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INJUNCTIVE RELIEF IN STATE COURTS FOR BREACH OF A NO-STRIKE CLAUSE

Seven years have elapsed since the United States Supreme Court decided in *Sinclair Refining Co. v. Atkinson*¹ that federal courts were barred from enjoining a strike which violates the no-strike clause of a labor contract. An apparent conflict between section 4 of the Norris-La Guardia Act,² which removes federal court jurisdiction to grant injunctive relief against such violations, and section 301 of the Taft-Hartley Act,³ which grants federal courts jurisdiction to remedy labor contract violations, was thereby resolved. An employer who brought suit pursuant to Section 301 was denied that remedy, an injunction, which is most aptly suited to deal with the unlawful strike. As a result, a union which has agreed to a binding arbitration no-strike contract may violate it by striking or by engaging in work stoppages and yet remain immune from federal injunction.⁴

Section 301 was undeniably designed by Congress to expand the relief previously available for breach of labor contracts. The processes by which this statute has become a vehicle for narrowing this relief must be examined.

The fact situation in which such a case develops is as follows: In the course of collective bargaining negotiations, Company A and Union B decide that it is mutually desirable for them to settle all grievances by means of arbitration. To that end, they enter into a contract whereby

¹ 370 U.S. 195 (1962).

² 29 U.S.C. § 104 (1964) provides in relevant part:

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

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

³ Labor Management Relations Act (Taft-Hartley Act) § 301(a), 29 U.S.C. § 185 (1964) provides in relevant part:

Suits for violation of contracts between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

⁴ The Norris-La Guardia Act relates only to legitimate activities of unions and does not prevent federal courts from issuing an injunction to prevent the commission of a crime, sabotage, or the destruction of property. *Potomac Elec. Power Co. v. Washington Chapter of Congress of Racial Equality*, 209 F. Supp. 559 (D.D.C. 1962); nor does it deny them power to issue an injunction in an action growing out of a labor dispute where the evidence clearly establishes that violence exists. *J.B. Michael & Co. v. Iron Workers Local 782*, 173 F. Supp. 319 (W.D. Ky. 1959).

Company A and Union B agree to be bound by any decision of the arbitration panel. They also agree to refrain from the use of economic weapons, Company A giving up its right to engage in a lockout and Union B giving up its right to strike. A dispute arises and Union B, in violation of the contract, orders its men off the job. Company A then demands that Union B order the men back to work and agree to arbitrate the dispute. At this point, Union B may refuse to arbitrate and continue the strike, or it may agree to arbitrate and nonetheless continue the strike. In either case, recognizing that the arbitration process could go on for an indefinite period, Company A seeks to enjoin the strike, since that will most effectively remedy the violation of the labor contract. Therefore, Company A decides to file suit for injunctive relief. Company A must now decide whether to bring the suit in state or federal court. The Union's amenability to suit as an entity, while not entirely clear in the past,⁵ is today certain, at least in federal court, due to the passage by Congress of Section 301.⁶ What would be the result of this case in each setting?

I. COMPANY A SEEKS AN INJUNCTION AGAINST UNION B IN FEDERAL COURT

Under Section 301, jurisdiction to entertain suits alleging breach of a labor contract has been conferred on federal courts. However, in hearing this suit the federal district court will be bound by the *Sinclair* decision. Therefore, an injunction will be denied although the court may order specific performance of the agreement to arbitrate,⁷ grant damages,⁸ or deny all relief.

The reasons for denying the injunction were well stated in *Sinclair*. Faced with the equally applicable provisions of Section 4 and Section 301, the Court held that Section 4 was controlling. In words which were later to prove important, the court stated, "The District Court was correct in dismissing Count 3 [seeking an injunction] of petitioner's complaint for *lack of jurisdiction* under the Norris-La Guardia Act."⁹ (emphasis added).

Justice Black, writing for the majority, relied on the legislative history of the act and came to the conclusion that Congress did not intend to repeal Section 4 by the passage of Section 301.¹⁰ This conclusion is hard to

⁵ See S. REP. NO. 105, 80th Cong., 1st Sess. 15-18 (1947).

⁶ Labor Management Relations Act (Taft-Hartley Act) § 301(b), 29 U.S.C. § 185 (1964) provides in relevant part:

Any labor organization which represents employees in an industry affecting commerce . . . may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States.

⁷ *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957).

⁸ *Id.*

⁹ 370 U.S. 195, 215 (1962).

