Specific Performance of Collective Bargaining Agreements

Arthur S. Leonard
SPECIFIC PERFORMANCE OF COLLECTIVE BARGAINING AGREEMENTS

ARTHUR S. LEONARD*

INTRODUCTION

The labor relations policy of the United States is not reflected in a neat and orderly code, but in a conglomeration of laws enacted over a considerable period of time¹ that often requires the courts to reconcile apparently conflicting provisions. Sometimes accommodations between provisions have been made in a reasonable manner byreinterpretating older laws in light of changing circumstances and new policies embodied in subsequent legislation.² In other instances, however, accommodations have been made without adequately considering these changing circumstances, and the result has been to complicate the law unnecessarily or to render it unrealistic.³

A prime example of inadequate accommodation is the law governing enforcement of collective bargaining agreements. Since Congress amended the labor laws in 1947 to make suits founded upon collective bargaining agreements cognizable in the federal courts,⁴ the law has

* Associate Professor of Law, New York Law School; B.S. 1974, Cornell University (New York State School of Industrial and Labor Relations); J.D. 1977, Harvard Law School. The author wishes to acknowledge with appreciation the support of the administration and trustees of New York Law School in providing a Faculty Research Grant and the invaluable services of a Student Research Assistant, Mr. Roy Francis, New York Law School Class of 1984. The author also wishes to thank his colleagues, George M. Armstrong, Jr. and Steven Anderman for helpful comments on earlier drafts of this Article.


evolved to allow injuries due to violations of labor contracts to be recompensed through damage actions. Specific enforcement of such contracts, however, is limited to provisions governing mandatory arbitration of disputes and the resulting arbitration awards. Thus, despite legislation that makes collective bargaining agreements legally binding, specific performance of such agreements is obtainable only to enforce contractual grievance procedures.

This Article contends that the courts’ limited accommodation of the laws restricting the use of injunctions in labor disputes with the collective bargaining laws is inadequate to deal with the reality of current labor relations in the United States. Part I outlines the statutory framework of federal labor law and identifies the Norris-LaGuardia Act as the source of the current judicial reluctance to specifically enforce collective bargaining agreements. Part II of this Article demonstrates that the legislative history of the Norris-LaGuardia Act does not adequately support this judicial interpretation. Part III analyzes the federalization of labor law effected by the Taft-Hartley Act and argues that the legislative history of this Act establishes that Congress intended federal courts to use their equitable power to restrain violations of labor agreements. Part IV suggests a basis for reinterpretation of the proper role of the federal courts in enforcing collective agreements and proposes statutory amendments that will legislatively effectuate this necessary change. This Article concludes that while equitable enforcement of collective bargaining agreements is consistent with existing federal legislation and labor policy, these laws should be amended to overcome some of the inhibiting effects of the Norris-LaGuardia Act.


I. The Legislative Framework and the Nature of the Problem

A. The Statutory Framework

Since 1914, when Congress created an exclusion from federal anti-trust law for labor organizations as part of the Clayton Act,\(^8\) the central goal of American labor policy has been to encourage employees to deal collectively with their employer through a union.\(^9\) Prior to passage of this Act, federal courts frequently had enjoined collective action by employees as combinations in restraint of trade.\(^10\) Congress attempted to end this practice by enacting the Clayton Act, which declares that human labor is not a commodity of commerce and that a


\(^9\) The Norris-LaGuardia Act states: "[I]t is necessary that [the worker] have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment . . . for the purpose of collective bargaining . . . ." 29 U.S.C. § 102 (1976). The Wagner Act states: "It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining . . . ." 29 U.S.C. § 151 (1976). The Wagner Act specifies the components of the collective bargaining duty and requires the parties to engage in the process with a good faith intention to reach an agreement. 29 U.S.C. § 158(d) (1976); see NLRB v. American Nat'l Ins. Co., 343 U.S. 395, 409 (1952); Highland Park Mfg. Co., 12 N.L.R.B. 1238, 1248-49 (1939), enforced, 110 F.2d 632 (4th Cir. 1940).

combination of employees for collective action therefore cannot be a restraint of trade.\(^\text{11}\)

A federal judiciary hostile to collective action by employees for purposes of obtaining improved terms and conditions of employment construed this exception narrowly.\(^\text{12}\) This judicial hostility to collective action by employees in the form of strikes, picketing or boycotts resulted in a "[g]overnment by injunction."\(^\text{13}\) Labor leaders and leading academics therefore agitated for new legislation to curb the power of federal courts to enjoin collective action by employees.\(^\text{14}\) In 1932, their efforts were rewarded by the passage of the Norris-LaGuardia Act,\(^\text{15}\) which Congress intended to overrule judicial decisions seriously restricting the Clayton Act's labor exemption.\(^\text{16}\)

The Norris-LaGuardia Act was an attempt to remedy specific abuses of the injunctive power. Many of the labor injunctions criticized by the advocates of the Act enforced "yellow dog" contracts—agreements between an individual employee and an employer in which the employee agrees not to join or support any labor union.\(^\text{17}\) Section 3 of the Act renders such contracts unenforceable.\(^\text{18}\) In addition, section 4 of the Act enumerates specific activities commonly associated with peaceful collective action by employees that may not be restrained or enjoined if they are performed in the course of "any


\(^{13}\) F. Frankfurter & N. Greene, supra note 11, at 1. The doctrine of Swift v. Tyson, 41 U.S. 1, 16 Pet. 1 (1842), overruled, Erie R.R. v. Tompkins, 304 U.S. 64 (1938), allowed the federal courts deciding labor disputes that came to them through diversity jurisdiction to develop a federal common law hostile to collective action by employees. F. Frankfurter & N. Greene, supra note 11, at 11-17.

\(^{14}\) For a history of legislative efforts to curb injunctions in labor disputes prior to 1930, see F. Frankfurter & N. Greene, supra note 11, at 134-98.


\(^{16}\) See infra pt. II.


labor dispute.” 19 Section 7, however, which deals mainly with the procedural aspects of injunctive relief, suggests that section 4 is not absolute; restraining orders and injunctions may be issued in labor disputes when there are unlawful acts that may result in irreparable injury that is neither compensable by damages nor preventable by public authorities. 20 Thus, the Norris-LaGuardia Act is aimed at preventing interference by the federal courts in attempts by employees and union representatives to organize, gain recognition for their unions and engage in collective bargaining activities, including strikes for better working conditions.

In 1935, Congress furthered the policy of promoting collective bargaining by passing the Wagner Act, 21 which created an administrative mechanism, the National Labor Relations Board (NLRB), for deciding union representation questions. 22 The Wagner Act also imposed upon employers the duty to bargain with majority unions representing their employees, 23 specified certain fundamental rights of employees to engage in collective action 24 and made violations of those rights by employers “unfair labor practices.” 25 The Act states that it was intended to encourage collective bargaining as a means of redressing the imbalance in the relationship between employers and individual employees. 26 Congress did not modify the Norris-LaGuardia Act when the Wagner Act was adopted. The two statutes were complementary; the earlier law restricted the power of federal courts to enjoin collective action by employees, while the later law established a framework to promote collective bargaining and require recognition of unions.

