Wildcat Strikes: The Affirmative Duty of the Parent Union to Intervene

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I. Introduction

Most collective labor agreements contain a no-strike clause, a promise by the union that it will not authorize a strike in the bargaining unit for the life of the contract. The no-strike clause is usually considered to be the quid pro quo for an agreement by the employer to arbitrate workers' grievances arising under the contract because the employer relinquishes some managerial autonomy in return for a promise of uninterrupted work. Section 301 of the Labor Management Relations Act of 1947 (the Taft-Hartley Act) was enacted in part to preserve this quid pro quo, thereby encouraging parties to agree to arbitrate grievances as an alternative to the economic ravages of strikes. Under section 301, "parent unions," as parties to collective bargaining contracts, are subject to liability for damages in federal court for breach of no-strike agreements. A parent union, however, cannot be held liable to an
employer for a work stoppage not authorized or ratified by it. Such unauthorized work stoppages are commonly referred to as wildcat strikes. Although wildcatting local affiliates can be sued for breach of a no-strike clause, lack of assets to satisfy a judgment very often precludes this as an effective remedy. In addition, an injunction is not always available for strikes in breach of contract. Moreover, where an injunction is granted, it may not be obeyed. Thus, the lack of an effective remedy for damages caused by a wildcat strike seriously undermines the grievance procedure by eroding the stability of the no-strike-arbitration exchange.

Recently, the Supreme Court held in Carbon Fuel Co. v. United Mine Workers, that a no-strike clause implied no obligation on the part of the parent union to take affirmative steps to end unauthorized work stoppages by some of its local unions. Although the Court recognized the importance of favoring arbitration in interpreting labor contracts, it emphasized the need for maintaining free collective bargaining and held that "the parties' agreement primarily determines their [contractual] relationship." Thus, in


9. The term "wildcat strike" is generally used to denote only work stoppages in derogation of the authority of both local and parent union officials. It has also been used to include strikes supported by local officials but not authorized or ratified by the parent union. E.g., Carbon Fuel Co. v. UMW, 444 U.S. 212 (1979). This latter definition will be employed here.

10. See Parent Union Liability, supra note 6, at 1033-34; Wildcat Strikes, supra note 7, at 476 n.23.

11. Only strikes arising out of grievances which are subject to arbitration are enjoinable. Buffalo Forge Co. v. United Steelworkers of America, 428 U.S. 397 (1976) (The Court held that a sympathy strike was not enjoinable where the underlying grievance was not subject to arbitration); accord, J.A. Jones Constr. Co. v. Plumbers, Local 598, 568 F.2d 1292 (9th Cir. 1978); Latrobe Steel Co. v. United Steelworkers of America, 545 F.2d 1336 (3d Cir. 1976). Also, an employer remains uncompensated for lost production due to unauthorized work stoppages where there is no effective damage remedy.

12. See, e.g., Carbon Fuel Co. v. UMW, 517 F.2d 1348, 1348 (4th Cir. 1975); Old Ben Coal Corp. v. Local 1487, UMW, 500 F.2d 950, 952 (7th Cir. 1974); Peabody Coal Co. v. Local 1734, UMW, 484 F.2d 78, 80 (6th Cir. 1973), cert. denied, 430 U.S. 940 (1977); Bethlehem Mines Corp. v. UMW, 476 F.2d 860, 862 (3d Cir. 1975).

13. See Edwards & Bergmann, The Legal and Practical Remedies Available to Employers to Enforce a Contractual "No-Strike" Commitment, 21 LAB. L.J. 3, 5-6 (1970) and note 27 infra and accompanying text.


15. Id. at 218-19.

16. Id. at 219. It was noted by the Court that because the parties had deleted from the
the absence of an express contractual obligation on the part of the parent union to attempt to end unauthorized work stoppages, the Court refused to impose such a duty.

In a subsequent decision, however, the Sixth Circuit in *United Steelworkers of America v. Lorain* held that a no-strike provision which included an express promise to “actively discourage and endeavor to . . . terminate” all strikes did not create a duty on the part of the international union to attempt to end a wildcat strike.  

The Sixth Circuit found this language not specific enough to create liability for damages. Rather, the court held that the contract’s general exculpatory clause controlled the extent of the union’s obligations under the no-strike clause. This interpretation of the contract is contrary to the construction of similar no-strike clauses by other courts. It is also inconsistent with the goals of Congress in enacting section 301 of the Taft-Hartley Act and the rules fashioned in light of these policies by federal courts, including the Supreme Court in *Carbon Fuel*, for the construction of labor contracts.

This Note will examine the legislative goals of Section 301 and the implementation of these goals by the courts. Further, it will be argued that the Sixth Circuit’s holding in *Lorain* diverges from these well-recognized goals. Specifically, it will be argued that 1) an express covenant creating a duty on the part of the parent union to take affirmative steps toward ending an unauthorized work stoppage should be enforced given the underlying policies of congressional labor legislation; 2) the *Lorain* court improperly con-
strued the no-strike agreement, particularly in light of these congressional policies; and 3) enforcement of an affirmative duty to end wildcat strikes would not undermine the union's position as the representative of its membership.

II. Historical Perspective: The Taft-Hartley Act

The Taft-Hartley Act, enacted in 1947, has been described as "retributive" because it was spawned in part by a wave of strikes occurring in 1946. Section 301 was intended by Congress to provide a remedy for employers in federal court when a collective bargaining agreement was breached by a union, in order to "promote
and make effective agreements not to strike." Congress recognized that,

[i]f Unions can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. . . . The chief advantage which an employer can reasonably expect from a collective agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare . . . there is little reason why an employer would desire to sign such a contract.27

Providing a remedy to employers for the breach of no-strike clauses fosters collective bargaining agreements which make the employer's promise to arbitrate labor's grievances the quid pro quo for forfeiting the right to strike. The promise to arbitrate has been called the "primary vehicle for the promotion of industrial peace."28 It is a system "designed to aid management in its quest for efficiency, to assist union leadership in its participation in the enterprise, and to secure justice for the employees. It is a means of making collective bargaining work. . . ."29 Thus, the intention of Congress in enacting section 301 was to encourage the making of these quid pro quo agreements and ultimately "to promote industrial peace through faithful performance by the parties."30

Another important policy which must be considered with, and in some cases, balanced against the policy of promoting industrial peace, is the notion that collective bargaining should remain free from governmental interference and that the intent of the parties should be paramount in enforcing labor contracts.31 Free and voluntary collective bargaining is a "fundamental premise" of federal

