



10-1981

## Jacksonville Bulk Terminals v. Longshoremen

Lewis F. Powell Jr

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df1 01/15/81

David Hunter Buffalo Forge  
controls - though he shares my lack  
of admiration for that miscarriage of  
justice.

Hea thinks it would not be  
unprincipled (perhaps?) to avoid  
Buffalo Forge by holding Norris  
LaGuardia doesn't apply to "political  
strike".

BENCH MEMORANDUM

To: Mr. Justice Powell

January 15, 1981

From: David Levi

No. 80-1045: Jacksonville Bulk Terminals, Inc., et al.,  
v. Internat'l Longshoremen's Ass'n

Questions Presented

1. Whether a dispute between management and labor,  
arising out of the Union's refusal to load ships headed for  
Russia, is a "case involving or growing out of any labor  
dispute" within the terms of the Norris-LaGuardia Act.



2. If the dispute is within the Norris-LaGuardia Act, whether a federal court may enjoin the strike pending arbitration under the principles stated in Boys Markets and Buffalo Forge.

I. Facts and Decision Below

On January 4, 1980, the United States began a grain embargo against the Soviet Union following the invasion of Afghanistan. Shortly thereafter, the International President of the International Longshoremen's Association (ILA), Thomas Gleason, announced that he was instructing all ILA unions on the Atlantic and Gulf Coasts to boycott all shipments to the Soviet Union of any materials including grain. The ILA also adopted a resolution that its members would not handle any cargo bound to or coming from the Soviet Union. The ILA boycott was therefore considerably broader than the more limited embargo ordered by President Carter. The Union boycott was purely a political boycott; no action was sought from the employers of union members.

Jacksonville Bulk Terminals(JBT) has a shipping terminal in Jacksonville, Florida, from which it loads superphosphoric acid onto ships bound for Russia. JBT is a subsidiary of ✓ Hooker Chemical Co. which in turn is a subsidiary of ✓ Occidental Petroleum Corp. Occidental has a contract with the Soviet Union for the supply of



superphosphoric acid. JBT is a party to the collective bargaining agreement between the Jacksonville Maritime Association and Local 1408 of the ILA. On January 15, 1980, Local 1408 refused to load a Norwegian vessel scheduled to pick up a cargo of acid from JBT for delivery to the Soviet Union.

The collective bargaining agreement between JBT and the Local includes a no-strike clause:

"During the term of this agreement the employer agrees that there shall be no lockout of the members of the Union, and the Union agrees that there shall not be any stike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interruption or stoppage, total or partial, of the employer's operation for any cause whatsoever."

In addition, the agreement contains a grievance and arbitration provision:

"Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, no later than 48 hours after such discussions, be referred in writing covering the entire grievance in a Port Grievance Committee ... A majority decision of this Committee shall be final and binding on both parties ...

Finally, the agreement contains two provisions relevant to its scope. First, it provides that the Agreement covers "all matters affecting wages, hours, and other terms



and conditions of employment and that during the term of this Agreement the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement." And second, the agreement expressly reserves to JBT control over the management of its business and the direction of its work force: "The Management of the Employer's business and the direction of the work force in the operation of the business are exclusviely vested in the Employer as functions of Management."

*Mgt.  
reserved  
control*

Faced with the Union's refusal to load the Norwegian vessel, JBT sought to compel <sup>①</sup> arbitration and, pending arbitration, it sought a <sup>②</sup> temporary restraining order and preliminary injunction to halt the boycott. The district court complied, enjoining the union from refusing to load the three ships then in port and ordering the union to process its grievance through the arbitration procedures specified in the collective bargaining agreement.

After the three ships were loaded, President Carter extended the trade embargo to include superphosphoric acid.

On appeal, the CA5 reversed the issuance of the injunction. The first question for the CA concerned the court's jurisdiction. Now that the trade embargo was extended, JBT would be sending no further ships to Russia in the foreseeable future, and the dispute might appear to be



moot. The CA found, however, that the dispute was of that class of cases that are "capable of repetition, yet evading review." To satisfy this exception to the normal mootness rules, when the matter is not brought as a class action, it must be shown that the challenged action is of such short duration that it cannot be fully litigated prior to its expiration and that there is a likelihood that the same complaining party would again be subjected to the same action. Given that it only takes a day or two to load a ship, if an injunction is issued, the ship will have departed before an appellate court can review the matter. Further, there is a "reasonable expectation that the same complaining party will be subjected to the same action again." The ILA maintains its policy. Russian troops are still in Afghanistan.

*not  
moot*

*Still  
not  
moot*

Turning to the merits, the CA found that a strike to achieve a political goal is a "labor dispute" within the meaning of the Norris-LaGuardia Act. That Act provides that "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 a strike. 29 U.S.C. §104(a). "Labor dispute" is defined in the Act 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." Relying on an earlier panel decision of the CA5,

*CA 5  
held*

*Def. of  
"labor  
dispute"*

*Definition*



*Conflicting policies of*

United States Steel Corp. v. United Mine Workers, 519 F.2d 1236 (CA5 1975), and without further analysis, the CA concluded that the dispute was a "labor dispute."

Having determined the threshold question in the affirmative, the CA was confronted with the classic Buffalo Forge/ Boys Market problem of accommodating the pro-"arbitration policy" of the LMRA with the "anti-injunction policy" of Norris-LaGuardia. In Buffalo Forge the Court found that a sympathy strike by a union in violation of a no-strike clause in a collective bargaining agreement could not be enjoined. The Court found that "the Union has gone on strike not by reason of any dispute it or any of its members has with the employer, but in support of other local unions." Certainly, the question of whether the sympathy strike violated the no-strike clause, and appropriate remedies if it did, would be subject to the arbitration procedures. But the strike itself could not be enjoined if it "was not over any dispute between the Union and the employer" subject to the arbitration provisions.

*Buffalo  
Forge/  
Boys  
Market*

Similarly, in this case the dispute was not "over" any arbitrable grievance. The dispute was over the Russian invasion of Afghanistan--"The Union's grievance is not, as asserted by JBT, a complaint against JBT doing business with the Soviets. It is a complaint against the actions of the USSR itself." No arbiter could resolve that grievance. Thus "[w]hile the question whether the strike itself violated the



parties' agreement is arbitrable, the underlying dispute between the ILA and the Soviet Union is not."

## II. Discussion

There are two questions for the Court: first whether or not Norris-LaGuardia has any application at all in this setting, and second, if it does, whether Buffalo Forge should be cut back to permit injunctions in such a case.

### A. Norris-LaGuardia and Political Strikes

The Court is presented with a question of statutory interpretation that would settle this case without reaching the more difficult Buffalo Forge controversy. The Norris-LaGuardia Act applies only to cases "involving or growing out of [a] labor dispute." Labor dispute is defined in the act as "any controversy concerning terms or conditions of employment or concerning the association or representation of persons in negotiating ... or seeking to arrange terms or conditions of employment."

#### 1. The Chief's Dissent from Denial

You may recall that the Court granted cert after the Chief wrote a dissent from denial in which he argued that this



affair was not within the Norris-LaGuardia Act. The Chief argued as follows:

"A necessary prerequisite for application of the Buffalo Forge doctrine is that there be a "labor dispute" between the employer and the employees, as that term is defined in the Norris-LaGuardia Act. There is no "labor dispute" here and there is no basis in any of our decisions for applying Norris-LaGuardia to politically-motivated work stoppages, concerning subjects over which employers have no control."

*CJ's  
dissent  
from denial  
of Cert*

The Chief cited a decision of the CA2 for support--Khedivial Line, S.A.E. v. Seafarers International Union, 278 F.2d 49, 50-51 (CA2 1960) (political boycott of Egyptian ships in retaliation for Egyptian boycott of American ships dealing with Israel is not a 'labor dispute'), as well as a summary affirmance by the CA5--West Gulf Maritime Assn. v. International Longshoremen's Assn., 413 F. Supp. 372 (SD Tex. 1975), aff'd summarily, 531 F.2d 574 (CA5 1976) (union's refusal to load grain on political grounds, not a labor dispute). See also NLRB v. International Longshoremen's Assn., 332 F.2d 992, 995 (CA4 1964) (politically-motivated ILA boycott of all ships that were trading or had traded with Cuba is not a 'labor dispute' within the meaning of §2(9) of the NLRA).

*Cases  
cited  
by CJ*

As a practical matter, since the Chief joined the 5-4 majority in Buffalo Forge, this rationale may be the key to a majority if the CA5 is to be reversed.

*yes*



Yet the argument is not altogether easy to make-- there is little in the way of legislative history one way or the other while precedents both are few in number and unhelpful in analysis--and there are some risks in adopting this line of approach if you hope to get the Court to reverse its Buffalo Forge position: By arguing that this dispute is "political" the Court might seem to be reaffirming the approach in Buffalo Forge that disputes such as this can be bifurcated into (1) a dispute over an underlying nonarbitrable/political grievance and (2) a dispute over the meaning of the no-strike clause. Since the Chief joined the majority in Buffalo Forge it is easier for him to adopt this approach.

## 2. The Argument Against Coverage

The argument that this political strike is not covered by Norris-LaGuardia runs as follows. First, injunctions against political sympathy strikes was not one of the abuses against which Norris-LaGuardia was aimed. As Justice Stevens explained in his dissent in Buffalo Forge, the Act was passed primarily in order to protect "labor's ability to organize and to bargain collectively. It was the history of injunctions against strike activity in furtherance of union organization, recognition, and collective bargaining, rather than judicial enforcement of collective-bargaining agreements,

*John's  
dissent  
in  
Buffalo*



10.

that led to the enactment of the Norris-LaGuardia Act in 1932." The statement of purpose preceding the Act identifies this primary purpose.

Second, the specific language of Norris-LaGuardia may indicate a limitation upon coverage. The definition of "labor dispute" refers to "any controversy concerning terms or conditions of employment, or concerning .. association or representation." The definition seems to focus on particular working conditions and on the right to concerted activity. *Yes*

Third, several precedents from this Court and from the circuit courts support a limited reading of the "labor dispute" definition. In Columbia River Co. v, Hinton, 315 U.S. 143 (1942), a fish processor sued a union of independent fishermen under the Sherman Act. The processor asked for injunctive relief and the association argued that injunctive relief was barred by Norris-LaGuardia. Fishermen who belong to the union are individual entrepreneurs without an employment relationship with any employer. The Union acts as a collective bargaining agency in the sale of fish caught by its members. The Union's demand that processors buy only from Union members led to the antitrust action. The CA found Norris-LaGuardia applicable; the Court reversed: *Carr*

"That a dispute among businessmen over the terms of a contract for the sale of fish is something different from a 'controversy concerning terms or conditions of employment ...' calls for no extended discussion ... [T]he Act was not intended to have application to disputes over the sale of commodities."



Similarly, in Federation of Musicians v. Carroll, 391 U.S. 99 (1968), the question was whether certain union practices imposed upon orchestra leaders, and resisted by these leaders as violations of the antitrust laws, were such as to amount to a labor dispute. Application of the Norris-LaGuardia Act would exempt the union's practices from the anti-trust laws. The Court found that the particular practices--e.g. price lists, forcing leaders to favor local musicians--were within the notion of a labor dispute which the Court defined by "the presence of a job or wage competition or some other economic inter-relationship affecting legitimate union interests between the union members and the [employers]."

More to the point, in several lower court cases the precise sort of dispute in this case--a political sympathy strike--has been held to be outside of the Norris-LaGuardia Act. In Khedivial Line v. Seafarers' International Union, 278 F.2d 49 (CA2 1960) (Lumbard, Moore, Friendly), the employer applied for an injunction when the union placed a picket line around his ship to protest Nasser's boycott of American ships doing business with Israel. The employer was an Egyptian company. The CA distinguished this Court decision in Marine Cooks v. Panama Steamship Co., 1960, 362 U.S. 365:

CA2

"In the Marine Cooks case the foreign shipowner was one of the persons alleged to be creating the substandard wages and working conditions against which defendants were protesting. Here, ... the shipowner was not the cause of the picketers' grievance. ... [W]hatever had been done here was the United Arab Republic's doing, not plaintiff's.



... We do not believe the prohibition of the Norris-LaGuardia Act against the grant of injunctions in 'a labor dispute' extends to picketing directed against policies of the government of the owner of a vessel as distinguished from activities of the owner. Broad as the Act's definition of 'labor dispute' is, it is not broad enough to encompass that."

Fourth, the Court has recognized in applying §7 of the NLRA--protecting activities that are for the "mutual aid and protection" of employees--that some activities by employees may be purely political and not directed to the "concerns of employees as employees." Eastex, Inc. v. NLRB, 437 U.S. 556 (1978). Certain political leafletting, for example, may not be protected by the labor laws. Thus, in general, the courts treat political activity on a different basis than activity directed to working conditions and terms of employment in the traditional sense.

### 3. The Argument for Coverage

Both the Union and the Solicitor General argue that the Norris-LaGuardia Act applies--although the SG thinks that the injunction was properly issued by the district court. They point to language in opinions of this Court suggesting that the Act is not to be interpreted narrowly. See Marine Cooks & Stewards v. Panama Steamship Co., 362 U.S. 365, 369 (1960). And they point to the decision of the Court in New Negro

*What?*

*How?*



Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938). In that case, the Court found that the Act did apply to prohibit an injunction of picketing of a store by members of a civic group who were seeking to encourage the store to hire more black workers. That the picketers were not union organizers or store employees, made no difference: By its terms the Act expressly applied to labor controversies "regardless of whether or not the disputants stand in the proximate relation of employer and employee." That the source of dispute was race discrimination rather than, for example, discrimination against union members, made no difference either:

"The Act does not concern itself with the background or the motives of the dispute. The desire for fair and equitable conditions of employment on the part of persons of any race ... and the removal of discriminations against them ... is quite as important ... as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor organization or association. ... There is no justification in the apparent purposes or the express terms of the Act for limiting its definition of labor disputes and cases arising therefrom by excluding those which arise with respect to discrimination in terms and conditions of employment based upon difference of race or color."

Rather more persuasively, it is also argued that the dispute here is nothing if not a labor dispute. The company complained to the district court that the Union was refusing to load cargoes headed for the Soviet Union in violation of the collective bargaining agreement. The company alleged the existence of a dispute between the parties to a labor

*There  
was a  
"dispute"*



agreement and they rested their entitlement to injunctive relief on the rights arising from the labor agreement. Quite simply the dispute here concerns the "application" of the no-strike clause in the collective bargaining agreement. This must be a controversy "concerning terms or conditions of employment." Indeed, the agreement not to strike is by contract a "term or condition" of employment. Unlike the CA2 decision in Khedivial, supra, involving a foreign shipowner which had no collective bargaining agreement with the picketing union, here the dispute centers around the rights guaranteed in the collective bargaining agreement.<sup>1</sup>

### 3. Conclusion

I think it is fairly apparent that none of the opinions of the Court, cited by either side, settles the question of whether or not the Norris-LaGuardia Act applies to a political dispute. I am convinced by the SG's argument that this matter arises out of a labor dispute. The Company is

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<sup>1</sup>The SG also argues that since the strike was over an arbitrable dispute--concerning cargo-handling assignments and the employer's right to choose its customers--the matter must be a labor dispute. He suggests further that even had there been no dispute over the terms of the collective bargaining agreement, the matter might still be a labor dispute: the essence of the matter is that employees are refusing to accept their work assignments. The employer/employee relationship is at the heart of the controversy.



seeking an injunction because it claims that the union has given up the right to strike no matter what the reason. This was the quid pro quo for the Company's agreement to binding arbitration. Khedivial is distinguishable--no collective bargaining agreement existed--and no other case from any other circuit conflicts with the decision of the CA5 here that the dispute is within the Act.