19. Id. § 104. These acts are divided into nine categories including ceasing or refusing to work, joining a union, paying strike benefits, assisting strikers, publicizing a dispute and related activities, or advising others to engage in these acts. Id. Each of these acts had been a subject of a federal injunction, or a basis for federal injunctive relief, prior to the enactment of the Norris-LaGuardia Act. See F. Frankfurter & N. Greene, supra note 11, at 89-105.

Section 13 of the Act defines “labor dispute” as “any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment.” 29 U.S.C. § 113(c) (1976).

20. Id. § 107. Section 8 requires applicants for injunctive relief to have made all reasonable efforts to resolve the dispute through negotiation or arbitration. Id. § 108.


22. Id. § 153.

23. Id. § 158(a)(5).

24. Id. § 157.

25. Id. § 158(a).

26. Id. § 151.
B. The Nature of the Problem

After 1935, the collective bargaining agreement began to emerge as a common phenomenon in American industry. Although collective agreements had existed prior to 1935, the law with respect to their status and enforceability was unsettled. The Norris-LaGuardia Act was not an attempt to delimit the enforcement of such contracts, but was a jurisdictional and procedural statute intended primarily to preclude federal courts from an interventionist role in labor disputes. Consequently, although a federal regime of labor law had been established under which employers were compelled to bargain with unions, the result of that bargaining, the labor agreement, was not uniformly enforceable as a matter of federal law. Enforcement under state law was equally uncertain, depending upon local statutes and common-law contract and antitrust doctrines developed in the individual states.

27. See A. Taylor, Labor Problems and Labor Law 393 (2d ed. 1950). By 1941, organizers for the Congress of Industrial Organizations had enlisted 600,000 steel workers and “virtually the entire industry was covered by union contracts.” F. Dulles, supra note 11, at 302. In 1937, General Motors and Chrysler recognized the United Automobile Workers and began negotiating collective contracts. Id. at 306; see Developing Labor Law, supra note 11, at 35 (“Between 1935 and 1947 unions had flourished . . . . In some industries . . . four fifths of the employees were working under collective bargaining agreements.”).

28. I L. Teller, Labor Disputes and Collective Bargaining 492-95 (1940); Christenson, Legally Enforceable Interests in American Labor Union Working Agreements, 9 Ind. L.J. 69, 70 (1933); Note, Labor Law—Nature, Validity, and Enforcement of Collective Bargaining Agreements, 11 N.Y.U.L.Q. 262, 262 (1933) [hereinafter cited as Enforcement of Collective Bargaining Agreements]. In some jurisdictions, for example, the existence of a labor agreement was held to bar strikes by the employees for the term of the agreement. Enforcement of Collective Bargaining Agreements, supra, at 266. In other jurisdictions, only an express no-strike provision in the agreement was held to impose such a restriction on employee actions. Annot., 2 A.L.R.2d 1278, 1282, 1284-85 (1948). In yet other jurisdictions, all strikes were seen as violative of state law and enjoinable regardless of contractual agreements. F. Cook, The Law of Trade and Labor Combinations 9-17, 31-37 (1898); F. Dulles, supra note 11, at 29-31.

29. See infra pt. II. In the interim between enactment of the Norris-LaGuardia Act and passage of the Taft-Hartley Act, cases in which injunctive relief against violations of labor agreements was sought in the federal courts were held to involve “labor disputes” within the meaning of the Norris-LaGuardia Act. Wilson & Co. v. Birl, 105 F.2d 948 (3d Cir. 1939); Colorado-Wyoming Express v. Denver Local Union No. 13, 35 F. Supp. 155 (D. Colo. 1940). On this basis, federal courts held that the Norris-LaGuardia Act precluded the issuance of an injunction against a violation of a labor agreement because such a violation was not considered an unlawful act as that term is used in the Norris-LaGuardia Act. Colorado-Wyoming Express, 35 F. Supp. at 158-59; see Textile Workers Union v. Wilson & Co., 80 F. Supp. 563, 569-70 (N.D. Ill. 1948).

30. See supra note 28.
This situation became a matter of grave concern in 1946, when wage and price controls established during World War II were lifted and the nation experienced a surge of strike activity. According to the proponents of the amendments, a major flaw in the existing law was the failure to make collective bargaining agreements, including agreements not to strike during the contract term, mutually binding as a matter of federal law.

In 1947, Congress enacted the Taft-Hartley Act, which provides that "[s]uits for violation of contracts between an employer and a labor organization . . . or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties . . . ." In the years following its enactment, the lower federal courts questioned whether section 301 of this Act was merely a grant of jurisdiction, requiring application of state law in the federal forum, or was a source of substantive law, making labor

31. F. Dulles, supra note 11, at 353-56; R. Koretz, supra note 17, at 548; Developing Labor Law, supra note 11, at 32, 36.
32. Originally, Congress attempted to amend the Wagner Act by passing a bill introduced by Representative Case (R.N.J.), which would have severely restricted the right to strike. President Truman vetoed the Case Bill and Congress failed to override. F. Dulles, supra note 11, at 356; Developing Labor Law, supra note 11, at 32.
33. See Developing Labor Law, supra note 11, at 36-37. In the Senate Committee Report on the Taft-Hartley Act, Senator Taft stated:

   The committee bill makes collective bargaining contracts equally binding and enforceable on both parties. . . .

   Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties . . . .

   It has been argued that the result of making collective agreements enforceable against unions would be that they would no longer consent to the inclusion of a no-strike clause in a contract.

   This argument is not supported by the record in the few States which have enacted their own laws . . . .

   In any event, it is certainly a point to be bargained over and any union with the status of "representative" under the NLRA which has bargained in good faith with an employer should have no reluctance in including a no-strike clause if it intends to live up to the terms of the contract.