26. Id. at 16-18.
27. Id. at 16.
30. Senate Report, supra note 5, at 16. "[T]he basic policy which, while not articulated, underlies the federal labor statutes . . . that economic warfare as the method for resolving labor disputes is primitive, barbaric, and—most important—wasteful, not only to the disputants, but also to the community." Public Policy, supra note 23, at 133. See also United Steelworkers v. Warrior & Gulf Nav. Co., 363 U.S. at 578.
31. "[I]n labor relations there is a freedom of contract ideal. It is that the parties should be free to write their own terms and conditions of employment. Inevitably, some tension exists, at least in the short run, between freedom of contract and industrial peace." Wellington, Freedom of Contract and the Collective Bargaining Agreement, 14 Lab. L.J. 1016, 1017 (1963).
In section 8(d) of the Taft-Hartley Act, Congress defined collective bargaining as "the mutual obligation . . . [to] confer in good faith . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . ."33

Underlying congressional protection of free and voluntary determination of the terms and conditions of employment by the parties was the realization that industrial peace "rests upon freedom, not restraint."34 Indeed the survival and success of the collective bargaining process depends upon its attractiveness and utility to the parties involved.38 Courts must refrain from general policy pronouncements which do not give due regard to the intent of the parties.38

The proper approach in construing the no-strike clause must be a realistic assessment of what the parties intended.37 "[I]f the rule of construction is unrelated to the sense of the collective agreement, the rule substitutes governmental decision-making for private decision-making and is therefore an inescapable interference with freedom of contract."38 The no-strike clause is "a point to be bargained over" and it can be entirely omitted or be as broad or as narrow in scope as the parties decide in their agreement.39 Thus, courts should consider the specific language of the no-strike pledge40 as well as the relevant labor policies in construing collective bargaining agreements.

35. See generally Cox, Reflections Upon Labor Arbitration, 72 HARV. L. REV. 1482 (1959) [hereinafter cited as Reflections].
37. Penn Packing Co. v. Amalgamated Meat Cutters, 497 F.2d at 891.
40. See Penn Packing Co. v. Amalgamated Meat Cutters, 497 F.2d at 891.
III. Judicial Interpretation of Congressional Policies

A. Judicial Sanction of the Quid Pro Quo Agreement

In *Textile Workers Union v. Lincoln Mills*,41 a labor union sought to enforce the arbitration provision of a collective bargaining agreement against an employer. The Supreme Court held that section 301 of the Taft-Hartley Act was more than merely a grant of jurisdiction to federal courts.42 In addition, "it authorizes federal courts to fashion a body of federal law for the enforcement of . . . collective bargaining agreements. . . ."43 The Court further held that problems lacking express statutory sanction "will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy."44 Relying upon the congressional policies of favoring arbitration of labor disputes45 and of promoting agreements not to strike,46 the Court granted an order for specific performance of the terms of the contract. In subsequent decisions, the Court similarly favored enforcement of the quid pro quo exchange by giving "generous scope" to both the promise by management to arbitrate grievances and the promise by the union not to strike. In so doing, the Court fashioned rules of construction of collective bargaining agreements which promote industrial peace.47

In *United Steelworkers of America v. Warrior & Gulf Navigation Co.*,48 the Court was again faced with an employer’s refusal to

41. 353 U.S. 448 (1957).
42. Id. at 451-52.
43. Id. at 451.
44. Id. at 457.
45. Id. at 458-59.
46. "Plainly the agreement to arbitrate grievance disputes is the quid pro quo for an agreement not to strike. . . . [Section 301] expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way." Id. at 455 (emphasis in original).
The union contended that the employer breached the collective bargaining agreement by contracting out to other companies maintenance work previously done by its employees and requested that the dispute be arbitrated according to the contract.\textsuperscript{49} The employer refused, arguing that the decision to contract out work was "strictly a function of management" which, according to the agreement, was not subject to arbitration.\textsuperscript{50} The Court noted that "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit."\textsuperscript{51} The Court held, however, that the dispute was subject to arbitration, stating that "[d]oubts [as to the scope of the arbitration clause] should be resolved in favor of coverage."\textsuperscript{52} The Court relied on the policy expressed in \textit{Lincoln Mills} that "[a] major factor in achieving industrial peace is the inclusion of a provision for arbitration. . . ."\textsuperscript{53}

In addition to the enforcement of promises by employers to arbitrate employee grievances, the Supreme Court has broadly construed the concomitant promise of labor not to strike. In \textit{Boys Markets, Inc. v. Retail Clerks Union}, a collective bargaining agreement contained a promise by an employer to arbitrate all grievance disputes and a promise by the union not to strike.\textsuperscript{54} The union, however, called a strike rather than submit a particular grievance to arbitration. After weighing the various elements of congressional labor policy,\textsuperscript{55} the Court granted the employer an injunction. The Court expressed particular concern for maintaining the viability of the quid pro quo exchange.\textsuperscript{56} Considering the effect its holding

\begin{itemize}
\item \textsuperscript{49} 363 U.S. at 575-76.
\item \textsuperscript{50} \textit{Id.} at 577.
\item \textsuperscript{51} \textit{Id.} at 582.
\item \textsuperscript{52} \textit{Id.} at 583. \textit{Accord, Gateway Coal Co. v. UMW}, 414 U.S. at 379-80; United States Steel Corp. v. UMW, 519 F.2d 1236, 1242 (5th Cir. 1975), \textit{cert. denied}, 428 U.S. 910 (1976); Amalgamated Meat Cutters v. Cross Bros. Meat Packers, Inc., 518 F.2d 1113, 1119 (3d Cir. 1975); Willo Packing Co. v. Butchers, Food Handlers, and Allied Workers Union, 450 F. Supp. 598, 599 (S.D.N.Y. 1978).
\item \textsuperscript{53} 363 U.S. at 578.
\item \textsuperscript{54} 398 U.S. 235, 239 (1970).
\item \textsuperscript{55} \textit{Id.} at 241. The Court balanced the congressional policy of promoting arbitration against the policy underlying the anti-injunction provisions of the Norris-LaGuardia Act, 29 U.S.C. § 104 (1976), which restricts labor injunctions by federal courts. \textit{Id.}
\item \textsuperscript{56} The Court stated in \textit{Boy's Market} that: [the lack of an effective remedy] seriously undermined the effectiveness of the arbitration technique as a method peacefully to resolve industrial disputes. . . . Clearly
would have on labor unions, the Court concluded, "[t]he growth and viability of labor organizations is hardly retarded — if anything this goal is advanced — by a remedial device that merely enforces the obligation that the union freely undertook. . . ."57

In Local 174, International Brotherhood of Teamsters v. Lucas Flour Co.,58 the Supreme Court again sought to uphold the quid pro quo exchange. In Lucas Flour the contract provided for mandatory arbitration of all disputes, but contained no express no-strike provision.59 The union called a strike over the concededly arbitrable issue of whether an employee had been discharged for good cause without resorting to the arbitration procedure.60 The employer brought an action against the union for damages caused by the strike. The Court held that the agreement to arbitrate implied a promise not to strike over an arbitrable issue during the life of the contract.61 The Court based its holding on the policies of industrial peace and freedom of contract62 and stated that "the basic policy of national labor legislation [is] to promote the arbitral process as a substitute for economic warfare."63 The Court also concluded: "[t]o hold otherwise would obviously do violence to accepted principles of traditional contract law."64

Thus the Supreme Court has consistently enforced the complimentary obligations of the quid pro quo exchange where they have been freely undertaken. Moreover, the Court has demonstrated a
willingness to fashion rules of construction with regard to these provisions which foster the legislative goal of industrial peace.