As I indicated above, I can well understand why the Chief takes the position that he does. He joined Buffalo Forge. The Court in that case drew a distinction between the dispute over application of the no strike clause and the dispute over the underlying "nonarbitrable" grievance. He is therefore accustomed to a mode of analysis that looks to the underlying grievance and considers the grievance to be outside of the arbitration agreement (non-arbitrable) or, as here, to be outside of the Norris LaGuardia Act. C 9's  
analysis

But the dissent in Buffalo Forge, which you joined, rejected the significance attached by the Court to the fact that the underlying grievance was not arbitrable. The employer had agreed to arbitration on the basis that all strikes were to be illegal: "A sympathy strike in violation of a no-strike clause does not directly frustrate the arbitration process, but if the clause is not enforceable against such a strike, it does frustrate the more basic policy of motivating employers to agree to binding arbitration by giving them an effective 'assurance of uninterrupted operation



during the term of the agreement.'" 428 U.S. at 423-424. The majority recognized that the agreement to arbitrate might be enforced by injunction and that the arbitrator's award once given was likewise enforceable by injunction. Yet it made little sense to permit an injunction after the arbitrator had reached his conclusion that the sympathy strike was illegal, but not permit the court to issue an injunction pending the arbitration where it was clear that the strike would be found illegal by the arbitrator. The point was that the parties had agreed to settle their differences--all of their differences--through arbitration.

If you continue to accept the viewpoint of the dissent in Buffalo Forge then I think you must view the dispute in this case to be a labor dispute. The parties have agreed to settle their differences through arbitration. The union has agreed to a sweeping no strike clause. The collective bargaining agreement appears to have been violated. Surely this is a labor dispute.

In short, and putting aside the difficulties of putting together a Court, I would not decide the case on the basis that Norris LaGuardia simply does not apply. I think it does apply essentially for the same reason that I think Buffalo Forge was wrong: the employer thought he had an agreement that would put a stop to all strikes and it is that agreement that he is seeking to enforce. On the other hand, if you think that the Court will not overrule Buffalo Forge or

David  
says  
this  
is a  
"labor  
dispute".  
If so,  
if any  
strikes  
would be  
- 29  
because  
the Pres  
of the  
Company  
campaigned  
for Reagan



17.  
if you think that Court ought not to reconsider a case so recently decided, then I think there may be some justification in following the Chief's position. Buffalo Forge characterizes the dispute in terms of the underlying grievance. So may you--if you are content to follow Buffalo Forge.

*may  
not  
have  
the option*

B. Applying Boys Market and Buffalo Forge

If you find that Norris-LaGuardia has no application, the case is over. But if Norris-LaGuardia is applicable the Court will have to consider how Boys Market and Buffalo Forge apply to this case.

In Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970), the Court reversed its holding in Sinclair Refining Co. v. Atkinson, 370 U.S. 195 (1962), that the anti-injunction provisions of Norris-LaGuardia preclude a federal court from enjoining a strike in breach of the no-strike clause of the collective bargaining agreement. Relying upon the "devastating implications for the enforceability of arbitration agreements and their accompanying no-strike obligations if equitable remedies were not available," and relying further on a need to accommodate Norris-LaGuardia and the LMRA, with its pro-arbitration policy, in the light of contemporary conditions, the Court found that an injunction was appropriately granted on the facts of that case.



In Buffalo Forge, however, the Court narrowed Boys Market by holding that an injunction could not issue when the grievance underlying the union's strike was "nonarbitrable." In that case the union was striking to show sympathy for another union negotiating with the same employer. There was nothing that an arbitrator could do to remove the source of the grievance. The Court found, therefore, that since the strike was not "over any dispute between the Union and the employer that was even remotely subject to the arbitration provisions of the contract," it did not amount to an evasion of "an obligation to arbitrate," and therefore fell outside of the Boys Market analysis. I have already described above the dissent by Justice Stevens, which you joined.

I simply cannot see how Buffalo Forge is distinguishable from this case. The SG and the employer make a game attempt. The SG argues that the underlying dispute is multifaceted. It is not only between the ILA and Russia. It is also whether the ILA "had any right under the collective bargaining agreement to dictate JBT's selection of its customers or to object to cargo-handling assignments where the cargo is ... politically offensive." These last two disputes are arbitrable under the terms of the collective bargaining agreement. The SG claims that for this reason the Court need not overrule its decision in Buffalo Forge in order to reverse. Yet he does not explain how this can be true. Presumably in Buffalo Forge the unions refusal to cross a

*David  
can't  
distinguish  
Buffalo  
Forge  
if we  
conclude  
Norris  
LaGuardia  
applies  
& thus  
must  
apply  
Buffalo  
Forge*



picket line and decision to stage a sympathy strike was also a dispute as to whether the union had the right, under the collective bargaining agreement, to dictate the employer's labor policies with respect to other unions or whether the employees could object to work assignments if they were not happy with the employer's treatment of other workers. The ease with which one can recharacterize the "underlying dispute" demonstrates how questionable the holding was in Buffalo Forge. But I do not think it provides a basis for distinguishing the case.

Similarly, in addition to urging the Court to overrule Buffalo Forge, JBT argues that it can be distinguished on the basis that the work stoppage issue related to a disagreement over the employer's right to choose its customers as part of its exercise of its management prerogatives--expressly protected in the collective bargaining agreement. What was at stake was management's ability to choose its business partners. Yet one could equally well argue that what was at stake in Buffalo Forge was management's prerogatives--viz. its ability to offer terms of employment to other workers.

Buffalo Forge held that when the dispute between the employer and the union centers on the application of the no-strike clause, that dispute is arbitrable, but no injunction will issue pending arbitration. I think it disingenuous to suggest that the dispute in this case is more than a dispute



over the application of the no-strike clause. But it is worth thinking some more about these attempts to distinguish or limit Buffalo Forge. If a convincing case can be made, it might be the best way to decide the matter.

Of course Buffalo Forge is a fat target. Because you joined the dissent in that case, I have not undertaken to fully critique the case. The dissent is fairly convincing. Also you have written recently to indicate how limited are management's other remedies in cases in which a no-strike clause has been breached. See your concurring opinion in Complete Auto Transit v. Reis, 49 U.S.L.W. 4473 (May 4, 1981). I attach a copy of your opinion in that case. If you would like more on Buffalo Forge, I can provide it.

*No - I've already heard more about that outrageous decision than I can tolerate gracefully.*

### III. Conclusion

In sum, I think that there are essentially three courses you can follow:

(1) you can adhere to the dissenting position in Buffalo Forge, and hope that this position now attracts a majority,

*no likelihood of this. The C.F. will hold N/L & B does not apply -*

(2) you can affirm, regretfully, on the basis of stare decisis and Buffalo Forge, No



or, (3) if you feel compelled to follow Buffalo Forge, you might consider that the matter is outside of Norris-LaGuardia altogether as a political question.

I do not see a way to distinguishing Buffalo Forge. Rumor has it that Justice Brennan, a dissenter in Buffalo Forge, will vote to affirm because he does not think that the Court can keep flipflopping on these issues. A third position is available, although I do not think that it or Buffalo Forge makes much sense. If you feel compelled to follow Buffalo Forge, because it is the "law," then you may look at the case through the eyes of the Buffalo Forge majority, permitting the "underlying grievance" to characterize the case. If we say that the "real" dispute here is between Russia and the ILA, then it is certainly plausible to say that this dispute is not covered by Norris-LaGuardia. In the end this may be the position that attracts a Court.



There is a better  
case to take than  
CA4 case

to run with view  
to Grant. Buffalo  
Forge makes no sense  
by a strike, & should  
be over-ruled.  
I may write

Resp. Union refused to service  
ships ~~to~~ to or from Soviet Union.

The "no-strike" clause was explicit  
as one can write in English language:

"prohibits any strike of any  
kind or degree whatsoever"... p 2

DC held that required recourse  
to arbitration. But CA5 vacated

DC's injunction, holding that Buffalo

PRELIMINARY MEMORANDUM

February 20, 1981 Conference  
List 5, Sheet 3

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC.,

v.

INTERNATIONAL LONGSHOREMEN'S ASS'N, et al.

Cert to CA5 (Rubin, Henderson,  
Reavley)

Federal/Civil Timely

SUMMARY: This case probably should have been straight-  
lined with No. 80-1058, Hampton Roads Shipping v. International  
Longshoremen's Ass'n. Because of its political views, the resp  
union refuses to provide services to any ship carrying cargo  
bound to or from the Soviet Union. The DC ordered arbitration  
and enjoined such work stoppages pending arbitration. The CA5  
upheld the order to arbitrate, but set aside the anti-strike  
injunction on the authority of Norris-LaGuardia and Buffalo  
Forge. Petrs argue that the work stoppage was outside Norris-  
LaGuardia and that there is a conflict with CA2 on this point.  
Petrs also urge the Court to reconsider its 5-4 decision in

This seems to be a correct application of Buffalo Forge.  
DISCUSS (with No. 80-1058). PS



Buffalo Forge.

FACTS: Petr Jacksonville Bulk Terminals, Inc., maintains a bulk marine shipping terminal in Jacksonville, FL.<sup>1</sup> With longshoremen who are members of Local 1408 of the resp ILA, JBT loads superphosphoric acid (SPA) onto ships destined for the USSR from Jacksonville.

On 1/4/80, in response to the USSR's invasion of Afghanistan, President Carter issued an embargo against grain shipments to the USSR. The embargo expressly exempted unshipped grain committed to the USSR under a 1975 agreement, and did not extend to non-grain products such as SPA.

A few days later, resp adopted a resolution providing that its members would not handle any cargo bound to or coming from the USSR. No action was sought from the employers of union members and nothing that the employers did could have eliminated the cause of the boycott.

On 1/15/80, a Norwegian ship entered the Port of Jacksonville to take on SPA for transport to the USSR. Pursuant to the ILA resolution, Local 1408 refused to handle the cargo. At no time did Local 1408 refuse to handle any other cargo.

The collective bargaining agreement between JBT and Local 1408 contains a no-strike clause,<sup>2</sup> a clause requiring

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<sup>1</sup> The other petrs are ✓ Hooker Chemical Corp. and ✓ Occidental Petroleum Corp, both corporate parents of JBT.

<sup>2</sup> The no-strike clause prohibits

"any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interruption or stoppage, total or partial, of the employer's operation for any cause whatsoever."



arbitration,<sup>3</sup> a clause stating that the management of the employer's business and the direction of the workforce "are exclusively vested in the Employer as functions of Management," and a clause stating that the agreement is

"intended to cover all matters affecting wages, hours, and other terms and conditions of employment and ... the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement."

JBT sought to compel arbitration, and pending arbitration it sought a TRO and a preliminary injunction to halt the boycott. The U.S. govt appeared and advised the DC that there was no prohibition of export of SPA to the USSR, that appropriate governmental action had been taken to control exports to the USSR in order to protect the public interest, and that "private action by longshore workers to interfere with such exports are [sic] not warranted."

The DC (Susan Black, MD Fla) ordered arbitration and, pending arbitration, enjoined the union from refusing to work aboard 3 Norwegian ships then in port. The DC held that Norris-LaGuardia was not applicable, reasoning that a purely political strike does not "involv[e] or grow[] out of any labor dispute" as those terms are used in §§4(a) and 13(c) of that statute, 29 USC §§104(a), 113(c), and that the ordinary criteria, including the public interest as voiced by the U.S. govt, required entry of the preliminary injunction.

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<sup>3</sup> The arbitration clause provides that "Matters under dispute which cannot be promptly settled between the Local and an individual Employer" shall be referred to arbitration.



The 3 ships were then loaded with SPA and left Jacksonville. Late in February, the President extended the trade embargo with the USSR to include SPA.

The union appealed the injunction, arguing that the DC's decision substantially burdened its members' first amendment rights and that the case was not moot.

HOLDING BELOW: Consolidating this case with its review of an ED La decision that had enforced some arbitration awards requiring the ILA to load grain,<sup>4</sup> CA5 upheld the order to arbitrate but set aside the anti-strike injunction, reasoning as follows:

(1) The case is not moot because the controversy qualifies as capable of repetition but evading review and "[w]hile the record is unclear concerning SPA, statements made at oral argument indicate that some is still being loaded for shipment to the Soviet Union".

(2) The injunction against the concerted refusal to work on certain ships violated neither the 1st nor the 13th Amendments.

(3) A strike to achieve a political goal is a "labor dispute" covered by Norris-LaGuardia. United States Steel Corp. v. United Mine Workers, 519 F2d 1236 (CA5 1975), cert. denied, 428 US 910 (1976) (Brown, Wisdom, Coleman) (pre-arbitration

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<sup>4</sup> In the ED La case, the CA affirmed the DC's decision to the extent that it enforced arbitration awards enjoining work stoppages as to specific vessels which were the subject of specific grievances. The CA found error, however, in the DC's decision enjoining such work stoppages with respect to grain destined for the Soviet Union under U.S. export license on any vessels that arrived thereafter in the Port of New Orleans. [See §9 of Norris-LaGuardia, 29 USC §109.]



injunction against coal miners' strike to protest the importation of South African coal by an electric power company, although not aimed at the miners' employer, held barred by Norris-LaGuardia). The CA found it "difficult satisfactorily to reconcile" United States Steel with West Gulf Maritime Ass'n v. International Longshoremen's Ass'n, 413 FSupp 372 (SD Tex 1975), aff'd summarily, 531 F2d 574 (CA5 1976) (union's refusal on political grounds, in violation of a no-strike agreement, to load grain on a ship bound for the Soviet Union does not present a labor dispute triggering Norris-LaGuardia). The CA cited Khedival Line, SAE v. Seafarers International Union, 278 F2d 49 (CA2 1960) (Lumbard, Moore, Friendly; p/c) (politically-motivated SIU boycott of Egyptian ships to retaliate for Egyptian blacklist of American ships that dealt with Israel held not to trigger Norris-LaGuardia since the plaintiff employer "was not the cause of the picketers' grievance"; but injunction denied for failure of federal jurisdiction), as in accord with West Gulf Maritime Ass'n. See also NLRB v. International Longshoremen's Ass'n ["Ocean Shipping"], 332 F2d 992 (CA4 1964) (Sobeloff, Bell; Bryan dissenting) (politically-motivated ILA boycott of all ships that were trading or had traded with Cuba held not a "labor dispute" within the meaning of §2(9) of the National Labor Relations Act, as amended; refusing enforcement of NLRB order finding unfair labor practice in union's refusal to provide workers for such ships). But to the extent of any inconsistency, the CA found United States Steel more persuasive than the other cases.

(4) "While the question whether the strike itself violated the parties' agreement is arbitrable, the underlying dispute between the ILA and the Soviet Union is not." Since arbitration



could not "resolve the grievance between the ILA and the Soviet Union," petrs could not bring themselves within the Boys Markets - Buffalo Forge exception to Norris-LaGuardia.

CONTENTIONS: (Question 1: Whether Norris-LaGuardia applies.) Petrs say there is a direct conflict with CA2's Khedival case and that since the NLRA and Norris-LaGuardia are in pari materia and should be construed in like manner, the decision in the present case is also at odds with CA4's Ocean Shipping. (Question 2) Petrs argue that the CA's decision misapplies Buffalo Forge. The employer in this case received explicit contractual recognition of its right to manage its own business. Any disagreement about the scope of the authority reserved by that clause was subject to mandatory arbitration under the contract. Such a disagreement is precisely what happened here. (Question 3) Petrs urge the Court to reconsider Buffalo Forge in light of the effects manifested here: specifically, unions are permitted to engage in political strikes despite having pledged not to strike "for any reason whatsoever"; more generally, employers are being denied any genuine quid pro quo for their commitments to arbitrate grievances.