¹⁰ For a view comporting with Justice Black's that the *Sinclair* case is correct as a matter of strict statutory interpretation see Wellington & Albert, *Statutory Interpreta-*

refute, for the conference report makes clear that just such a repeal provision was reported by the House and rejected by the Conference Committee.¹¹ In dissent, Justice Brennan agreed with the majority opinion as far as it went. He was willing, however, to look at both sections and resolve the apparent conflict which Congress saw, but chose not to resolve. In Justice Brennan's view, the Court was obligated to resolve the conflict by harmonizing the two statutes so that the purposes of each would be effectuated to the greatest degree.¹² The dissent proposed to achieve this by allowing an injunction against peaceful strikes carried out in breach of collective bargaining agreements. This would have resulted in giving maximum effect to Section 301 while interfering minimally with Section 4, which Justice Brennan believed was not really intended to deal with labor contract violations.¹³ By way of retort, Justice Black stated that it was not for the Court "to reconsider and overrule the action of Congress in refusing to repeal or modify the controlling commands of the Norris-La Guardia Act."¹⁴

The *Sinclair* case receded from a policy previously given wide scope by the Court—that of encouraging arbitration. That policy was first announced in the case of *Textile Workers Union v. Lincoln Mills*¹⁵ where the Court stated that "the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike."¹⁶ To effectuate this new policy, the Court in *Lincoln Mills* decided that Section 301 authorized federal courts to fashion a body of federal law to enforce collective bargaining agreements.¹⁷ Moreover, that federal law included the right to specific performance of promises to arbitrate grievances. The Court held that the anti-injunction provisions of the Norris-La Guardia Act did not prevent federal courts from compelling arbitration¹⁸ despite the fact it recognized that a literal reading might bring the dispute within the terms of the Act.¹⁹ Any doubt as to the scope of that arbitration policy was dispelled by the *Steelworkers Trilogy*²⁰ where the Court set forth the narrow limits

tion and the Political Process: A Comment on Sinclair v. Atkinson, 72 YALE L.J. 1547 (1963).

¹¹ I LEGISLATIVE HISTORY OF THE LMRA 570. The House bill provided for federal jurisdiction of suits for breach of collective bargaining contracts and had expressly declared that the Norris-La Guardia Act's anti-injunction provisions would not apply to such suits. *Id.* at 221-22.

¹² 370 U.S. 195, 216 (1962).

¹³ *Id.* at 225.

¹⁴ *Id.* at 213.

¹⁵ 353 U.S. 448 (1957).

¹⁶ *Id.* at 455.

¹⁷ *Id.* at 456.

¹⁸ *Id.* at 457-59.

¹⁹ *Id.* at 458.

²⁰ *United Steelworkers Union v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers Union v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960); *United Steelworkers Union v. American Mfg. Co.*, 363 U.S. 564 (1960).

within which judicial review of an arbiter's decision was confined. However, three cases came to the Court in 1962 which required amplification of the doctrine set forth in *Lincoln Mills*. Two gave added impetus to the arbitral process, but one, *Sinclair*, created a significant roadblock.

The first case, *Charles Dowd Box Co. v. Courtney*,²¹ held that state and federal jurisdiction of suits for breach of labor contracts was concurrent. The Court rejected the argument that Section 301 had preempted state jurisdiction, noting that the purpose of Congress in enacting Section 301 was not to limit but to expand the availability of forums for the enforcement of contracts made by labor organizations.²²

Then, in *Teamsters' Local 174 v. Lucas Flour Co.*²³ the Court held that a strike to settle a dispute which the collective bargaining agreement provides shall be settled by binding arbitration constitutes a violation of the agreement. In this case the employer had sought and received damages in the Washington state court, which had applied local law in arriving at its result. Affirming that award, the Court held that state courts must apply federal law and that in so doing incompatible doctrines of local law must give way to principles of federal labor law.²⁴ This was so because the subject matter of Section 301 was peculiarly one that called for uniform law. The Court recognized that conflicting legal approaches might impede the parties' willingness to resort to binding arbitration.

It was against this background that the Court faced the *Sinclair* case. In several earlier cases, the Court had been faced with a conflict between the Norris-La Guardia Act and other federal statutes. In *United States v. Hutcheson*²⁵ a possible conflict between section 20 of the Clayton Act²⁶ and the Norris-La Guardia Act was resolved by reading them together "as a harmonizing text,"²⁷ thus removing an otherwise indictable offense under the Clayton Act from the purview of the federal courts. In *Brotherhood of R.R. Trainmen v. Chicago R. & I. R.R.*²⁸ the Court reconciled provisions of the Railway Labor Act calling for binding arbitration²⁹ by enjoining a strike despite the provisions of the Norris-La Guardia Act prohibiting such injunctions. Then, an accommodation between Section 4 and Section 301 was reached in *Lincoln Mills*, although the Court could have refused to do so had it engaged in "literal" reading.³⁰

²¹ 368 U.S. 502 (1962).