B. Theories of Parent Union Liability Under Section 301

Under section 301(b) of the Taft-Hartley Act, a union can be held liable only for the acts of its agents. Section 301(e) provides that the common law of agency applies in determining whether an individual is acting as an agent for the union. In adopting the common law agency test, Congress followed the Coronado Coal Co. v. United Mine Workers rule that union liability depends upon proof "that what was done was done by their agents in accordance with their fundamental agreement of association." Following the enactment of the Taft-Hartley Act, however, a number of courts, in an effort to promote the goal of fostering industrial peace, held unions liable for unauthorized strikes by invoking one or both of two theories which conflict with the rules of strict agency; the "mass action" theory and the "implied duty of reasonable efforts."

The mass action theory in effect held a union responsible where its members struck en masse in breach of contract, even though the strike was not formally authorized by any union official. This theory was first applied in United States v. United Mine Workers where the Court of Appeals for the District of Columbia held the mine workers union liable for a simultaneous nationwide strike because "men don't act collectively without leadership."


66. 29 U.S.C. § 185(e) (1976). See Vulcan Materials Co. v. United Steelworkers of America, 430 F.2d 446, 457 (5th Cir. 1970), cert. denied, 401 U.S. 963 (1971) (The acts of a general union agent are binding upon the union regardless of whether it was specifically authorized or ratified by it and where the local and parent union act in concert, they are each liable for the acts of each other's agent as well as those of their own). United Textile Workers v. Newberry Mills, Inc., 238 F. Supp. 366, 373 (W.D.S.C. 1965) (overt actions of union officers in their official capacity constitute authorization or ratification); accord, Carbon Fuel Co. v. UMW, 444 U.S. at 216-17; UMW v. Gibbs, 383 U.S. 715, 736 (1966).


68. See W. CONNOLLY & B. CONNOLLY, supra note 28, at 284.

The theory was again used to impute liability to a union for an unauthorized strike: "[M]ass action by union members must realistically be regarded as union action. The premise is that large groups of men do not act collectively without leadership and that a functioning union must be held responsible for the mass action of its members." The other theory used by a number of courts to impute liability to unions for wildcat strikes was that a promise not to strike implied a duty on the part of the union to use all reasonable means to end a strike. Failure to satisfy this implied obligation rendered the union liable to the employer for breach of contract. This theory was also used by the court in *Eazor* where members of two local unions staged a wildcat strike over a grievance involving the discharge of two union members. The strike was conceded in breach of the contract which prohibited strikes without first resorting to arbitration. In addition to its mass action rationale, the Third Circuit found the union liable although the union did not authorize the strike and, in fact urged its members back to work, because it had failed to take all reasonable steps available to end the strike. The court stated: "[n]ecessarily implied in the unions' agreement that there should be no strike was an obligation on their part to use every reasonable means to bring to an end a strike begun by their members without their authorization." It also found that the no-strike clause would be "illusory" if best efforts weren't implied and that failure to take such steps indicated "passive acquiescence in the strike."
In invoking both the mass action theory and the doctrine of an implied duty of reasonable efforts, the Eazor court sought to fulfill the goals of Congress to foster the arbitration process as an alternative to economic strife\(^7\) and to promote and make effective the corresponding promise not to strike.\(^7\) The court also asserted that the "basic goal of Congress [was] to promote industrial peace."\(^7\)

**C. Carbon Fuel**

*Carbon Fuel Co. v. United Mine Workers,*\(^8\) effectively refuted both of the theories relied upon by the Eazor court.\(^8\) *Carbon Fuel* involved a collective bargaining agreement which contained a promise by the union to settle all disputes through arbitration\(^8\) and to "maintain the integrity of [the] contract. . . ."\(^8\) Three local unions engaged in a total of forty-eight work stoppages against an employer which were unauthorized by the parent union and in breach of the collective bargaining contract.\(^8\) Thirty-one of the strikes were held by the Fourth Circuit to be a breach of the contract by the local unions. With respect to these strikes, the Fourth Circuit ostensibly applied the mass action theory to find the three local unions liable. The court, however, stated that the mass action theory, "properly applied," limited liability to the local unions.

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... duty include removal of discipline of wildcat leaders, suspension and fining of striking members, establishing a secret ballot vote to return to work, and placing the local in temporary trusteeship. See also notes 193-202 infra and accompanying text.

78. 520 F.2d at 963.

79. *Id.* The implied obligation "effectuates the intent of Congress in enacting section 301(a) of the Taft-Hartley Act 'to promote and make effective agreements not to strike.'" *Id.* (quoting from *Senate Report, supra* note 5, at 16).

80. *Id.*


83. 444 U.S. at 216. The promise to arbitrate grievances implies a concomitant promise not to strike over an arbitrable issue. See note 61 *supra* and accompanying text.

84. 444 U.S. at 216.

85. *Id.* at 213. The employer sought damages from the parent union for losses caused by the wildcat strikes. The Fourth Circuit held that 17 of the 48 work stoppages were sympathy strikes and that strikes not the result of a dispute between the union and the company were not in breach of the promise not to strike implied from the union's promise to arbitrate all disputes. 582 F.2d at 1348. The court cited Buffalo Forge Co. v. United Steelworkers of America, 428 U.S. 397 (1976). See note 61 *supra.*
which had participated in the strike. The court refused to impute liability to the parent union "absent a showing of complicity on the part of a larger union entity. . . ." Essentially, the court applied strict principles of agency. It recognized that because all members of the locals, including the local officers, participated in the strikes, the locals should be deemed to have authorized the strikes, but because no agent of the parent union authorized, supported, or ratified the strike, no liability could be imputed to the parent union. The Fourth Circuit also examined the bargaining history of the parties to determine whether the parent union could be held liable for breach of an implied duty of affirmative efforts. It noted that a "best efforts" clause contained in a previous agreement had been deleted in subsequent contracts and that the agreement in force at the time of the strikes contained no provision imposing an affirmative duty to attempt to end strikes on the part of the union. The court concluded that an implied affirmative duty "[i]n light of the bargaining history . . . rewrites the terms of the contract upon which the parties had agreed," and thus, could not be imposed in this instance.