Resps reply that the CA made a straightforward application of Buffalo Forge. Also, in "the precise situation of this case", CA4 has come out the same way. Hampton Roads Shipping Ass'n v. International Longshoremen's Ass'n, 631 F2d 282 (CA4 1980), petn for cert. pending, No. 80-1058 (same conf. list and sheet as the present case, but not straight-lined). Resps argue that this is a "labor dispute" because it involves a disagreement between the employer and the union over whether the latter is contractually required to work in the circumstances of this case. Resps



distinguish Ocean Shipping and Khedival on the ground that the unions' employers were not involved in those cases. Resps also note that Khedival long preceded Buffalo Forge. The union "does not punish anyone whose conscience is less sensitive." Accordingly, it is absurd to characterize this as a dispute between the employer and the union over management prerogatives.

DISCUSSION: In my opinion, the only reason to take this case or Hampton Roads Shipping would be to reconsider Buffalo Forge.

Norris-LaGuardia. In saying that there is a "labor dispute" but that it is not an arbitrable dispute over management's rights, the union attempts to have it both ways. That sort of inconsistency, however, is a natural result of Buffalo Forge. Thus, the views of the CA4 in Hampton Roads Shipping, decided one week before CA5 decided this case, are identical to those of the CA5. See 631 F2d at 285. The fact that Khedival predates Buffalo Forge says nothing about the tension between Khedival and this case on the Norris-LaGuardia question. However, Khedival can be distinguished on the ground that the boycott in that case was directed at the policies of the government of the employer, whereas in the present case the boycott is more nearly directed at policies of the employer. That brings the present case closer to Marine Cooks & Stewards v. Panama Shipping Co., 362 US 365 (1960) (picketing of Liberian vessel by American union to protest the effect of "flags of convenience" on wages and working conditions of American seamen held a "labor dispute" triggering Norris-LaGuardia).

Application of Buffalo Forge to Political Boycotts. There appears to be no principled basis for distinguishing political



boycotts from sympathy strikes for purposes of arbitrability. If that is so, there can be little doubt that the CA has correctly applied Buffalo Forge.

Reconsideration of Buffalo Forge. In their Buffalo Forge dissent, Justices Brennan, Marshall, Powell, and Stevens argued that if a union has contractually promised not to strike for any reason, but then strikes during the term of the contract, a DC has the power to enjoin the strike pending arbitration. In my opinion, post-Buffalo Forge experience shows the correctness of the dissent. The record in the present case, however, does not contain the kind of empirical data that would be needed to reach such a judgment. Also, since the problem from the employer's perspective is economic damage, some tension might be relieved if the Court were to allow LMRA §301 damages suits against individual employees. Complete Auto Transit, Inc. v. Reis, No. 79-1777, to be argued February 24.

Assuming the Court remains persuaded of the wisdom of Buffalo Forge as applied to sympathy strikes, this petn should be denied. If the Court wishes to hear one of these ILA political boycott cases, the present case is preferable to Hampton Roads Shipping. Judge Rubin's opinion is more exhaustive than Judge Sprouse's opinion in Hampton Roads Shipping; the latter does not discuss whether this boycott is covered by Norris-LaGuardia.

Response filed.

02/03/81

Coleman

Opns in petn



JACKSONVILLE BULK TERMINALS

vs.

INTL. LONGSHOREMEN'S ASSN.

*9 ps Hunter this is different from Puerto Rico. It involved a labor controversy. Have more in no labor controversy. Purely political. not w/m our standards*

Relist for

Q. J. to write. I'll

HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
	G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.	✓											
Brennan, J.		✓										
Stewart, J.		✓										
White, J.		✓										
Marshall, J.		✓										
Blackmun, J.		✓										
Powell, J.	✓											
Rehnquist, J.		✓										
Stevens, J.	✓											

*probably join him. If he doesn't write, I will.*











Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 11, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-1045, Jacksonville Bulk Terminals v.  
I.L.A.  
No. 80-1058, Hampton Roads Shipping Ass'n v.  
I.L.A.

I enclose a draft of my proposed dissent from  
denial of cert in this case.

Regards,

W.B.  
Ginsburg



Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

03/11/81

FIRST DRAFT

From: The Chief Justice

Circulated: MAR 11 1981

Recirculated: \_\_\_\_\_

No. 80-1045, Jacksonville Bulk Terminals, Inc., et al. v.  
International Longshoremen's Ass'n, et al.

No. 80-1058, Hampton Roads Shipping Ass'n, et al. v.  
International Longshoremen's Ass'n, et al.

CHIEF JUSTICE BURGER, dissenting.

In these cases two Courts of Appeals overturned preliminary injunctions ordering the International Longshoremen's Association and Locals of that Association, pending arbitration, to cease and desist from refusing to handle certain cargo bound to or from the Soviet Union. The work stoppages were carried out, in clear violation of collective bargaining agreements, pursuant to a resolution of the Association entered into in response to the Soviet Union's invasion of Afghanistan. They also went beyond



the official retaliatory embargo imposed by the United States on certain trade with the Soviet Union.

Each of the pertinent collective bargaining agreements contains a clause prohibiting any strike or work stoppage, a clause requiring arbitration of all grievances, a clause stating that the management of the employer's business and the direction of the workforce "are exclusively vested in the Employer as functions of Management," and a clause stating that the agreement is

"intended to cover all matters affecting wages, hours, and other terms and conditions of employment and ... the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement."

The employers sought to compel arbitration; pending arbitration they sought temporary restraining orders and preliminary injunctions to halt the plainly illegal work stoppages.

In No. 80-1045, the United States District Court for the Middle District of Florida ordered arbitration and, pending arbitration, enjoined the union from refusing to work aboard 3 named ships then in port. The court held that the Norris-LaGuardia Act was not applicable, reasoning that a purely political strike does not "involv[e] or grow[] out of any labor dispute" as those terms are used in §§4(a) and 13(c) of that statute,<sup>1</sup> and that the ordinary criteria, including the public

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<sup>1</sup> 29 U.S.C. §§104(a), 113(c) (1976). Section 4(a) provides:

"No court of the United States shall have jurisdiction to



interest as voiced by the United States in argument to the District Court,<sup>2</sup> required entry of the preliminary injunction. The Court of Appeals reversed. New Orleans Steamship Association v. General Longshore Workers, 626 F.2d 455 (C.A.5 1980).

In No. 80-1058, the United States District Court for the Southern District of West Virginia also issued a preliminary injunction pending arbitration. That court based its decision primarily on the management discretion clause in the agreement. The Court of Appeals reversed. Hampton Roads Shipping Association v. International Longshoremen's Association, 631 F.2d 282 (C.A.4 1980).

Both Courts of Appeals took the view that the anti-injunction standards of the Norris-LaGuardia Act as elaborated in

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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 ... ."

Section 13(c) provides:

"The term 'labor dispute' includes 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, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

<sup>2</sup> The United States advised the District Court that there was no prohibition of export of the products in question to the U.S.S.R., that appropriate governmental action had been taken to control exports to the U.S.S.R. in order to protect the public interest, and that "private action by longshore workers to interfere with such exports are [sic] not warranted."



Boys Markets, Inc. v. Retail Clerks Union, 398 US 235 (1970); and Buffalo Forge Co. v. United Steelworkers of America, 428 US 397 (1976), apply to these cases. Noting that the obvious, underlying "dispute" between the union and the U.S.S.R. cannot be resolved by the arbitration,<sup>3</sup> the Courts of Appeals concluded that Buffalo Forge precluded the injunctions.

That approach misses the point. A necessary prerequisite for application of the Buffalo Forge doctrine is that there be a "labor dispute" between the employer and the employees, as that term is defined in the Norris-LaGuardia Act. 29 U.S.C. §§104(a), 113(c) (1976). There is no "labor dispute" here and there is no basis in any of our decisions for applying Norris-LaGuardia to purely political work stoppages, concerning subjects over which the employer has no control. Prior decisions of other federal courts so recognize. See Khedival Line, S.A.E. v. Seafarers International Union, 278 F2d 49 (CA2 1960) (politically-motivated boycott of Egyptian ships to retaliate for Egyptian blacklist of American ships that dealt with Israel is not a "labor dispute" triggering Norris-LaGuardia); West Gulf Maritime Ass'n v. International Longshoremen's Ass'n, 413 F. Supp. 372 (S.D. Tex. 1975), aff'd summarily, 531 F.2d 574 (C.A.5 1976) (union's refusal on political grounds, in violation of a no-strike

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<sup>3</sup> The Fifth Circuit remarked, "Unfortunately, no arbitrator can tell the Soviets to withdraw from Afghanistan." New Orleans Steamship Ass'n, supra, at 467. That, of course, begs the question: the arbitrator can command the Union not to strike.

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and  
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agreement, to load grain on a ship bound for the Soviet Union does not present a "labor dispute"). See also NLRB v. International Longshoremen's Ass'n, 332 F.2d 992 (C.A.4 1964) (politically-motivated ILA boycott of all ships that were trading or had traded with Cuba is not a "labor dispute" within the meaning of §2(9) of the National Labor Relations Act).

The present cases plainly do not involve "labor disputes" within the meaning of Norris-LaGuardia. Although the injunctions must reflect sensitivity to First and Thirteenth Amendment values,<sup>4</sup> the work stoppages at issue clearly do not remotely warrant the additional protective umbrella of the national labor policy.

Because both Courts of Appeals have, in my view, erroneously viewed a strike to achieve a purely political goal of the Union as a "labor dispute" reached by Norris-LaGuardia, and because I do not believe in any event that our decision in Buffalo Forge precludes anti-strike injunctions in these cases, I would grant certiorari and summarily reverse the judgments of the Courts of Appeals. Our caseload problems cannot justify tolerance of such egregious abuse of judicial power as manifest in these holdings.

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<sup>4</sup> Noting that none of the respondents was enjoined from speaking and that the injunctions prohibit only concerted work stoppages, the Fifth Circuit rejected respondents' claims that the injunctions violated First and Thirteenth Amendment rights. New Orleans Steamship Ass'n, supra, at 462-463.



March 12, 1981

No. 80-1045 Jacksonville Bulk Terminals v. I.L.A.  
No. 80-1058 Hampton Roads Shipping Ass'n. v. I.L.A.

Dear Chief:

I approve of your draft of a proposed dissent from denial of cert, as I do not understand Buffalo Forge as reaching "political" rather than "labor" disputes.

I agree with John, however, that the question is an important one, apparently arises with some frequency, and I therefore think it would be best to grant the case.

In sum, my first vote is to grant, and failing three other votes to take the case, I would like for you to add my name to my dissent.

Sincerely,

The Chief Justice

LFP/lab

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

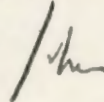
March 12, 1981

Re: 80-1045 - Jacksonville Bulk Terminals v.  
I.L.A.  
80-1058 - Hampton Roads Shipping Assn.  
v. I.L.A.

Dear Chief:

Although you make a substantial case for summary reversal, I think it may be better to hear argument in these cases. After full argument, we might decide to confine Buffalo Forge to the sympathy strike situation and discourage the extension of its reasoning to different fact situations such as this.

Respectfully,



The Chief Justice

Copies to The Conference



Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: The Chief Justice

1st PRINTED DRAFT Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES Recirculated: MAR 13 1981

JACKSONVILLE BULK TERMINALS, INC., ET AL, v.  
INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT

HAMPTON ROADS SHIPPING ASSOCIATION, ET AL, v.  
INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

Nos. 80-1045 and 80-1058. Decided March —, 1981

CHIEF JUSTICE BURGER, dissenting.

In these cases two Courts of Appeals overturned preliminary injunctions ordering the International Longshoremen's Association and Locals of that Association, pending arbitration, to cease and desist from refusing to handle certain cargo bound to or from the Soviet Union. The work stoppages were carried out, in clear violation of collective-bargaining agreements, pursuant to a resolution of the Association entered into in response to the Soviet Union's invasion of Afghanistan.<sup>1</sup>

Each of the pertinent collective-bargaining agreements contains a clause prohibiting any strike or work stoppage, a clause requiring arbitration of all grievances, a clause stating that the management of the employer's business and the direction of the workforce "are exclusively vested in the Employer as functions of Management," and a clause stating that the agreement is

"intended to cover all matters affecting wages, hours,

<sup>1</sup> The work stoppages also went beyond the official retaliatory embargo imposed by the United States on certain trade with the Soviet Union.



and other terms and conditions of employment and . . . the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement."

The employers sought to compel arbitration; pending arbitration they secured temporary restraining orders and preliminary injunctions to halt the plainly illegal work stoppages. In No. 80-1045, the United States District Court for the Middle District of Florida ordered arbitration and, pending arbitration, enjoined the union from refusing to work aboard 3 named ships then in port. The court held that the Norris-LaGuardia Act was not applicable, reasoning that a purely political strike does not "involv[e] or grow[] out of any labor dispute" as those terms are used in §§ 4 (a) and 13 (c) of that statute,<sup>2</sup> and that the ordinary criteria, including the public interest as voiced by the United States in argument to the District Court,<sup>3</sup> required entry of the preliminary injunction. The Court of Appeals reversed. *New Orleans Steamship Assn. v. General Longshore Workers*, 626 F. 2d 455 (CA5 1980).

<sup>2</sup> 29 U. S. C. §§ 104 (a), 113 (c) (1976). Section 4 (a) provides:

"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. . . ."

Section 13 (c) provides:

"The term 'labor dispute' includes 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, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

<sup>3</sup> The United States advised the District Court that there was no prohibition of export of the products in question to the U. S. S. R., that appropriate governmental action had been taken to control exports to the U. S. S. R. in order to protect the public interest, and that "private action by longshore workers to interfere with such exports are [sic] not warranted."



In No. 80-1058, the United States District Court for the Southern District of West Virginia also issued a preliminary injunction pending arbitration. That court based its decision primarily on the management discretion clause in the agreement. The Court of Appeals reversed. *Hampton Roads Shipping Assn. v. International Longshoremen's Assn.*, 631 F. 2d 282 (CA4 1980).

On appeal, both Courts of Appeals took the view that the anti-injunction standards of the Norris-LaGuardia Act as elaborated in *Buffalo Forge Co. v. United Steelworkers of America*, 428 U. S. 397 (1976); and *Boys Market, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), apply to these cases. Noting the obvious, that the underlying "dispute" between the union and the U. S. S. R. cannot be resolved by the arbitration,<sup>4</sup> the Court of Appeals concluded that *Buffalo Forge* precluded the injunctions.

That approach wholly misses the point. A necessary prerequisite for application of the *Buffalo Forge* doctrine is that there be a "labor dispute" between the employer and the employees, as that term is defined in the Norris-LaGuardia Act. There is no "labor dispute" here and there is no basis in any of our decisions for applying Norris-LaGuardia to politically-motivated work stoppages, concerning subjects over which employers have no control. Decisions of other federal courts do recognize. See *Khedivial Line, S. A. E. v. Seafarers International Union*, 278 F. 2d 49, 50-51 (CA2 1960) (politically-motivated boycott of Egyptian ships to retaliate for Egyptian blacklist of American ships that dealt with Israel is not a "labor dispute" triggering Norris-LaGuardia); *West Gulf Maritime Assn. v. International Longshoremen's Assn.*, 413 F. Supp. 372 (SD Tex. 1975), aff'd summarily, 531 F. 2d 574 (CA5 1976) (union's refusal on political grounds, in violation of a no-strike agreement, to load grain on a ship bound for

<sup>4</sup> The Fifth Circuit remarked, "Unfortunately, no arbitrator can tell the Soviets to withdraw from Afghanistan." *New Orleans Steamship Assn.*, *supra*, at 467. That, of course, begs the question: the arbitrator can command the Union not to strike.