S. Rep. No. 105, 80th Cong., 1st Sess. 15, 17-18 (1947), reprinted in R. Koretz, supra note 17, at 605, 608. Significantly, Senator Taft did not suggest that unions would accept no-strike provisions only if such provisions were believed to be judicially unenforceable.
35. Id. § 185(a) (1976). This section also provides that unions have capacity to sue or be sued in any action founded upon a labor contract. Id. § 185(b).
agreements enforceable as a matter of federal law.\textsuperscript{36} Initially, the Supreme Court held that the section was only procedural, creating no federal law of labor contracts.\textsuperscript{37} Upon reconsideration in a later case, however, a new majority concluded that section 301 was intended to be substantive.\textsuperscript{38}

In \textit{Textile Workers Union v. Lincoln Mills},\textsuperscript{39} a union sought to compel an employer to honor a contract provision requiring arbitration of certain grievances.\textsuperscript{40} The Court held that accommodation of the Norris-LaGuardia and Taft-Hartley Acts was possible because enforcement of agreements to arbitrate was not "a part and parcel of the abuses against which the [Norris-LaGuardia] Act was aimed."\textsuperscript{41} Consequently, even though Congress had not amended or repealed the Norris-LaGuardia Act when it enacted section 301, such amendment or repeal was unnecessary because the Norris-LaGuardia Act was not intended to preclude enforcement of such promises.\textsuperscript{42}

In the \textit{Steelworkers Trilogy},\textsuperscript{43} a set of landmark decisions building upon \textit{Lincoln Mills}, the Court further established labor arbitration as the preferred mechanism for resolving contract disputes, and held that arbitration awards were specifically enforceable.\textsuperscript{44} The Court was initially reluctant to extend the \textit{Lincoln Mills} rationale to allow federal courts to enjoin strikes because it seemed the Norris-LaGuardia Act was expressly aimed at barring anti-strike injunctions.\textsuperscript{45} By 1970, however, a majority of the Court had come to believe that a strike

\begin{itemize}
  \item 37. \textit{Id.} at 441-49.
  \item 39. 353 U.S. 448 (1957).
  \item 40. \textit{Id.} at 449.
  \item 41. \textit{Id.} at 458. This was not the first time that the Court had looked to the intent underlying the Norris-LaGuardia Act to reconcile its broad language with later enactments. In a series of cases involving the Railway Labor Act, 45 U.S.C. §§ 151-188 (1976), the Court held that various dispute resolution provisions of that Act could be accommodated with the Norris-LaGuardia Act by allowing injunctions, including injunctions against strike action, in support of those provisions. \textit{E.g.}, Brotherhood of R.R. Trainmen v. Chicago River & I.R. Co., 353 U.S. 30, 40-41 (1957); Brotherhood of R.R. Trainmen v. Howard, 343 U.S. 768, 774-75 (1952); Graham v. Brotherhood of Locomotive Firemen, 338 U.S. 232, 240 (1949); Virginian Ry. Co. v. System Fed'n No. 40, 300 U.S. 515, 562-63 (1937). Although the Railway Labor Act was initially passed in 1926, ch. 347, 44 Stat. 577 (1926), the provisions at issue were added by ch. 691, 48 Stat. 1185 (1934), after the Norris-LaGuardia Act was enacted.
  \item 42. \textit{See infra} notes 98-108 and accompanying text.
  \item 44. 363 U.S. at 597-99; 363 U.S. at 577-78; 363 U.S. at 568-69.
\end{itemize}
over a dispute that was subject by contract to mandatory arbitration could be enjoined under the rationale of *Lincoln Mills* and the *Steelworkers Trilogy*. In *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, the Court reasoned that such injunctions were not among the abusive injunctions against which the Norris-LaGuardia Act was intended to operate. The Court emphasized the narrowness of this exception, asserting it was the union's duty to submit the dispute to arbitration, not the contractual no-strike provision, that was enforced by the anti-strike injunction.

There are important but anomalous consequences of the theory embraced by the Court in *Boys Markets*. First, an injunction may be obtained against a strike, even though the contract lacks an express no-strike provision, if the strike is over an issue subject to mandatory arbitration. Second, strikes over non-arbitrable issues cannot be enjoined even though the contract states that the union waives its right to strike or engage in any work stoppage for the contract's duration. The latter limitation was enunciated by the Court in a case involving a sympathy strike and reiterated in a case involving politically inspired refusals to work. In both cases, injunctions were unavailable despite the existence of a contractual no-strike agreement, because these cases were not within the narrow exception created by *Boys Markets*.

An employer is therefore deprived of a significant part of the benefit of its bargain because a strike will not be enjoined even when a union has agreed not to strike for the term of the contract and monetary damages do not fully compensate the employer for injury suffered in a strike. Indeed, the current convoluted state of the law has led to a theory of coterminous interpretation under which two federal circuit

---

48. Id. at 250-53.
49. Id. at 253. The majority opinion in *Boys Markets* is somewhat ambiguous, but later decisions make clear that it is the quid pro quo for arbitration (the express or implied no-strike obligation) that is being equitably enforced. See *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397, 407 (1976); *Gateway Coal Co. v. UMW*, 414 U.S. 368, 381-82 (1974).
52. Id.
54. Id. at 2678-79, 2685-87; *Buffalo Forge Co. v. United Steelworkers*, 428 U.S. 397, 406-08 (1976).
55. The doctrine of coterminous application was originally enunciated in *Gateway Coal Co. v. UMW*, 414 U.S. 368 (1974). The Court stated it would be possible for the parties to "expressly negate any implied no-strike obligation," but "absent an explicit expression of such an intention ... the agreement to arbitrate and the duty not to strike should be construed as having coterminous application." Id. at 382.
courts have even refused to award damages for strikes that violated the contract, solely because the strikes were not over arbitrable disputes. 56

Unions and employees also suffer because courts refuse to specifically enforce collective bargaining contracts. As companies relocate, reorganize or change owners, unions have attempted to obtain injunctive relief to preserve the status quo pending an arbitrator's determination of the union's rights under the labor contract. 57 Although some courts have granted such status quo injunctions in reliance upon Boys Market, 58 it is unclear whether the availability of such injunctions may be affected by the continued influence of the Norris-LaGuardia Act. 59

The Norris-LaGuardia Act was not intended to deal with contract enforcement matters. Congress intended in the Taft-Hartley Act to make collective agreements mutually binding and enforceable. Accommodating the Norris-LaGuardia Act to the realities of modern-day labor relations requires recognizing that the contract enforcement injunction is not necessarily an anti-labor device, but one of a panoply of remedial devices available to a court to ensure that promises made

56. Ryder Truck Lines, Inc. v. Teamsters Freight Local No. 480, 705 F.2d 851 (6th Cir. 1983), vacated pending reh'g, 710 F.2d 233 (1983); Delaware Coca-Cola Bottling Co. v. General Teamsters Local Union 326, 624 F.2d 1182 (3d Cir. 1980). But see Transcaribbean Motors Trans., Inc. v. Union De Tronquistas, Local 901, 553 F. Supp. 362 (D.P.R. 1982) (damages may be awarded even if injunction is unavailable). The Seventh Circuit has limited application of the doctrine of coterminous interpretation to enforcement of no-strike pledges implied as the quid pro quo for arbitration and to issuance of injunctions against activities otherwise protected under the Norris-LaGuardia Act. United States Steel Corp. v. NLRB, 711 F.2d 772, 776-77 (7th Cir. 1983).

57. E.g., Gulf Coast Indus. Workers' Union v. Exxon Co., 712 F.2d 161 (5th Cir. 1983); Aluminum Workers Int'l Union v. Consolidated Aluminum Corp., 696 F.2d 437 (6th Cir. 1982); Local Lodge No. 1266, Int'l Ass'n of Machinists v. Panoramic Corp., 668 F.2d 276 (7th Cir. 1981); United Steelworkers v. Fort Pitt Steel Casting, 598 F.2d 1273 (3d Cir. 1979); Lever Bros. Co. v. International Chem. Workers Union, Local 217, 554 F.2d 115 (4th Cir. 1976); Hoh v. Pepsico, Inc., 491 F.2d 556 (2d Cir. 1974).


in good faith at the bargaining table are observed in good faith during the contract term.