²² *Id.* at 508-09.

²³ 369 U.S. 95 (1962).

²⁴ *Id.* at 102-03.

²⁵ 312 U.S. 219 (1941).

²⁶ 15 U.S.C. § 17 (1964).

²⁷ 312 U.S. 219, 231 (1941).

²⁸ 353 U.S. 30 (1957).

²⁹ 45 U.S.C. § 153 (1964).

³⁰ 353 U.S. 448, 458 (1957).

Certainly it would not have taken a long jump to bridge the gap between *Hutcheson*, *Chicago River*, and *Lincoln Mills* on the one hand and *Sinclair* on the other, yet the Court specifically rejected such analogies. It distinguished *Chicago River* by noting that there it was Congress and not the parties themselves who compelled binding arbitration. Nothing in the legislative history of the Railway Labor Act indicated that Congress had debated and rejected an express repeal of the Norris-La Guardia Act as it had in enacting Section 301.³¹ Distinguishing *Lincoln Mills*, the Court argued that the kinds of conduct there enjoined were not of the type which the Norris-La Guardia Act was specifically designed to prevent, whereas in *Sinclair* an injunction against peaceful work stoppages would prohibit the precise kinds of conduct which Congress had declared unenjoinable.³²

Clearly *Sinclair* would play havoc with the policy of arbitration, which the Court had described as the "kingpin of federal labor policy."³³ If unions could breach their no-strike promises without fear of injunction, then they would retain a powerful economic weapon, the employer having surrendered his by agreeing to binding arbitration of disputes. If that were the case, then employers would most assuredly have to reconsider signing such agreements, in which case the "kingpin" would soon be toppled. The majority solemnly took note of the argument that injunctions against such strikes were necessary to make the arbitration process effective, stating that Congress had itself rejected that view. Therefore it was for Congress to reconsider the desirability of modifying their decision.³⁴

The difference in view between the majority and minority opinions in *Sinclair* can best be described as a distinction between what is and what ought to be. Both recognized the advantages of having a labor union perform its contractual obligations. However, either through inaction or inability to deal with a problem that it obviously foresaw, Congress left the problem unresolved, apparently hoping that the courts would resolve it and draw the fire from those adversely affected. That did not ensue.

We are thus left with the result that the federal courts, having been given jurisdiction of these controversies, are denied the most effective means to deal with them. Company A will be denied an injunction in federal court.

II. COMPANY A SEEKS AN INJUNCTION AGAINST UNION B IN STATE COURT

A. *Pre-Sinclair*

The leading case in this area is *McCarroll v. Los Angeles County Dist. Council of Carpenters*,³⁵ decided by Justice Traynor. Perceptively antici-

³¹ 370 U.S. 195, 211 (1962).

³² *Id.* at 212.

³³ *Id.* at 213.

³⁴ *Id.*

³⁵ 49 Cal. 2d 45, 315 P.2d 322 (1957), *cert. denied*, 355 U.S. 932 (1958).

pating the *Sinclair* decision, he held that although federal courts would be barred by Section 4 from enjoining a peaceful strike which violated a labor contract, state courts could grant such relief. He stated that Section 301, rather than preempting state court jurisdiction, conferred concurrent jurisdiction on state and federal courts.³⁶ Relying on *Lincoln Mills*, he recognized that "substantive" federal law must govern.³⁷ Both of these propositions were later confirmed by the United States Supreme Court in *Dowd Box*³⁸ and *Lucas Flour*.³⁹

Justice Traynor refused to include within the applicable federal law the anti-injunction provisions of Section 4, concluding that state courts were not subject to those restraints. Two arguments were used to buttress this position. First, he utilized the language of the Norris-La Guardia Act⁴⁰ to demonstrate that Congress had intended to place those jurisdictional limitations only on federal courts. Then he referred to the policy behind the enactment of Section 301, describing it as one of enhancing the suability of unions as entities by opening the federal courts to employers irrespective of diversity jurisdiction. Nothing contained in that policy, he noted, required a state court to withhold injunctive relief when enforcing Section 301 rights. In language which has proven all too prophetic, he said:

We would give altogether too ironic a twist to this purpose [facilitating the enforcement of labor contracts against unions] if we held that the actual effect of the legislation was to abolish in state courts equitable remedies that had been available, and leave an employer in a worse position in respect to the effective enforcement of his contract than he was before the enactment of Section 301.⁴¹

Justice Traynor was obliged to apply federal "substantive" law, but drew the line when faced with the prospect of incorporating therein federal "remedial" law. Federal law was to be applied in ascertaining whether a "right" of action existed, but state law controlled in granting a "remedy."