CA 4 & CA 5  
applied  
anti-  
injunction  
provisions  
of Norris-  
LaGuardia

no "labor  
dispute"



the Soviet Union does not present a "labor dispute"). See also *NLRB v. International Longshoremen's Assn.*, 332 F. 2d 992, 995-996 (CA4 1964) (politically-motivated ILA boycott of all ships that were trading or had traded with Cuba is not a "labor dispute" within the meaning of § 2 (9) of the National Labor Relations Act).

The present cases plainly do not involve "labor disputes" within the meaning of *Norris-LaGuardia*. Although injunctions must reflect sensitivity to First and Thirteenth Amendment values,<sup>5</sup> the work stoppages at issue clearly do not remotely warrant the additional protective umbrella of the national labor policy.

Because both Courts of Appeals have, in my view, erroneously viewed a strike to achieve a purely political goal—however worthy—of the Union as a "labor dispute" protected by *Norris-LaGuardia*, and because I do not believe in any event that our decision in *Buffalo Forge* precludes anti-strike injunctions in these cases, I would grant certiorari and summarily reverse the judgments of the Courts of Appeals. Our caseload problems cannot justify tolerance of such egregious abuse of judicial power as manifest in these holdings.

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<sup>5</sup> Noting that none of the respondents was enjoined from speaking and that the injunctions prohibit only concerted work stoppages, the Fifth Circuit rejected respondents' claims that the injunctions violated First and Thirteenth Amendment rights, *New Orleans Steamship Assn., supra*, at 462-463.



*Announced* . . . . ., 19...

[illegible]



Supreme Court of the United States  
Washington, D. C. 20543

March 20, 1981

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE

Re: No. 80-1045, Jacksonville Bulk Terminals,  
Inc. v. ILA  
No. 80-1058, Hampton Roads Shipping Assn  
v. ILA

At Conference today, we voted to hear the problem presented by these cases. I intend to vote to grant in the CA5 case, Jacksonville Bulk Terminals, and to hold the CA4 case, Hampton Roads Shipping, for Jacksonville. The issues are more fully ventilated in the CA5 opinion. Judge Sprouse's opinion for CA4 in Hampton Roads Shipping does not discuss the Norris-LaGuardia issue, although he impliedly decides the issue in favor of the union.

Regards,

WRB



*Announced* . . . . ., 19...

[illegible]



SUPREME COURT OF THE UNITED STATES

No. 79-1777

Complete Auto Transit, Inc., et al., Petitioners, v. Danny Reis et al.	}	On Writ of Certiorari to the United States Court of Ap- peals for the Sixth Circuit.
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[May 4, 1981]

JUSTICE POWELL, concurring in part and concurring in the judgment.

The Court's opinion makes clear that Congress, in enacting the Taft-Hartley amendments to the National Labor Relations Act, did not intend to hold individuals liable in damages for wildcat strikes. I therefore join the Court's judgment and most of its opinion. I do not, however, share the Court's view that there remains to management a "significant array of other remedies," *ante*, at 15, n. 18, with which to deter or obtain compensation for illegal strikes. In fact, the "remedies" said to be available are largely chimerical.

I

Collective-bargaining agreements typically contain a promise by the union not to strike during the agreement's term. Unions agree to these no-strike clauses in exchange for the employer's promise to arbitrate disputes arising in contract administration. *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, 449, 455 (1957). Each promise is the "quid pro quo" for the other, *United Steelworkers v. American Mfg. Co.*, 363 U. S. 564, 567 (1960), because the employer yields traditional managerial autonomy in exchange for industrial peace.

Despite the mutual benefits of the no-strike/grievance-arbitration pact, strikes in breach of contract occur with dis-



turbing frequency. In some cases, these strikes are encouraged or even instigated by union leaders.<sup>1</sup> Often, however, they are true "wildcats"—strikes that arise spontaneously to protest grievances against the company and, occasionally, against the union leadership itself. Responsible unions disapprove of such strikes, but some officials, especially those at the local level, may acquiesce in them because of the fervor of intransigent members.

Whatever the cause, strikes in breach of contract frequently injure all concerned: the employer,<sup>2</sup> employees, and the public. Strikes and lockouts by their nature squander human working capacity, the full use of which is essential to the enjoyment of the Nation's productive potential. To be sure, the national labor policy recognizes that, in some circumstances, the use of weapons of strike and lockout is consistent with and protected by law. Labor, management, and the public nevertheless share a "common goal of uninterrupted production." *United Steelworkers v. Warrior & Gulf Mfg. Co.*, 363 U. S. 574, 582 (1960). The essential tenet of our labor policy is that "a system of industrial self-government" based on consensual (albeit vigorously negotiated) labor contracts, see *United Steelworkers v. American Mfg.*

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<sup>1</sup> Strike encouragement sometimes is explicit but more often is cryptic. A union may employ subtle signals to convey the message to strike. One court noted that unions sometimes employ "a nod or a wink or a code . . . in place of the word 'strike.'" *United States v. UMW*, 77 F. Supp. 563, 566 (DC 1948), aff'd, — U. S. App. D. C. —, 177 F. 2d 29, cert. denied, 338 U. S. 871 (1949).

<sup>2</sup> Production disruptions have obvious short-term adverse consequences. And one commentator has pointed out that the long-term consequences of these strikes may be even more severe. A strike rends the "closely integrated supply and distribution systems" that the company has developed. M. Jay Whitman, *Wildcat Strikes: The Unions' Narrowing Path to Rectitude?*, 50 Ind. L. J. 472, 473 (1975). Such systems "presume predictability. A business with a reputation for labor problems, let alone wildcats, simply cannot provide its customers with that predictability," *ibid.*, leading once-regular customers to seek other sources of supply.



Co., 363 U. S. 564, 570 (1960) (BRENNAN, J., concurring), is preferable to "strikes, lockouts, or other self-help," *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U. S. 235, 249 (1970).

When the Taft-Hartley amendments were enacted in 1947, the Nation had experienced a wave of labor unrest.<sup>3</sup> Congress found that "the balance of power in collective bargaining" had been destroyed because employers, who had promised to arbitrate disputes in exchange for no-strike promises, often failed to obtain the industrial peace for which they bargained. S. Rep., *supra*, n. 3, at 14.<sup>4</sup>

## II

It is increasingly clear that the 1947 Taft-Hartley amendments did not provide employers with an effective remedy for wildcat strikes. The Court today holds, properly I think, that Congress intended to foreclose a damages remedy against individual wildcat strikers. The Court states, however, that there remains a number of legal weapons with which to deter or terminate illegal strikes, or to obtain compensation when they occur. *Ante*, at 15-16, n. 18. In support of its view, the Court contends that the employer may (i) obtain an in-

<sup>3</sup> The Senate Report accompanying the Taft-Hartley amendments observed that the Nation in 1945 experienced

"the loss of approximately 38,000,000 man-days of labor through strikes. This total was trebled in 1946 when there were 116,000,000 man-days lost. . . ." S. Rep. No. 105, 80th Cong., 1st Sess., 2 (1947) (hereinafter S. Rep.).

<sup>4</sup> The Senate Report stated that if workers "can break agreements with relative impunity, then such agreements do not tend to stabilize industrial relations. The execution of such an agreement does not by itself promote industrial peace. The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract." *Id.*, at 16.



junction, (ii) discharge the strikers, (iii) request the union to use its internal disciplinary powers, or (iv) sue the union entity for damages. *Ibid.* In reality, more often than not, each of these remedies is illusory.

Injunctions in labor disputes are generally prohibited by the Norris-LaGuardia Act.<sup>5</sup> In *Boys Markets, Inc. v. Retail Clerks Local 770*, 398 U. S. 235 (1970), the Court recognized a limited exception to the anti-injunction provisions of that Act. *Boys Markets* permits injunctions to terminate strikes pending arbitration if the grievance underlying the strike is arbitrable. However, *Boys Markets* offers only "narrow" relief, *id.*, at 253, because injunctions cannot be obtained in strikes of other kinds. *E. g.*, *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976) (injunctions not available in sympathy strikes). Moreover, even when an injunction is available, workers on strike often are disinclined to obey it.<sup>6</sup> Courts may be reluctant to impose contempt penalties on individual workers; if ordered, such penalties are difficult to enforce.

Nor is discharge a realistic remedy in most cases. Because a strike in breach of contract is unprotected conduct under the National Labor Relations Act, see *NLRB v. Sands Mfg. Co.*, 306 U. S. 332 (1939), workers who strike illegally may be terminated. It therefore has been argued that discharge effectively deters strikes and punishes wrongdoers because discharge is "the industrial equivalent of capital punishment." M. Jay Whitman, *Wildcat Strikes: The Union's*

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<sup>5</sup> Section 4 of the Norris-LaGuardia Act, 29 U. S. C. § 104, provides, in pertinent 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. . . ."

<sup>6</sup> Compare *Old Ben Coal Corp. v. Local 1487, UMW*, 457 F. 2d 162 (CA7 1972) with *Old Ben Coal Corp. v. Local 1487, UMW*, 500 F. 2d 950, 952 (CA7 1974). See Gould, *On Labor Injunctions Pending Arbitration: Recasting Buffalo Forge*, 30 *Stan. L. Rev.* 533, 541, and n. 47 (1978).



Narrowing Path to Rectitude?, 50 Ind. L. J. 472, 481 (1975). There are at least three reasons why this remedy in practice often is not effective. First, in a large wildcat strike, wholesale discharges are not practical because an employer cannot terminate all or most of his labor force without crippling production. See *Boys Markets, supra*, at 248-249, n. 17.<sup>7</sup> Second, certain kinds of *selective* discharges arguably are illegal. The National Labor Relations Board takes the position that an employer may not discipline a union officer more severely than other strike participants, even where the union officer failed to fulfill a contractual undertaking to help terminate strikes.<sup>8</sup> In any event, discharging only selected strikers is unlikely to influence the rank-and-file to return to work. Such discharges actually may aggravate worker discontent and thereby prolong the strike. *Cedar Coal Co. v. UMW*, 560 F. 2d 1153, 1157 (CA4 1977), cert. denied, 434 U. S. 1047 (1978); see 86 Harv. L. Rev. 447, 454, n. 33 (1972). At a minimum, strikers may insist that their discharged colleagues be reinstated as a condition to returning to work. Fishman & Brown, Union Responsibility for Wild-

<sup>7</sup> Discharging the entire work force would "caus[e] mountainous personnel problems. Consider the sheer logistics of hiring, training and acclimating an entirely new work force with suitable skills. Even if a new labor force could be recruited, the time and expense of this process, from recruitment to full promotion, could very well sound the death knell of the business." Fishman & Brown, Union Responsibility for Wildcat Strikes, 21 Wayne L. Rev. 1017, 1021 (1975).

<sup>8</sup> E. g., *Miller Brewing Co.*, 254 N. L. R. B. No. 24 (Jan. 14, 1981); *South Central Bell Telephone Co.*, 254 N. L. R. B. No. 32 (Jan. 14, 1981); *Precision Casting Co.*, 233 N. L. R. B. 183 (1977). The Board's position is so clear that employers may be deterred from conducting selective discharges. This Court has not addressed the question, but some courts of appeals have not warmly received the Board's reasoning. See *Gould, Inc. v. NLRB*, 612 F. 2d 728 (CA3 1979) (denying enforcement to 237 N. L. R. B. 881 (1978)), cert. denied, — U. S. — (1980); *Indiana & Mich. Electric Co. v. NLRB*, 599 F. 2d 277 (CA7 1979) (denying enforcement to 237 N. L. R. B. 226 (1978)); see also *NLRB v. Armour-Dial, Inc.*, 638 F. 2d 51, 54-56 (CA8 1981).



cat Strikes, 21 Wayne L. Rev. 1017, 1022 (1975). Third, arbitrators not infrequently refuse to sustain discharges of strikers. See Handsaker & Handsaker, Remedies and Penalties for Wildcat Strikes: How Arbitrators and Federal Courts Have Ruled, 22 Cath. U. L. Rev. 279, 284 (1973).

The union itself normally will not discipline its striking members. Most unions have the legal authority to take such action, see Summers, Legal Limitations on Union Discipline, 64 Harv. L. Rev. 1049, 1065 (1951), but the power seldom is used. In a wildcat strike, worker recalcitrance sometimes is directed at the incumbent union leadership as much as at company management. In these circumstances, the union's attempt to discipline is unlikely to be effective and may be counterproductive. Moreover, under this Court's decision in *Carbon Fuel Co. v. UMW*, 444 U. S. 212 (1979), a parent union normally is not obligated to take affirmative steps to prevent or terminate a wildcat strike. Absent such an obligation, there is little incentive for the union to intervene, even where intervention would be useful.

Finally, a suit for damages against the union entity rarely is feasible.<sup>9</sup> Last Term, in *Carbon Fuel*, *supra*, we largely

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<sup>9</sup> Sophisticated employers for tactical reasons may elect to forego tenable post-strike suits for damages. As the Court points out, such suits may "exacerbate industrial strife," *ante*, at 15, n. 18, and thereby delay the dissipation of the acrimony engendered by the strike. Employers also may elect not to sue for damages because they do not want to subject themselves to the disclosure attendant to litigation. A damages suit

"necessarily involves detailed discussion of an employer's most intimate financial secrets. By making a damage claim, the employer puts its finances at issue in the litigation. The discovery rules of the *Federal Rules of Civil Procedure* give the union and its accountants the right to explore every corner of the employer's books. If the union conducts its case properly, it will know everything from per-unit profit to the finer details of corporate management." M. Jay Whitman, *supra*, n. 1, 50 Ind. L. J., at 474 (footnote omitted).

Finally, part of the price of settling the strike often is a promise that the company will waive its claim for damages. *Ransdell v. International*



foreclosed this possibility when we held that liability normally may not be imposed on a parent union<sup>10</sup> absent proof that it authorized or ratified the strike.<sup>11</sup> It is a foolish union that would invite a damages suit by explicitly endorsing a strike in this manner. See n. 1, *supra*.

### III

The Court plainly is unrealistic, therefore, when it suggests that employers have at their disposal a battery of alternate remedies for illegal strikes. *Ante*, at 15, n. 18. The result of the absence of remedies is a lawless vacuum. Despite a no-strike clause, a plant may be closed with adverse consequences that often are far-reaching. The strike injures the employer, other companies and their employees, and consumers in general. Frequently, the strike is harmful even to the majority of strikers, who feel obligated to honor the picket line of minority wildcatters.

It is, of course, the province of Congress to set the Nation's labor policy. I do not suggest that authorizing a damages remedy against individual wildcat strikers would be desirable. I do believe, however, that the absence of an effective remedy leaves such strikes undeterred and the public interest unprotected. The National Labor Relations Act, as amended in 1947, was intended to further broader national interests

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*Assn. of Machinists*, 97 L. R. R. M. 2738 (ED Wis. 1978); Gould, On Labor Injunctions, Unions, and the Judges: The *Boys Market* Case, 1970 Sup. Ct. Rev. 215, 231 (1970).

<sup>10</sup> *Carbon Fuel* did not consider the quantum of proof necessary to establish damages liability against a local union. Because of the local's proximity to workers, an inference of agency—and hence, liability—arguably may arise even without explicit proof of strike authorization or ratification. See § 301 (e) of the Act, 29 U. S. C. § 185 (e). The possibility that the local will be liable may be of little practical benefit, however, because the local often is judgment-proof.

