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SISTER UNION STRIKES AND "NO STRIKE" CLAUSES: THE LOGIC AND NECESSITY OF A PRESUMPTION OF INCLUSIVITY

INTRODUCTION

With the reinstitution of limited injunctive relief in the labor-management field, the Supreme Court left unanswered numerous correlative problems. The Boys Markets decision, despite its self-limiting, narrow application, has been used in these ensuing years to justify a plethora of injunctive remedies, notwithstanding either the Norris-LaGuardia Act limitations or the stormy interaction of forces that beckoned Norris-LaGuardia in the first place. The emergence of judicial uncertainty, coupled with the growing trend toward preference of arbitration, has left Boys Markets the bulwark of strike-prevention efforts. From the management side Boys Markets represents a judicial enforcement of the collective bargaining quid pro quo, yet from the labor side Boys Markets must be interpreted as remaining true to its limited holding.

Overshadowing the entire problem is the unique relationship of these bargaining-table adversaries. For while their relationship is basically symbiotic, their short-term goals are sharply divergent: each, quite naturally, wants a larger slice of the economic pie. The

2. "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." Id. at 253.
3. 29 U.S.C. § 101 et seq.; 29 U.S.C. § 101 provides that:
   No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.
5. See text at note 55, infra.
6. Supra note 2.

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vehicle is collective bargaining; the method is subtle, and sometimes not-so-subtle coercion.

Tranquil economic relationships achieved in great part through collective bargaining, can exist only when each side is assured of receiving those benefits and considerations for which they bargained. If an issue is left ambiguous, or is "resolved" ambiguously, the potential for conflicting interpretations in the future creates the potential for economic strife. The necessity of coercive steps often results in the emergence of ill will between the parties and a viewing of the collective bargaining process with skepticism. One thought predominates: ambiguities and potential difficulties must be dealt with at the bargaining table so that rights and obligations are clearly understood. The absence of foresight, or the reluctance of the adversaries, has often prevented an orderly handling of labor grievances through thorough collective bargaining sessions. While ambiguities still exist, Boys Markets remains the ace-in-the-hole for anti-strike injunctive efforts on the part of management.

One problem area is the sister union strike. Although completely lawful under the Norris-LaGuardia Act, this labor instrument of solidarity now stands as the next concept to be absorbed into the injunctive premise of Boys Markets. This analysis will attempt to lay the foundation for a theoretical examination of the Boys Markets holding vis-a-vis sister union strikes. This will be done in light of the difficulties which still exist in its interpretation, and in light of labor relations history. As the pendulum of labor relations seemingly swings back towards management and employer-oriented protections, the roles of collective bargaining

8. This article will attempt to show that the Boys Markets' holding is, and should represent a broad interpretative theory of inclusivity, going initially to the benefit of management. Some authors, correctly, are warning management negotiators to be specific, and to not rely on mere trends. See, e.g., Dinkel, The Enforcement of No-Strike Clauses, 9 Law Notes 107 (1973). This article, too, urges all negotiators to spell out their demands at the bargaining table. It in no way counsels its readers to rely on management-oriented decisions necessarily emanating from collective bargaining ambiguities.
10. For another example of the management-oriented trend see, Adler,
agents similarly shift. It is at the point now where labor unions may have to specifically reserve a right thought to be statutorily granted, or be faced with losing that right.

**THE PROBLEM**

A sister union strike is not a new problem to management. It has the potential of occurring in the private sector any time two distinct bargaining units work side by side. If bargaining unit A calls a strike of its members for some lawful reason and bargaining unit B, under the same management, decides to honor A's strike, B is engaging in a sister union strike. The result of this action is a more widespread, rather than a partial work stoppage. Absent other facts, both unions are acting within their lawful statutory rights.\(^1\)

The problem becomes more legally complex if we add the fact that bargaining unit B is under a collective bargaining agreement containing a “no-strike” clause,\(^2\) while bargaining unit A is not.\(^3\) Before discussing the various theoretical approaches to this problem it would be wise to examine the unique legal background of this issue.

