Unauthorized Work Stoppages—Stranger Pickets in the Coalfields

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STUDENT ARTICLES

UNAUTHORIZED WORK STOPPAGES—
"STRANGER PICKETS" IN THE
COALFIELDS

INTRODUCTION

In recent years the bituminous coal industry has been beset by labor unrest manifested in the form of unauthorized "wildcat" strikes. There has been an apparent increase in the tendency of many coal miners to resort to spontaneous, unauthorized work stoppages over various types of disputes with their employers. Many of these work stoppages are the result of disputes that are subject to resolution through the mandatory grievance and arbitration mechanism incorporated in the series of collective bargaining agreements entered into between the Bituminous Coal Operator's Association and the United Mine Workers of America (hereinafter BCOA and UMWA). There has also been frequent use of "roving," or "stranger," pickets, where miners involved in a dispute at a particular mine unilaterally establish picket lines at other mines of the same employer or other employers, regardless of the desire of those other employees to cease work or become involved in a dispute not their own. The tradition among UMWA members, born of years of severe hardship and concerted struggle, and passed to the current generation of miners, dictates that no miner cross the picket line of a brother miner. The result is that a purely local dispute may grow into an industry-wide work stoppage. The concomitant losses of coal production, wages, profits, contributions to the health and retirement funds, and tax revenues are well documented.

Many coal operators have responded to these problems by resorting to the Federal courts to control the strikes and strikers. The resulting cases represent the most significant coal-related labor law developments of 1977, and are the subject of this note. In order to understand these cases, however, one must first look at the background upon which they rest.

UNAUTHORIZED WORK STOPPAGES

BACKGROUND

The general federal labor policy pertaining to the enforcement of collective bargaining agreements in the federal courts was explained in the landmark case of Textile Workers Union v. Lincoln Mills. In Lincoln Mills the Supreme Court determined that the policy of the Labor Management Relations Act of 1947 was to foster peaceful industrial relations by making voluntary collective bargaining agreements enforceable by either party, that Congress favored no-strike agreements, and that an agreement to arbitrate grievance disputes was the *quid pro quo* for a promise not to strike. The Court held that labor contract grievance-arbitration provisions were specifically enforceable in federal courts under section 301(a) of the LMRA. Because of the policy favoring peaceful resolution of labor disputes through arbitration the Supreme Court subsequently held, in Teamsters Local 174 v. Lucas Flour Co., that when parties to a collective bargaining agreement have agreed to final and binding arbitration, there arises an implied duty not to strike over those matters subject to arbitration. The effect of these cases was to render a union liable for breach of contract in a section 301(a) proceeding when a strike occurs over a dispute that was subject to resolution through mandatory arbitration provisions. The federal courts, however, were precluded from enjoining work stoppages in labor disputes by section four of the Norris-LaGuardia Act. This prohibition applied without regard to

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2 353 U.S. 448 (1957).
3 29 U.S.C. §§ 141-187 (1970) [also known as the Taft-Hartley Act] [hereinafter cited as LMRA].
4 353 U.S. at 453-55.
5 29 U.S.C. § 185(a)(1970) provides in part:
Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
7 369 U.S. 95, 105-106 (1962).
8 29 U.S.C. § 104 (1970) provides in part:
No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined)
the presence of an express or implied no-strike promise or grievance-arbitration provision.9

The Supreme Court altered its position in Boys Markets, Inc. v. Retail Clerks Union Local 770,10 in which it held that section four of the Norris-LaGuardia Act did not prohibit a federal court from enjoining a strike in breach of a collective bargaining agreement where the agreement contained provisions for binding arbitration of the dispute over which the strike resulted. This holding was premised upon the national labor policy favoring peaceful, voluntary resolution of industrial disputes.11 Arbitration was deemed central to this national policy. The Court reasoned that since a denial of injunctive relief would often deprive an employer of the only effective means of enforcing a no-strike clause, employers might be discouraged from entering into collective bargaining agreements with arbitration provisions that could be enforced against them.12 The Court stated that the core purposes of the Norris-LaGuardia Act13 would not be vitiated by the limited use of injunctive relief when necessary to promote the policy favoring arbitration. Boys Markets thus provided a judicial remedy that management could invoke whenever employees chose to strike in disregard of mandatory contractual grievance-arbitration procedures. It should be emphasized that the Court characterized its holding as "narrow,"14 and to be applied only in limited circumstances.15

from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment; . . .

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute; . . .

11 Boys Markets, Inc. v. Retail Clerks Union Local 770, 398 U.S. at 252.
12 Id. at 248, 252.
13 Id. at 253.
14 Id.
15 The oft-cited formula as to when Boys Markets injunctive relief is proper is: A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbi-
The presence of mandatory grievance and arbitration provisions in the National Bituminous Coal Wage Agreements has therefore provided a basis for the judicial imposition of an implied no-strike clause coterminous with the scope of the grievance-arbitration mechanism upon those collective bargaining agreements. This implied no-strike clause is enforceable by injunction where the strike is over an arbitrable grievance. The employer also has the right to recover damages for breach of contract in a section 301(a) proceeding.

A conflict of authority developed among the circuit courts of appeals over the applicability of Boys Markets injunctive relief to work stoppages resulting from a refusal of employees to cross picket lines established by other workers. This conflict was resolved by the Supreme Court in Buffalo Forge Co. v. United Steelworkers of America. The majority framed the issue in Buffalo Forge as "whether a federal court may enjoin a sympathy strike pending the arbitrator's decision as to whether the strike is forbidden by the express no-strike clause contained in the collective bargaining contract to which the striking union is a party." The five judge majority distinguished Boys Markets and held that section four of the Norris-LaGuardia Act prohibited injunctive relief in this situation. The essential factor in Buffalo Forge was that

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18 Compare NAPA Pittsburgh, Inc. v. Automotive Chauffeurs Local 926, 502 F.2d 321 (3d Cir. 1974), cert. denied, 419 U.S. 1049 (1974); and Monongahela Power Co. v. Local 2332, IBEW 484 F.2d 1209 (4th Cir. 1973) (both upholding the granting of injunctive relief); with Amstar Corp. v. Amalgamated Meat Cutters, 468 F.2d 1372 (5th Cir. 1972); and Plain Dealer Publishing Co. v. Cleveland Typographical Union # 53, 520 F.2d 1220 (6th Cir. 1975) (both denying injunctive relief).
20 428 U.S. at 399.
21 The Court recognized that if an arbitrator had ruled that the sympathy
the strike, while perhaps constituting an arbitrable issue itself, was not the result of any dispute that would have been subject to resolution by arbitration between the employer and the sympathy strikers. Therefore "[t]he strike had neither the purpose nor the effect of denying or evading an obligation to arbitrate or of depriving the employer of its bargain."22 Moreover, while such a strike might have been a breach of a private contract, it did no injury to the national policy favoring arbitration, and therefore the Norris-LaGuardia anti-injunction prohibition was deemed paramount.23