<sup>11</sup> *Carbon Fuel* recognized, of course, that an explicit contractual undertaking by the parent to intervene to terminate wildcats could be the basis for damages liability. See 444 U. S., at 218–222.



than those of either labor or management. It was conceived not only as a charter for labor rights but also as a framework of law to promote orderly labor relations. Wildcat strikes are at war with these objectives.



Daniel

80-1045 JACKSONVILLE BULK v. INTERNAT'L LONGSHOREMEN

Argued 1/18/82



Gies (Petro) (a talented labor law lawyer)

Norman La Guardia is inapplicable  
- no "labor dispute" here. Definition  
of this term is specific & narrow.

need not read Buffalo Forge issue  
if we agree as to inapplicability of N/LaG  
Act.

Two distinctions (even if N/LaG Act)

1. The conduct here is not protected  
by NLRA. In Buffalo, right not  
to cross picket line is a protected right.  
Wages, hours & working conditions were  
at issue.

2. Nature of the conduct is different  
The work-stoppage here is confined within  
the employer-employee relationship.  
In Buffalo F., ~~as~~ other employers &  
other employees ~~etc~~ were involved. Thus  
there, arbitration provisions did not  
apply.

There has been no arbitration in  
this case, ~~but~~ because Union declined  
to go to arbitration



Gier (cont.)

Called case will not control this one.  
But we should apply that case.

SG & Peter. here have dif. theories.

SG believes there was a "union dispute" within meaning of N. L. R. A. Act. SG nevertheless thinks the case comes w/in the "exception recognized in Boys Market" to the Act's prohibition vs strike injunctions.

This is a unique strike. ~~But~~ The employees had nothing to do with the work stoppage. A strike in these circumstances is contrary to nat. labor policy.

The ~~no~~ no-strike clause is not limited to what may be arbitrable. Clause applies to "any cause whatever."

Peter wants an injunction pending arbitration (but is this arbitrable?)



## Mathews (Rese)

Agrees the dispute is a political  
- ~~the~~ dispute

The no-strike clause obliges  
Union to comply with promise to provide  
labor.

( I find Mathews argument as to  
arbitration is unimpeachable )

The ~~issue~~<sup>quest</sup> is whether the issue  
is non-arbitral. This would apply  
to any political difference.

→ ( The no-strike clause does not  
say it applies only to ~~non~~  
arbitral issues. Yet Union  
- based on Buffalo F. - is  
arguing the clause applies  
only to such issues )



1/19/82

80-1045 Jacksonville Bulk

Reverie on one or more grounds.

1. Norris La Guardia, by definition of "labor dispute", doesn't apply:

2. Boys Market Apples

Union argues there is a "labor dispute".

It identifies two levels of analysis:

(1) Political - not a labor dispute

(2) No strike clause - right to withdraw labor by a strike. Then is a labor dispute by it is non-arbitral because the cause of strike can't be resolved by arbitration.

Circular reasoning. If heart of the controversy is political then Norris La Guardia doesn't apply. If, as Union says, heart of matter is no-strike clause. Then is a labor dispute between this employer & this Union. It is arbitral & different therefore from Buffalo Forge.

3. Buffalo Forge is a travesty. It destroys the ~~integrity~~ integrity of contracts. ~~Unquestioned~~ The explicit language of no-strike clause controls. It is not conditioned upon whether the parties can arbitrate invasion of Afghanistan.



The Chief Justice

Rev.

Not a labor dispute

Justice Brennan

Affirm

Unless we overrule Buffalo Forge, must affirm.

There was a labor dispute

Justice White

Affirm

Buffalo Forge contracts

Can't enjoin until arbitrated.

x x x

After discussion B & W said  
he might go along with  
Rev. in N.Y. LaGuardia.



Justice Marshall

*App. m*

*Agree with W & B &*

Justice Blackmun

*App. m*

*9 is a labor dispute*

*B/Force controls*

Justice Powell

*Rev.*



App'ns

Joined Buffalo Free

Rev.

Nixon LaGuardia Act definition  
does not embrace political disputes.

Fact that Union ~~strikes~~ strikes  
can't convert a political dispute

Rev.

Agree with LFP.

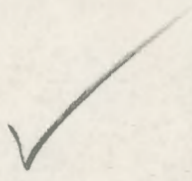
Would overrule Buffalo Free. It  
makes no sense.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 22, 1982



RE: No. 80-1045 Jacksonville Bulk Terminal v. International  
Longshoremen's Association

Dear Chief:

Thurgood has agreed to do the opinion for the Court in  
the above.

Sincerely,

*Bill*

The Chief Justice  
cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

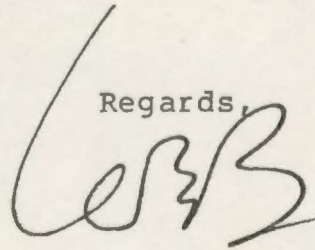
January 22, 1982

RE: 80-1045 - Jacksonville Bulk Terminal v. International  
Longshoremen's Association

MEMORANDUM TO THE CONFERENCE:

I am reexamining my position with respect to Buffalo Forge.  
There were several votes contingent on whether that case should  
be overruled. I will let you know.

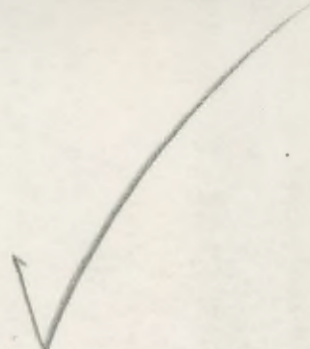
Regards,





Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE



January 27, 1982

RE: No. 80-1045, Jacksonville Bulk Terminals v. ILA

MEMORANDUM TO THE CONFERENCE:

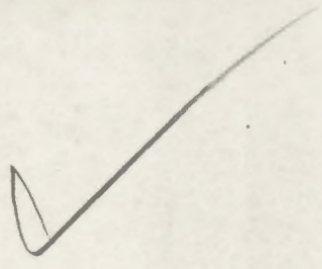
If Buffalo Forge v. United Steelworkers, 428 U.S. 397 (1976), can be read to prevent a federal court from enjoining a union from refusing to handle cargo to or from a foreign country it does not approve of, in violation of the no-strike clause in its contract, I would join to overrule it.

Regards,



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE



January 28, 1982

RE: No. 80-1045 - Jacksonville Bulk Terminals, Inc. Et al.  
v. International Longshoremen's Assn.

MEMORANDUM TO THE CONFERENCE:

One of "us irreconcilables" will be doing a  
dissent in this case.

Regards,



January 28, 1982

80-1045 Jacksonville Bulk Storage v. ILA

Dear Chief:

I would consider joining an opinion to overrule Buffalo Forge.

It cut back substantially on Boy's Market, and seems to me to be contrary to national policy in favor of arbitration.

As was evident from the briefing and argument of this case, the rationale of Buffalo Forge is being read to justify a strike for any political or policy cause wholly unrelated to disputes between management and unions over the terms and conditions of employment. Unlike the union movement in some other countries, American unions only rarely have authorized or tolerated strikes in the interest of furthering a political cause, foreign or domestic.

The sanctioning of such strikes by this Court could encourage a change in this policy of restraint by U.S. unions.

Sincerely,

The Chief Justice

lfp/ss

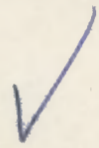
cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 8, 1982



No. 80-1045 Jacksonville Bulk Storage  
v. ILA

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Dear Chief,

As I indicated at the Conference, I would  
also consider joining an opinion to overrule  
Buffalo Forge.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra", is written below the word "Sincerely".

The Chief Justice

Copies to the Conference



no strike clause could not  
have been more explicit - 3

What the employer might  
to enforce - 8, 10

"  
This case involves a labor  
dispute" - 9, 10, 16, 17

as to political strike - 14

What Buffalo Forge held - 18

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PE-  
TITIONERS v. INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[March —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, we consider the power of a federal court to en-  
join a politically motivated work stoppage in an action  
brought by an employer pursuant to §301(a) of the Labor  
Management Relations Act (LMRA), 29 U. S. C. §185(a)  
(giving federal courts jurisdiction over breach-of-contract ac-  
tions between an employer and a labor organization), to en-  
force a union's obligations under a collective-bargaining  
agreement. We first address whether the broad anti-injunc-  
tion provisions of the Norris-LaGuardia Act, 29 U. S. C.  
§101 *et seq.*, apply to politically motivated work stoppages.  
Finding these provisions applicable, we then consider  
whether the work stoppage may be enjoined under the ra-  
tionale of *Boys Markets, Inc. v. Retail Clerks Union*, 398  
U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelwork-  
ers*, 428 U. S. 397 (1976), pending an arbitrator's decision on  
whether the strike violates the collective-bargaining  
agreement.

I

On January 4, 1980, President Carter announced that, due  
to the Soviet Union's intervention in Afghanistan, certain  
trade with the Soviet Union would be restricted.

Note: I would not join the  
sentence on p 12 as to dispute  
"dispute" of fed. judiciary & I indeed  
I doubt that I can join Part III B.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Marshall

MAR 17 1982

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

Reviewed  
3/17

In my  
view  
Buffalo Forge

is an  
abbreviation

that I can't  
follow. Cf.  
the "no-strike  
clause" in  
this case.  
See p 5, 6



2 JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN

Superphosphoric acid (SPA), used in agricultural fertilizer, was not included in the Presidential embargo.<sup>1</sup> On January 9, 1980, respondent International Longshoremen's Association (ILA) announced that its members would not handle any cargo bound to, or coming from, the Soviet Union or carried on Russian ships.<sup>2</sup> In accordance with this resolution, respondent local union, an ILA affiliate, refused to load SPA bound for the Soviet Union aboard three ships that arrived at the shipping terminal operated by petitioner Jacksonville Bulk Terminals, Inc. (JBT) at the Port of Jacksonville, Florida during the month of January 1980.

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<sup>1</sup> On February 25, 1980, the embargo was extended to include SPA along with other products. On April 24, 1981, President Reagan lifted the SPA embargo as part of his decision to remove restrictions on the sale of grain to the Soviets. By telegrams dated April 24, 1981 and June 5, 1981, the ILA has recommended to its members that they resume handling goods to and from the Soviet Union. Although the work stoppage is no longer in effect, there remains a live controversy over whether the collective-bargaining agreement prohibits politically motivated work stoppages, and the Union may resume such a work stoppage at any time. As a result, this case is not moot. See *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397, 403, n. 8 (1976).

<sup>2</sup> The President of the ILA made the following announcement:

"In response to overwhelming demands by the rank and file members of the Union, the leadership of the ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.

"The reason for this action should be apparent in light of international events that have affected relations between the U. S. & Soviet Union.

"However, the decision by the Union leadership was made necessary by the demands of the workers.

"It is their will to refuse to work Russian vessels and Russian cargoes under present conditions of the world.

"People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs." Brief for Respondents 2, n. 2.



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 3

In response to this work stoppage, petitioners JBT, Hooker Chemical Corporation, and Occidental Petroleum Company (collectively referred to as the Employer)<sup>3</sup> brought this action pursuant to § 301(a) of the LMRA, 29 U. S. C. § 185(a), against respondents ILA, its affiliated local union, and its officers and agents (collectively referred to as the Union). The Employer alleged that the Union's work stoppage violated the collective-bargaining agreement between the Union and JBT. The Employer sought to compel arbitration under the agreement, requested a temporary restraining order and a preliminary injunction pending arbitration, and sought damages.

The agreement contains both a broad no-strike clause and a provision requiring the resolution of all disputes through a grievance procedure, ending in arbitration.<sup>4</sup> The no-strike clause provides:

"During the term of this Agreement, . . . the Union agrees there shall not be any strike of any kind or degree whatsoever, . . . for any cause whatsoever; such causes

! / couldn't  
be  
broader

<sup>3</sup>JBT is a wholly owned subsidiary of Oxy Chemical Corporation, which is a subsidiary of Hooker. Ownership of all these corporations is ultimately vested in Occidental. Hooker Chemical Company manufactures SPA at a manufacturing facility in Florida. Pursuant to a bilateral trade agreement between Occidental and the Soviet Union, SPA is shipped to the Soviet Union from the JBT facility in Jacksonville.

<sup>4</sup>The grievance and arbitration clause provides in relevant part:

"Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall . . . be referred . . . to a Port Grievance Committee. . . . In the event this Port Grievance Committee cannot reach an agreement . . . the dispute shall be referred to the Joint Negotiating Committee. . . .

"A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator. . . ."



4 JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN

including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. . . .”

The United States District Court for the Middle District of Florida ordered the Union to process its grievance in accordance with the contractual grievance procedure. The District Court also granted the Employer's request for a preliminary injunction pending arbitration, reasoning that the political motivation behind the work stoppage rendered the Norris-LaGuardia Act's anti-injunction provisions inapplicable.

The United States Court of Appeals for the Fifth Circuit affirmed the District Court's order to the extent it required arbitration of the question whether the work stoppage violated the collective-bargaining agreement. *New Orleans Steamship Association v. General Longshore Workers*, 626 F. 2d 455 (1980).<sup>5</sup> However, the Court of Appeals disagreed with the District Court's conclusion that the provisions of the Norris-LaGuardia Act are inapplicable to politically motivated work stoppages. Relying on *Buffalo Forge*, the Court of Appeals further held that the Employer was not entitled to an injunction pending arbitration because the underlying dispute was not arbitrable. We agree with the Court of Appeals that the provisions of the Norris-LaGuardia Act apply to this case, and that, under *Buffalo Forge*, an injunction pending arbitration may not issue.

CA 5

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<sup>5</sup> The Union concedes that the question whether the work stoppage violates the no-strike clause is arbitrable. In a consolidated case, the Court of Appeals upheld an injunction issued by the United States District Court for the Eastern District of Louisiana enforcing an arbitrator's decision that the ILA work stoppage violated a collective-bargaining agreement. *New Orleans Steamship Association v. General Longshore Workers*, 626 F. 2d 455, 469 (CA5 1980).



## II

Section 4 of the Norris-LaGuardia Act provides in part:

“No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . 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.” 29 U. S. C. § 104.

Congress adopted this broad prohibition to remedy the growing tendency of federal courts to enjoin strikes by narrowly construing the Clayton Act’s labor exemption from the Sherman Act’s prohibition against conspiracies to restrain trade, see 29 U. S. C. § 52. See, *e. g.*, H.R. Rep. No. 669, 72d Cong., 1st Sess. 7–8, 10–11 (1931). This Court has consistently given the anti-injunction provisions of the Norris-LaGuardia Act a broad interpretation, recognizing exceptions only in limited situations where necessary to accommodate the Act to specific federal legislation or paramount congressional policy. See, *e. g.*, *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235, 249–253 (1970); *Railroad Trainmen v. Chicago River & Indiana R. Co.*, 353 U. S. 30, 39–42 (1957).

The *Boys Markets* exception, as refined in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), is relevant to our decision today. In *Boys Markets*, this Court re-examined *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195 (1962), which held that the Norris-LaGuardia Act precludes a federal district court from enjoining a strike in breach of a collective-bargaining agreement, even where that agreement contains provisions for binding arbitration of the grievance concerning which the strike was called. 398 U. S., at 237–238. The Court overruled *Sinclair* and held that, in order to accommo-

*emasculated*



## 6 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

date the anti-injunction provisions of Norris-LaGuardia to the subsequently enacted provisions of §301(a) and the strong federal policy favoring arbitration, it was essential to recognize an exception to the anti-injunction provisions for cases in which the employer sought to enforce the union's contractual obligation to arbitrate grievances rather than to strike over them. *Id.*, at 249-253.<sup>6</sup>

After *Boys Markets*, the Courts of Appeals divided on the question whether a strike could be enjoined under the *Boys Markets* exception to the Norris-LaGuardia Act pending arbitration, when the strike was not over a grievance that the union had agreed to arbitrate.<sup>7</sup> In *Buffalo Forge*, the Court resolved this conflict and held that the *Boys Markets* exception does not apply when only the question whether the strike violates the no-strike pledge, and not the dispute that precipitated the strike, is arbitrable under the parties' collective-bargaining agreement.<sup>8</sup>

*Buffalo*

The Employer argues that the Norris-LaGuardia Act does not apply in this case because the political motivation underlying the Union's work stoppage removes this controversy from that Act's definition of a "labor dispute." Alternatively, the Employer argues that this case fits within the exception to that Act recognized in *Boys Markets* as refined in *Buffalo Forge*. We review these arguments in turn.