II. THE LEGISLATIVE HISTORY OF THE Norris-LaGuardia Act

The enactment of the Norris-LaGuardia Act in 1932 culminated a sustained campaign to eliminate anti-union injunctions in the federal courts. At the time of its passage, the Clayton Act had been hailed by labor leaders as a sort of Magna Carta for labor, and many observers predicted that federal court injunctions against collective activity would be eliminated, or at least sharply reduced, as a result of the restriction introduced in the statute. The federal courts, however, narrowly construed the Clayton Act's labor provisions to protect only direct economic action taken by employees against their own employer for reasons having solely to do with the terms and conditions of their employment. In addition, the Clayton Act introduced the concept of the private antitrust action, actually increasing the opportunities for anti-union injunctions by allowing individual employers to seek injunctive relief.

Apart from the antitrust laws, however, there were other sources of anti-union injunctions contributing to the drive towards the Norris-LaGuardia Act. Prominent among these were injunctions compelling specific performance of "yellow dog" contracts. Although judicial reception of these contracts was not unanimously approving, suits for their enforcement often resulted in injunctions against collective action by employees. At the time, issues of contract enforcement


61. F. Frankfurter & N. Greene, supra note 11, at 142-44; E. Lieberman, supra note 10, at 96-99. This view was not unanimous. William Howard Taft, speaking as the President of the American Bar Association five days after the Clayton Act was passed, stated: "But what I fear is that when the statute is construed by the courts it will keep the promise of labor leaders to the ear and break it to the hope of the ranks of labor." Address by President Taft, 39 A.B.A. Rep. 359, 380 (1914).

62. F. Frankfurter & N. Greene, supra note 11, at 165-76.


64. G. Norris, Fighting Liberal 303-11 (1945). See supra notes 17-18 and accompanying text.

65. F. Frankfurter & N. Greene, supra note 11, at 37-42; G. Norris, supra note 64, at 304.
were not questions of federal law, but came before the federal courts through diversity jurisdiction or as claims appended to federal antitrust or interstate commerce claims. In the era of federal common law prior to *Erie Railroad v. Tompkins*, however, federal courts created a federal common law of labor contracts receptive to the enforcement of “yellow dog” contracts.

Although the legislative history of the Norris-LaGuardia Act is complex, it is clear the Act was designed primarily to counteract this judicial hostility toward collective action by employees. Bills were introduced to deal with the problems of “yellow dog” contracts and anti-union injunctions several years before passage was finally achieved. The difficulties encountered in promulgating legislation that would be constitutional, unmistakable and not subject to narrowing interpretations finally led proponents to a simple, elegant solution: Congress exercised its authority to define the jurisdiction of the lower federal courts by depriving those courts of the power to issue injunctions against collective actions that arose from labor disputes and by declaring “yellow dog” contracts unenforceable in the federal courts.

The proponents recognized that the resulting legislation was not a complete response to the public policy issues raised by unionism and collective bargaining. One of the drafters of the bill wrote:

The bill is not a comprehensive code of labor law for the federal courts, nor even an all-inclusive formulation of procedural safeguards to remedy revealed defects. The measure under discussion merely deals with the most insistent issues presented by the labor injunction as utilized by the federal courts. Within its narrow scope it is the most considered legislative effort that has yet come before Congress, attempting to grapple candidly with the difficulties of intervention by law in the controversies of industry . . . . The proposals are guided by experience in the actual operation of labor injunctions, and reflect the mature opinion of disinterested experts. The remedies suggested are intended to meet the specific difficulties and abuses that have come to the surface, in the light of

67. 304 U.S. 64 (1938).
68. G. Norris, *supra* note 64, at 304.
70. F. Frankfurter & N. Greene, *supra* note 11, at 208-15. Concerns about constitutionality led Senator Norris to abandon efforts toward enactment of a predecessor of his bill that declared “yellow dog” contracts illegal and attempted to redefine property for purposes of the freedom of contract provisions of the Constitution. *Id.* at 206-08; see G. Norris, *supra* note 64, at 305-06. Ironically, this jurisdictional solution to the problem of the labor injunction, initiated by political progressives to assist organized labor, is presently advocated by conservatives seeking to restrict federal courts from ruling on abortion or school prayer. *See* Winter, *Abortion, Prayer Bills Bar U.S. Court Review*, 67 A.B.A.J. 546 (1981).
problems peculiar to labor controversies. They also attempt to fit the labor injunction more harmoniously into the general scheme of equity jurisdiction.\textsuperscript{71}

The chief concern of the sponsors of the legislation was to correct situations in which the federal courts were being used by powerful employers to dominate unorganized employees attempting to engage in collective action to secure better working conditions.\textsuperscript{72} Congress was concerned not with enforcement of collective agreements in the few areas in which collective bargaining had become established, but with specific abuses of the injunctive power. These included injunctions used to destroy organizing campaigns, to break unions and to deny unions the opportunity to achieve contracts by forbidding economic action in support of contract demands.\textsuperscript{73} Injunctions to enforce collective agreements, however, were not among the concerns of Congress in enacting the Norris-LaGuardia Act.

Committee reports and floor debates on the bill reinforce the view that the Norris-LaGuardia Act was not intended to preclude federal courts from ordering specific performance of collective bargaining agreements. The only contract enforcement actions addressed by the proponents of the legislation were actions to enforce "yellow dog" contracts.\textsuperscript{74} At no time did any proponent of the legislation single out injunctions enforcing collective agreements as an abuse sought to be corrected by the Act.\textsuperscript{75} Such injunctions, while relatively rare, had

\textsuperscript{71} F. Frankfurter & N. Greene, \textit{supra} note 11, at 226 (emphasis added). In 1930, Felix Frankfurter, then a professor at Harvard Law School, published \textit{The Labor Injunction} in collaboration with Nathan Greene. \textit{See} F. Frankfurter & N. Greene, \textit{supra} note 11. This book was to become the authoritative account of the abuses against which the Norris-LaGuardia Act was directed, principally because Professor Frankfurter was a member of the committee that drafted the legislation at the suggestion of Senator Norris. \textit{See} G. Norris, \textit{supra} note 64, at 307. The book describes the full range of anti-union injunctions perceived by the legislation's proponents as being "abusive." \textit{See} F. Frankfurter & N. Greene, \textit{supra} note 11, at 1-46. Significantly, the use of injunctions to enforce collective agreements negotiated at arm's length between a union and an employer is mentioned only in passing although the authors were aware that such injunctions had issued in the past. \textit{See id.} at 108-10. Such injunctions clearly were not a significant concern of the drafters of the legislation, indicating that it was not the drafters' intention to affect the use of such injunctions.