Boys Markets and Buffalo Forge provide the judicial setting in which the recurring problems of industrial strife in the bituminous coal industry have recently been litigated. A reading of the cases in this area reveals two related, but analytically distinct, problematic situations: (1) the propensity of some miners and local unions of the UMWA to engage in frequent work stoppages over arbitrable disputes; and (2) the spread of work stoppages (whether or not they arise over arbitrable grievances) from the mine of origin to other mines via "roving" or "stranger" pickets. In section 301 actions in federal courts, coal operators have sought to halt alleged "patterns and practices" of repeated work stoppages over arbitrable grievances through the use of prospective Boys Markets injunctions,24 and by attempts to require the International Union to adopt specific policies and practices designed to end recurring work stoppages by independent-minded locals.25

The most significant developments have occurred in those cases in which attempts have been made to curtail the spread of wildcat strikes. Buffalo Forge has provided a shield for the miners when they have refused to cross picket lines established by stranger pickets. However, theories have been advanced to circumvent the effect of Buffalo Forge by distinguishing that case on the following grounds: (1) that Buffalo Forge is not applicable where the relief sought is damages;26 (2) that Buffalo Forge controls only when a picket line is established by workers engaged in a lawful strike; therefore, when stranger pickets are engaged in a strike over an arbitrable grievance, Buffalo Forge does not provide a defense

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22 Id. at 408.
23 Id. at 409-13.
24 See text accompanying notes 69-78, 128-140 infra.
25 See text accompanying notes 64-81, infra.
26 See text accompanying notes 31-41, 127 infra.
to those employees who refuse to cross that picket line;' and, (3) that a union's refusal to arbitrate over the legality of the refusal of its members to cross a stranger picket line constitutes an enjoinable breach of contract in and of itself. Yet another approach is illustrated in cases where damages have been sought against the International and various district levels of the UMWA for failure to halt the spread of wildcat strikes. One case also demonstrates an attempt by coal operator attorneys to invoke the Declaratory Judgement Act as a vehicle for constraining work stoppages.

Although there is a great deal of apparent overlap among the issues dealt with in the cases discussed, each case will be treated separately so that the impact of subtle factual distinctions may be fully understood, and over-generalization avoided.

THIRD CIRCUIT

The paradigmatic factual situation recurrent in these cases is present in United States Steel Corp. v. United Mine Workers. In August, 1969, employees of the Christopher Coal Company in West Virginia, members of UMWA Local 1058, engaged in a work stoppage to protest the discharge of five local union officers and committeemen following a job bidding dispute. Roving pickets from Local 1058 established a picket line at U. S. Steel's Robena Mine Complex in Pennsylvania. Employees at the Robena Complex, members of UMWA Local 6321, refused to cross the picket line. U. S. Steel subsequently brought an action against the International UMWA, District 4 and Local Union 6321 to recover monetary damages resulting from the week long work stoppage. A jury returned a verdict in favor of the plaintiff and the case was brought before the Third Circuit on appeal. Judge Rosenn, writing for the court, stated the central issue as:

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27 See text accompanying notes 44-47, 93-110, 122-126 infra.
28 See text accompanying notes 42-43 infra.
29 See text accompanying notes 48-63, 115-121 infra.
30 See text accompanying notes 79-81 infra.
31 548 F.2d 67 (3d Cir. 1976).
32 Plaintiff also originally had sought a preliminary injunction but did not proceed with this because the Robena employees had returned to work. Id. at n.7.
33 At trial in November, 1973, plaintiff had alleged that the Robena employees were engaged in a sympathy strike in support of the West Virginia miners, and that the failure to invoke the contractual grievance-arbitration mechanism constituted a breach of the contract. The defendants denied this allegation and asserted that the work-stoppage resulted from the Robena miners' concern for their safety, as the West Virginia miners had allegedly threatened violence. Such a claim would not
whether a union can be held liable to an employer in money damages for the refusal of union members to cross a stranger picket line when the collective bargaining agreement between the union and the employer provides a detailed grievance-arbitration procedure but contains no express no-strike clause. Because of its interpretation of *Buffalo Forge*, which had been decided while the appeal was pending, the court reversed the award of damages.

The court recognized that the denial of injunctive relief in *Buffalo Forge* was founded upon the prohibitions of the Norris-LaGuardia Act, and that the Norris-LaGuardia Act did not apply to damage actions. It nevertheless considered *Buffalo Forge* to be dispositive of the claims at issue because, as the court noted, the propriety of an award of monetary damages following a work stoppage is dependent upon whether the work stoppage constituted a breach of a contractual duty not to strike. Since the collective bargaining agreement at issue did not contain an express no-strike promise, the determination as to whether the work stoppage was a breach of contract was dependent upon whether the dispute underlying the work stoppage was subject to the mandatory grievance-arbitration provisions of the contract. Because of the implicit finding by the jury that the strike was a sympathy strike, and in the absence of an express no-strike clause, the court deemed *Buffalo Forge* directly controlling of the issue:

Had the contract in the instant case contained a no-strike clause, the issue whether the sympathy strike violated the union's no-strike undertaking might have been arbitrable. In the absence of a no-strike clause however, *Buffalo Forge* establishes that there is "no possible basis for implying from the existence of an arbitration clause a promise not to strike that would have constituted a breach of the duty to arbitrate under the circuit law at that time. See Gateway Coal Co. v. UMW, 466 F.2d 1157 (3d Cir. 1973). Because of the subsequent reversal of *Gateway*, Gateway Coal Co. v. UMW, 414 U.S. 368 (1974), and the intervening ruling in *Buffalo Forge*, the parties switched positions in their arguments before the Third Circuit. For purposes of deciding the appeal, and in light of the trial court's jury instructions, the court treated the verdict in favor of plaintiff as an implied finding that the Robena workers were engaged in a sympathy strike. *Id.* at 70, 72-73.