The Supreme Court affirmed the Fourth Circuit's holding that the parent union did not authorize or ratify the strikes by its locals and was not obligated under the contract to attempt to end the strikes. Referring to the imputation of liability on the part of the parent union for the mass action of three of its locals, Justice Brennan, writing for a unanimous Court, stated, "Congress limited the responsibility of unions for strikes in breach of contract to cases when the union may be found responsible according to the common-law rule of agency." The Court cited section 301(b)

86. 582 F.2d at 1349-50.
87. Id. at 1349 (quoting United States Steel Corp. v. UMW, 534 F.2d 1063, 1074 (3d Cir. 1976)).
88. 582 F.2d at 1349. See note 66 supra.
89. Id. at 1350.
90. Id. at 1349.
91. Id. at 1349.
92. Id.
93. 444 U.S. at 215.
94. Id. at 216 (footnote omitted).
which provides that a union is bound by the acts of its agents and section 301(e) which requires that agency be determined by the common law of agency. The Court concluded that holding the parent union liable in the face of Congress’ clear statement on the limits of union responsibility would be “anomalous” and would “pierce the shield that Congress took such care to construct.”

The Court acknowledged the legislative policy of favoring arbitration, but rejected the assertion that such a policy required an implied obligation on the part of the parent union to end strikes in derogation of its authority. It was noted that a policy of “particular importance” which the Taft-Hartley Act sought to promote was the policy of free collective bargaining. The Fourth Circuit’s finding that the parties had directly addressed the issue in prior contracts, but had specifically deleted it from the controlling agreement was cited by the Supreme Court as indicative of the parties’ intent. The Court concluded: “It would do violence to the bargaining process and the national policy furthering free collective bargaining to impose by judicial implication a duty . . . that the parties in arms-length bargaining first included and then purposely deleted.”

IV. United Steelworkers of America v. Lorain

Subsequent to the Supreme Court’s ruling in Carbon Fuel, the Sixth Circuit decided United Steelworkers of America v. Lorain.
Lorain involved a wildcat strike by members of a union local in breach of their collective bargaining agreement which provided for an employee grievance procedure that included mandatory arbitration. The contract also contained a promise by the union to "actively discourage and endeavor to prevent or terminate" any strike. After most of the workers walked off the job and the union had abandoned its efforts to end the work stoppage, the employer instituted a suit against both the local and the parent union for damages caused by the wildcat strike.

The trial court held that the local union, because it was not a party signatory to the collective bargaining agreement, was not liable for a breach of that contract. The court did, however, find that the local officers were acting as authorized agents of the International in their activities during the wildcat strike and that "the International through acts of omission and commission . . . breached its contractual mandate to 'actively discourage and endeavor to terminate' any such unlawful strike." The court found

(U.S. No. 80-56).


105. Id. The International was a party signatory to the contract and thus liable for breach of its provisions. Id.

106. The walkout commenced on the morning of Thursday, July 15, 1976 after an informal discussion of certain employee grievances. Local union officers were not involved in initiating or encouraging the walkout and in fact sought to dissuade the employees by reminding them of the no-strike obligation under the contract. During the afternoon following the walkout, efforts by the local officers to induce the wildcatting employees to return to work consisted mainly of attempting to negotiate the strikers' grievance with the company. On Friday, the second day of the strike, all of the local union officers remained off the job, but did meet with the company again to seek a negotiation of the employee grievances. Also on Friday, the International's president sent a telegram urging the striking local members to return to work. Representatives of the International also met with the strikers and local officials on Sunday to urge the strikers to return to work, but the meeting was adjourned without success. After this meeting, all further attempts on the part of local officials and the parent union to "lead, urge, advise, admonish, or discipline" the wildcatting employees to end their strike were ceased. Id. at 5. On both Monday and Tuesday following the walkout an International representative informed the company that none of the local officials would report to work and that no union representative would cross the picket line for negotiations. A temporary restraining order was obtained by the company on Tuesday afternoon and all employees returned to work on Wednesday, July 21. Id. at 7.

107. Id. at 11.

108. Id. at 8.

that the union’s failure to take action after the Sunday following the walkout constituted “passive acquiescence” in the strike and that this acquiescence, along with the local’s efforts to negotiate the strikers’ grievances, constituted a ratification by the parent union of the illegal strike.\textsuperscript{110} The court also invoked the mass action theory\textsuperscript{111} and the \textit{Eazor Express} doctrine of an implied duty of affirmative efforts\textsuperscript{112} to implicate the International in the ratification of the strike.\textsuperscript{113}

Finally, the district court held that the International’s failure to take any action in the final two days of the strike, thereby casting the entire burden on the company to end the strike, was a breach of its express promise to “actively discourage and endeavor to . . . terminate any stoppage. . . .”\textsuperscript{114} The district court found that this promise imposed a duty on the union, not only to refrain from initiating or authorizing a strike, but to use all available means to terminate an unauthorized strike.\textsuperscript{115} The obligation to use all available means was held to require more than just “rhetoric,” but to include internal union action against the strikers such as fines, suspensions, expulsion, and any other penalties provided for by the union constitution.\textsuperscript{116} The district court emphasized that any one of the several bases on which it found the International liable was in itself legally sufficient to support liability.\textsuperscript{117}

On appeal, the Sixth Circuit reversed the lower court holding that the International had ratified the walkout.\textsuperscript{118} The court held that the union was under no duty to take affirmative steps\textsuperscript{119} and that the union’s inactivity in the final two days of the strike, absent such a duty, could not constitute a ratification of the wildcat strike.\textsuperscript{120} The court also overturned the lower court’s ruling that

\begin{itemize}
  \item \textsuperscript{110} Id. at 28.
  \item \textsuperscript{111} Id. at 23-24. See notes 68-71 supra and accompanying text.
  \item \textsuperscript{112} Id. at 24. See notes 72-77 supra and accompanying text.
  \item \textsuperscript{113} Although both of these doctrines were rendered invalid by the Supreme Court in \textit{Carbon Fuel}, the district court emphasized that the language of the express provision alone was sufficient to create an affirmative duty on the part of the parent union. Id. at 30.
  \item \textsuperscript{114} Id. at 27.
  \item \textsuperscript{115} Id.
  \item \textsuperscript{116} Id. at 25.
  \item \textsuperscript{117} Id. at 30.
  \item \textsuperscript{118} United Steelworkers of America v. Lorain, 616 F.2d at 922-24.
  \item \textsuperscript{119} Id. at 921.
  \item \textsuperscript{120} Id. at 922.
\end{itemize}
the union's failure to discipline the strikers and its attempts at negotiating their grievances with the company during the strike were acts of ratification.\textsuperscript{121}

In addition, the Sixth Circuit reversed the lower court's holding that the International had an express duty under the collective bargaining agreement to take action to end the strike.\textsuperscript{122} The court reinterpreted the no-strike clause and held that no affirmative duty was established by its terms because the phrase "actively discourage and endeavor to prevent or terminate any stoppage" was not specific enough to impose an obligation.\textsuperscript{123} The court stated that it would be "inappropriate" to find that this clause created a liability for damages because it appears with the phrase "participation in such activities [unauthorized interruptions of work] shall result in discharge of all those employees responsible for such occurrences. . . ."\textsuperscript{124} An additional reason was that the promise to actively terminate served "a function, separate and apart from the question of defining standards of conduct which will subject the union to damages."\textsuperscript{125} The court did not articulate what it intended this separate function to be, but it is apparent from the holding of the Sixth Circuit that the clause requiring the union to endeavor to terminate strikes was rendered meaningless. This construction is contrary to the rule that "a court should strive to give meaning to every provision in a contract."\textsuperscript{126}