In dissent, Justice Carter agreed that federal law must be applied. However, as part of that law he would have included the anti-injunction provisions of Section 4. In his view the right not to be enjoined was "a part and parcel of the [federal] rights which may be exercised with reference to bargaining agreements."⁴²

³⁶ *Id.* at 60, 315 P.2d at 330.

³⁷ *Id.* at 59, 315 P.2d at 329.

³⁸ 368 U.S. 502 (1962).

³⁹ 369 U.S. 95 (1962).

⁴⁰ "No court of the United States . . . shall have jurisdiction to issue any . . . injunction in a case involving or growing out of a labor dispute . . ." (emphasis added). Norris-La Guardia Act (Labor Disputes) § 1, 29 U.S.C. § 101 (1964). For the view that "court of the United States" means courts created by Congress pursuant to Article III of the Constitution see *International Longshoremen's Union v. Wirtz*, 170 F.2d 183 (9th Cir. 1948), *cert. denied*, 336 U.S. 919 (1949).

⁴¹ 49 Cal. 2d 45, 63-64, 315 P.2d 322, 332 (1957).

⁴² *Id.* at 73-74, 315 P.2d at 338.

The problems engendered by any attempt to distinguish "substantive" law from "procedural" or "remedial" law are beyond the bounds of this discussion. It might be noted, however, that the "outcome" of *McCarroll* was determined by the remedy granted. The remedial law to be applied could be thought of as substantive in nature,⁴³ and to that extent no injunction should have been granted once Justice Traynor determined that federal substantive law controlled.

B. *Post Sinclair*

In *Shaw Electric Co. v. International Bhd. of Elec. Workers Local 98*⁴⁴ the Pennsylvania Supreme Court, in accord with the *McCarroll* decision, held that it had jurisdiction to enjoin a union from striking in violation of a no-strike clause.

The Court's reasoning proceeded along very structured lines. The enactment of Section 301 did not confine jurisdiction to federal courts. Although *Lucas Flour* required the use of substantive principles of federal law, its emphasis on uniformity of application related only to the interpretation of the contractual provisions in the agreement. Section 301 does not carry with it Section 4 as part of the body of federal substantive law which state courts must apply when they seek to enforce Section 301 rights. Even if Section 4 were "woven into the fabric of Section 301," it would not deny to the states their inherent injunctive power, for Congress intended Section 4 to be applicable to federal courts only.⁴⁵ The fact that state courts might become the preferred forum for such actions did not deter the Court. It reasoned that no erosion of Section 301 rights would occur because it readily acknowledged that federal law, "where applicable," governed such suits even though the action was brought in a state court.⁴⁶

But that is exactly the point at issue. If federal law "governs" in suits brought to enforce Section 301 rights and Section 4, as a result of *Sinclair*, is a part of that federal law, then are not state as well as federal courts precluded from granting injunctions in these cases? It is apparent that Congress did not intend Section 4 to apply to state courts⁴⁷ and did not intend Section 301 to limit previously available state remedies. Nonetheless, once *Dowd Box*, *Lucas Flour*, and *Sinclair* are digested, the impelling conclusion is that the substantive federal law which must be applied by the states includes Section 4.⁴⁸ Therefore, it appears that state courts are barred

⁴³ *Guaranty Trust Co. v. York*, 326 U.S. 99 (1945). For a view supporting this position see *Crestwood Dairy, Inc. v. Kelley*, 222 F. Supp. 614, 617 (E.D. N.Y. 1963).

⁴⁴ 418 Pa. 1, 208 A.2d 769 (1965).

⁴⁵ *Id.* at 11-12, 208 A.2d at 775.

⁴⁶ *Id.* at 13-14, 208 A.2d at 776.

⁴⁷ See *McCarroll v. Los Angeles County Dist. Council of Carpenters*, 49 Cal. 2d 45, 315 P.2d 322 (1957).

⁴⁸ But see *Janofsky & Vaughn, The Affirmative Role of State Courts to Enjoin*

from enjoining no-strike clause violations.