\textsuperscript{73} \textit{See} S. Rep. No. 163, 72d Cong., 1st Sess. (1932); F. Frankfurter & N. Greene, \textit{supra} note 11, at 1-46, 82-133.


\textsuperscript{75} Opponents of the legislation criticized the bill for failing to draw any distinction "between legal or illegal strikes." S. Rep. No. 1060, 71st Cong., 2d Sess. 8
been issued, and had been discussed in the academic literature on labor contract law contemporaneous with the deliberations of Congress on this issue.\textsuperscript{76} These injunctions, therefore, were not omitted from discussion due to ignorance, but because they were not considered abusive.

Although the legislators focused on specific abuses of the injunctive power, the language of the Norris-LaGuardia Act is broad in its apparent wholesale withdrawal of jurisdiction. This was at least partly a reaction to judicial treatment of the Clayton Act.\textsuperscript{77} The Clayton Act labor exemption\textsuperscript{78} had been finely drawn to address a particular problem: the issuance of injunctions on a restraint of trade theory based on the Sherman Act.\textsuperscript{79} The relatively narrow language of this exemption was interpreted to preclude federal courts from enjoining only direct economic action while allowing the issuance of injunctions against secondary activity in support of unionization to continue.\textsuperscript{80} Consequently, to ensure that the Norris-LaGuardia Act was effective, it was drawn broadly to foreclose a narrow construction and avoid possible loopholes or exceptions.\textsuperscript{81} The proponents of the legislation were not reticent in voicing their distrust of the courts in this matter and repeatedly justified the breadth of the legislation by reference to concerns about the anti-union views of the judiciary.\textsuperscript{82}

As drafted and eventually enacted, the Norris-LaGuardia Act includes a detailed procedure for issuing injunctions when they are not specifically precluded by the statute, including, inter alia, cases in-

\begin{itemize}
  \item \textsuperscript{76} See Christenson, supra note 28, at 89-90; Enforcement of Collective Bargaining Agreements, supra note 28, at 267.
  \item \textsuperscript{77} See 75 Cong. Rec. 5468 (remarks of Rep. Beedy); id. at 5470 (remarks of Rep. Browning); id. at 5478 (remarks of Rep. LaGuardia).
  \item \textsuperscript{78} 15 U.S.C. § 17 (1982).
  \item \textsuperscript{79} See F. Frankfurter & N. Greene, supra note 11, at 8-11, 142-45.
  \item \textsuperscript{80} See id. at 165-76.
  \item \textsuperscript{81} Senator Norris commented:
    We have to be careful what words and phrases we incorporate in the bill.
    If we leave a loophole, and one of the judges who wants to issue this kind of
    an injunction cares to do so, he will drive the whole court right through it
    . . . . It is difficult to try to meet these ingenious, devising methods by
    which the courts will put in any kind of construction if we give them the
    chance to do it.
    75 Cong. Rec. 4770 (1932).
  \item \textsuperscript{82} See 75 Cong. Rec. 5468 (1932) (remarks of Rep. Beedy); id. at 5470 (remarks of Rep. Browning); id. at 5478 (remarks of Rep. LaGuardia); id. at 5014 (remarks of Sen. Neely); id. at 4770 (remarks of Sen. Norris); id. at 5491 (remarks of Rep. Swing).
\end{itemize}
volving unlawful acts resulting in irreparable injuries.\footnote{29 U.S.C. § 107 (1976). The statute removes jurisdiction to issue injunctions only with respect to particular enumerated activities. \textit{Id.} § 104. Activities not enumerated may be enjoined if the procedural requirements of the statute are met.} Thus, the Act does not remove all federal court jurisdiction to issue injunctions in labor matters,\footnote{The only suggestion that the Act would remove jurisdiction to issue all injunctions is in the remarks of Representative Beck, an opponent of the bill: "No injunction shall be issued against the organization and maintenance of strikes even where said strikes are called in violation of contract, to extort graft, to compel the employer to commit a criminal act, to accomplish political purposes, to prevent freedom of press, to prevent the use of products which the public desire to use, to coerce Congress and the Executive." 75 Cong. Rec. 5471 (1932). Representative LaGuardia responded: "[T]his bill does not prevent the court from restraining any unlawful act. This bill does prevent the Federal court from being used as an agency for strike-breaking purposes and as an employment agent for scabs to break a lawful strike." \textit{Id.} at 5478. The Supreme Court has noted that the remarks of opponents of a bill should not be used to determine legislative intent. National Woodwork Mfrs. Ass'n v. NLRB, 386 U.S. 612, 639-40 (1967).} but rather provides a mechanism for the issuance of injunctions in those cases that are not "a part and parcel of the abuses against which the Act was aimed."\footnote{Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 458 (1957).} If a contract enforcement action does not involve enjoining any of the specifically enumerated activities, only the procedural aspects of the Norris-LaGuardia Act apply.\footnote{See 29 U.S.C. §§ 107-110 (1976). The requirement that unlawful acts are being threatened or committed has been construed to limit the issuance of injunctions. See United Packing House Workers v. Wilson & Co., 80 F. Supp. 563, 569-70 (N.D. Ill. 1948). The Supreme Court, however, has stated that this requirement is inapposite to a contract enforcement action. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 458 (1957).} An employer or a union, therefore, should be able to sue for an injunction to compel specific performance of substantive contract terms if the relief sought does not include an order against striking, picketing, publicizing the dispute, or any of the other activities specifically mentioned in the statute.\footnote{See 29 U.S.C. § 104 (1976). A review of the enumerated actions reveals no basis under this section for the assertion that federal courts lack jurisdiction to order specific performance of a labor agreement. \textit{See id.}}

The few cases raising the contract enforcement issue prior to the passage of the Taft-Hartley Act in 1947 did not distinguish between the procedural and jurisdictional aspects of the Norris-LaGuardia Act. If the case arose out of a labor dispute as defined in the Act, the courts automatically and ritualistically found that they did not have jurisdiction to entertain a request for injunctive relief.\footnote{The leading case cited for the proposition that the Norris-LaGuardia Act deprived the courts of jurisdiction to enjoin contract violations is Wilson & Co. v. Birl, 105 F.2d 948 (3rd Cir. 1939). That case does not address the issue directly.} Under the
broad definitional language of the Act, a dispute about the meaning of a collective bargaining agreement was unquestionably a labor dispute.

Thus, despite the great changes in the character of industrial organization and employee relations occurring between 1932 and 1947, the Norris-LaGuardia Act continued as a bar to specific enforcement of collective bargaining contracts. This was therefore an important issue to be resolved when Congress sought in 1947 to reassert a federal role in labor relations with passage of the Taft-Hartley Act.