34 *Id.* at 69 (footnote omitted).
36 548 F.2d at 72.
37 *Id.*
could have been violated by the sympathy strike” in this case. 428 U.S. at 408.3

This was true because the underlying dispute in the sympathy strike, the dispute between Christopher Coal and Local 1058, was not subject to, nor could it have been resolved by, arbitration between U. S. Steel and Local 6321.39

The holding in U. S. Steel is a correct application of Buffalo Forge. In a true sympathy strike situation the underlying dispute cannot be resolved by arbitration between the sympathy strikers and their employer. In the absence of an express no-strike promise a court cannot imply a promise not to strike over non-arbitrable matters. Subversion of the arbitration process is the only justification for the Boys Markets exception to the Norris-LaGuardia prohibition.40 Therefore, in the situation present in U. S. Steel there was no basis for implying a promise not to engage in a sympathy strike. Such a work stoppage could not have been a breach of contract, and the Third Circuit so held as a matter of law.41

The plaintiff, U. S. Steel Corporation, attempted to avoid the effect of Buffalo Forge by raising what might appropriately be termed the “bootstrap argument”: that the union was liable for breach of contract for its failure to arbitrate the issue as to whether union members had the right to honor a stranger picket line. The court disposed of this contention by noting that Buffalo Forge had flatly held that a promise not to engage in sympathy strikes cannot be implied solely from the presence of arbitration provisions, and the union therefore had no contractual duty to arbitrate the issue already settled in Buffalo Forge.42 The court did indicate that the result might have been different had the contract contained a general no-strike promise.43

In U. S. Steel, the underlying dispute, or “primary dispute,”44 was the job bidding/discharge controversy between Christopher Coal and Local 1058. That dispute was apparently subject to the mandatory grievance-arbitration provisions of the national coal

38 Id. at 73.
39 Id.
40 398 U.S. at 249-53.
41 548 F.2d at 73.
42 Id. at n.13.
43 Id. This dictum, however, is questionable, as the collective bargaining agreement in Buffalo Forge contained an express, general no-strike promise.
44 Id. at 74. See note 52 infra.
contract, thus the Local 1058 work stoppage was illegal.\textsuperscript{45} Plaintiff argued that \textit{Buffalo Forge} was distinguishable on this basis.\textsuperscript{46} The court, relying on the key of arbitrability, refuted this attempt to impute the illegality of the stranger pickets', or "primary" strike, to those who refused to cross the stranger picketline; "The Robena strike was not over any dispute 'between the Union and the employer' — between UMW and U. S. Steel — that was subject to arbitration."\textsuperscript{47} While the discussion of this issue was scant, it appears that the result and rationale of \textit{U. S. Steel} are consistent with \textit{Buffalo Forge}.

The final argument raised by U. S. Steel was that the International and district unions were liable in damages for failure to take "all reasonable steps" to terminate the strike by Local 1058 and to prevent its spread.\textsuperscript{48} This approach would have placed liability only upon the International and the district unions. The court summarily disposed of this argument by noting that the issue of union liability for the spread of the strike had not been tried in the court below.

The question left open in \textit{U. S. Steel} was squarely faced and resolved in \textit{Republic Steel Corp. v. United Mine Workers of America},\textsuperscript{49} in which the court considered the certified question:

\begin{quote}
Whether the International Union, UMWA, [can be] liable in damages for failing to use every reasonable effort to stop the spread of illegal wildcat strikes waged by UMWA members against other employers, thereby inducing plaintiff's employees to engage in sympathy strikes.\textsuperscript{50}
\end{quote}

Republic Steel had brought actions for injunctive relief and damages as a result of work stoppages occurring when employees at two of Republic's mines refused to cross picket lines established by pickets who were subsequently determined to be employees of Buckeye Coal Company. The Republic and Buckeye employees were members of the UMWA. The record on appeal did not disclose the nature of the dispute between Buckeye and its employees.

\textsuperscript{45} The court, however, on the basis of the record before it, refused to assume this to be true. \textit{Id.}
\textsuperscript{46} The underlying, or primary strike, in \textit{Buffalo Forge} was a lawful economic strike. \textit{Buffalo Forge Co. v. United Steelworkers of America}, 428 U.S. at 400 (1976).
\textsuperscript{47} 548 F.2d at 74, \textit{citing} \textit{Buffalo Forge Co. v. United Steelworkers of America}, 428 U.S. 397, 405 (1976).
\textsuperscript{48} 548 F.2d at 74.
\textsuperscript{49} 570 F.2d 467 (3d Cir. 1978).
\textsuperscript{50} \textit{Id.} at 469.
Republic sought damages against the International UMWA, the district, subdistrict and local unions, as well as the individual union officers who represented its employees. Republic argued that the rationale of *Eazor Express, Inc. v. International Brotherhood of Teamsters* provided a basis for liability for the failure of a union to use all reasonable efforts to prevent the spread of an unauthorized and allegedly illegal work stoppage to another employer. The union argued that the rule of *Buffalo Forge*, as well as the holding in *U. S. Steel*, precluded liability for damages in a sympathy strike context.

Judge Aldisert, writing for the court, noted that neither *Buffalo Forge* nor *U. S. Steel* barred the relief sought by plaintiff. The theory advanced by plaintiff was that the sympathy strike "resulted from an illegal underlying strike whose issues were subject to the compulsory settlement procedures of a collective bargaining agreement." It was noted that *U. S. Steel* was not tried on the theory advanced by plaintiff in *Republic*. Moreover, both *U. S. Steel* and *Buffalo Forge* shared "the crucial factor of the non-arbitrability of issues which had precipitated the underlying strike." That is, *Buffalo Forge* "did not decide what remedies are available to an employer when the issues precipitating the underlying strike are subject to settlement procedures."

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52 570 F.2d at 477. Judge Aldisert has made a significant contribution to the judicial approach to the problems in these cases by application of the phrase "underlying strike."

The strike which precipitates the sympathy action is properly referred to as the "underlying strike." Although the terms "primary" and "secondary" strike have sometimes appeared in reference to the underlying and sympathy strikes, respectively, it is thought that the former terms are more properly used as terms of art in labor boycott situations.

H. at n.7.
53 Id. at 477.
54 Id. This statement is factually correct as to *Buffalo Forge*, wherein it had been stipulated that the underlying strike was "bona fide, primary and legal" as it was an economic strike. 428 U.S. at 403. The reference to the non-arbitrability of the underlying strike in *U. S. Steel* is incorrect. There the underlying strike was over a job-bidding dispute. 548 F.2d at 73 and n.12. The *Republic* court's quotation of the language in *U. S. Steel* concerning non-arbitrability clearly suggests that the underlying dispute in *U. S. Steel* was not arbitrable because it was not subject to resolution by arbitration between the sympathy strikers and their employer. As the *Republic* court noted, however, *U.S. Steel* was "not tried on that theory." Compare text accompanying notes 44-47 supra.
55 570 F.2d at 477.
Having determined that neither Buffalo Forge nor U. S. Steel controlled, the court held that "in a sympathy strike context, an International union may be liable for damages if it did not exercise all reasonable efforts to halt conduct of its members which is proven to be unlawful." Because of the lack of proof in the record as to the nature of the underlying strikes, however, the cases were remanded. The court noted that plaintiff's ability to recover was dependent upon proof that "[1] the dispute stranger UMWA pickets had with their employer or employers was one that was subject to the grievance and arbitration clause contained in the Agreement . . . . [2] [T]he UMWA knew or should have known of the action of the stranger pickets, and [3] nevertheless failed to exhaust all reasonable means to bring that unlawful action to an end."