To return to our hypothetical situation, Company A must conclude that to proceed in federal court is folly, whereas the pursuit of the injunction in the courts of states such as Pennsylvania and California will be rewarded despite the above analysis. Therefore, if Company A still desires an injunction, it must file suit in a state court. Union B, however, may seek removal to federal court by relying on section 1441, the federal removal statute.⁴⁰ Company A must then move to remand the action to state court or run the risk of being denied injunctive relief.

III. THE IMPACT OF THE FEDERAL REMOVAL STATUTE ON *McCarroll* AND ITS PROGENY

In seeking remand, Company A will argue that the federal district court is without jurisdiction to grant the relief prayed for, an injunction, because Section 4 denies such jurisdiction to the federal court. Thus, it does not have "original jurisdiction" to entertain the case. Although the claim could have been framed in Section 301 language, it was predicated on a "state created right" which antedated the passage of Section 301. The claim is not one "arising under" the "laws of the United States"⁵⁰ as it would be had it been predicated on Section 301. Jurisdiction must be denied by the federal court and the case remanded to the appropriate state court.

Just such an argument was accepted by the Third Circuit Court of Appeals in *American Dredging Co. v. Local 25, Marine Div., Int. U.O.P. Eng.*⁵¹ In a two-to-one decision, the court of appeals remanded the case to the Pennsylvania state court. The majority disposed of the contention that the federal district court could assume jurisdiction based on its power to grant such relief as it deemed appropriate. The district court had held that under Rule 54(c) of the Federal Rules of Civil Procedure,⁵² it could have

Strikes in Breach of Collective Bargaining Agreements, 7 B.C. IND. & COM. L. REV. 869 (1966).

⁴⁰ Removal of Causes Act § 1441, 28 U.S.C. § 1441 (1964) provides in relevant part:

- (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.
- (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. (emphasis added).

⁵⁰ See Removal of Causes Act § 1441(b), 28 U.S.C. § 1441(b) (1964).

⁵¹ 338 F.2d 837 (3rd Cir. 1964), cert. denied, 380 U.S. 935 (1965).

⁵² FED. R. CIV. P. 54(c) provides in part:

Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. (emphasis added).

granted money damages as an appropriate measure of relief.⁵³ Then, referring to section 1441(c),⁵⁴ regarding joinder of causes of action, the district court held that it had jurisdiction of the entire matter.⁵⁵ The court of appeals treated this as a bootstrap argument, stating that Rule 54(c) in and of itself does not confer jurisdiction on the federal courts. Moreover, Rule 82 of the Federal Rules⁵⁶ specifically provides that the Rules shall not be used to extend federal jurisdiction.

In an exaltation of form over substance, the court decided the case based on the way the plaintiff had framed his complaint in the state court action.

To hold that Section 1441 may be recruited to defeat the Congressional purpose in enacting Section 301(a) would be to mock reason and to deny justice, where as here, the complaint was based solely on state-created rights and did not, within its four corners, raise or present any controversy with respect to the validity, construction or effect of Section 301(a) upon the determination of which the result of the action depended.⁵⁷

Great reliance was placed by the majority on the statement made in *Sinclair* that the count which sought an injunction was correctly dismissed "for lack of jurisdiction under the Norris-La Guardia Act."⁵⁸

The dissenting judge indicated that *Sinclair* was binding upon state courts as part of the federal substantive law which they must apply when enforcing Section 301 rights.⁵⁹ Alternatively, he argued that the district court had original jurisdiction because the Norris-La Guardia Act removed only *equity* jurisdiction to grant injunctive relief, but did not remove *subject matter* jurisdiction.⁶⁰ Short shrift was made of the "state created right" theory because *Lucas Flour* made federal law the "exclusive determinant" in such cases, thereby sanctioning the use of a state forum but only to apply federal labor law.⁶¹

Until 1967, the *American Dredging* case stood as the authoritative law on the subject with only a lower federal court decision in the second circuit to the contrary.⁶² In that year the Sixth Circuit Court of Appeals, in *Avco*

⁵³ 224 F. Supp. 985 (E.D. Pa. 1963).

⁵⁴ Removal of Causes Act § 1441(c), 28 U.S.C. § 1441(c) (1964) provides:

Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise nonremovable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

⁵⁵ 224 F. Supp. 985, 989 (E.D. Pa. 1963).

⁵⁶ FED. R. CIV. P. 82 provides in part:

These Rules shall not be construed to extend or limit the jurisdiction of the United States district courts or the venue of actions therein.

⁵⁷ 338 F.2d 837, 848 (3rd Cir. 1964).