**LEGAL BACKGROUND**

In 1932, with the passage of the Norris-LaGuardia Act, the labor movement in this country finally received the statutory support it needed to achieve parity with management. The anti-injunction provisions legalized economic sanctions by labor unions,\(^4\) and gave

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2. "The incorporation of a no-strike clause in a labor agreement means that all disputes relating to the interpretation and the application of a labor agreement are to be resolved through the grievance and arbitration procedure in an orderly and peaceful manner, and not through the harsh arbiter of industrial warfare. The pledge of the union not to strike during the contract period stabilizes industrial relations within the plant and thereby protects the interests of the employer, the union, and the employees. Indeed, a chief advantage that employers obtain from the collective bargaining process is the assurance that the plant will operate free from strikes or other forms of interruption to production (slowdowns, for example) during the contract period." SLOANE AND WITNEY, *supra* note 7, at 389.

3. The difference between never having had a “no-strike” agreement, or having had such an agreement recently terminate is not of significance in this analysis.

4. "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
teeth to the economic, and sometimes social demands of their officials. As long as the labor sanction involved or grew out of a labor dispute no injunction could be issued.

With this giant step towards equalization, labor groups and management began entering into meaningful collective bargaining agreements. Many of these contained "mandatory arbitration-no strike" clauses. The legislative efforts toward economic tranquility and stabilization were looked upon favorably by the judicial system, yet not without some skepticism. Judicial opinion came forth most notably in the Steelworkers trilogy. In this series of cases, the Supreme Court examined the collective bargaining concept and set forth several guidelines.

In Steelworkers v. American Manufacturing Co. the Court said: "Arbitration is a stabilizing influence only as it serves as a vehicle for handling any and all disputes that arise under the agree-

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15. See, M.D. Forkosh, A TREATISE ON LABOR LAW, Chapters IV and XIII (2d ed. 1965).
16. Supra note 3.
17. The classic treatment of the labor injunction is to be found in FRANKFURTER AND GREENE, supra note 4.
19. Supra note 12.
20. Supra note 18.
21. The giving up of the right to strike must be expressed in "clear and unmistakable language." Timken Roller Bearing Co. v. NLRB, 325 F.2d 746 (6th Cir. 1963).
ment." In United Steelworkers v. Warrior & Gulf Navigation Co. the collective bargaining agreement was held to contain "the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate." Also,

\[A\]rbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties.

Inevitably, the collision occurred. The anti-injunction provisions and the strong historical policies of Norris-LaGuardia were struck head-on by the heretofore impotent concept of mandatory arbitration. The first time the Supreme Court was asked to comment, they espoused no judicial precedent for bilateral mandatory arbitration.

In Sinclair Refining Co. v. Atkinson the Supreme Court chose to uphold only the employer's half of mandatory arbitration's *quid pro quo*. The employer had to arbitrate grievances but the union could not be enjoined from striking. The first round went to the Norris-LaGuardia Act. What remains baffling from this holding and its history is the fact that employers continued to negotiate collective bargaining contracts with one-side-enforceable "no-strike" clauses. Perhaps, clairvoyantly, *stare decisis* did not ring

23. 363 U.S. at 567.
24. 363 U.S. at 578.
25. 363 U.S. at 581.
26. FRANKFURTER AND GREENE, supra note 4.
29. "Since we hold that present case does grow out of a 'labor dispute', the injunction sought here runs squarely counter to the proscription of injunctions against strikes contained in § 4(a) of the Norris-LaGuardia Act, to the proscription of injunctions against peaceful picketing contained in § 4(e) and to the proscription of injunctions prohibiting the advising of such activities contained in § 4(i). For these reasons, the Norris-LaGuardia Act, deprives the courts of the United States of jurisdiction to enter that injunction unless, as is contended here, the scope of that Act has been so narrowed by the subsequent enactment of § 301 of the Taft-Hartley Act that it no longer prohibits even the injunctions specifically described in § 4 where such injunctions are sought as a remedy for breach of a collective bargaining agreement. Upon consideration, we cannot agree with that view and agree instead with the view expressed by the courts below and supported by the Court of Appeals for the First and Second Circuits that § 301 was not intended to have any such partially repealing effect upon such a long-standing, carefully thought out and highly significant part of this country's labor legislation as the Norris-LaGuardia Act." 370 U.S. at 203.
30. One possible explanation was the existence of concurrent state laws
convincingly when measured against this bargained-for *quid pro quo* and the traditional concept of contractual obligations freely entered into.31