The duty imposed upon the International UMWA by the court in Republic Steel and liability for breach thereof, was premised upon the International's control over both the stranger pickets and the sympathy strikers, and the responsibility of the International as a signatory to an industry-wide agreement and the concomitant industry-wide commitment to peaceful contractual dispute resolution.

Although the court held that the International Union may be liable for failure to halt the spread of illegal wildcat strikes, it rejected liability as to the other defendants. Applying the rule of Atkinson v. Sinclair Refining Co., the court held that individual union officers were not liable for alleged unlawful concerted activity. The district, sub-district and local unions were held not liable because

[a]n implied obligation to take reasonable steps to prevent the spread of unlawful strikes can be imposed only to the extent that it can be exercised, and in the sympathy strike context, the

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54 Id. at 470.
55 Id. at 478.
56 Id.
57 Id. at 479. The holding and reasoning in Republic Steel were presaged by a sensitive and well-stated expression of concern over the increased economic and social turbulence manifested in relations between miners and coal operators. The recent incidence of wildcat strikes and violence was perceived by Judge Aldisert as a disastrous straying from the basic tenets of our national labor policy. The opinion stated that the holding was "mandated by the public interest. The International union simply must bear certain obligations if it is to continue to be entitled to the rights and benefits accorded by our national labor policy." Id., Cf., United States v. International Union, UMWA, 77 F. Supp. 563, 566-67 (D.D.C. 1948).
crucial communication link which exists between the international union and both sets of strikers may well be nonexistent between the geographically limited branches of that union and the roving pickets.\footnote{570 F.2d 467, 478. The court noted that in a case wherein sufficient allegations and proof are present that various sub-levels of a union have control over both sets of strikers, a different result might obtain.}

The result in Republic Steel is not inconsistent with our national labor policy and the rights and obligations of parties to a national collective bargaining agreement. However, the holding in that case should not be read as allowing, nor should it be extended to allow, the imputation of the illegality of the underlying strike to the sympathy strike. It would appear that Buffalo Forge and \textit{U. S. Steel}\footnote{548 F.2d 67 (3d Cir. 1976).} preclude an award of damages against employees who engage in a sympathy strike, regardless of the illegality of the underlying strike. It would also be a misapplication of the rationale underlying Republic and Eazor Express\footnote{520 F.2d 951 (3d Cir. 1975), \textit{cert. denied}, 424 U.S. 935 (1976).} to attempt to use those cases as support for the imputation of the illegality of the underlying strike to the sympathy strikers for purposes of enjoining the sympathy strike. The holding and rationale of Republic are clearly applicable only to a level of union organization which has control over both wildcat (underlying) strikers and the sympathy strikers. The duty delineated in Republic is one which arises from the tripartite relationship between two locals and their common superior, the International Union, and possibly a shared district union. There is no comparable relationship between two local unions; therefore there is no comparable duty nor basis for liability.

\textit{Bituminous Coal Operators' Association Inc. v. International Union, United Mine Workers of America}\footnote{431 F. Supp. 774 (W.D. Pa. 1977).} (hereinafter BCOA) represents an attempt by the bargaining agent of the bituminous coal industry to halt a “national pattern and practice” of illegal work stoppages by imposing specific duties upon the International Union, UMWA by means of a nationwide injunction and declaration of obligations. The complaint alleged a national pattern and practice of picketing and work stoppages over disputes that were subject to resolution through the grievance and arbitration provisions of the 1974 National Bituminous Coal Wage Agreement, and that the International Union, UMWA, had breached its obligation to maintain the integrity of the contract by failing to use reasona-
ble efforts to insure compliance with that agreement. The case was decided on a motion to dismiss on the pleadings, and therefore the allegations of the complaint were taken as true. Plaintiff sought the imposition of an order upon the International which would contain very extensive and specific provisions for halting future contract violations and for disciplining non-complying locals.

The court held that the complaint did allege a breach of the 1974 contract. It next considered the availability of injunctive relief which the court described as "prospective in the sense that future action is proscribed in situations not yet existing and removed from the present facts." After recognizing that a prospective Boys Markets injunction would be allowed in some circumstances in the Third Circuit pursuant to United States Steel Corp. v. U.M.W.A., and in other circuits, the court held that the injunctive relief requested was not permissible. U. S. Steel was distinguished because the relief granted therein applied to employees of a single employer at a single work complex. Moreover, the court noted that the broad relief requested would violate the Norris-LaGuardia Act as interpreted in Boys Markets and Buffalo Forge. Specifically, it was indicated that the requested relief would constitute

[an advance determination by the Court as to the specific duties of the International Union, without regard to the many and varied factual circumstances in which a dispute might arise, and which] would expose the International to the sanctions of contempt despite what might be a good faith belief in

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65 See Article XXVII, National Bituminous Coal Wage Agreement of 1974.
66 431 F. Supp. 774, 778. See also Consolidation Coal Co. v. International Union, UMWA, 431 F. Supp. 787 (W.D. Pa. 1977), a companion case having essentially the same claims at issue, wherein the allegations of a "national pattern and practice" of breach of contract, as alleged in BCOA, were supported by evidence of record.
68 431 F. Supp. at 778.
69 Id. at 780.
70 534 F.2d 1063, rehearing denied, 534 F.2d 1084 (3d Cir. 1976).
71 Old Ben Coal Corp. v. Local 1487, UMW, 500 F.2d 950 (7th Cir. 1974); CF&I Steel Corp. v. United Mine Workers of America, 507 F.2d 170 (10th Cir. 1974); contra, United States Steel Corp. v. United Mine Workers of America, 519 F.2d 1263 (6th Cir. 1975).
72 431 F. Supp. at 782.
73 Id.
74 Id. at 783.
the legality of a particular strike or walk-out. Lawful union activity would thus be "chilled." 75

Another reason for the denial of requested injunctive relief was the fact that some of the members of the BCOA had no facilities whatsoever within the Western District of Pennsylvania nor within the Third Circuit. 76 Further, the court noted that such an injunction would be improper because the legal obligations of the defendant and other branches of the union varied among the judicial circuits. 77 Finally, and perhaps of greatest significance, the court reasoned that the extensive injunctive "relief requested would necessarily be a substantial interference with the internal administration of the union" which would violate the public policy embodied in Section 8(a)(2) of the National Labor Relations Act. 78

The court also declined to exercise its discretion to issue a ruling pursuant to the Declaratory Judgement Act 79 to determine whether the defendant had breached the 1974 contract by failing to use all reasonable means at its command to end the national pattern and practice of illegal work stoppages and picketing. The refusal to issue a declaratory judgement was based on essentially the same reasons as the denial of injunctive relief: i.e., that the judgment would apply to generalized allegations which did not actually constitute a concrete case. 80 Such a judgment would be contrary to "a federal labor policy that encourages the private resolution of disputes in the manner agreed to by the parties." 81 The court felt that the determination sought by plaintiff's request for declaratory judgment was more suitably made on an ad hoc basis.