<sup>6</sup> In *Boys Markets*, the underlying dispute was clearly subject to the grievance and arbitration procedures of the collective-bargaining agreement, and the strike clearly violated the no-strike clause.

<sup>7</sup> See cases cited in *Buffalo Forge*, 428 U. S., at 404, n. 9.

<sup>8</sup> In *Buffalo Forge*, the strike at issue was a sympathy strike in support of sister unions negotiating with the employer. The Court reasoned that there was no need to accommodate the policies of the Norris-LaGuardia Act to § 301 and the federal policy favoring arbitration when a strike is not called over an arbitrable dispute, because such a strike does not directly frustrate the arbitration process by denying or evading the union's promise to arbitrate. 428 U. S., at 407-412.



## III

At the outset, we must determine whether this is a “case involving or growing out of any labor dispute” within the meaning of § 4 of the Norris-LaGuardia Act, 29 U. S. C. § 104. Section 13(c) of the Act broadly defines the term labor dispute to include “any controversy concerning terms or conditions of employment.” 29 U. S. C. § 113(c).<sup>9</sup>

*First Q,  
Does this  
involve a  
a labor  
dispute*

The Employer argues that the existence of political motives takes this work stoppage controversy outside the broad scope of this definition. This argument, however, has no basis in the plain statutory language of the Norris-LaGuardia Act or in our prior interpretations of that Act. Furthermore, the argument is contradicted by the legislative history of not only the Norris-LaGuardia Act but also the 1947 Taft-Hartley amendments to the National Labor Relations Act (NLRA).

## A

An action brought by an employer against the union representing its employees to enforce a no-strike pledge generally involves two controversies. First, there is the “underlying dispute,” which is the event or condition that triggers the work stoppage. This dispute may or may not be political, and it may or may not be arbitrable under the parties’ collective-bargaining agreement. Second, there is the parties’ dispute over whether the no-strike pledge prohibits the work stoppage at issue. This second dispute can always form the basis for federal court jurisdiction, because § 301(a) gives fed-

<sup>9</sup> Section 13(c) provides:

(c) The term ‘labor dispute’ includes 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, regardless of whether or not the disputants stand in the proximate relation of employer and employee.”



## 8 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

eral courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization." 29 U. S. C. § 185(a).

It is beyond cavil that the second form of dispute—whether the collective-bargaining agreement either forbids or permits the union to refuse to perform certain work—is a "controversy concerning the terms or conditions of employment." 29 U. S. C. § 113(c). This § 301 action was brought to resolve just such a controversy. In its complaint, the Employer did not seek to enjoin the intervention of the Soviet Union in Afghanistan, nor did it ask the District Court to decide whether the Union was justified in expressing disapproval of the Soviet Union's actions. Instead, the Employer sought to enjoin the Union's decision not to provide labor, a decision which the Employer believed violated the terms of the collective-bargaining agreement. It is this contract dispute, and not the political dispute, that the arbitrator will resolve, and on which the courts are asked to rule.

The plain language of the Norris-LaGuardia Act does not except labor disputes having their genesis in political protests. Nor is there any basis in the statutory language for the argument that the Act requires that each dispute relevant to the case be a labor dispute. The Act merely requires that the case involve "any" labor dispute. Therefore, the plain terms of § 4(a) and § 13 of the Norris-LaGuardia Act deprive the federal courts of the power to enjoin the Union's work stoppage in this § 301 action, without regard to whether the Union also has a nonlabor dispute with another entity.<sup>10</sup>

<sup>10</sup> Of course, there are exceptions to the Act's prohibitions against enjoining work stoppages. See, e. g., *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970). The employer may obtain an injunction to enforce an arbitrator's decision that the strike violates the collective-bargaining agreement and can recover damages for the violation, pursuant to § 301 of the Labor Management Relations Act (LMRA), 29 U. S. C. § 185. See, e. g., *Buffalo Forge*, 428 U. S., at 405. See also —, and note 18, *infra* (discussing Board's authority under 29 U. S. C. §§ 160(k), 160(l), to

} yes

What Employer  
sought to  
enjoin  
yes

The "dispute"  
is whether  
the Union  
has violated  
its no-  
strike  
clause.

18,



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 9

The conclusion that this case involves a labor dispute within the meaning of the Norris-LaGuardia Act comports with this Court's consistent interpretation of that Act.<sup>11</sup> Our decisions have recognized that the term "labor dispute" must not be narrowly construed because the statutory definition itself is extremely broad and because Congress deliberately included a broad definition to overrule judicial decisions that had unduly restricted the Clayton Act's labor exemption from the antitrust laws. For example, in *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U. S. 365, 369 (1960), the Court observed:

*Then case involves a labor dispute*

petition for an injunction upon finding reasonable cause to believe that the strike is an unfair labor practice).

<sup>11</sup>The Employer's reliance on *Eastex, Inc. v. NLRB*, 437 U. S. 556 (1978), to argue that a politically motivated strike is not a labor dispute is misplaced. In *Eastex*, we addressed whether certain concerted activity was protected under § 7 of the NLRA, 29 U. S. C. § 157, and we recognized that "[t]here may well be types of conduct or speech that are so purely political or so remotely connected to the concerns of employees as to be beyond the protection of § 7." *Id.*, at 570, n. 20. Although the definition of a "labor dispute" in § 2(9) of the NLRA, 29 U. S. C. § 152(9), is virtually identical to that in § 13(c) of the Norris-LaGuardia Act, 29 U. S. C. § 113(c), and the two provisions have been construed consistently with one another, *e. g.*, *United States v. Hutcheson*, 312 U. S. 219, 234, n. 4 (1941), this similarity does not advance the Employer's argument. Union activity that prompts a "labor dispute" within the meaning of these sections may be protected by § 7, prohibited by § 8(b), 29 U. S. C. § 158(b), or neither protected nor prohibited. The objective of the concerted activity is relevant in determining whether such activity is protected under § 7 or prohibited by § 8(b), but *not* in determining whether the activity is a "labor dispute" under § 2(9).

Moreover, the conclusion that a purely political work stoppage is not protected under § 7 means simply that the employer is not prohibited by § 8(a)(1) of the NLRA, 29 U. S. C. § 158(a)(1), from discharging or disciplining employees for this activity. It hardly establishes that no "labor dispute" existed within the meaning of § 2(9). Similarly, if the employees protested such sanctions under the collective-bargaining agreement, an arbitrator might ultimately conclude that the sanctions were proper, but this would not alter the obvious fact that the matter is a labor dispute.



## 10 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

"Th[e] Act's language is broad. The language is broad because *Congress was intent upon taking the federal courts out of the labor injunction business* except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act. The history and background that led Congress to take this view have been adverted to in a number of prior opinions of this Court in which we refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts." (emphasis added; footnote omitted)

The critical element in determining whether the provisions of the Norris-LaGuardia Act apply is whether "the employer-employee relationship [is] the matrix of the controversy." *Columbia River Packers Association v. Hinton*, 315 U. S. 143, 147 (1942). In this case, the Employer and the Union representing its employees are the disputants, and their dispute concerns the interpretation of the labor contract that defines their relationship.<sup>12</sup> Thus, the employer-employee relationship is the matrix of this controversy.

*This  
dispute*

Nevertheless, the Employer argues that a "labor dispute" exists only when the Union's action is taken in its own "economic self-interest." The Employer cites *American Federation of Musicians v. Carroll*, 391 U. S. 99 (1968), and *Columbia River Packers Association*, *supra*, for this proposition.

<sup>12</sup> A labor dispute might be present under the facts of this case even in the absence of the dispute over the scope of the no-strike clause. Regardless of the political nature of the Union's objections to handling Soviet-bound cargo, these objections were expressed in a work stoppage by employees against their employer, which focused on particular work assignments. Thus, apart from the collective-bargaining agreement, the employer-employee relationship would be the matrix of the controversy. We need not decide this question, however, because this case does involve a dispute over the interpretation of the parties' collective-bargaining agreement.



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 11

In these cases, however, the Court addressed the very different question whether the relevant parties were "labor" groups involved in a labor dispute for the purpose of determining whether their actions were exempt from the antitrust laws.<sup>13</sup> These cases do not hold that a union's noneconomic motive inevitably takes the dispute out of the Norris-LaGuardia Act, but only that that protections of that Act do not extend to labor organizations when they cease to act as labor groups or when they enter into illegal combinations with nonlabor groups in restraint of trade.<sup>14</sup> Here, there is no question that the Union is a labor group, representing its own interests in a dispute with the Employer over the employees' obligation to provide labor.

Even in cases where the disputants did not stand in the relationship of employer and employee, this Court has held that the existence of noneconomic motives does not make the

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<sup>13</sup> In *American Federation of Musicians*, the Court held that, although orchestra leaders acted as independent contractors with respect to certain "club-date" engagements, the union's involvement with the leaders was not a combination with a nonlabor group in violation of the Sherman Act. In finding that leaders were a "labor group," and a party to a labor dispute, the Court relied on the "presence of a job or wage competition or some other economic interrelationship affecting legitimate union interests between the union members and the independent contractors." 391 U. S., at 106 (quoting the opinion of the District Court). In *Hinton*, the Court found that the union was merely an association of independent fish sellers involved in a controversy with fish buyers over a contract for the sale of fish; they were not employees of the buyers, nor did they seek to be. 315 U. S., at 147.

The Employer's reliance on *Bakery Drivers Union v. Wagshal*, 333 U. S. 437 (1948), is similarly misplaced. In that case, the Court held only that a controversy between two businessmen over delivery times or methods of payment does not become a labor dispute merely because a union representative, with or without his employer's consent, sought to obtain payment pursuant to a particular method. *Id.*, at 443-444.

<sup>14</sup> The Employer's economic-motive analysis also leads to the untenable result that strikes in protest of unreasonably unsafe conditions and some sympathy strikes are not "labor disputes."



## 12 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

Norris-LaGuardia Act inapplicable. For example, in *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552 (1938), this Court held that the Norris-LaGuardia Act prohibited an injunction against picketing by members of a civic group, which was aimed at inducing a store to employ Negro employees. In determining that the group and its members were "persons interested in a labor dispute" within the meaning of § 13, the Court found it immaterial that the picketers, who were neither union organizers nor store employees, were not asserting economic interests commonly associated with labor unions—*e. g.*, terms and conditions of employment in the narrower sense of wages, hours, unionization or betterment of working conditions. *Id.*, at 560. Although the lower courts found Norris-LaGuardia inapplicable because the picketing was motivated by the group's "political" or "social" goals of improving the position of Negroes generally, and not by the desire to improve specific conditions of employment, this Court reasoned: "The Act does not concern itself with the background or the motives of the dispute." 303 U. S., at 561.

B

The Employer's argument that the Union's motivation for engaging in a work stoppage determines whether the Norris-LaGuardia Act applies is also contrary to the legislative history of that Act. The Act was enacted in response to federal court intervention on behalf of employers through the use of injunctive powers against unions and other associations of employees. This intervention had caused the federal judiciary to fall into disrepute among large segments of this Nation's population. See generally S. Rep. No. 163, 72d Cong., 1st Sess. 8, 16-18 (1932); 75 Cong. Rec. 4915 (1932) (remarks of Sen. Wagner).

Apart from the procedural unfairness of many labor injunctions, one of the greatest evils associated with them was the

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can join III B*

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This was  
Wagner's  
view. We  
need not  
endure it*



use of tort-law doctrines, which often made the lawfulness of a strike depend upon judicial views of social and economic policy. See, e. g., Cox, Current Problems in the Law of Grievance Arbitration, 30 Rocky Mountain L. Rev. 247, 256 (1958). In debating the Act, its supporters repeatedly expressed disapproval of this Court's interpretations of the Clayton Act's labor exemption—interpretations which permitted a federal judge to find the Act inapplicable based on his or her appraisal of the "legitimacy" of the union's objectives.<sup>15</sup> See, e. g., 75 Cong. Rec. 4916 (1932) (remarks of Sen. Wagner) (definition of labor dispute expanded to overrule *Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921)); *id.*, at 5487–5488 (remarks of Sen. Celler) (bill brought forth to remedy decisions allowing injunction in *Duplex* and in *Bedford Cut Stone Co. v. Stone Cutters Association*, 274 U. S. 37 (1927)). See also *id.*, at 4686 (remarks of Sen. Hebert) (committee minority agreed that injunctions should not have issued in *Bedford* and *Duplex*). See generally H.R. Rep. No. 669, 72d Cong., 1st Sess. 8, 10–11 (1932). The legislative history is replete with criticisms of the ability of powerful employers to use federal judges as "strike-breaking" agencies; by virtue of their almost unbridled "equitable discretion," federal judges could enter injunctions based on their disapproval of the employees' objectives, or on the theory that these objectives or actions, although lawful if pursued by a single employee, became unlawful when pursued through the "conspiracy" of concerted activity. See, e. g., 75 Cong. Rec. 4928–4938 (1932); *id.*, at 5466–5468; *id.*, at 5478–5481; *id.*, at 5487–5490.

Furthermore, the question whether the Norris-LaGuardia Act would apply to politically motivated strikes was brought to the attention of the 72nd Congress when it passed the Act.

<sup>15</sup> See *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 468–469 (1921). See also *Bedford Cut Stone Co. v. Stone Cutters Association*, 274 U. S. 37, 54–55 (1927).



14 JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN

Opponents criticized the definition of "labor dispute" in § 13(c) on the ground that it would cover politically motivated strikes. Representative Beck argued that federal courts should have jurisdiction to enjoin political strikes like those threatened by labor unions in Europe. 75 Cong. Rec. 5471-5473 (1932) (discussing threatened strike by British unions protesting the cancellation of leases held by Communist Party members, and threatened strikes by Belgian unions protesting a decision to supply military aid to Poland).<sup>16</sup> In response, Representative Oliver argued that the federal courts should not have the power to enjoin such strikes. *Id.*, at 5480-5481. Finally, Representative Beck offered an amendment to the Act that would have permitted federal courts to enjoin strikes called for ulterior purposes, including political motives. This amendment was defeated soundly. See *id.*, at 5507.

Further support for our conclusion that Congress believed that the Norris-LaGuardia Act applies to work stoppages instituted for political reasons can be found in the legislative history of the 1947 Taft-Hartley amendments to the NLRA. That history reveals that Congress rejected a proposal to repeal the Norris-LaGuardia Act with respect to one broad category of political strikes.<sup>17</sup> The House bill included definitions

as to  
political  
strikes

<sup>16</sup> The thrust of this objection was "that it takes no account whatever of the motives and purposes with which a nation-wide strike or boycott can be commenced and prosecuted." 75 Cong. Rec. 5472 (1932) (remarks of Rep. Beck).