Parity, though, was forthcoming. In *Boys Markets, Inc. v. Retail Clerks Union, Local 770* the Supreme Court recognized a different priority, and chose to establish an exception to the anti-injunction provisions of the Norris-LaGuardia Act. The facts in *Boys Markets* were deceptively simple. Over a dispute as to the responsibility of arranging merchandise in a frozen food case, the union struck. Management, pursuant to the express terms of their present contract, demanded arbitration and the immediate cessation of the strike. The union refused; management obtained a temporary restraining order. The union challenged on the strength of the Norris-LaGuardia Act and on the relatively recent Supreme Court opinion in *Sinclair*.32

The Supreme Court, in upholding the sanctity of the “no-strike” clause, overruled *Sinclair* and paved the way for the issuance of the first post-Norris-LaGuardia Act labor injunction.33 *Boys Mar-

which permitted the issuance of injunctions when the state had jurisdiction. See Note, Labor Injunctions, *Boys Markets, And The Presumption of Arbitrability*, 85 Harv. L. Rev. 636, 647-48 n.50 (1972).

31. The court will sometimes look into the bargaining history of the parties to see if the clause had been proposed and rejected, never proposed, etc. See, *Montana-Dakota Utility Co. v. NLRB*, 455 F.2d 1088 (8th Cir. 1972).

32. “At the outset, we are met with respondent’s contention that *Sinclair* ought not to be disturbed because the decision turned on a question of statutory construction which Congress can alter at any time. Since Congress has not modified our conclusions in *Sinclair*, even though it has been urged to do so, respondent argues that principles of *stare decisis* should govern the present case.” 398 U.S. at 240.

33. “We do not agree that the doctrine of *stare decisis* bars a re-examination of *Sinclair* in the circumstances of this case. We fully recognize that important policy considerations militate in favor of continuity and predictability in the law. Nevertheless, as Mr. Justice Frankfurter wrote for the Court, ‘[S]tare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience.’ *Helvering v. Hallock*, 309 U.S. 106, 119. . . . It is precisely because *Sinclair* stands as a significant departure from our otherwise consistent emphasis upon the congressional policy to promote the peaceful settlement of labor disputes through arbitration and our efforts to accommodate and harmonize this policy with those underlying the anti-injunction provisions of the Norris-LaGuardia Act that we believe *Sinclair* should be reconsidered. Fur-
kets, however, was not to be a sweeping departure from prior policies. As a precedent it became applicable when:

1) The parties to the injunction action are bound by a collective bargaining agreement that contains a mandatory grievance and arbitration clause.

2) The strike or concerted activity sought to be enjoined arises out of a dispute subject to the grievance and arbitration procedure.

3) The employer was ready to proceed with arbitration when the employees went out on strike.

4) The issuance of an injunction would be appropriate under the ordinary principles of equity, that is, the employer would suffer irreparable injury if the strike would not be enjoined.

THEORETICAL ANALYSIS

*Boys Markets* has given us the framework with which to examine employer-sought injunctions in labor disputes. By keeping in mind the legal-historical background of sister union strikes, the usefulness of *Boys Markets* as a precedent can be ascertained. Two major areas will be discussed below.

The Enumerated Contract Provision

The judicial system has been consistent in refusing to grant an injunction when the collective bargaining agreement reserves a particular right to strike to the union. In *Morton Salt Co. v. NLRB*, for example, the "no-strike" clause expressly reserved the individual employees' right to honor other unions' lawful picket lines. The 9th Circuit stated that although the reservation was not determinative of the issue it did reflect the parties' intent that disputes of this kind do not arise under the grievance procedure found elsewhere in the contract.

Other courts have been stronger in their enforcement of specific strike reservations. In *Martin Hageland, Inc. v. U.S. District Court,*

thermore, in light of developments subsequent to *Sinclair,* in particular our decision in *Avco Corp. v. Aero Lodge* 735, 390 U.S. 557 (1968), it has become clear that the *Sinclair* decision does not further but rather frustrates realization of an important goal of our national labor policy. In 398 U.S. at 240-41.

34. Relias, supra note 28, at 759.

35. "The national labor policy as explained in *Boys Markets,* does not justify—indeed it prohibits—the entry of the preliminary injunction to prevent the union from asserting a right to strike which it specifically reserved by contract." Associated General Contractors of Illinois v. Illinois Conference of Teamsters, 454 F.2d 1324 (7th Cir. 1972).

36. 472 F.2d 416 (9th Cir. 1972).

37. 472 F.2d at 421.