It appears that Judge Weber in BCOA wisely determined that the relief sought was improper. An analysis of the requested order makes obvious the extensive and detailed intervention into internal union affairs that would have resulted, and which certainly would be inconsistent with established labor policy. Moreover, the extraterritorial effect of such an order by a U.S. district court raises the spectre of severe problems of judicial administration. Finally, the court's refusal to issue a declaratory judgment pro-

75 Id.
76 Id. at 784.
77 Id.
80 431 F. Supp. 744, 786.
81 Id.
perly rebuffed an attempt to achieve indirectly that which plaintiff could not achieve directly.

FOURTH CIRCUIT

A narrow interpretation of Buffalo Forge by the Fourth Circuit is suggested by Cedar Coal Co. v. United Mine Workers of America, which involved a wildcat strike that began in southern West Virginia and led to an industry-wide work stoppage during the summer of 1976. The appeal was a consolidation of three related cases in which plaintiff coal companies sought injunctive relief and damages against striking miners. The facts of each case vary, and the holdings of the court indicate the parameters of Boys Markets injunctive relief in the Fourth Circuit.

Case No. 76-1793 began when employees of Cedar Coal Company, represented by Local Union 1759, UMWA, engaged in a work stoppage over a job bidding dispute that had been in arbitration, but which the arbitrator had not, at that time, totally decided. Subsequently, Cedar suspended two employees; this suspension was upheld by an arbitrator, but became an additional reason for the strike. Cedar then brought suit in the U. S. district court under section 301(a) of the LMRA seeking injunctive relief and damages. The company alleged that the defendants had engaged in a "pattern and practice of refusing to submit . . . disputes . . . to peaceful settlement through grievance and arbitration procedures," that this pattern would continue, and that the present strike was over the arbitrator's rulings both as to the discharged employees and as to the job posting of the communication job. The district court issued a temporary restraining order and later imposed coercive civil contempt fines upon the union, and contempt fines against two employees. These actions became an additional basis for the work stoppage. Local 1759 moved to vacate the restraining order on the following grounds: (1) that the strike was not enjoinable under the rule of Buffalo Forge and section four of the Norris-LaGuardia Act because, regardless of the original motives, the strike had developed into a protest against the use of federal labor injunctions in the coal fields and therefore was not over a dispute subject to arbitration; (2) that because of the vio-

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83 560 F.2d at 1156-57.
84 "Id. at 1157.
85 "Id.
86 "Id. at 1158. As a prerequisite to ending the strike Local 1759 demanded: (1)
lent context of the work stoppage it was not a strike according to section 502 of the LMRA; and (3) that the union was not liable because the strike was not authorized, but rather was a wildcat strike. Without stating any reason for so doing, the district court continued indefinitely the hearing on Cedar’s motion for a preliminary injunction. The temporary restraining order expired, the strike continued to spread, and Cedar appealed the case.\[56\]

Addressing the substantive merits of the injunction issues, the court noted that in all three cases the necessary prerequisites for the issuance of Boys Markets injunctive relief had been satisfied, and the only question remaining was the application of the Buffalo Forge rule to the facts of each case.\[57\] The original wildcat strike in Case No. 76-1793 was “squarely” within the scope of Boys Markets, as the strike began over the job bidding and suspension disputes, both of which were subject to arbitration, and which had in fact been arbitrated.\[58\] The most novel and instructive aspect of Case No. 76-1793 was the rejection of the union’s defense that the strike was not enjoinable because it was ultimately a protest against federal labor injunctions and thus was not over an arbitrable dispute. The court noted that to allow a union to assert a defense that the strike was over the actions taken by a court in such a case “would amount to nothing more nor less than an overruling of Boys Markets by the unilateral act of one of the parties and would abandon completely the function of the courts in these cases as set forth in Boys Markets.”\[59\] Since the strike was clearly

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\[56\] 560 F.2d at 1168.

\[57\] Id. at 1171.

\[59\] Id. This is not to say that the court will not recognize the non-enjoinability of strikes as a form of social or political protest in a different context. Id. at 1169, and text accompanying note 4. See Armco Steel Corp. v. United Mine Workers, 505
enjoinable under *Boys Markets*, it followed that the district court's action of indefinitely continuing the hearing on the motion for preliminary injunction was error.\(^{92}\)

Pursuant to their strike against Cedar Coal Company, members of Local 1759 picketed mines other than the ones at which they were employed. On June 24 and 25, 1976, Cedar Coal employees, members of Local Union 1766, encountered these pickets at mines within the jurisdiction of Local 1766. The Local 1759 pickets were purportedly protesting federal labor injunctions. Members of Local 1766 observed the picket lines, and Case No. 76-1785 resulted.\(^{93}\) Cedar Coal brought suit under section 301(a) of the LMRA against Local 1766, the district\(^{94}\) and the International, alleging, as in Case No. 76-1793, a pattern and practice of refusing to submit arbitrable disputes to the grievance-arbitration process, and further alleging

a pattern and practice of the defendants to treat arbitrable disputes arising at any mine of any signatory operator as their own, as disputes between all employees and all signatory operators, and as directly involving the terms and conditions of employment of all employees at all mines. This strike, the complaint alleged, was over the arbitrator's rulings in the disputes of Local 1759.\(^{95}\)

The district court judge characterized the work stoppage by Local 1766 members as a sympathy strike, and further noted that the strike was a protest over real or imagined wrongs by the federal courts. Relying upon *Buffalo Forge*, he denied the requested injunctive relief and dismissed the complaint for failure to state a claim upon which relief could be granted.\(^{96}\)

The Fourth Circuit held the dismissal of the complaint to be error.\(^{97}\) The reasoning given in support of this holding is the most significant aspect of the *Cedar Coal* case. Earlier in the opinion, the court had analyzed *Buffalo Forge* and determined that the

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\(^{93}\) Id. at 1171.

\(^{94}\) Id. at 1159.

\(^{95}\) Both locals, 1759 and 1766, were contained within UMWA District 17.

\(^{96}\) 560 F.2d at 1159 (emphasis added).