III. Federalization of Labor Agreement Enforcement Actions

A. The Legislative History of the Taft-Hartley Act

During the late 1930's and the years of World War II, organized labor made great strides in obtaining recognition and achieving collective bargaining agreements in several major industries. Enforcement of collective bargaining agreements, however, was still governed by general contract law, which varied among jurisdictions. During the war, a national no-strike pledge and the establishment of the War Labor Board to deal with grievances and contract disputes forestalled the need to deal with problems of contract enforcement. After the war there was considerable labor unrest as wage and price controls were removed and returning servicemen and their unions became

Rather, dicta in the opinion indicate that the Norris-LaGuardia Act left the courts powerless to enjoin a peaceful strike under any circumstances. Id. at 952-53. More closely on point is Colorado-Wyoming Express v. Denver Local No. 13, 35 F. Supp. 155 (D. Colo. 1940), in which the court refused to order performance of an alleged agreement. The court, however, based its decision on the conclusion that the contract in question was one-sided and had some of the characteristics of a "yellow dog" contract. See id. at 158-59. Of some interest in this connection are cases in which employers who had negotiated with unions sought injunctive relief against jurisdictional picketing by rival unions or discontented employees. See, e.g., United Elec. Coal Cos. v. Rice, 80 F.2d 1 (7th Cir. 1935) (injunction granted), cert. denied, 297 U.S. 714 (1936); Houston & N. Tex. Motor Freight Lines v. Local Union No. 886, 24 F. Supp. 619 (W.D. Okla. 1938) (injunction denied); Donnelly Garment Co. v. I.L.G.W.U., 21 F. Supp 807 (W.D. Mo. 1937) (injunction granted), vacated, 304 U.S. 243 (1938).

90. The Wagner Act contains an exception to this bar limited to enforcement of NLRB orders. 29 U.S.C. § 160(h) (1976).
91. See supra note 27 and accompanying text.
93. F. Dulles, supra note 11, at 332-44.
militant in pursuing their economic demands and grievances. Questions of contract enforcement, and particularly of enforcement of contractual no-strike pledges, became a matter of concern to Congress. Eventually, the Taft-Hartley Act was passed by a Congress apparently determined to make collective bargaining agreements enforceable in the federal courts.

The legislative history of the contract enforcement provisions of the Taft-Hartley Act is not a model of clarity, at least partly because there were significant differences in the bills drafted in the Senate and the House. The House bill stated that the Norris-LaGuardia Act was not to apply to actions brought to enforce labor agreements. The committee report on the bill explained that it was the intent of the drafters to make "the Norris-LaGuardia Act inapplicable in suits and proceedings involving violations of contracts which labor organizations voluntarily and with their eyes open enter into." The minority report also noted that "courts would have the power to grant injunctive relief regardless of the provisions of the Norris-LaGuardia Act." Specific mention of the inapplicability of the Norris-LaGuardia Act was included in the bill because prior judicial decisions suggested that the Norris-LaGuardia Act prevented federal courts from issuing injunctions to enforce collective agreements.

By contrast, the Senate drafters did not include a specific exception to the Norris-LaGuardia Act but instead initially sought to make contract violations an unfair labor practice. The committee report

94. Id. at 346-54.
95. Id.
97. Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 452 (1957) ("legislative history of § 301 is somewhat cloudy and confusing").
98. H.R. 3020, 80th Cong., 1st Sess. § 302(e) (1947), reprinted in 1 NLRB Legislative History, supra note 96, at 221, stated: "In actions and proceedings involving violations of agreements between an employer and a labor organization or other representative of employees, the provisions of the [Norris-LaGuardia Act] shall not have any application in respect of either party." See id. § 301(c) (violations of antitrust laws), reprinted in 1 NLRB Legislative History, supra note 96, at 221.
100. Id. at 108, reprinted in 1 NLRB Legislative History, supra note 96, at 399.
102. S. 1126, 80th Cong., 1st Sess. (1947), reprinted in 1 NLRB Legislative History, supra note 96, at 111-12, 114.
on the Senate bill states the legislation was intended to achieve "[s]tatutory recognition of the collective agreement as a valid, binding, and enforceable contract."\textsuperscript{103} This was "a logical and necessary step" in establishing collective bargaining as part of the federal legislative framework.\textsuperscript{104} In debate, Senator Taft commented: "The purpose of Title III is to give the employer and the employee the right to go to the Federal courts to bring a suit to enforce the terms of a collective bargaining agreement."\textsuperscript{105}

The conference committee followed the terms of the House bill with some modifications. Explicit reference to the inapplicability of the Norris-LaGuardia Act, however, was replaced by language regarding the liability of unions for the actions of their agents.\textsuperscript{106} Although the compromise bill did not contain express reference to the Norris-LaGuardia Act, the report on the bill indicates it was intended to render section 6 of the Norris-LaGuardia Act inapplicable to actions brought under section 301 of the Taft-Hartley Act.\textsuperscript{107}

The conference report did not explain whether the express reference to the Norris-LaGuardia Act in the House bill was dropped because Congress wanted to forbid the use of injunctions in contract enforcement actions, or because the conference committee considered the language unnecessary in light of the broad grant in section 301(a) of federal jurisdiction over suits to enforce such agreements. Thus, although the omission of the exclusionary language by the conference committee has been viewed as evidence that Congress intended to leave the operation of the Norris-LaGuardia Act intact in section 301 actions,\textsuperscript{108} the legislative history is equivocal on this point.

Also advanced in support of the continuing applicability of the Norris-LaGuardia Act to contract enforcement actions is the argument that elsewhere in the statute Congress specifically mentioned that Act when it wished to nullify its provisions.\textsuperscript{109} Section 10(h) of the Wagner Act,\textsuperscript{110} for example, which allows the NLRB to obtain spe-


\textsuperscript{104} Id.


\textsuperscript{107} Id.


cific enforcement of its orders or preliminary injunctive relief pending action on the merits of a case, expressly exempts such actions from operation of the Norris-LaGuardia Act. Similarly, section 208(b) of the Taft-Hartley Act expressly provides that the Norris-LaGuardia Act does not apply when the Attorney General petitions a federal court for injunctive relief in the event of a national emergency strike.

In contrast, section 301 of the Taft-Hartley Act does not refer to the Norris-LaGuardia Act. The conference report nevertheless states that Congress intended to make the agency provisions of the Norris-LaGuardia Act inapplicable to section 301 actions. The absence of an express reference in the statute therefore should not be considered dispositive of Congress' intent. Indeed, accommodation of the Norris-LaGuardia and Taft-Hartley Acts is necessary to effectuate the intent of Congress expressed in the legislative history of the Taft-Hartley Act.