⁵⁸ *Id.* at 840.

⁵⁹ *Id.* at 858.

⁶⁰ *Id.* In support of this view see Z. CHAFEE, SOME PROBLEMS OF EQUITY 368 (1950).

⁶¹ 338 F.2d 837, 857 (3rd Cir. 1964).

⁶² *Tri-Boro Bagel Co. v. Bakery Drivers Local 802*, 228 F. Supp. 720 (E.D. N.Y. 1963).

Corp. v. Aero Lodge No. 735,⁶³ unanimously rejected the reasoning of the third circuit by holding that a plaintiff could not avoid the effect of section 1441 by framing his complaint in terms of "state created rights." It held that despite its language, the complaint was predicated on a Section 301 right, so that the matter was removable as an action founded on a right "arising under the laws of the United States."⁶⁴ By way of dictum, the court expressed the view that state courts were prohibited by *Sinclair* from granting injunctive relief.⁶⁵ It concluded that the plaintiff had suffered no injustice as a result of having had the state court injunction dissolved.

To resolve the conflict between the two circuits, the United States Supreme Court granted certiorari. In view of Section 301, which authorized the bringing of such suits in federal court, it was unanimously held that under section 1441(b) the plaintiff's claim was one arising under the "laws of the United States" within the original jurisdiction of the district court.⁶⁶ Therefore, the defendant had the right to remove notwithstanding the fact that the federal court was barred by Section 4 from granting the requested relief. The Court clarified its remark in *Sinclair* concerning lack of jurisdiction under the Norris-La Guardia Act by stating that this referred solely to the "equity jurisdiction" of the federal courts which was divested by the Norris-La Guardia Act.⁶⁷

It is now quite clear that when section 1441 and the *Sinclair* rule are applied, Company A will be unable to secure an injunction in state as well as federal courts. One possibility still remains for Company A. If the state court had issued a temporary restraining order, as happened in *Avco*, the defendant Union may nonetheless seek removal to federal court. Once having assumed jurisdiction of the case under section 1441, the federal district court may refuse to dissolve the state court injunction for such reasons as it deems appropriate. The question will then arise whether the state court injunction *may* be dissolved by the federal district court under general equity theories or *must* be dissolved because the state court was itself without jurisdiction to grant the injunction had it properly applied the *Sinclair* rule. This is merely a reformulation of the *McCarroll* question: whether state courts must give effect to the *Sinclair* rule as part of that body of federal substantive law which they must apply in fashioning Section 301 remedies.

The court of appeals in *Avco* would have denied to the states their injunctive power in Section 301 cases and apparently would have reversed a lower federal court had it refused to dissolve the state court injunction. The Supreme Court expressly reserved judgment on this question⁶⁸ although

⁶³ 376 F.2d 337 (6th Cir. 1967).

⁶⁴ *Id.* at 340.

⁶⁵ *Id.* at 342.

⁶⁶ *Avco Corp. v. Aero Lodge No. 735*, 390 U.S. 557 (1968).

⁶⁷ *Id.* at 561.

⁶⁸ *Id.* at 560 n.2, 561 n.4.

it did quote with approval language from *Lincoln Mills*: "Federal interpretation of the federal law will govern, not state law."⁶⁹ (emphasis added).

IV. POSSIBLE REMEDIES

Should the question come before it, the Supreme Court will make *Sinclair* applicable to the states, thereby totally denying injunctive relief in such cases. Such a decision is inevitable despite the fact that Section 301 had as its central purpose the supplementation of state remedies, especially in states where unions were not suable as legal entities. Once it is accepted that *Sinclair* is part of our federal labor policy, there is no alternative but to make Section 4 applicable to the states as part of that body of federal substantive law which *Lucas Flour* requires the states to apply. This is not changed by noting that Congress intended no such result. The problem results from the *Sinclair* decision itself, and the question really is: Did Congress intend the result in the *Sinclair* case? Having several options open to it when it enacted Section 301, Congress left the question unresolved. In *Sinclair* the Supreme Court did not remedy Congress's indecision, and the results followed logically once that decision was made.

The Court, even more than Congress, has encouraged labor and management to voluntarily settle their disputes by means of binding arbitration. It is a procedure whereby labor problems can be resolved without resort to the work disruptions which have had such a debilitating effect on the economy. There is no sound rationale for allowing a strike to continue when the parties have agreed to binding arbitration, since the ultimate effect of the strike is to undermine the arbitral process. If one accepts the view that the national labor policy espoused in *Lincoln Mills* would be better served if strikes in breach of contract could be enjoined, there are several possible remedies for this unfortunate situation.