Rather than give effect to the language of the no-strike clause which required the union to "actively discourage and endeavor to prevent or terminate" strikes, the \textit{Lorain} court emphasized an ex-

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\item \textsuperscript{121} \textit{Id.} at 923. The duty not to ratify a strike in breach of the contract is distinct from the duty to intervene to end wildcat strikes. However, inadequacy of a union's efforts to end strikes has been held to be evidence of ratification. Riverton Coal Co. v. UMW, 453 F.2d 1035, 1042 (6th Cir. 1972); Local Union 984, \textit{Int'l Bhd. of Teamsters v. Humko Co.}, 287 F.2d 231, 242 (6th Cir. 1961); Oxco Brush Div., \textit{Vistron Corp. v. International Ass'n of Machinists}, 93 L.R.R.M. 2721, 2727 (M.D. Tenn. 1974). \textit{See also note 66 supra.}
\item \textsuperscript{122} United Steelworkers of America v. \textit{Lorain}, 616 F.2d at 922.
\item \textsuperscript{123} \textit{Id.}
\item \textsuperscript{124} \textit{Id.} at 920, 922.
\item \textsuperscript{125} \textit{Id.} at 922.
\item \textsuperscript{126} \textit{Willo Packing Co. v. Butchers, Foodhandlers, and Allied Workers Union}, 450 F. Supp. 598, 601 n.10 (S.D.N.Y. 1978). \textit{See RESTATEMENT OF CONTRACTS § 236(a) (1932)} ("An interpretation which gives a reasonable, lawful and effective meaning to all manifestations of intention is preferred to an interpretation which leaves a part of such manifestations unreasonable, unlawful or of no effect."); \textit{accord 3 CORBIN ON CONTRACTS § 546 (1960).}
\end{itemize}
culpatory clause which disclaimed union liability for damages for unauthorized strikes. The court held that because this exculpatory clause was the only portion of the no-strike provision which specifically mentioned damages, those words alone defined the extent of the union's duty under the contract. The Sixth Circuit's holding is a reversal of the district court's finding that "such language of exculpation does not, on its face, purport to release the International from its own specific promise that there will be no strikes without first fulfilling . . . their contractual . . . obligations of affirmative action." The district court read the no-strike clause as containing two distinct promises: a promise to refrain from authorizing or ratifying a work stoppage and a promise to "endeavor to terminate" any wildcat work stoppage. The explicit language providing for an affirmative duty should not be ignored in favor of a general disclaimer of liability for unauthorized strikes.

A. No-Strike Clause Constructions By Other Courts

The Sixth Circuit's construction of the no-strike clause in Lorain is inconsistent with interpretations of similar provisions by other courts. One of the decisions cited by the Sixth Circuit in support of its conclusion that the terms of the no-strike provision were not specific enough to create an affirmative duty was Penn Packing Co. v. Amalgamated Meat Cutters.

In Penn Packing, the collective bargaining agreement contained a promise by the union that it "guarantee[d]" there would be no strike. The Third Circuit held that the term "guarantees" was not specific enough to create strict liability on the part of the

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127. United Steelworkers of America v. Lorain, 616 F.2d at 920. The exculpatory clause provided that "[t]he Union shall not be liable for monetary damages for unauthorized strikes. . . ." Id.
128. Id. at 922.
129. No. 1-76-145, slip op. at 26-27 (E.D. Tenn. April 8, 1977). Cf. Eazor Express, Inc. v. International Bhd. of Teamsters, 357 F. Supp. at 168 n.17 (Disclaimers by the International union of liability for breach of contract by its locals appearing in the collective bargaining agreement were held to be "mere ineffectual contrivances.").
130. RESTATEMENT OF CONTRACTS § 236(c) (1932). "Where there is an inconsistency between general provisions and specific provisions, the specific provisions ordinarily qualify the meaning of the general provisions."
131. 497 F.2d 888 (3d Cir. 1974).
132. Id. at 890. "The union for itself and for its individual members agrees and guarantees that there shall be no strike. . . ." Id.
union for an unauthorized strike. In dictum, however, the court implied that the union's promise created an affirmative duty to attempt to end the strike. The court found that because union officials had exercised every available means to end the strike, the union had not breached any duty it may have had under the contract. It was also stressed that courts must "interpret the words in a contract of this nature to give them their ordinary and reasonable meaning." The requirement of specific language in Penn Packing was applied only to the creation of strict liability on the part of the union for strikes and, therefore, does not support the Sixth Circuit's finding in Lorain that the promise to "actively endeavor to prevent or terminate" is so general as to create no duty.

Another decision cited by the Sixth Circuit in Lorain was Latas Libby's, Inc. v. United Steelworkers of America. The collective bargaining agreement in Latas Libby's contained the following promise: "No officer or representative of the union or employee shall authorize, instigate aid or condone, any [work stoppage] during the life of this Agreement." The First Circuit interpreted the promise not to "condone" as creating an affirmative duty on the part of the parent union to attempt to induce its membership to end a wildcat strike. The court emphasized that the clause "describes with particularity the union's responsibilities to avoid strikes." In comparison with the language of the no-strike provision in Lorain, the clause in the Latas Libby's contract is considerably less precise and the interpretation of the Lorain court is therefore clearly in conflict with the ruling of the First Circuit in Latas Libby's.

Another example of a provision which was held to create an obligation of affirmative action on the part of the union is the no-
strike clause in *Airco Speer Carbon-Graphite v. Local 502*.\(^{141}\) In *Airco*, the union promised to "cooperate with the Company in every way possible to prevent any such stoppages of work and to terminate such stoppages that may occur as soon as possible."\(^{142}\) The district court construed the term "cooperate" to create an obligation on the part of the union to initiate action to get its membership back to work. "[T]he express terms of the clause prohibit the union from disregarding a strike and permitting its continuance, once it has commenced, regardless of whether the union itself instigated the strike."\(^{143}\)

A court can determine the meaning of an express no-strike clause by examining the language and structure of the clause, the bargaining history of the parties, and any relevant conduct that shows the parties' understanding of the contract.\(^{144}\) Because there was no evidence offered in *Lorain* concerning the parties' bargaining history or any other relevant extrinsic evidence as to the intent of the parties, the language and the context of the no-strike clause should have been determinative.\(^{145}\) In light of the enforcement of the promise to "cooperate" in *Airco* and the promise not to "condone" in *Latas Libby's*, the holding by the Sixth Circuit in *Lorain* that the terms "actively discourage and endeavor to prevent or terminate" a strike were not specific enough to create a duty on the part of the union is unfounded. The clauses enforced in *Airco* and *Latas Libby's* were substantially less explicit than the unambiguous terms of the no-strike clause in *Lorain*. The construction of a no-strike clause should involve "a realistic reading of that clause in light of the range of pressures and policies which impinge on collective bargaining."\(^{146}\) Such a construction must involve a recogni-


\(^{142}\) Id. at 875.