38. Id.
Central District of California\textsuperscript{39} a 9th Circuit court contended that it was without jurisdiction to order the union to forego the remedy it reserved at the bargaining table.\textsuperscript{40} Another interpretation yielded a similar result in \textit{Standard Food Products Corporation v. Brandenberg}.\textsuperscript{41} Here, the Second Circuit firmly upheld a union’s retention of the right to strike when enumerated employer violations occurred and the union could present a “colorable claim” of such violations.\textsuperscript{42}

One pitfall of the above precedents is the language used to create the right to honor a sister union’s picket line. Where, for example, the retention of the right is predicated on the existence of a “bona fide” dispute by the sister union with the employer, the absence of proof of “bona fides” will remove the exception to the “no strike” provision and permit the injunction to issue.\textsuperscript{43}

An enumerated clause can work the other way as well. A union can agree to a clause that will prohibit it from honoring a sister union’s lawful picket line.\textsuperscript{44} When such is the case, a union may not call, authorize, or comfort a strike, and may not remain silent in the face of a wildcat strike by its members. The duty contractually imposed on the union is to undertake every reasonable means available to return the strikers to work.\textsuperscript{45}

All things considered, the courts will use the enumerated contract clause to gather the intent of the parties. They are hesitant to reverse obligations freely entered into, especially if these are shown to directly relate to obligations assumed and carried out by the other side. An unambiguously worded, distinct clause in the collective bargaining agreement retaining (or yielding) the right to honor another union’s lawful picket line will create that

\textsuperscript{39} 460 F.2d 789 (9th Cir. 1972).
\textsuperscript{40} 460 F.2d at 791.
\textsuperscript{41} 436 F.2d 964 (2d Cir. 1970).
\textsuperscript{42} 436 F.2d at 966.
\textsuperscript{44} Northwest Airlines, Inc. v. Air Line Pilots Association, International, 442 F.2d 251, 255 (8th Cir. 1971).
obligation. Specific reservations, however, are often not enumerated by the parties. This necessitates further discussion of the problem in a different, more complex context.

The Scope of the General “No Strike” Clause

Any discussion here must begin with the concepts of “arbitrability” and “waiver”. In United Steelworkers v. Warrior & Gulf Navigation Co., the Supreme Court stated that all doubts arising from collective bargaining agreements are to be resolved in favor of arbitration. Therefore, it would seem that a dispute which may or may not be within the scope of the agreement is to be considered included, and thus enjoined until arbitration has taken place. Numerous cases have proceeded under this broad construction of the waiver of the right to strike.

Arguments, as well as precedents, however, exist on the opposite side of this problem. One major precedent emanates from the Warrior & Gulf case cited above. This narrower interpretation of arbitrability recognizes the strong federal policy of promoting peaceful settlement of labor disputes through arbitration yet chooses to hold Boys Markets to its narrowest interpretation.

With specific regard to sister strikes, two strong arguments can sometimes be successfully made for the narrow interpretation of a general “no strike” clause. The first argument is that the employer-employee friction is a result of a strike, not the cause of the strike, and thus is not a dispute resolvable under the parties’ collective bargaining agreement. The second argument is based on the inappropriateness of classifying a sister union strike as one “over a grievance” which the parties were contractually bound to arbitrate.

It would appear that there exists sufficient lower federal court support for either the broad (inclusive) or the narrow (exclusive) interpretation of the “no strike” clause vis-a-vis sister strikes. The

47. 363 U.S. at 582.
49. 363 U.S. at 582-83.
52. Amstar Corp. v. Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, 468 F.2d 1372, 1373 (5th Cir. 1972).
key, perhaps, lies with the wording of the particular arbitration clause. With specific emphasis on the problem addressed in this article,

\[ \ldots \text{the right to strike is protected by law, whether it be for economic reasons, for the purpose of improving working conditions, or for mutual aid or protection of employees who are members of another Union. This right may be surrendered or waived by appropriate provisions in the collective bargaining agreement.} \]

(emphasis added)

While the bargaining parties are given almost an infinite number of ways to approach the problem of the inclusivity-exclusivity of the “no strike” clause, the courts are given but two. They, in any individual case, may mandate a broad construction and interpret the waiver to cover every applicable instance not specifically and precisely excluded, or, they may interpret the clause as narrowly drawn and require that all inclusions be specifically enumerated. Despite the balancing of judicial precedents, the pendulum of labor relations has been moving towards a broader interpretive stance with regard to inclusivity and arbitrability. Likewise with regard to the ease with which the courts have been finding broad waivers of the right to strike. The burden is being placed on the union to negotiate their exceptions to the general “no strike” clause, thus allowing management to walk to the bargaining table with greater flexibility and power in their negotiating position.