<sup>17</sup> In relying on this history, we do not argue that congressional rejection of a broad repeal of the Norris-LaGuardia Act precludes accommodation of that Act to the LMRA. See *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195, 204-210 (1962). In *Boys Markets Co. v. Retail Clerks Union*, 398 U. S. 235, 249 (1970), this Court put that argument to rest. Rather, we rely on this legislative history because it demonstrates that Congress believed that the Norris-LaGuardia Act did apply to controversies concerning politically motivated work stoppages. Furthermore, in this case, unlike *Boys Markets*, we are not asked to accommodate the Norris-LaGuardia



of various kinds of labor disputes. See H.R. 3020, 80th Cong., 1st Sess., 1 Legislative History of the LMRA 158 (1947) (Leg. His.); H.R. Rep. No. 245, 80th Cong., 1st Sess., 18-19, 1 Leg. His. 292, 309-310. Of relevance here, § 2(13) defined a "sympathy" strike as a strike "called or conducted not by reason of any dispute between the employer and the employees on strike or participating in such concerted interference, but rather by reason of either (A) a dispute involving another employer or other employees of the same employer, or (B) *disagreement with some governmental policy.*" H.R. 3020, § 2(13), 1 Leg. His. 168 (emphasis added). Section 12 of the House bill made this kind of strike "unlawful concerted activity," and "it remove[d] the immunities that the present laws confer upon persons who engage in them." H.R. Rep. No. 245, 80th Cong., 1st Sess. 23, 1 Leg. His. 314. In particular, the Norris-LaGuardia Act would not apply to suits brought by private parties to enjoin such activity, and damages could be recovered. See *id.*, at 23-24, 43-44, 1 Leg. His. 314-315, 334-335. In explaining these provisions, the House Report stated that strikes "against a policy of national or local government, which the employer cannot change," should be made unlawful, and that "[t]he bill makes inapplicable in such suits the Norris-LaGuardia Act, which heretofore has protected parties to industrial strife from the consequences of their lawlessness." *Id.*, at 24, 44, 1 Leg. His. 315, 335.

The Conference Committee accepted the Senate version, which had eliminated these provisions of the House bill.<sup>18</sup>

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Act to a specific federal act or to the strong policy favoring arbitration.

<sup>18</sup>The Senate had declined to adopt these provisions of the House bill. The Senate Report explained that it did not want to impair labor's social gains under the Norris-LaGuardia Act and the NLRA of 1935, but instead wanted to remedy "specific types of injustice" or "clear inequities" by "precise and carefully drawn legislation." S. Rep. No. 105, 80th Cong., 1st Sess. 1, 1 Leg. His. 407. Some of the concerted activities listed in § 12 of



## 16 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

The Conference Report explained that its recommendation did not go as far as the House bill, that § 8(b) prohibits jurisdictional strikes and illegal secondary boycotts, and that the Board, *not private parties*, may petition a district court under § 10(k) or § 10(l) to enjoin these activities notwithstanding the provisions of the Norris-LaGuardia Act. H.R. Conf. Rep. No. 510, 80th Cong. 1st Sess. 36, 42-43, 57, 58-59, 1 Leg. His. 540, 546-547, 561, 562-563. In short, Congress declined in 1947 to adopt a broad "political motivation" exception to the Norris-LaGuardia Act for strikes in protest of some governmental policy. Instead, if a strike of this nature takes the form of a secondary boycott prohibited by § 8(b), Congress chose to give the Board, not private parties, the power to petition a federal district court for an injunction. See 29 U. S. C. §§ 160(k), 160(l).

## C

This case, brought by the Employer to enforce its collective-bargaining agreement with the Union, involves a "labor dispute" within any common-sense meaning of that term. Were we to ignore this plain interpretation and hold that the political motivation underlying the work stoppage removes this controversy from the prohibitions of the Norris-LaGuardia Act, we would embroil federal judges in the very scrutiny of "legitimate objectives" that Congress intended to prevent when it passed that Act. The applicability not only of § 4, but of all of the procedural protections embodied in that Act, would turn on a single federal judge's perception of the motivation underlying the concerted activity.<sup>19</sup> The Em-

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the House bill were made unfair labor practices, and the National Labor Relations Board, *not private parties*, could petition a district court for injunctions against certain unfair labor practices. See *id.*, at 35, 40, 1 Leg. His. 441, 446 (reciting proposed revisions to NLRA, §§ 8(b), 10(k), 10(l)).

<sup>19</sup> This proposed exception does not limit the judge's discretion to consideration of specified external conduct or of provisions in a collective-bargaining agreement, as does the *Boys Markets* exception. It provides no



JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN 17

ployer's interpretation is simply inconsistent with the need, expressed by Congress when it enacted the Norris-LaGuardia Act, for clear "mileposts for judges to follow." 75 Cong. Rec. 4935 (1932) (remarks of Sen. Bratton).

In essence, the Employer asks us to disregard the legislative history of the Act and to distort the definition of a labor dispute in order to reach what it believes to be an "equitable" result. The Employer's real complaint, however, is not with the Union's political objections to the conduct of the Soviet Union, but with what the Employer views as the Union's breach of contract. The Employer's frustration with this alleged breach of contract should not be remedied by characterizing it as other than a labor dispute. We will not adopt by judicial fiat an interpretation that Congress specifically rejected when it enacted the Taft-Hartley amendments to the NLRA. See note 17, *supra*. In the past, we have consistently declined to constrict Norris-LaGuardia's broad prohibitions except in narrowly defined situations where accommodation of that Act to specific congressional policy is necessary. We refuse to deviate from that path today.

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Employer  
objects to  
breach of  
contract

## IV

Alternatively, the Employer argues that the Union's work

guidance to judges in dealing with concerted activity arguably designed to achieve both political and labor-related goals. Such mixed-motivation cases are bound to arise. For example, in *United States Steel Corp. v. United Mine Workers*, 519 F. 2d 1236 (CA5 1975), miners picketed another employer for importing coal from South Africa. The Court of Appeals held that the Norris-LaGuardia Act applied, and that the *Boys Markets* exception was not available, because "the miners' action was not aimed at [their employer] at all, but rather at the national policy of this country's permitting the importation of South African coal." 519 F. 2d, at 1247 (footnote omitted). Under the political-motivation exception, even if the miners had picketed because slave labor was employed to mine the imported coal, the Norris-LaGuardia Act might not apply. Minor variations in the facts would endow the courts with, or divest them of, jurisdiction to issue an injunction, and would create difficult line-drawing problems.



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stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), because the dispute underlying the work stoppage is arbitrable under the collective-bargaining agreement. In making this argument, the Employer disavows its earlier argument that the underlying dispute is purely political, and asserts that the Union's work stoppage was motivated by a disagreement with the Employer over the management-rights clause in the collective-bargaining agreement. The Solicitor General, in an amicus brief filed on behalf of the United States, agrees with the Employer that the work stoppage may be enjoined pending arbitration. He contends that in addition to the political dispute, disputes concerning both the management-rights clause and the work-conditions clause underlie the work stoppage, and that at least one of these disputes is arguably arbitrable.<sup>20</sup>

We disagree. *Buffalo Forge* makes it clear that a *Boys Markets* injunction pending arbitration should not issue unless the dispute underlying the work stoppage is arbitrable. The rationale of *Buffalo Forge* compels the conclusion that

*Buffalo Forge*

<sup>20</sup> The management-rights clause provides:

"The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers, and authority Employer had prior to signing of this Agreement are retained by the Employer."

The work-conditions clause provides:

"Where hardship is claimed by the Union because of unreasonable or burdensome conditions or where work methods or operations materially change in the future, the problem shall first be discussed between the local and Management involved. In the event an agreement cannot be reached, either party may refer the dispute to the Joint Negotiating Committee and, if the matter cannot be resolved by that Committee, either party may then refer the question to an arbitrator in accordance with the procedure set forth in Clause 15(B)."



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 19

the Union's work stoppage, called to protest the invasion of Afghanistan by the Soviet Union, may not be enjoined pending the arbitrator's decision on whether the work stoppage violates the no-strike clause in the collective-bargaining agreement. The underlying dispute, whether viewed as an expression of the Union's "moral outrage" at Soviet military policy or as an expression of sympathy for the people of Afghanistan, is plainly not arbitrable under the collective-bargaining agreement.

The attempts by the Solicitor General and the Employer to characterize the underlying dispute as arbitrable do not withstand analysis. The "underlying" disputes concerning the management-rights clause or the work-conditions clause simply did not trigger the work stoppage. To the contrary, the applicability of these clauses to the dispute, if any, was triggered by the work stoppage itself. Consideration of whether the strike intruded on the management-rights clause or was permitted by the work-conditions clause may inform the arbitrator's ultimate decision on whether the strike violates the no-strike clause. Indeed, the question whether striking over a nonarbitrable issue violates other provisions of the collective-bargaining agreement may itself be an arbitrable dispute. The fact remains, however, that the strike itself was not over an arbitrable dispute and therefore may not be enjoined pending the arbitrator's ruling on the legality of the strike under the collective-bargaining agreement.

The weaknesses in the analysis of the Employer and the Solicitor General can perhaps best be demonstrated by applying it to a pure sympathy strike, which clearly cannot be enjoined pending arbitration under the rationale of *Buffalo Forge*. If this work stoppage were a pure sympathy strike, it could be characterized alternatively as a dispute over the Employer's right to choose to do business with the employer embroiled in a dispute with a sister union, as a dispute over management's right to assign and direct work, or as a dispute over whether requiring the union to handle goods of the em-



## 20 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

ployer whose employees are on strike is an unreasonable work condition.<sup>21</sup> None of these characterizations, however, alter the fact, essential to the rationale of *Buffalo Forge*, that the strike was not over an arbitrable issue and therefore did not directly frustrate the arbitration process.

The Employer's argument that this work stoppage may be enjoined pending arbitration really reflects a fundamental disagreement with the rationale of *Buffalo Forge*, and not a belief that this rationale permits an injunction in this case. The Employer apparently disagrees with the *Buffalo Forge* Court's conclusion that, in agreeing to broad arbitration and no-strike clauses, the parties do not bargain for injunctive relief to restore the status quo pending the arbitrator's decision on the legality of the strike under the collective-bargaining agreement, without regard to what triggered the strike. Instead, they bargain only for specific enforcement of the union's promise to arbitrate the underlying grievance before resorting to a strike. See 428 U. S., at 410-412. The Employer also apparently believes that *Buffalo Forge* frustrates the arbitration process and encourages industrial strife. But see *id.*, at 412.<sup>22</sup> However, this disagreement with *Buffalo*

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<sup>21</sup> In fact, the employer in *Buffalo Forge* made just such a claim. In addition to alleging breach of the no-strike clause, it claimed that the strike was caused by "refusal to follow a supervisor's instructions to cross the . . . picket line." *Buffalo Forge, supra*, at 401. The district court found that the strike was in sympathy with the sister union and was not over a dispute that the parties were contractually bound to arbitrate. *Id.*, at 402-403. On appeal, the employer did not press its argument that the work stoppage was in part a protest over truck driving assignments. *Id.*, at 403, n. 8.

<sup>22</sup> The Employer argues that industrial strife is encouraged because employers are given the incentive to discharge or discipline the workers for refusing to work, which is likely to precipitate further strikes. According to this argument, the strike, which began over a nonarbitrable dispute, is transformed into a dispute over an arbitrable issue, *i. e.* the employer's right under the collective-bargaining agreement to discipline these workers, and may be enjoined under the *Boys Markets/Buffalo Forge* exception. See, *e. g.*, *Complete Auto Transit, Inc. v. Reis*, 614 F. 2d 1110,



*Forge* only argues for reconsidering that decision.<sup>23</sup> It does not justify distorting the rationale of that case beyond recognition in order to reach the result urged by the Employer.

## V

In conclusion, we hold that an employer's § 301 action to enforce the provisions of a collective-bargaining agreement allegedly violated by a union's work stoppage involves a "labor dispute" within the meaning of the Norris-LaGuardia Act, without regard to the motivation underlying the union's decision not to provide labor. Under our decisions in *Boys Markets* and *Buffalo Forge*, when the underlying dispute is not arbitrable, the employer may not obtain injunctive relief pending the arbitrator's ruling on the legality of the strike under the collective-bargaining agreement.

*Affirmed.*

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1113-1114 (CA6 1980), *aff'd on other grounds* 451 U. S. 401 (1981). This Court has not addressed the validity of this "transformation" analysis. See *Complete Auto Transit, Inc. v. Reis*, 451 U. S., at 405, n. 4.

<sup>23</sup> The Employer has also requested that we reconsider our decision in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976). We decline this invitation.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

March 17, 1982

Re: No. 81-406 - Mississippi University for Women, et al.  
v. Joe Hogan

MEMORANDUM TO: Al Stevas

FROM: The Chief Justice

LOB

I agree with your treatment but not the terminology.  
I have thought in such a case you treat the "unruly"  
paper as "lodged" but not "filed."

We can let the matter stand where it is until  
argument.

cc: The Conference



March 17, 1982

80-1045 Jacksonville Bulk Terminals v. Longshoremen

Dear Thurgood:

Your opinion persuasively argues that the dispute in this case was a "labor dispute" involving a central piece of the collective bargaining agreement. You also demonstrate the ease with which a sympathy or political strike can be viewed as a strike over the terms of employment. For both of these reasons I have always been puzzled by the step away from Boy's Market the Court took in Buffalo Forge.

For the time being I will await the dissent. But I would join your opinion if you would add a final section overruling Buffalo Forge.

Sincerely,

Justice Marshall

Copies to the Conference

LFP/vde



df1 03/17/82

To: Justice Powell

From: David

Re: Justice Marshall's draft opinion in Jacksonville Bulk

Terminals: No. 80-1045.

I had a brief discussion with Justice Marshall's clerk the other day about this case--primarily to make sure that our opinion in Allied would not conflict in any way. As far as any potential conflict is concerned, I do not see any. You might note the legislative history discussion at page 15 with some extra care. It can be argued that because the House's definition of "sympathy strike"--to include strikes against governmental policy--was not accepted by the Senate, therefore the Congress did not wish to make political strikes and boycotts illegal. Justice Marshall's clerk called this to my attention last week. It seems to me, however, that it can just as easily be argued that the Senate assumed that its very broad definition of secondary boycott--a definition much broader than the House's--took up the slack and would cover political boycotts of neutrals. At any rate very little can be devined from the Senate's refusal to adopt the broader definition of sympathy strike for our purposes in Allied, and I did not and do not see the need of saying anything in our opinion about this bit of legislative history. (It was not argued by the parties.)



More importantly, Justice Marshall's clerk told me that he would be willing to overrule Buffalo Forge and that it is their understanding that Justice Brennan would go along. But he did not wish to jeopardize his court by trying to do so in this draft.

I wonder if it would not make sense for you very quickly to circulate something like the following--assuming that you still favor overruling Buffalo Forge:

"Dear Justice Marshall:

Your opinion persuasively argues that the dispute in this case was a "labor dispute" involving a central piece of the collective bargaining agreement. You also demonstrate the ease with which a sympathy or political strike can ~~also~~ be viewed as a strike over the terms of employment. For both of these reasons I have always been <sup>puzzled</sup> ~~baffled~~ by the step away from Boy's Market the Court took in Buffalo Forge.

For the time being I will await the dissent. But I ~~believe that I~~ would join your opinion if you would add a final section overruling Buffalo Forge.

*Sincerely,*



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

✓

March 17, 1982

Re: No. 80-1045 - Jacksonville Bulk Terminals  
v. Longshoremen

Dear Thurgood:

Unlike Lewis' "tentative" position I cannot agree that a boycott of Soviet shipping is a "labor dispute" between the ship owner and longshoremen. It is purely a political dispute -- and on which I agree with the longshoremen, but that is not the issue.

I am prepared to overrule Buffalo Forge but I'd like to do it some other way than calling a political boycott a "labor dispute."