\(^{97}\) Id.
Supreme Court in that case meant to tie together the non-arbitrability of the underlying cause with the cause of the strike at issue so that, when the underlying cause is not subject to arbitration, a refusal to cross a picket line, generated by a strike over the underlying cause, is not a violation of a no-strike clause which is enforceable by injunction against the strike although it may be by arbitration . . . . Following Buffalo Forge, it seems that where the underlying issue is not arbitrable, then a refusal to cross a picket line set up on account of that underlying issue, although the refusal may be arbitrable, may not be prevented by injunction pending arbitration.8

After analyzing the cases overruled by Buffalo Forge, and the relationship between Buffalo Forge and Boys Markets, the court stated we take it that a correct construction of Buffalo Forge is to limit the application of Boys Markets so that it does not apply in cases where the only dispute between the company and the union is over the meaning or application of the no-strike provision, express or implied, which dispute has been brought about by a dispute which is not arbitrable.9

The scope of this interpretation of the law is made clear when applied to the facts of Case No. 76-1785, wherein the court stated [w]hile the dispute [between Cedar and Local 1766] may not technically have been 'over a grievance which both parties are contractually bound to arbitrate,' . . . because it is at least arguable that Cedar could not have conceded the arbitrable issue to Local 1766, it rather being engaged in arbitration with Local 1759, we think that construction of Boys Markets is too narrow here. [1] Here, the employer is the same as to both Locals; [2] the collective bargaining agreement is the same; [3] the bargaining unit is the same; [4] the locality of employment is the same; and [5] most importantly, the purpose of 1766's refusal to cross the 1759 picket lines was not to coerce Cedar into conceding an issue to Local 1759 which was not arbitrable; rather, the purpose of the 1766 strike was to coerce Cedar into conceding an issue to Local 1759 which was admittedly arbitrable.10

On this basis, the court held that Boys Markets, not Buffalo Forge, controlled, and therefore the dismissal of the complaint was error.11

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8 Id. at 1169 (citation omitted).
9 Id. at 1170.
10 Id. at 1171-72.
11 Id. at 1172.
It is important to note that the court of appeals treated the allegations of Cedar's complaint as true, including the allegation that Local 1766 was striking over the arbitrator's ruling in the dispute between Local 1759 and Cedar.\footnote{Id. at 1171.} This posture on appeal is unfortunate as it renders the scope of the holding less than totally clear. Obviously the Boys Markets exception to section four of the Norris-LaGuardia Act arises where a strike operates to vitiate a contractually agreed upon grievance-arbitration mechanism. The Supreme Court, however, has never held that the refusal of members of one union, or local, to cross picket lines established by members of another union, or local, may be enjoined despite the prohibitions of section four of the Norris-LaGuardia Act. Where the underlying strike is over an arbitrable grievance, virtually any refusal to cross such a picket line can be characterized as an attempt to coerce the illegal strikers' employer to abdicate instead of arbitrate. The remedy for the illegally struck employer is to obtain a valid Boys Markets injunction against its own employees. And while those engaged in a sympathy strike or refusal to cross picket lines may be indirectly pressuring the other employer, and harming their own employer as well, there is nevertheless no arbitrable dispute between the sympathy strikers and their own employer that would fall within the "narrow exception" to the Norris-LaGuardia Act embodied in Boys Markets. The force of this argument is more compelling where the no-strike promise that the sympathy strikers are alleged to have breached is not voluntarily agreed upon, but is implied from the presence of contractual arbitration provisions.\footnote{Both the majority and dissent in Buffalo Forge stated that a no-strike promise implied from the presence of contractual grievance and arbitration provisions does not extend to sympathy strikes. The Court stated: "[t]o the extent that ... courts ... have assumed that a mandatory arbitration clause implies a commitment not to engage in sympathy strikes, they are wrong." 428 U.S. at 408; accord, id. at 425, n.17 (dissenting opinion). A major tenet of federal labor policy is that workers have the right to strike, and although that right may be waived, NLRB v. Rockaway News Supply Co., 345 U.S. 71 (1953), such waiver should be explicitly stated. Mastro Plastics Corp. v. NLRB, 350 U.S. 270 (1956).}

*Cedar Coal* can be interpreted as holding that the illegality of a strike over an arbitrable grievance by union A will be imputed to determine whether a refusal by members of union B to cross union A's picket line is subject to injunction in a federal court. But perhaps the holding of Case No. 76-1785 in *Cedar Coal* is limited to the situation where sympathy strikers have an identity of inter-
ests with the underlying (illegal) strikers, such as where they share a common employer, collective bargaining agreement, bargaining unit, locality of employment or certain practical interests. There is language suggesting such an approach in the case. Alternatively, the court may have accepted the argument that where employees refuse to cross a picket line established by pickets proven to be striking illegally, then the sympathy strikers may also be enjoined. Regardless of whether Case No. 76-1785 of Cedar Coal is premised upon this basis or upon a showing of identity of interests between underlying and sympathy strikers, the holding is an unwarranted extension of the federal injunctive power in labor disputes, for it contravenes the Congressional prohibition of section four of the Norris-LaGuardia Act, as well as the consistent themes of federal labor policy. Moreover, imputation of illegality, as a judicial technique in Boys Markets—Buffalo Forge cases, will do nothing to mitigate the problems endemic in labor relations in the eastern bituminous coal fields, but will only exacerbate the situation. Such a holding demonstrates a refusal to acknowledge the practical reality of life in the organized coal industry; miners refuse to cross a picket line for many reasons or for a single reason: because it is there.

The third action consolidated into Cedar Coal, Case No. 76-1846, provides some indication that the holding of Case No. 76-1985 may depend upon the identity-of-interests approach, rather than an imputation of illegality to sympathy strikers. In Case No. 76-1846, Southern Ohio Coal Company, a signatory to the national coal contract, brought an action under section 301(a) of the LMRA against its employees, members of Local Union 1949, UMWA, for their failure to cross picket lines established by persons allegedly protesting the federal injunction against Local 1759. The district court found that the pickets were not members of Local 1949, that 1949 members refused to cross the line "perhaps from fear or perhaps from exercise of a right not to cross picket lines, or perhaps for other reasons, respectful of the picket line and its meaning to

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104 See text accompanying note 100, supra.
105 Regardless of the correctness of such a rule, it would result in other problems: Is it relevant in an action for damages whether the sympathy strikers had actual knowledge that stranger pickets were engaged in an unlawful strike? What happens if stranger pickets are from different employers and some are engaged in a lawful strike while the others are engaged in an unlawful strike? What happens when mixed motives, such as fear and sympathy, compel a refusal to cross?
106 560 F.2d at 1160.
Relying upon Buffalo Forge, the district court denied Southern's motion for injunctive relief. The Fourth Circuit affirmed.

In upholding the district court's decision the Fourth Circuit noted that

there was no dispute between Southern and Local 1949 which had anything to do with the picket line, or not crossing it, until after the picket line appeared . . . . Even considering that the underlying purpose of 1949's strike may have been to put indirect pressure on Cedar to concede an arbitrable issue to Local 1759, Southern could concede nothing to Local 1759 because it was not bound to it by a collective bargaining agreement, and there was no dispute between Southern and Local 1759.