Three considerations will now follow. Each will examine the judicial soundness of an interpretation of inclusivity and arbitrability of a sister strike engaged in by a union under a general “no strike” collective bargaining agreement. The three are: 1) the quid pro quo argument; 2) the equity argument; and 3) the labor policy argument.

1. The Quid Pro Quo Argument

*Boys Markets* stated that “... a no-strike obligation, express or implied, is the quid pro quo for an undertaking by the employer to submit grievance disputes to the process of arbitration.” The decision solidified the Court’s preference for an inclusive interpert-
tation. In United Steelworkers v. American Manufacturing Co., an earlier Supreme Court had stated:

... the agreement is to submit all grievances to arbitration, not merely those that a court may deem to be meritorious. There is no exception in the "no strike" clause and none therefore should be read into the grievance clause, since one is the quid pro quo for the other. In the above interpretation the Court adopts a rule of "equality of obligations". Maintenance of contractual balance is of the utmost concern. This prevents the bargaining concept from becoming fruitless to one side or the other, with arbitration necessarily abandoned as a vehicle for mutual peaceful resolution of disputes. Neither side should be willing to assume obligations unless concomitant obligations are undertaken by the other side. Here, the employer is made to arbitrate and the union is made to stay on the job.

But Boys Markets, apart from its own limited holding, spoke of generalities. Precise case-by-case analysis is dictated by the court's obligation to fairly construe the terms of the contract. In Boys Markets there existed no exceptions to the union's obligation to remain on the job. Where the wording is clear and unambiguous, and the agreement prohibits any strike or activity interfering with the employer's production, a broad construction is not only to be preferred, but would seem to be demanded by the Boys Markets precedent.

As to sister union strikes, if the union has unqualifiedly promised not to interfere with employer's production for the life of the agreement, the union is bound not to honor the other union's picket line. This can be the only result if the quid pro quo rationale is to co-exsist with the federal policy of promoting arbitration and peaceful settlement of disputes.

2. The General Principles of Equity Argument

This consideration brings several equitable concepts into direct conflict with one another. It is for this reason that the sister union strike question often skirts a direct confrontation with equity.

56. 363 U.S. at 567.
57. 398 U.S. at 252.
59. The union still may specifically reserve the right to participate in a sister union strike. When they do not, however, it is important to focus on the concept of "equality of obligations" and the employer's potential reliance on continuous job performance by the union members for the life of the contract.

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In arguing for an injunction, the employer invokes the concepts of “inadequacy of the remedy at law”, “irreparable injury”, “occurring and continuous breaches”, and “balancing of hardships”. Often on the facts the court will be judicially compelled to recognize these principles both to issue and to uphold labor injunctions.60

Yet in dealing with sister strikes, the reality is that equitable arguments by management have been successful only when coupled with public policy arguments. For example, in Ozark Air Lines, Inc. v. Air Line Pilots Association International61 the pilots of Ozark refused to cross a picket line of a sister union in spite of the existence of a “no strike” clause in their current collective bargaining agreement. The court in Ozark focused on the lack of reasonable efforts on the part of the union to negotiate the dispute.62 The court then went on to note the inadequacy of the remedy at law and the irreparable injury to be sustained if service was interrupted on an interstate carrier.63

In another instance, equity was linked to public policy to prevent employees from striking over wages. The collective bargaining agreement permitted strikes only to counter “clear violations” of the contract in Allied Division of the Delaware Contractors Association, Inc. v. Local Unions 542, 542A, 542B, I.U.O.E.64 The court in Allied held that the wage dispute was not a “clear violation” of the agreement, thus it was subject to the arbitration clause. The court went on to find “irreparable injury” resulting from the termination of construction work on several projects of public importance.65

Labor unions would seemingly have more success in invoking equitable concepts alone, based on the unique circumstances of a sister union strike. In a situation close in basic theory to the sister strike, one solid equitable argument prevented the issuance of an injunction. In Lanco Coal Co. v. Southern Labor Union, Local No.
the dispute involved a question of representation. As with the sister strike, there was no work assignment issue, and the strikers had no direct grievance against the struck employer. The court stated:

One traditional consideration in the use of equity powers is the avoidance of multiple litigation. The doctrine that equity does not deal in "halves" is also of significance. In the instant case the issuance of this injunction will not necessarily eliminate other disputes but may indeed produce a fragmentation of remedies. The injunction was denied.