(1) The Supreme Court could reverse the position it took in *Sinclair*, which was decided by a five-to-three margin. A concurring opinion in *Avco* may shed some light on this point. Justice Stewart, joined by Justices Brennan and Harlan, observed that the Court will "have an opportunity to reconsider the scope and continuing validity of *Sinclair*."⁷⁰ (emphasis added). The dissenters in *Sinclair* were Justices Brennan, Harlan, and Douglas. If Justice Stewart wishes to question the "continuing validity" of *Sinclair*, then a nucleus of four members of the Court may be willing to overrule *Sinclair*. The two newest members of the Court⁷¹ may provide the fifth vote for reversal.

In any attempt to overrule *Sinclair*, the court must resolve two issues: (i) whether *Sinclair* was correctly decided and (ii) the propriety of over-

⁶⁹ *Id.* at 559.

⁷⁰ *Id.* at 562.

⁷¹ Justices Fortas and Marshall.

ruling it at this time. The *Sinclair* Court was faced with these key facts: (i) the congressional purpose in enacting Section 301 was to provide a federal forum for enforcing collective agreements; (ii) the Norris-La Guardia Act was one of the most significant and hard fought pieces of legislation ever enacted to protect organized labor; (iii) Congress considered and rejected a proposal which would have had the effect of repealing Section 4 insofar as it applied to enforcement of Section 301 rights; (iv) in other sections of the Taft-Hartley Act, Congress expressly repealed the Norris-La Guardia Act where it impeded the congressional design.⁷²

Against such a background one could hardly say that Congress *intended* to repeal Section 4 by the passage of Section 301. Neither the plain meaning of the language of Section 301 nor its legislative history lend themselves to such a construction. What then remains? At most we have the possibility that Congress desired to leave the task of resolving the issue to the courts. That position was articulated in the *Sinclair* dissent by Justice Brennan when he stated that it was reasonable to construe the conference committee's elimination of the House repeal as leaving open the possibility of judicial accommodation.⁷³ One searches in vain for some indication by Congress that such was its intent. The only clear statement of congressional intent is that suits for breach of such agreements should remain wholly private and should be left to the usual processes of the law.⁷⁴ This is hardly a resounding call for judicial accommodation.

What we apparently have is a desire by some members of the Court to resolve the conflict⁷⁵ between the two statutes in a manner which comports with their view of what Congress *should have done*. In fact, Congress did reject such a proposal although for unarticulated reasons. In the future, when Congress rejects a particular provision of a bill, need it include a note to the Court indicating that their rejection is not to be taken as an invitation to judicially construe such a provision back into the statute?

Congress was unwise in rejecting the House provision, but as Justice Black stated, "[I]t is not this Court's business to review the wisdom of that decision."⁷⁶

If *Sinclair* has so frustrated the congressional purpose, why then has Congress not remedied the situation? As was the case in enacting Section

⁷² 370 U.S. 195, 204-05 (1962).

⁷³ *Id.* at 224.

⁷⁴ *Id.* at 207.

⁷⁵ Labor Management Relations Act (Taft-Hartley Act) § 301, 29 U.S.C. § 185 (1964) grants the federal courts jurisdiction of labor-management contract violations without specifying the nature of the remedial relief available. Norris-La Guardia Act (Labor Disputes) § 4, 29 U.S.C. § 104 (1964) removes federal court jurisdiction to grant injunctions against peaceful strikes growing out of labor disputes. There is no actual conflict between these two statutes.

⁷⁶ 370 U.S. 195, 213 (1962).

301, congressional silence should not be taken as an indication to the Court to act in one manner or another. Rather, it may indicate Congress's inability to effectively legislate in certain areas of national concern where a power bloc's vital interests are at stake. At least in this case, it is not for the Court to attempt to assume Congress's role.

The limitation on the federal courts' power to enjoin strikes was won by organized labor at great cost.⁷⁷ If that limitation is to be revoked, even in part, the better arena for such a skirmish is in Congress, where the competing interests can marshal all their forces and arguments and the public also can have its say.