B. The Lincoln Mills Accommodation

In Textile Workers Union v. Lincoln Mills, the Supreme Court finally accepted the notion that the Norris-LaGuardia Act must be subjected to a process of accommodation to be harmonized with the later Taft-Hartley Act. The Court noted that the Norris-LaGuardia Act was not intended to deal with the problem of enforcing agreements to arbitrate because this issue was not "a part and parcel of the abuses against which the Act was aimed." The Court limited the scope of this accommodation process by allowing specific enforcement of arbitration agreements only because the parties had selected this alternative mechanism for settling their disputes. Although some of the language in the Court's decision supports the argument that the Norris-LaGuardia Act should not apply to any section 301 action,
this limitation to arbitration agreements has been reinforced by later cases further restricting the availability of injunctive relief in section 301 actions.\textsuperscript{118}

The rationale invoked in the Court's initial accommodation of the Norris-LaGuardia Act is equally valid with respect to the broader issue of specific performance of collective bargaining agreements. The Norris-LaGuardia Act was enacted as a response to federal courts' intervention in labor disputes, which had prevented unionization or collective bargaining by depriving unions of their most effective weapons.\textsuperscript{119} In that context, broad statutory language taking the federal courts out of labor disputes was reasonable. The political climate was not yet ripe for comprehensive legislation creating a federal labor law, so Congress enacted the Norris-LaGuardia Act to defederalize many labor law questions.

By the mid-1930's, there had been a drastic shift in political and economic forces.\textsuperscript{120} Enacted in this changed environment, the Wagner Act of 1935 represented a federalization of labor law to encourage arbitrate grievance disputes to the inapposite procedural requirements of that Act.”\textsuperscript{118} Id. at 458 (footnote omitted).

118. The \textit{Boys Markets} Court stated: “Our holding in the present case is a narrow one. We do not undermine the vitality of the Norris-LaGuardia Act. We deal only with the situation in which a collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure.” 398 U.S. at 253. In \textit{Buffalo Forge}, the Court stated:

The driving force behind \textit{Boys Markets} was to implement the strong congressional preference for the private dispute settlement mechanisms agreed upon by the parties. Only to that extent was it held necessary to accommodate § 4 of the Norris-LaGuardia Act to § 301 of the Labor Management Relations Act and to lift the former's ban against the issuance of injunctions in labor disputes. 428 U.S. at 407.

119. See \textit{supra} pt. II. Justice Brennan, writing for the Court in \textit{Boy's Markets}, commented:

The Norris-LaGuardia Act was responsive to a situation totally different from that which exists today. In the early part of this century, the federal courts generally were regarded as allies of management in its attempt to prevent the organization and strengthening of labor unions; and in this industrial struggle the injunction became a potent weapon that was wielded against the activities of labor groups. 398 U.S. at 250 (footnote omitted).

120. Senator Norris noted that if the Norris-LaGuardia Act had been passed by Congress in the previous session, President Hoover would have vetoed it and there would not have been sufficient support for an override. \textit{See} G. Norris, \textit{supra} note 64, at 308-09. In 1932, the Senate was still Republican but the swing in public opinion reflected by the election in 1930 of a Democratic House made enactment of the Act possible. \textit{See} W. Manners, \textit{Patience and Fortitude: Fiorello La Guardia 129} (1976). The subsequent election of Franklin D. Roosevelt and the New Deal Congress completed this shift.
resolution of the issues that appeared paramount: unionization and the right to demand collective bargaining. The Taft-Hartley Act furthered this federalization by creating both a mechanism for dealing with labor disputes that affect interstate commerce and a federal law of collective agreements. The defederalization of the law of contract enforcement that occurred with enactment of the Norris-LaGuardia Act was overridden by the federalization embodied in the Taft-Hartley Act. It was not necessary for Congress expressly to overrule the earlier Act. The nature of the Taft-Hartley Act made it clear that Congress was abandoning the underlying laissez-faire philosophy of the Norris-LaGuardia Act and reinjecting federal courts into labor disputes involving violations of collective bargaining agreements.

IV. THE NEED FOR FURTHER ACCOMMODATION

A. Judicial Reinterpretation

In a legislative regime that prizes most highly the process of collective bargaining culminating in a binding labor agreement, it is anomalous to hold that such an agreement is not entitled to specific performance because a prior legislative scheme premised on the absence of this labor policy is still on the books. Accommodation of later enactments by reinterpreting earlier ones is vital to the promotion of rationality in federal labor law. Accommodation in the context of contract enforcement is especially pertinent. Collective bargaining agreements are written to be used by line supervisors, union stewards and rank-and-file employees in the course of their everyday dealings. Their meanings in plain English should coincide whenever possible with their meanings in a contract enforcement action. Thus, a clear and unequivocal contractual provision in which the union undertakes that there will be no work stoppage of any kind for the duration of the agreement should not be twisted by the courts to allow a wide variety of work stoppages merely because earlier courts were not trusted by Congress to be sufficiently neutral. A detailed legislative scheme now exists for deciding the issues of union representation and bargaining rights that led to many of the disputes that provoked abusive injunctions prior to the Norris-LaGuardia Act. The underlying reasons for interpreting that Act to

121. See supra note 9 and accompanying text.
122. See supra note 41.
123. The no-strike provision at issue in Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397 (1976), is a good illustration: "There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity." Id. at 399 n.1.
limit the courts' remedial powers under section 301 no longer exist.\textsuperscript{125} The continued application of the Norris-LaGuardia Act in this context creates conflict and confusion, and undermines respect for collective agreements in the workplace.

The contradictory history of "status quo" labor injunctions\textsuperscript{126} against employers in the federal courts is another example of how the obsolete philosophy of the Norris-LaGuardia Act continues to confuse the developing law of labor relations. During the 1930's and 1940's, unions sometimes sought injunctive relief against employers to enforce contract provisions or to halt employer actions viewed as detrimental to the interests of the union or the employees.\textsuperscript{127} Some courts correctly held the Norris-LaGuardia Act to be no bar to injunctions against employers because this Act was intended only to protect labor, not management, from injunctions.\textsuperscript{128} The Act removes the jurisdiction to enjoin specified activities when they occur in the context of a labor dispute.\textsuperscript{129} Almost all of these activities are ordinarily engaged in by employees undertaking collective action, not employers.\textsuperscript{130} At least one court, however, held that the Act was neutral, depriving both employers and unions of the right to injunctive relief in labor disputes.\textsuperscript{131} After Boys Markets, several circuits held that unions could obtain injunctions staying employer actions pending a determination by an arbitrator whether a collective bargaining agreement precluded the employer action in question.\textsuperscript{132} The Supreme Court, however,

\begin{footnotesize}
\begin{enumerate}
\item[125] Those areas of the economy over which federal labor policy has not yet been extended, such as agriculture, still may require the application of the Norris-LaGuardia Act. The fact that such areas are not covered by federal labor policy, however, indicates a view that they are best left to local regulation and thus are not appropriately the subject of federal court actions.
\item[126] A status quo labor injunction is requested by a union to stop an employer from taking some action that is the subject of a grievance while grievance proceedings under the contract are pending. See Cantor, Buffalo Forge and Injunctions Against Employer Breaches of Collective Bargaining Agreements, 1980 Wis. L. Rev. 247, 261-62; Comment, Injunctions Restraining Employers Pending Arbitration: Equity and Labor Policy, 82 Dick. L. Rev. 487, 487 (1978).
\item[130] Id. Only subsection (b), joining or remaining a member of an employer organization, has anything to do with actions an employer might take during the course of a labor dispute.
\item[132] Local Lodge No. 1266, Int'l Ass'n of Machinists v. Panoramic Corp., 668 F.2d 276, 284-85 (7th Cir. 1981); United Steelworkers v. Fort Pitt Steel Casting, 598
\end{enumerate}
\end{footnotesize}
discouraged this trend when it vacated a status quo injunction order and remanded the case for reconsideration in light of the Court's decision in Buffalo Forge. Subsequently, some courts have been reluctant to experiment with status quo relief in the absence of egregious facts.