Unions, though, have also found themselves on the receiving end of the injunction-denial. In *Automobile Transport, etc. v. Paddock Chrysler-Plymouth, Inc.* the union honored a lawful picket line of a sister union in accordance with an express reservation in their collective bargaining contract. When the strike was over the union members reported back for work but only two were allowed to return based on seniority. The union sought to arbitrate their grievance and sought a mandatory injunction. The court held that principles of equity did not warrant the issuance of an injunction in this case.

Regardless of the positions of the parties, equity reduces to an examination of the individual facts. Yet, two general hypotheses can be drawn about equity and sister union strikes. First, if Union A has already struck the employer and caused a work stoppage or disruption, it is much less likely that the sister strike by Union B would cause "irreparable injury" to the employer. Second, if Union A has already struck the employer, the seeking of an injunction against Union B's sister strike would not resolve the original dispute. The injunction proceeding itself might be considered "multiple litigation" of the type that equity seeks to prevent, and certainly will not assist.

Thus, from an equitable view, a presumption of inclusivity might seem to work an injustice on the labor union, but this is not so. Principles of equity would neither warrant nor demand a broad interpretation of the "no strike" clause. If either of the above hypotheses (no additional injury, or non-resolution of the original dispute) are found to exist, equity might demand the non-issuance

67. 320 F. Supp. at 275.
69. 365 F. Supp. at 602.
70. The court considered the concepts of occurring and continuous breaches, irreparable injury, and the balancing of hardships. 365 F. Supp. at 602.
of the injunction. And this, in fact, is what would occur notwithstanding the broad scope of the *Boys Markets* precedent, and notwithstanding a presumption of inclusivity. The injunction would not issue because the equitable arguments by the union would remove the necessary element of the injunction being appropriate under ordinary principles of equity spelled out by the Supreme Court in *Boys Markets*. With this precedent removed, the applicable law becomes the Norris-LaGuardia Act, and with it the strong statutory protections against injunctions.

Thus, labor's equitable strengths are in no way adversely affected by a presumption of inclusivity under *Boys Markets*. Under either interpretative analysis, the side that clearly carries the equitable issues will prevail. Equity neither depends upon presumptions, nor convincingly argues against presumptions. The ultimate fairness of a presumption of inclusivity must rely on other considerations when equity provides no definitive resolution to the sister strike under a general "no strike" provision.

3. The Thrust of Labor Policy

As in all labor-management situations, a certain deference must be paid to public policy. The Supreme Court found policy reasons to substantiate the *Boys Markets* decision, just as they did earlier with their opposite holding in *Sinclair*. In remarking on the return of the strike injunction the Court stated:

> [T]he central purpose of the Norris-LaGuardia Act to foster the growth and viability of labor organizations is hardly retarded—if anything, this goal is advanced—by a remedial device that merely enforces the obligation that the union freely undertook under a specifically enforceable agreement to submit disputes to arbitration.71

This third consideration deals with the most amorphous aspect of the arguments surrounding presumptions of inclusivity. If *Boys Markets* is viewed strictly as an attempt to establish industrial harmony and stability, it is easy to understand the benefits and detriments apportioned to each side by permitting injunctions. Unions are prevented from striking to aid sister unions, and such a prevention serves to dilute the strength of the labor movement. Yet in permitting injunctions, arbitration is promoted, as well as peaceful settlements of disputes without employee loss of wages.  

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71. 398 U.S. at 252-53.
For management, the permitting of injunctions guarantees the absence of work stoppages for the Boys Markets scope is broad, especially when extended to cover wildcat strikes and, as shown here, sister strikes. Yet, the fostering of industrial harmony and stability by compelling the employer to use the arbitration process removes some of the employer's options of responsivity in dealing with problems arising out of the management operation and the work milieu.

As with equitable considerations, the individual facts will be strongly determinative, but, again, two hypotheses will be put forth. First, if Union A's strike has already disrupted normal industry operations, the sister strike by Union B must be measured only by the increased disruption to the industry, not by the total industrial disruption. With wide-spread chaos, and the absence of industrial harmony, the policy considerations of Boys Markets fall to the wayside and do not at all contribute to justifying management's injunctive efforts.