\(^{143}\) Id.

\(^{144}\) Delaware Coca-Cola Bottling Co. v. General Teamster Locals, 624 F.2d 1182, 1185 (3d Cir. 1980). See also Carbon Fuel Co. v. UMW, 444 U.S. at 219-22 (the Court considered extrinsic evidence, including the bargaining history of the parties, to interpret the contract); Old Ben Coal Corp. v. UMW, 457 F.2d 162, 164 (7th Cir. 1972) (the court considered the bargaining history of the parties).

\(^{145}\) Delaware Coca-Cola Bottling Co. v. General Teamster Locals, 624 F.2d at 1185.

\(^{146}\) *Wildcat Strikes*, supra note 7, at 477. See Pilot Freight Carriers, Inc. v. International Bhd. of Teamsters, 495 F. Supp. 619, 636 (M.D.N.C. 1980) ("[I]n determining rights and duties in a collective bargaining agreement, the court must always consider national labor policy.").
tion of the nature of the quid pro quo exchange and the effect a promise of affirmative action has on that exchange. In view of the explicit language of the clause in *Lorain* and the policies of promoting arbitration and industrial peace which permeate Congressional labor legislation, the meaning of the *Lorain* no-strike provision must be that it creates an affirmative obligation on the part of the union to attempt to end unauthorized work stoppages.

B. *Lorain* and Federal Labor Policy

The failure of the Sixth Circuit in *Lorain* to find an affirmative duty on the part of the union is fundamentally in conflict with the important policies which Congress sought to promote through the Taft-Hartley Act. One of the major objectives of section 301 of the Taft-Hartley Act was "to promote and make effective" the quid pro quo exchange of employee grievance arbitration and the promise not to strike. By insuring the effectiveness of this quid pro quo agreement, Congress sought to stabilize industrial relations and to decrease the incidence of economic warfare over labor disputes. It was recognized that "[t]he execution of an agreement does not by itself promote industrial peace." Thus, judicial construction and enforcement should reflect the aims of federal labor policy as well as an analysis of the language of the contract. Specifically, interpretation of the scope of a no-strike clause should reflect the policy of insuring the effectiveness of the union's promise not to strike. The goals of stable labor-management relations

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147. See Delaware Coca-Cola Bottling Co. v. General Teamster Locals, 624 F.2d at 1188 (The court interpreted the scope of a no-strike clause in the context of the quid pro quo exchange.) See notes 24-40 supra and accompanying text.
148. See notes 28-30 supra and accompanying text.
149. See notes 22-27 supra and accompanying text.
150. Senate Report, supra note 5, at 16.
151. Id. "We shall have to find methods not only of peaceful negotiation of labor contracts, but also of insuring industrial peace for the lifetime of such contracts . . . there must be responsibility and integrity on both sides in carrying them out." Id. (quoting an address by President Truman).
152. Yale & Towne Mfg. Co. v. Local Lodge No. 1717, 299 F.2d 882 (3d Cir. 1962). "The better construction [is] . . . to construe the words and phrases of this agreement so that the no-strike provision shall . . . be in conformity with an enlightened labor and management federal policy." Id. at 888.
and industrial peace are defeated when union members strike in derogation of the authority of their union. Unauthorized work stoppages tend to undermine the stabilizing effect of the quid pro quo agreement because the employer is not getting what it bargained for and has no effective remedy against the perpetrators of the wildcat strike. The recognition of an express provision creating an obligation on the part of the union to take affirmative steps to end an unauthorized work stoppage is therefore mandated in light of federal policy. The Supreme Court has proscribed "freewheeling" disregard for congressional policies in the enforcement of collective labor agreements. "Lincoln Mills makes clear that this federal common law [regarding labor contract enforcement] must be 'fashion[ed] from the policy of our national labor laws.'"

Any ambiguity in the language of the no-strike agreement regarding the creation of the union's affirmative duty to try to end wildcat strikes should be resolved in favor of the avowed federal policies of preserving an effective quid pro quo exchange of the promise to arbitrate and the promise not to strike and of fostering stable and peaceful labor-management relations. Although there is no compulsion to agree to any provision, be it grievance arbitration, a no-strike clause, or a promise to take affirmative steps toward ending wildcat strikes, federal courts have demonstrated a willingness to fashion rules of labor contract construction which give generous scope to these promises when they appear in collective bargaining agreements. While the Supreme Court has em-

154. See notes 27, 56-57 supra and accompanying text.
155. See Note, The Enforceability of the No-Strike and Interest Arbitration Provisions of the Experimental Negotiating Agreement in Federal Courts, 12 Val. L. Rev. 57, 70-71 (1977) [hereinafter cited as The Enforceability of the No-Strike Provision], "[A]s a matter of public policy it is desirable to impose an obligation upon a union to take steps to frustrate its members from doing that which it is contractually prohibited from doing as an entity." Eazor Express, Inc. v. International Bhd. of Teamsters, 357 F. Supp. at 165. See also notes 13, 27 supra and accompanying text.
157. Id. at 255 (quoting from Textile Workers Union v. Lincoln Mills, 353 U.S. at 456).
158. See notes 28-30 supra and accompanying text.
phrased the importance of maintaining free collective bargain-
ing,160 "it also makes it clear that the collective bargaining
agreement is not an ordinary contract to be governed by ordinary
principles of contract law and that these principles must be ad-
justed in light of the imperatives of federal labor policy. . .").161
Federal labor policy clearly requires the recognition of an affirma-
tive obligation by the union to intervene during wildcat strikes
where it expressly agrees to such a duty.162

V. The Policies Underlying the Circuit Court's Holding
in Lorain

Although the Sixth Circuit in Lorain conceded that a union
could expressly agree to assume an obligation to take affirmative
steps to end wildcat strikes,163 its construction of the no-strike
clause belies such a statement. The court stated that "[i]t is not
the law in this circuit that a union is required to take affirmative
action to end a strike, absent exceptional circumstances."164 The
court did not address the question of whether an express promise
by the union constitutes an "exceptional circumstance." Implicit in
the court's construction of the no-strike clause, however, was the
notion that "[i]t is not the union's role to act as an agent of the
employer, to perform acts the employer requires, but to be the rep-
resentative of its members."165 The court implied that enforcement
of an affirmative duty on the part of a union is inapposite to its

160. See Carbon Fuel Co. v. UMW, 444 U.S. 212 (1979); Gateway Coal Co. v. UMW, 414
Co. v. NLRB, 397 U.S. 99 (1970); Local 174, Int'l Bhd. of Teamsters v. Lucas Flour Co., 369
U.S. 95 (1962); United Steelworkers of America v. Warrior & Gulf Nav. Co., 363 U.S. 574
(1960).