This language seems to rebut the implication in Case No. 76-1785 of an imputation of the illegality of the underlying strike to sympathy strikers. Unlike the sister locals in Cases 76-1793 and 76-1785 (Locals 1759 and 1766 respectively) there was no basis for recognizing an identity of interests between Locals 1949 and 1759 other than the common bond between any two local unions of the UMWA.

In summary, it appears that a Boys Markets injunction will issue in the Fourth Circuit when the object of the sympathy strike is "to compel the company to concede an arbitrable issue" and there is some linkage, or common interests, or common goal between the illegal, underlying strikers and those who refuse to cross the illegal strikers' picket line. On the other hand, an injunction will be barred by the rule of Buffalo Forge where the sympathy strikers have no such common bond with the illegal strikers.

**Sixth Circuit**

In *Southern Ohio Coal Co. v. United Mine Workers of America*, the Sixth Circuit adopted a significantly different interpretation and application of Buffalo Forge from that of the Fourth Circuit. The case began with a series of work stoppages in 1975 over arbitrable grievances at three mines owned by Southern, the employees of which were represented by Local Unions 1886,
1890, and 1957 of the UMWA. Southern sought injunctive relief against the three local unions, District 6, and the International Union, UMWA. Having found a pattern of disregard for the contractual dispute settlement procedures, the district court granted injunctions against the three locals but refused to extend the orders to the district or International defendants. The district court's orders required the locals to refrain from engaging in any work stoppage, and from encouraging others to cease work. The orders further required them to "utilize the grievance and arbitration procedures of the National Bituminous Coal Wage Agreement of 1974, with respect to arbitrable grievances; and [t]o take all action which may be necessary to assure compliance with the terms of" that contract. The order was still in effect in July, 1976, when Southern employees refused to cross picket lines allegedly established at Southern's mines by employees of Cedar Coal Company from West Virginia. Southern brought motions for orders to show cause why its employees should not be held in contempt. The district court, relying upon Buffalo Forge, denied Southern's motions. Southern appealed that denial, as well as the court's previous refusal to extend the application of the orders against the district and International Unions. The local unions appealed the original injunctions on the grounds that they were, inter alia, vague and overbroad.

The court of appeals first held that the injunctions issued in 1975 were proper under the rule of Boys Markets because the original disputes were subject to arbitration. The court next considered Southern's contention that the district court erred in refusing to extend the injunctions to the district and International Unions. The district court had found that the district and International Unions had notice of the 1975 work stoppages but held that notice alone was not a sufficient basis for application of the injunctions to those defendants. The district court had also found that neither the district nor the International had provoked or instigated the 1976 work stoppages. Southern contended that the district and International Unions had a duty to use "all 'reasonable means' at their disposal to end the unauthorized strikes" and should be liable for failure to do so. The court rejected this "agency theory" of

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111 Id. at 699-700.
112 Id. at 699.
113 Id. at 700.
114 Id. at 701.
115 Id.
116 Id.
liability and reiterated the established law of the circuit"" that a union may [not] be held responsible for the 'mass action' of its members in staging an unauthorized strike or for failure to use its 'best efforts' in curtailing one . . . . [A] union may only be held responsible for the authorized or ratified actions of its officers and agents."" The court stated that a contrary result might obtain in a case in which the record indicated that the district or International Union "‘encouraged, condoned or induced the [unauthorized] strikes, either through action or inaction.'" Moreover, a union's "‘studied ambivalence toward an unauthorized strike may constitute sufficient inducement, encouragement and condonation' of that strike so as to render the union subject to injunctive relief and damages." However, the record in Southern Ohio contained no evidence of such inducement or condonation.

The court next considered the district court's refusal to issue show cause orders against the defendant local unions for refusing to cross the stranger picket lines. The court, relying on Buffalo Forge, affirmed. Southern had argued that Buffalo Forge was not controlling on this issue because the stranger pickets were engaged in an illegal work stoppage and that the Southern employees had ratified the illegal strike and adopted its goals by refusing to cross the picket lines. Southern sought to buttress this argument, and further distinguish Buffalo Forge, by virtue of the fact that the stranger (underlying) pickets and sympathy strikers were members of the same bargaining unit and were under the same contract. The court wisely rejected this argument, stating that the "‘bare assertion' that both sets of strikers are members of the same bargaining unit under the same contract did not further the central inquiry under Buffalo Forge: i.e., ‘whether the employees sought to be enjoined are striking over issues which they have agreed to arbitrate.'"

118 E.g., Peabody Coal Co. v. Local Unions, 543 F.2d 10 (6th Cir. 1976).
119 551 F.2d at 701. Accord, United Construction Workers v. Haislip Baking Co., 223 F.2d 572 (4th Cir. 1955); contra, Republic Steel, supra note 48, and text accompanying notes 48-60, supra.
120 551 F.2d at 701.
121 Id.
122 Id. at 703. The court also noted that arbitration under the 1974 coal agreement was on a "mine-by-mine" basis, with only a possibility of central review by the Arbitration Review Board in certain instances. Therefore, the benefit to be derived by the sympathy strikers from resolution of the underlying, illegal strike, in favor of the underlying strikers, is highly tenuous and speculative. Id. at 703 and n.6. This reference to the arbitration procedure is contrary to the inference drawn
The court also rejected any theory of liability based on the imputation of the illegality of the underlying strike to the sympathy strikers. Southern argued that it would be anomalous to hold that, although a strike over an arbitrable grievance is illegal and therefore enjoinable, a strike in support of that illegal strike is not enjoinable. This argument was rejected because: (1) it shifted "the focus of the court's inquiry from the employees against whom the injunction is sought to the illegal pickets," (2) thereby posing problems of proof since the illegal pickets usually are not parties to the action; and (3) such a rule would force employees to determine the legality or illegality of the stranger pickets' dispute before deciding whether or not to honor the stranger picketline. The proper focus of the court in a section 301(a) injunction proceeding is upon the employees sought to be enjoined. The only basis for a "Boys Markets injunction is a finding that the issue underlying the work stoppage is arbitrable." Where the employees in question have refused to cross a stranger picketline, that refusal to cross is the underlying issue, and "whether motivated by sympathy or fear of reprisal, the work stoppage is not caused by an arbitrable dispute between the mine workers and the employer." In other words, the lawfulness of the stranger picketline is irrelevant in a section 301(a) proceeding in which the employees sought to be enjoined are those who refuse to cross a stranger picketline.

Southern also asserted the "bootstrap" argument that the arbitration clause at issue was broad enough to include the dispute as to whether the employees had a right to engage in a sympathy strike, and therefore injunctive relief would be proper pending an arbitrator's resolution of that issue. This approach was rejected in accordance with the principle accepted by both the majority and dissent in Buffalo Forge: "that an implied no-strike agreement does not extend to sympathy strikes."

from that provision by the Fourth Circuit in Cedar Coal, 560 F.2d 1153, 1172. Where the sympathy and underlying strikers share not only a common collective bargaining unit and agreement, but also a common employer and a common work situs, the sympathy strikers might well benefit from the employer's concession of an arbitrable issue to the underlying, illegal strikers. However, it is questionable whether sympathy strikers in most situations would benefit from such a concession, even where sympathy and underlying strikers share a common employer.