(2) The parties could include in their collective bargaining agreement an express provision granting the arbiter power to enjoin a strike which breaches a no-strike clause. An example of such a suggested provision is set out below. We shall assume that a typical collective bargaining contract calling for binding arbitration of disputes is in force. The pertinent provisions to be added follow:

- 1) There shall be no strikes, work stoppages, or lockouts.
- 2) Any dispute concerning the interpretation or application of the terms of the agreement shall be resolved by resort to the described arbitration procedure. Failure of either party to this agreement to follow the dispute procedure outlined in step 3 shall be deemed a violation of this agreement.
- 3) Dispute Procedure
 - a) When a dispute arises it shall be discussed as soon as possible between designated representatives of the parties to this agreement. If no agreement is reached, either party may request immediate implementation of step (b).
 - b) (This will contain a typical binding arbitration procedure).
 - c) In the event of a violation of Sections 1 or 2 above, either party can bypass steps (a) and (b) and resort to immediate arbitration. Upon telegraphic notice to the offending party and the arbiters, the panel shall hold a hearing within forty-eight hours and shall render an award within twelve hours after the hearing. The panel shall make findings of fact concerning the alleged violation and shall grant appropriate relief, including a binding order to cease and desist from the illegal conduct.

In *Ruppert v. Egelhofer*⁷⁸ the New York Court of Appeals enforced an arbitration order enjoining a slowdown despite that state's own anti-injunction statute.⁷⁹ That decision proceeded on the theory that the court was not issuing its own injunction over the objection of the Union, the situation for which the Norris-La Guardia Act was designed, but was enforcing the award of the arbiters by whose decision both parties had agreed to be bound.

It has been common practice for federal courts to enforce arbitration

⁷⁷ C. GREGORY, *LABOR AND THE LAW*, ch. I-VII (2d rev. ed. 1958).

⁷⁸ 3 N.Y.2d 576, 148 N.E.2d 129, 170 N.Y.S.2d 785 (1958). In *Drake Bakeries, Inc. v. American Bakery Workers Local 50*, 370 U.S. 254 (1962), the Court noted the *Ruppert* case in footnote 5 without comment.

⁷⁹ N.Y. LABOR LAW § 807 (McKinney 1965).

awards by injunction where other than strikes or picketing occurred.⁸⁰ A recent case has taken the *Ruppert* concept and given it vitality in the federal courts. In *New Orleans Steamship Ass'n v. General Longshore Workers Local 1418*⁸¹ the Fifth Circuit Court of Appeals held that the Norris-La Guardia Act did not deprive federal courts of jurisdiction to enforce an arbitration award which had ordered a Union to cease and desist from work stoppages. *Sinclair* was distinguished by limiting its application to the situation where an injunction was sought outside the arbitral process. The court stated that:

[M]ore than semantical ground . . . there is a real difference between an ordinary injunction and an order enforcing the award of an arbitrator *although the end result is the same*.⁸² (emphasis added).

The Norris-La Guardia Act was held inapplicable. The court reasoned that once arbitration was completed there was no longer a labor dispute which could be the subject of those provisions. It stated that Section 301 and Section 4 were to be construed "*in pari materia*" so as to effect an accommodation.⁸³

Once the "semantical" nuances are stripped, this appears to be an attempt, albeit a successful one, to scale the mountain from the other side. The United States Supreme Court has recently denied review of this case,⁸⁴ perhaps indicating that *Sinclair* may lose vitality if such provisions become commonplace.

(3) The best remedy would be for Congress to grasp the bit in its teeth and do what it should have done initially. Professor Aaron, one of the foremost authorities on labor law, has deemed it unlikely that Congress will act, stating that "the triumph of legislative common sense is not yet at hand."⁸⁵ The pressing labor problems of farm workers and public employees, however, may force Congress to undertake some new labor legislation. As part of a legislative scheme dealing with these problems, Congress may deem it advisable to amend Section 301. Such a provision should repeal Section 4 insofar as it prohibits the equity jurisdiction of federal courts to grant injunctions against peaceful strikes which breach collective bargaining agreements. Only then will an agreement calling for binding arbitration truly be a *quid pro quo* for an agreement not to strike.

Arthur Fields

⁸⁰ *Fountainbleau Hotel Corp. v. Hotel Employees Local 255*, 328 F.2d 310 (5th Cir. 1964).

⁸¹ 389 F.2d 369 (5th Cir. 1968), *cert. denied*, 89 S. Ct. 92 (1968).

⁸² *Id.* at 372.

⁸³ *Id.*

⁸⁴ *General Longshore Workers Local 1418 v. New Orleans Steamship Ass'n*, 389 F.2d 369 (5th Cir. 1968), *cert. denied*, 89 S. Ct. 92 (1968).

⁸⁵ Aaron, *Strikes in Breach of Collective Agreements: Some Unanswered Questions*, 63 COLUM. L. REV. 1027, 1030 (1963).