Neither the language of the Norris-LaGuardia Act nor its legislative history compels a finding of a lack of federal jurisdiction to issue injunctions in section 301 actions on the petition of labor unions against employers. Furthermore, section 7 of the Norris-LaGuardia Act, which merely specifies procedures and conditions precedent to the award of injunctive relief, should not be used to support the substantial barriers which have been erected in the paths of unions seeking such relief. If a collective bargaining agreement contains a provision that the status quo will be preserved pending arbitration of a grievance, a union should be entitled to specific performance of that provision to the same extent that an employer is entitled to specific performance of any undertaking by the union not to strike over pending grievances. Moreover, if a no-strike obligation is implied as a quid pro quo for the agreement to arbitrate, a promise to maintain the status quo should also be implied as a quid pro quo for the union's contractual undertaking not to strike over grievances. In each case, a party has agreed to a restriction upon its freedom of action with a reasonable expectation that the other party similarly will exercise restraint with respect to contractual disputes. A theory of mutual

---


134. See Gulf Coast Indus. Workers' Union v Exxon Co., 712 F.2d 161 (5th Cir. 1983); Aluminum Workers Int'l Union v. Consolidated Aluminum Corp., 696 F.2d 437 (6th Cir. 1982).


136. In Greyhound Lines, the circuit court on remand rejected the notion that a status quo obligation could be implied in the absence of a status quo provision in the contract:

While a promise to submit a dispute to arbitration may justify a finding of an implied duty not to strike... such a promise does not imply a duty on the part of the employer to preserve the status quo pending arbitration. The source of this difference is that a strike pending arbitration generally will frustrate and interfere with the arbitral process while the employer's altering the status quo generally will not. The implication of a duty not to strike
obligation is particularly appropriate under our statutory framework, which values collective agreements and peaceful resolution of labor disputes, and was designed to make such agreements enforceable as a matter of law.

B. A Statutory Solution

Subtle interpretations based on careful consideration of the language and legislative history of the Norris-LaGuardia Act have not been characteristic of courts since the statute was enacted. Reacting to the broad, pro-union sentiments of the drafters, courts have frequently failed to make the accommodations necessary to adapt the Act to changing circumstances. It may be necessary, therefore, for Congress to amend existing statutes to conform more closely to modern economic realities and expectations.

The simplest legislative solution would be an amendment to section 301 of the Taft-Hartley Act similar to the provision contained in the original House version of that Act. This amendment should provide that section 4 of the Norris-LaGuardia Act has no application in actions brought pursuant to section 301. To ensure that this amendment will have the desired effect, section 7 of the Norris-LaGuardia Act also should be amended to expressly allow injunctions against "violations of an obligation not to strike pursuant to a collective bargaining agreement."
The notice and hearing requirements of section 7 are necessary to protect the parties adequately and should remain intact.\textsuperscript{140} The findings of fact required to support an injunction that currently are delineated in this section should be limited in application to the activities for which they were designed—injunctions against acts of employees and unions.\textsuperscript{141} New requirements, more appropriate to an action seeking a status quo injunction against an employer, should be included.\textsuperscript{142} These changes will remove the barriers to specific enforcement of no-strike agreements and the conceptual impediments to the grant of status quo injunctions.

**Conclusion**

It is anachronistic for courts to claim to be precluded from providing specific enforcement of collective agreements by a statute that is a relic of a different age.\textsuperscript{143} The Norris-LaGuardia Act was not intended to apply to suits for the enforcement of collective bargaining agreements. Furthermore, although that Act was not repealed with respect to enforcement of collective contracts when Congress enacted the Taft-Hartley Act, the core of the Norris-LaGuardia Act has been whittled away by legislative grants of authority to the NLRB and appropriate to remove the requirement in paragraph (e) that public authorities be found unable or unwilling to preserve order.


\textsuperscript{141} The first sentence of 29 U.S.C. § 107 (1976), might be amended to read: "(1) No court of the United States shall have jurisdiction to issue a temporary or permanent injunction against a labor organization, employee or group of employees in any case involving or growing out of a labor dispute . . . ."

\textsuperscript{142} The following would be inserted after 29 U.S.C. § 107(e) (1976):

(2) No court of the United States shall have jurisdiction to issue a temporary or permanent injunction against an employer or association of employers in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect:

(a) That employer actions have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, which actions are alleged to be either unlawful or in violation of the terms of a collective bargaining agreement and may, in the opinion of the court, result in irreparable injuries if not enjoined;

(b) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief; and

(c) That complainant has no adequate remedy at law.

various federal officials to seek injunctions in a wide range of cases. The Supreme Court also has restricted the scope of the Norris-LaGuardia Act by authorizing the lower federal courts to issue injunctions against strikes over issues that are subject to mandatory arbitration agreements. These accommodations were necessary to adapt the statutory scheme to modern realities.

During the 1970's and the early 1980's, however, courts have failed to apply the reasoning of *Boys Markets* to other situations and have revived the Norris-LaGuardia Act as a barrier against specific enforcement of labor agreements. This lack of vision should be redressed by a change of judicial approach or by legislative action. While the labor movement can be expected to resist any tampering with a law that has been described as "labor's charter," change is necessary to correct an absurd paradox in the existing labor laws and will ultimately benefit both labor and management by clarifying and demystifying an important area of law that touches their everyday relations.

---

144. Notable in this regard are 29 U.S.C. § 160(h), (j), (l) (1976) (injunctions in conjunction with NLRB action); id. § 178 (injunctions in case of national emergency); id. § 186(e) (injunctions to restrain bribery of union representatives and officials); id. § 412 (injunctions to restrain violations of labor bill of rights); id. § 440 (injunctions in actions to enforce reporting and disclosure requirements of 29 U.S.C. §§ 431-441 (1976)); id. § 464 (injunctions to restrain violations of union trusteeship requirements of 29 U.S.C. §§ 462-465 (1976)).

145. Two circuits have indicated a willingness to accommodate the Norris-LaGuardia Act to modern realities that might make them amenable to arguments favoring reinterpretation. Painting & Decorating Contractors Ass'n v. Painters & Decorators Joint Comm., 717 F.2d 1293, 1294-95 (9th Cir. 1983); Drywall Tapers & Painters, Local 1974 v. Operative Plasterers' & Cement Masons' Int'l Ass'n, 537 F.2d 669, 673-74 (2d Cir. 1976).

146. G. Norris, *supra* note 64, at 310.