The second hypotheses is related to the first. If the sister strike serves to confuse and render more difficult the retention of industrial harmony, labor policy would dictate the issuance of an injunction, provided the other necessary criteria were met. Such a situation might arise where the sister union's strike confuses or blurs the issues underlying the initial strike and compounds the problem of resolving those issues. Here the Boys Markets precedent is useful as a statement of labor policy for the 1970's as it promotes the need for clarity and compromise between labor and management.

It remains arguable whether this final consideration contributes at all to the broad interpretation of the "no strike" clause. On the other hand, the amorphous quality alluded to earlier severely prevents this consideration from substantially aiding labor's attempt to rebut a presumption of inclusivity.

**SUMMARY OF CONSIDERATIONS**

With sister union strikes the balancing of considerations must be precise—both conceptually and factually. No doubt, there are easy, convenient rationalizations on both sides. To uphold an injunction the party contends a violation of the "no-strike" clause, points to Boys Markets, claims irreparable injury to the employer, and uses language consonant with a broad constructionist viewpoint. To defeat the injunction, the party contends that the underlying dispute is not about the contract, points to the self-limiting application of Boys Markets, and in its strict-constructionist words...
clings to the policy rationale of Norris-LaGuardia. The easy judicial decision though will not resolve the larger question. This concerns the scope of the broad “no-strike” provision, the burden of proof of inclusivity or exclusivity, and the unique equitable considerations of each case.

The initial consideration by the court must be whether or not the issue of sister strikes has been dealt with in the present collective bargaining agreement between the parties. The enumerated clause, as evincing the intent of the parties, will prevail as part of the explicit quid pro quo.

The absence of an enumerated provision summons the need for a theoretical analysis of the “inclusivity-exclusivity” concept. Boys Markets, despite its self-professed limited holding, has been thrust by lower federal courts into a position where it is used to justify anti-strike injunctions arising in many varied contexts. One such context is the sister strike.

This broadening, however, is not necessarily bad, nor necessarily unwarranted from an analysis of the problem areas of quid pro quo, equity, and public policy. Under the quid pro quo analysis the presumption of inclusivity, in a broadly drawn “no strike—mandatory arbitration” agreement, is warranted by the Supreme Court’s stance on promotion of arbitration as the preferred means for the settlement of labor disputes. Under the equity analysis, the Boys Markets criterion of irreparable injury makes any presumptions of inclusivity-exclusivity superfluous. Equitable considerations thus do not warrant any deviation from the presumption dictated by the quid pro quo analysis. The public policy analysis comes forth as too nebulous, alone, to dictate a deviation from the presumption of inclusivity. When linked, however, to equitable issues, the argument over the non-applicability of Boys Markets as a precedent would immediately surface. This argument suffices to defeat the presumption if equitable considerations clearly would permit the strike.

It remains, therefore, that no judicial considerations stand in the way of allowing the courts to interpret Boys Markets in its broadest sense. In a “no strike—mandatory arbitration” agreement the presumption ought to be that sister union strikes are prohibited, unless the right to so honor them is specifically reserved. The law, equity, and public policy are supportive of this position.
CONCLUSION

The case of Boys Markets, Inc. v. Retail Clerks Union, Local 770 has left in its wake unanswered questions. Perhaps the most unanswerable is how far the decision itself will be used to justify anti-strike injunctions. Yet the more pertinent question is how collective bargaining negotiators will react to this shifting of bargaining strength between labor and management.

Boys Markets, interpreted with a presumption of inclusivity, would be an extremely important decision as both sides struggle for increased economic benefits amidst, hopefully, tranquil relations. Any purported anti-labor effects of such a presumption can be more than compensated for at the bargaining table. Herein lies the importance of the decision, and the importance of a presumption of inclusivity. The resolution of areas of ambiguity will ultimately benefit both management and labor for it will compel them either to accept the legal guidelines or to establish their own. No longer will each side allow the issue (e.g. the sister union strike) to go unmentioned during negotiations on the assumption that silence will go to their benefit. The parties will walk in knowing that if the right is not specifically reserved, Boys Markets, and a myriad of following precedents will consider the right to be waived within the general “no strike” promise.

It is only in this way that the bargaining parties are made to determine for themselves the rights and obligations apportioned under the agreement. The “advantage” given to management by this presumption of inclusivity of sister union strikes will last only until the present collective bargaining agreement expires. This is indeed a small price to pay for certainty under the law. For, to offer no guidelines in the face of omission, and to leave the ambiguity to the judicial system, is tantamount to a renunciation and rejection of the collective bargaining process.

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