"Collective agreements, because of . . . [their] institutional characteristics . . . are less com-
plete and more loosely drawn than many other contracts; therefore, there is much more to
be supplied from the context in which they were negotiated." Id. at 1500.

162. The policies of industrial peace and of support for the arbitration process support
the finding of an affirmative duty on the part of the union to end strikes as an effective
method for curbing unauthorized strikes. Where the parties have expressly agreed to such
an arrangement, the policy of allowing the parties to freely determine the terms and condi-
tions of employment mandates the enforcement of such an agreement. See notes 26-40
supra and accompanying text.

163. United Steelworkers of America v. Lorain, 616 F.2d at 922.

164. Id. at 921 (emphasis added).

165. Id.
position as collective bargaining representative.

The Sixth Circuit's concern for the "role" of the union is not unfounded. Affirmative steps seen as pro-management action by employees may tend to fractionate a union during a wildcat strike because a true wildcat strike is, to some extent, a rebellion against the authority of the union as well as against the employer. Factionalism within a union could exacerbate an already inflamed wildcat situation and make effective compromise more difficult. Both the union and the employer suffer when the representation process breaks down. Also, the union may not necessarily have the loyalty of all employees. Hostile groups within the bargaining unit may seek to expose the union to liability. Ultimately, excessive interference with the self-help efforts of wildcaters may antagonize local membership and even provoke disaffiliation of the local from the parent union.

On the other hand, inaction by the parent union or perfunctory warnings and mere lip service to the no-strike promise are of little value in curtailing wildcat strikes. The ravages of a prolonged strike are an anathema to both workers and management. "While [a wildcat strike] ... lets off emotional steam and dramatizes grievances, it can result in excessive loss to the company [and to employees]. ..." Many employers suffer irreparable harm due to unauthorized work stoppages. In addition to lost production, the wildcat strike creates uncertainty. Foreign competitors who are not hampered by the threat of strike may be encouraged to enter the market of a company whose production is subject to interrup-

166. See Dolly Madison Indus., Inc., 74-1 Lab. Arb. Awards (CCH) ¶ 8092 (1974); Wildcat Strikes, supra note 7, at 481-82.
167. See note 9 supra.
169. Wildcat Strikes, supra note 7, at 481-82. See Dolly Madison Indus., Inc., 74-1 Lab. Arb. Awards (CCH) ¶ 8092, 3340 (1974) ("Overkill" is likely to destroy the union as an effective leader and representative, leaving neither the employer nor the union with any influence over wildcat strikers.).
171. Id. at 702.
172. Parent Union Liability, supra note 6, at 1043-44.
174. See The Enforceability of the No-Strike Provisions, supra note 155, at 64.
tion by illegal strikes. Another important reason for avoiding wildcat strikes is the undermining effect it has on the grievance procedure. When the parent union fails to exercise the powers it has under its constitution to end a wildcat strike, employees tend to perceive this inaction as tacit support. At best, refusal to take affirmative steps is seen as "passive acquiescence" by the strikers. At worst, perfunctory notices urging a return to work can actually be interpreted as covert authorization of the strike. Subtle clues in official messages may indicate the parent union's "unofficial" position. "If a nod or a wink or a code was used in place of the word 'strike,' there was just as much a strike called as if the word 'strike' had been used." Thus, the no-strike clause bargained for by the employer is meaningless where the parent union implies its support for a wildcat strike by its failure to take steps which it is empowered to take to bring the strike to an end. Moreover, where an affirmative duty is expressly bargained for in the agreement, failure to enforce it is contrary to the important principle of freedom of contract and likely to damage the confidence an employer has in the collective bargaining process.

175. Id.  
176. See note 13, supra and accompanying text.  
177. See Southern Ohio Coal Co. v. UMW, 551 F.2d 695, 701 (6th Cir.), cert. denied, 434 U.S. 876 (1977); Oxco Brush Div., Vistrone Corp. v. International Ass'n of Machinists, 93 L.R.R.M. 2721, 2725-26 (M.D. Tenn. 1974); Parent Union Liability, supra note 6, at 1045-46.  
178. See Southern Ohio Coal Co. v. UMW, 551 F.2d at 701; Eazor Express, Inc. v. International Bhd. of Teamsters, 520 F.2d at 964; Riverton Coal Co. v. UMW, 453 F.2d at 1042; Local Union 984, Int'l Bhd. of Teamsters v. Humko Co., 287 F.2d 231, 242 (6th Cir. 1961).  
179. See Oxco Brush Div., Vistrone Corp. v. International Ass'n of Machinists, 93 L.R.R.M. 2721, 2726 (M.D. Tenn. 1974) (jury charge required consideration of whether union's inaction was a form of persuasion to continue work stoppage).  
181. Parent Union Liability, supra note 6, at 1048.  
182. See notes 31-35 supra and accompanying text. See Republic Steel Corp. v. UMW, 570 F.2d 467 (3d Cir. 1978).

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. To the extent that any union . . . refuses to enforce appropriately authorized union discipline upon recalcitrant members who violate . . . collective bargaining agreements . . . that union can be said to have abrogated a proportion of valued rights granted to the union under national labor policy.

Id. at 479. Strikes in breach of contract are unprotected activity and an employer has the
VI. The Standard of All Reasonable Means

A crucial issue is the standard by which a union's conduct should be measured in determining whether its duty of affirmative action has been fulfilled.\(^{188}\) A proper standard can significantly mitigate the threat of destabilizing a union while still allowing meaningful enforcement of the union's duty to intervene during wildcat strikes. A duty of "all reasonable means"—the steps that a reasonable union leader, in good faith, would take under the circumstances\(^{184}\)—would allow a union official to balance the potential benefits of his actions in trying to end a strike with the risk of exacerbating the wildcat rebellion or unreasonably jeopardizing the union's relationship with its local membership.\(^{185}\) A union should not be held to have agreed to a duty under the contract which would endanger its affiliation with a local;\(^{186}\) and an employer should not be held to have intended to compel a union to take

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\(^{188}\) See notes 39, 144-47 supra and accompanying text.

\(^{184}\) See also Adley Express Co. v. Highway Truck Drivers, Local 107, 349 F. Supp. 436, 444 (E.D. Pa. 1972) (the court applied a standard of "very substantial and sincere" efforts, steps "which could reasonably be expected to effectuate a return to work."). Cf. W. Prosser, J. Wade & V. Schwartz, Cases and Materials on Torts 195 (6th ed. 1976) (part of the standard of care for professionals in actions for negligence is "the exercise of a discerning judgment in the exercise of a reasonable discretion").