122 551 F.2d at 704.
124 Id.
125 Id.
126 Id.
127 Id. at 705.
The court correctly rejected Southern’s attempts to circumvent the rule of *Buffalo Forge*. The *Boys Markets* exception to section four of the Norris-LaGuardia Act is “narrow” and only applies where the effect of a work stoppage is to subvert the arbitration process. Quite simply, under the national coal contracts, where the “cause” of a work stoppage is a refusal by employees to cross a stranger picketline, whether motivated by sympathy or fear, then those employees do not have a dispute with their employer which is subject to resolution by arbitration. Miners who refuse to cross a stranger picketline have no dispute whatsoever with their own employer except whether they may observe the stranger picketline. The absence of an express no-strike promise in the national coal contracts clearly operates to prohibit the implication of a “no-sympathy strike” clause. Additionally, the attempts to shift the focus of inquiry in section 301(a) injunction proceedings from the actions of the miners sought to be enjoined to the stranger (underlying) pickets’ dispute with the stranger pickets’ employer was correctly repudiated as an attempt to make injunctive relief dependent upon factors clearly irrelevant under *Boys Markets* and *Buffalo Forge*.

The final issue on appeal was the union’s contention that the injunctions, originally issued in 1975, were invalid because they were vague and overbroad. The overbreadth argument was based upon the claim that the injunctions constituted a ban on all work stoppages while the contract was in effect, regardless of the arbitrability vel non of the underlying dispute, and therefore the injunctions violated section nine of the Norris-LaGuardia Act and exceeded the *Boys Markets* exception to Norris-LaGuardia. The injunctions were also, in the union’s view, impermissibly vague per Rule 65(d) of the Federal Rules of Civil Procedure. The court thus addressed “the fundamental question of whether an injunction restraining a work stoppage may ever [be] prospective in effect and, if so, under what circumstances.”

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128 29 U.S.C. § 109 (1970) provides: [Every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided in this chapter.
129 551 F.2d at 705-06.
130 Id.
131 Id.
The court analyzed the position taken on this issue in other
circuits.\textsuperscript{132} However, primary support for a prospective injunction
was found in \textit{Boys Markets}, as the Court therein had recognized
that an express or implied no-strike promise was the \textit{quid pro quo}
for arbitration provisions, and that widespread disregard of the no-
strike promise would deprive the employer of his bargain and
thereby undermine the national policy favoring arbitration. The
court stated,

An employer faced with the tactic of repeated strikes over ar-
bitrable grievances need not repair to federal court each time
his plant is shut down to relitigate issues decided in previous
litigation. Once a court has found that a union is engaged in a
continuing practice of striking over arbitrable disputes and the
\textit{Boys Markets} guidelines are satisfied, we believe that the ensu-
ing injunction may be extended to encompass future strikes
over disputes similar to those which caused strikes in the past.\textsuperscript{133}

To hold otherwise, the court reasoned, would deprive an employer
of an effective remedy and operate to thwart the national policy
favoring arbitration.\textsuperscript{134}

The court next delineated the requirements governing such
injunctions. It noted that section nine of the Norris-LaGuardia Act
requires the "narrowest possible injunction necessary to effectively
safeguard the plaintiff's rights."\textsuperscript{135} The court warned against the
dangers resulting from prospective injunctions, especially the pos-
sibility that an employer may attempt to specifically enforce a no-
strike promise through the court's contempt power, "a result that
\textit{Buffalo Forge} may not, countenance."\textsuperscript{136} The court gave specific
guidance as to when such relief is proper:

prospective injunctions should only be granted in extreme cases
where absolutely necessary to preserve the arbitration process
. . . . The decree must be narrowly drawn and firmly grounded
on factual support in the record . . . . [T]he District Court
should expressly find: [1] that the present strike may be en-

\begin{footnotes}
  \textsuperscript{132} United States Steel v. United Mine Workers of America, 534 F.2d 1063 (3d
  Cir. 1976); Donovan Construction Co. v. Construction and Maintenance Laborers
  Union, 533 F.2d 481 (9th Cir. 1976); CF&I Steel Corp. v. United Mine Workers of
  America, 507 F.2d 170 (10th Cir. 1974); Old Ben Coal Corp., v. Local No. 1487,
  UMW, 500 F.2d 950 (7th Cir. 1974). \textit{Contra}, United States Steel Corp. v. United
  Mine Workers of America, 519 F.2d 1236 (5th Cir. 1975).

  \textsuperscript{133} 551 F.2d at 709 (citations omitted).

  \textsuperscript{134} \textit{Id.}

  \textsuperscript{135} \textit{Id.}

  \textsuperscript{136} \textit{Id.} at 710.
\end{footnotes}
joined under *Boys Markets*; [2] that the union has engaged in a pattern of strikes over arbitrable grievances; [3] that is likely to continue; [4] that the strikes constituting the pattern of violation would warrant relief under the *Boys Markets* formula; and, [5] that the decree is limited to specifically identified areas of dispute which have already been adjudicated and which satisfy the *Boys Markets* guidelines.\(^{137}\)

Application of the above criteria demonstrated the invalidity of the injunctions at issue. The court noted that the injunctions were overbroad because they restrained virtually all work stoppages, and because of a lack of specific findings as to the pattern of work stoppages.\(^{138}\) The vagueness challenge was sustained and the reference to the contractual arbitration provision in the orders was held not to cure the vagueness.\(^{139}\) Finally, the injunctions were flawed because of the failure to include an order to the employer to arbitrate disputes, as required by *Boys Markets*.\(^{140}\)

The Sixth Circuit has thus established an intermediate position on the availability of prospective *Boys Markets* relief, one which demonstrates a keen sensitivity to the realities of industrial relations in the coal fields, and which may serve as a model of accommodation of the conflicting interests involved.

**Conclusion**

The recurring problem of unauthorized work stoppages in the coal industry is not one which is likely to be resolved through judicial decisions. Courts simply have no control over the economic and social factors which often give rise to labor unrest in the coalfields. In addition, the dictates of federal labor policy require that courts proceed with caution when asked to intervene in such matters. Nevertheless, coal companies have done everything within their power to keep their miners on the job, and resort to the federal courts has been an important part of these efforts. The courts have generally responded in a reasonable manner. As the cases discussed in this note reflect, the courts have shown an understanding of their limited role and a sensitivity to the basic principles underlying Federal labor policy.

*S. Benjamin Bryant*