\(^{185}\) See Oxco Brush Div., Vistron Corp. v. International Ass'n of Machinists, 93 L.R.R.M. at 2725-26. (The charge to the jury required consideration of whether the steps taken by a union were in good faith, "based upon expertise and experience in an effort solely to reduce friction" or merely "token lip service."); Dolly Madison Indus., Inc., 74-1 Lab. Arb. Awards (CCH) ¶ 8092 (1974). The arbitrator in Dolly Madison stated that a duty to use reasonable means required:

[That] a union . . . ha[s] some flexibility based upon the circumstances of the strike to determine for itself the means which would be most likely not only to end the strike as rapidly as possible, but also to preserve the union's power to continue to effectively and responsibly represent and lead the employees in its continuing collective bargaining relationship with the employer.

Id. at 3340. See also Parent Union Liability, supra note 6, at 1046-47.

\(^{186}\) See Parent Union Liability, supra note 6, at 1048.
action which would foreseeably aggravate an unauthorized work stoppage. A union, therefore, should be liable for breach of its express promise to the extent that its efforts are unreasonably inadequate under the circumstances. 187

To be distinguished is the standard of “all reasonable means” enforced by the court in Eazor Express. 188 It has been argued that the Eazor standard would be more accurately described as a duty of “all possible means.” 189 “The obligation is not discretionary, but mandatory. Therefore, it leaves no latitude for political or even good faith judgments as to what might and what might not be productive.” 189 The court advocated the “politics of power rather than the politics of persuasion.” 190 Such an approach is too rigid for the delicate task of balancing policies to achieve stable labor-management relations. 191

The range of actions that can be taken by a union to induce its membership to return to work is broad. 192 At a minimum, a union


189. Parent Union Liability, supra note 6, at 1044.


191. Id. at 167. The violence which occurred during the strike may have been a factor in the Eazor court’s adoption of this standard. See Dolly Madison Indus., Inc., 74-1 Lab. Arb. Awards (CCH) ¶ 8092, 3340 (1974).

192. Wildcat Strikes, supra note 7, at 492. See Dolly Madison Indus., Inc., 74-1 Lab. Arb. Awards (CCH) ¶ 8092 (1974) (“[L]ong range labor relations would [not] be best served by an unwaivering . . . obligation that a union use every weapon at its command at the very outset of a wildcat strike regardless of other facts and circumstances. Such [an approach would be] overkill . . .” Id. at 3340.).

193. Disciplinary action by the union against its membership must be in accordance with the constitution and by-laws of the union. Many constitutions permit the union to discipline members who impair the union’s contractual obligations, such as the no-strike clause. See Parent Union Liability, supra note 6, at 1039; Connolly, supra note 28, at 286. See, e.g., Burke v. International Bhd. of Boilermakers, Local 6, 302 F. Supp. 1345, 1350-51 (N.D. Cal. 1967), aff’d per curiam, 417 F.2d 1063 (9th Cir. 1969). Procedural due process must be observed whenever a union fines, suspends, expels or otherwise disciplines a member, except for nonpayment of dues. 29 U.S.C. § 411(a)(6) (1976). See, e.g., Gabaner v. Woodcock, 520 F.2d 1084 (8th Cir. 1975) cert. denied, 423 U.S. 1061 (1976); Tincher v. Piasecki, 520 F.2d 851 (7th Cir. 1975).
may publicly disavow an unauthorized work stoppage or order its membership back to work. However, simple exhortation by the union is often ineffective. At the other extreme, a union may expel a wildcat striker. Expulsion is often as undesired by the employer as it is by the employee and should therefore be used only as a last resort. Suspension from the union is another possible step. In Eazor Express, the court suggested that the “books” of wildcat strikers be lifted or union hall hiring facilities be withheld so that they could not work elsewhere during the strike. Where local officers participate in the strike, a parent union may, in accordance with its constitution and by-laws, strip such local officers of their authority and create a trusteeship over the local in order to end a strike in breach of contract. Denial of access to local union facilities through the imposition of a trusteeship may be effective in curtailing the operation of a wildcat strike. The union may also be able to impose financial sanctions, such as fines or the withholding of strike fund benefits. Arranging for a secret ballot vote on ending the strike may be all that is needed in some cases.

194. In a national sampling of labor agreements, 13% of all collective bargaining contracts required express disavowal and 32% required the union to order a return to work. BUREAU OF NATIONAL AFFAIRS, BASIC PATTERNS IN UNION CONTRACTS 93 (8th ed. 1975).
195. See, e.g., United Steelworkers of America v. Lorain, 616 F.2d at 921; Riverton Coal Co. v. UMW, 453 F.2d at 1042.
197. Union expulsion of local members is the type of action most likely to trigger instability in parent union-local relations. See Note, Considerations in Disciplining Employees for Participation in Violations of the No-Strike Clause, 106 U. PA. L. REV. 999, 1003 (1958).
200. Parent Union Liability, supra note 6, at 1038.
202. See Parent Union Liability, supra note 6, at 1040.
203. In Eazor, one of the wildcatting locals returned to work after the first secret ballot vote by the strikers. 357 F. Supp. at 166 n.14.
The "politics of persuasion" should be considered in employing the various means available to the union. Union action to end a strike should be coercive rather than punitive. The risks and possible benefits of union action, as well as the extent of the union's disciplinary powers under its constitution and by-laws, must be weighed in determining the reasonableness of its action or inaction. A union must therefore have the opportunity to employ good faith discretion in deciding the manner and extent of its intervention. In short, where the union has expressly agreed to intervene, parent union officials must function as effective union leaders as well as responsible parties to collective labor agreements in cooperating with the employer to induce an end to unauthorized work stoppages. Such cooperation between the union and the employer is a natural and necessary step in the maturation of labor-management relations.

VII. Conclusion

An express promise by the union to take steps to induce an end to unauthorized work stoppages, such as the provision in United Steelworkers of America v. Lorain should be enforced by the courts. The Lorain court's holding was objectionable not only because of its unsound construction of the no-strike clause, but also because of its fundamental inconsistency with the legislative purpose of section 301 of the Taft-Hartley Act. Upholding the union's affirmative duty is also mandated by the Supreme Court's avowed policy of broadly construing the quid pro quo exchange of grievance arbitration and the promise not to strike in collective bargaining agreements. The enforcement of an affirmative duty of intervention does not undermine the union's position as the representative of its membership where it can exercise good faith

204. See, e.g., Penn Packing Co. v. Amalgamated Meat Cutters, Local 195, 497 F.2d at 890 (The union persuaded workers who were protesting the suspension of an employee to return to work by paying the salary of the suspended employee during the arbitration of the grievance.) Carbon Fuel Co. v. UMW, 444 U.S. at 214 n.1. (Through frequent meetings with strikers and threats of discipline, the union ended most of 48 unauthorized work stoppages within one or two days. To avoid aggravating worker unrest, however, the union chose not to take any disciplinary action.).

205. An active role in the resolution of unauthorized strikes is not infrequently resorted to by unions, even where they have no contractual obligation to do so. See A. Goldman, Labor Law and Industrial Relations in the United States of America 261 (1979).
discretion in taking appropriate and reasonable steps to end a strike. Where it is expressly provided for in the contract, reasonable cooperation should be deemed part of the quid pro quo exchange.

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