Regards,

*WBB*

Justice Marshall

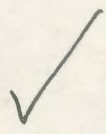
Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 18, 1982



RE: No. 80-1045 Jacksonville Bulk Terminals v. Long-  
shoremen

Dear Thurgood:

You'll recall at conference that my view was that this case had to be affirmed unless we were to overrule Buffalo Forge. I gather that's the basis upon which you've written it and as long as Buffalo Forge stands undisturbed I'll join it.

Sincerely,

Justice Marshall

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 18, 1982

Re: 80-1045 - Jacksonville Bulk Terminals v.  
International Longshoremen's Association

Dear Thurgood:

Although I think that your analysis of the Buffalo Forge issue in Part IV of your opinion is correct, I am still not persuaded that this case involves a "labor dispute" within the meaning of the Norris-LaGuardia Act. As your opinion points out, that term is defined by §13(c) as a controversy "concerning terms or conditions of employment." In my opinion, a controversy concerning the question whether superphosphoric acid shall be shipped to the Soviet Union before it withdraws its armed forces from Afghanistan is not such a controversy. I also do not agree with the notion that the litigation in which the company seeks to enjoin the strike is the kind of "labor dispute" that the anti-injunction provision of the statute contemplated. If that had been Congress' intent, I would think the statute would simply have prohibited all federal injunctions against strikes, rather than injunctions against strikes growing out of disputes over terms and conditions of employment. I shall therefore wait for further writing.

Respectfully,

Justice Marshall

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 18, 1982

No. 81-1045 Jacksonville Bulk Terminals v.  
Internatinal Longshoremen's Association

Dear Thurgood,

You have written persuasively concerning whether the politically motivated work stoppage in this case is a labor dispute within the meaning of the anti-injunction provisions of the Norris-LaGuardia Act. As I indicated at Conference, I could join an opinion overruling Buffalo Forge. For the present, I shall await further writing.

Sincerely,

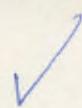
Justice Marshall

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE



March 18, 1982

Re: No. 80-1045 - Jacksonville Bulk Terminals  
v. International Longshoreman's Assn.

MEMORANDUM TO THE CONFERENCE:

I will have a dissent around in this case next week.

Regards,



Supreme Court of the United States  
Washington, D. C. 20543



CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 18, 1982

Re: 80-1045 - Jacksonville Bulk Terminals  
v. Int'l Longshoremen's Ass'n

Dear Thurgood,

Please join me in your circulating draft. Although it is arguable that the Norris-LaGuardia Act was not intended to foreclose injunctions in disputes like this, it seems to me that you have the better of the argument.

With respect to reconsidering Buffalo Forge, I have been strongly opposed to the notion that the dissenting Justices in a particular case should feel free to consider overruling that case as soon as a new Justice with similar views arrives on the scene or as soon as one of the majority is willing to join them. If that were the usual policy, the law would be in a shambles and the Court's authority severely diminished. When a case has received the kind of institutional attention that cases get here, the resulting decision has an authority of its own that should command more respect than the views of individual Justices. At least there should be some sound reason for overruling, such as experience over a period of time. The continued disagreement of those who were in dissent seems to me an unwise predicate for the Court to reverse its course. This is particularly true in statutory construction cases, where Congress is free to remedy what it deems to be improvident interpretations of its laws.

If this is the kind of dispute within the reach of the Norris-LaGuardia Act, as I think it is, reversal of the decision below would be little more than a disagreement with the Congressional policy expressed in that legislation. That is not a legitimate function for us, however.

Sincerely yours,

Justice Marshall

Copies to the Conference

cpm



CHAMBERS OF  
THE CHIEF JUSTICE

March 19, 1982

RE: No. 80-1045, Jacksonville Bulk Terminals  
v. International Longshoremen's Association

MEMORANDUM TO THE CONFERENCE:

I indicated earlier that I could, if necessary, overrule Buffalo Forge, but it is now clear to me that we need not reach that issue to reverse in this case.

This case does not involve or grow out of a labor dispute as that term is defined in § 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c) (1976), or as that term is commonly understood. Section 13(c) defines a labor dispute as "any controversy concerning terms or conditions of employment ... ." The dispute in this case is strictly a political dispute, not a controversy concerning "terms" or "conditions" of employment. If a boycott of shipments to or from the Soviet Union is a labor dispute, then every challenge of a union or its members to a government policy or program can be distorted into a labor dispute. If Congress had intended to bar federal courts from issuing injunctions in political disputes, it could have simply prohibited federal courts from enjoining strikes rather than limiting its prohibition to controversies concerning "terms or conditions of employment." Therefore, I cannot agree with the Court's conclusion that the Norris-LaGuardia Act bars a federal court from enjoining this politically motivated boycott manifested in a work stoppage.

The International Longshoremen's Association objects to the Soviet Union's invasion of Afghanistan. So do I and millions of others. I can and do refuse to buy Russian products, such as Stolnichnaya vodka. The union can do the same, but here it announced that it would not



handle any cargo bound to, or coming from, the Soviet Union, or any cargo carried on Russian ships. This case commenced after the ILA refused to load superphosphoric acid onto certain ships bound for the Soviet Union in accordance with its opposition to Soviet policy. The ILA has no objection to any terms or conditions of employment or any other quarrel with employers; it would have loaded the superphosphoric acid on any non-Russian ship bound for a destination other than the Soviet Union. No one has suggested that the ILA's action is actually motivated to obtain concessions relating in any way to employment conditions. The ILA refused to handle the cargo simply because a foreign country brutally invaded another country and the union desired to express its opposition to the invasion.

The plain words and plain meaning of § 13(c) simply cannot be read to lead to the conclusion that this case involves or grows out of a labor dispute; the ILA members are not seeking to make any changes in the terms or conditions of their employment.

As the Court recognizes, we have held that the test of whether the Norris-LaGuardia Act applies is whether "the employer-employee relationship [is] the matrix of the controversy." Columbia River Packers Association v. Hinton, 315 U.S. 143, 147 (1947). The courts of appeals have held that unions are protected by the Norris-LaGuardia Act when they act to advance the economic interests of their members. See, e.g., Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company, 362 F.2d 649, 654 (CA5 1966). These cases illustrate the plain meaning of § 13(c)'s definition of labor dispute--the Norris-LaGuardia Act protects union organizational efforts and efforts to improve working conditions. The Court errs in finding that the matrix of this controversy is the ILA's relationship with the petitioners. The matrix of this controversy is the ILA's objection to the Soviet invasion. The ILA's dispute with the petitioners merely flows from the particular manner it employed to show its opposition to the invasion of Afghanistan. The ILA is neither directly nor indirectly working to advance the economic interests of its members, or even the economic interests of Soviet or Afghan workers. In reality, the ILA's conduct was patently contrary to its members' economic interests since it reduces the amount of available work and pay. Thus, the cases generally explicating the meaning of the Norris-LaGuardia Act support the conclusion reached from analysis of the plain words of § 13(c): This case simply does not involve or grow out of a labor dispute.

Federal courts have consistently recognized that the Norris-LaGuardia Act does not apply to politically



motivated work stoppages concerning subjects over which employers have no control. These courts, in cases which are practically indistinguishable from this case, and in fact often involved the same union, properly concluded that the Act only applies to disputes concerning terms or conditions of employment.<sup>1</sup> This Court has never before intimated, as it now proposes to hold, that the Norris-LaGuardia Act protects the violation of no-strike clauses simply because the union has a political view it wishes to dramatize. Norris-LaGuardia is not concerned with political disputes but only with labor disputes.

Since the meaning of the words of the statute is plain, and since the applicable precedent supports the conclusion that this is not a labor dispute, I cannot justify a holding that politically motivated strikes are outside the coverage of the Norris-LaGuardia Act absent clear evidence to the contrary in the legislative history. See, e.g., Bread Political Action Committee v. Federal Election Commission, 50 U.S.L.W. 4291, 4292 (1982). The excerpts from the legislative history relied upon by the Court fall far short of the clear evidence required to overcome the plain language of § 13(c). Frankfurter and others cautioned that when the legislative history is ambiguous, as it is here, we must follow the words of the statute.

In 1947, Congress declined to amend the federal labor laws so that strikes protesting "disagreement with some government policy" would not be protected by the Norris-LaGuardia Act. I Legislative History of the LMRA 168 (1947). Similarly, Congress in 1932 rejected an amendment which would have permitted federal courts to enjoin acts

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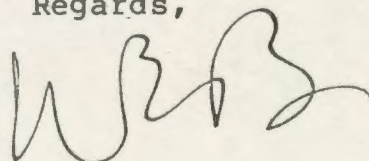
<sup>1</sup>See Khedivial Line, S.A.E. v. Seafarers International Union, 278 F.2d 49, 50-51 (CA2 1960) (politically motivated blacklist of Egyptian ships to retaliate for Egyptian blacklist of American ships that dealt with Israel is not "labor dispute" triggering Norris-LaGuardia); West Gulf Maritime Ass'n v. International Longshoremen's Ass'n, 413 F. Supp. 372 (SD Tex. 1975), aff'd summarily, 531 F.2d 574 (CA5 1976) (union's refusal, on political grounds, in violation of a no-strike agreement, to load grain on a ship bound for the Soviet Union does not present a "labor dispute"). See also NLRB v. International Longshoremen's Ass'n, 332 F.2d 992, 995-96 (CA4 1964) (politically motivated ILA boycott of all ships that were trading or had traded with Cuba is not a "labor dispute" within the meaning of § 2(9) of the National Labor Relations Act).



"performed or threatened for an unlawful purpose or with an unlawful intent ... ." 75 Cong. Rec. 5507 (1932). These amendments would have swept more broadly than the plain language of § 13(c) as it stands. Indeed, Representative Beck's amendment would have rendered the Norris-LaGuardia Act a nullity, since federal judges would have been able to enjoin a strike merely by finding it motivated by an "unlawful purpose." Congress might have declined to adopt such amendments because they would have rendered legitimate union activity unprotected. Therefore, the legislative history does not compel a conclusion in this case contrary to the plain language of § 13(c).

Finally, the Court argues that a common-sense interpretation of the meaning of the term labor dispute supports its conclusion. Even assuming that the "common-sense" meaning of the term labor dispute is relevant in light of Congress' definition in § 13(c), it does not support the proposed opinion. The ILA objects to the Soviet Union's invasion of Afghanistan, but it has no quarrel with petitioners. There is nothing to suggest that anything the petitioners could have done to improve the terms or conditions of employment would have persuaded the ILA to load the ships. Thus, common sense, as well as the plain meaning of § 13(c), precludes a rational conclusion that this dispute is a labor dispute.

Regards,

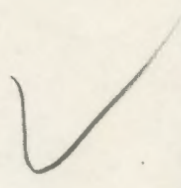
A handwritten signature in dark ink, appearing to be 'W.B.B.', written in a cursive style.



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 2, 1982

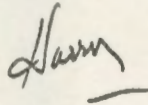


Re: No. 80-1045 - Jacksonville Bulk Terminals v.  
International Longshoremen's Association

Dear Thurgood:

Please join me. With all the correspondence that has flowed back and forth for this case, I shall not burden us all with comments on my part.

Sincerely,



Justice Marshall

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

✓  
April 16, 1982

RE: No. 80-1045, Jacksonville Bulk Terminals v. ILA

MEMORANDUM TO THE CONFERENCE:

We seem to have reached an impasse in this case. A majority seems inclined to reverse, but, apparently because of our differing stands on how best to deal with the case, the recorded vote at conference, 5-4 to affirm, left some things "in the air."

As I read the various circulations, (a) John and I see this as a purely political dispute and we would reverse without reaching the Buffalo Forge issue; (b) Bill Brennan, Thurgood, Lewis, and Sandra all think Buffalo Forge should be reached; all but Thurgood are on record as being willing to reverse Buffalo Forge, and Thurgood dissented in Buffalo Forge; (c) Byron and Harry have joined Thurgood's opinion; Byron is on record as opposing overruling Buffalo Forge; and (d) Bill Rehnquist hasn't voted.

To break this impasse, I now inquire whether Thurgood might be willing to reconsider Buffalo Forge. Should he so decide, we would need to add a new section to the opinion dealing with Buffalo Forge. I will join it, even though I think Buffalo Forge need not be overruled to reverse in this case.

If I am correct in my "scoresheet," it is possible that a majority of the Court will go along. That, of course, remains to be seen and will emerge when you respond.

If a majority believes that a strike protesting the invasion of a foreign country may be enjoined, we ought, I submit, so hold. To accomplish that, I am now prepared to join an opinion reversing this case which modifies or overrules Buffalo Forge.

Regards,

WBZ



CHAMBERS OF  
THE CHIEF JUSTICE

April 16, 1982

RE: No. 80-1045, Jacksonville Bulk Terminals v. ILA

MEMORANDUM TO THE CONFERENCE:

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Regards,

WBZ

Hallelujah! But it's probably too late now

DL



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

✓

April 19, 1982

Re: No. 80-1045 Jacksonville Bulk Terminals v. ILA

Dear Chief:

I have read your memorandum to the Conference dated April 16th, addressing the various possibilities for a decision in this case. I voted at Conference to affirm the judgment of the Court of Appeals, and continue to be of the view that Buffalo Forge should not be overruled. Because the question of whether or not this was a "labor dispute" seemed to me closer than I had thought, I was awaiting the further circulation of your dissent before finally casting my vote. But since I definitely do not favor overruling Buffalo Forge, which you now suggest, I will vote now to make my position clear.

Sincerely,

*WRW*

The Chief Justice

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST



April 19, 1982

Re: No. 80-1045 Jacksonville Bulk Terminals v. ILA

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

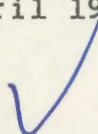
Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 19, 1982

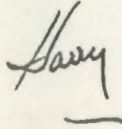


Re: No. 80-1045 - Jacksonville Bulk Terminals v. ILA

Dear Chief:

This is in response to your inquiry of April 16. I have no inclination in this case to overrule Buffalo Forge.

Sincerely,



The Chief Justice

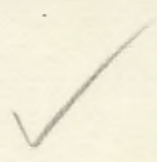
cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 19, 1982



Re: No. 80-1045 - Jacksonville Bulk Terminals v. ILA

Dear Chief:

In reply to your inquiry of April 16, I will  
not write or vote to overrule Buffalo Forge.

Sincerely,

*T.M.*

T.M.

The Chief Justice

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 19, 1982

Re: No. 80-1045 - Jacksonville Bulk Terminals v. ILA

Dear Chief:

In reply to your inquiry of April 16, I will  
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Sincerely,

*T.M.*

T.M.

The Chief Justice

cc: The Conference



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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

Circulated: \_\_\_\_\_

APR 21 1982

Recirculated: \_\_\_\_\_

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS, v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[April —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, we consider the power of a federal court to enjoin a politically motivated work stoppage in an action brought by an employer pursuant to §301(a) of the Labor Management Relations Act (LMRA), 29 U. S. C. §185(a) to enforce a union's obligations under a collective-bargaining agreement. We first address whether the broad anti-injunction provisions of the Norris-LaGuardia Act, 29 U. S. C. §101 *et seq.*, apply to politically motivated work stoppages. Finding these provisions applicable, we then consider whether the work stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), pending an arbitrator's decision on whether the strike violates the collective-bargaining agreement.

### I

On January 4, 1980, President Carter announced that, due to the Soviet Union's intervention in Afghanistan, certain trade with the Soviet Union would be restricted.



2 JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN

Superphosphoric acid (SPA), used in agricultural fertilizer, was not included in the Presidential embargo.<sup>1</sup> On January 9, 1980, respondent International Longshoremen's Association (ILA) announced that its members would not handle any cargo bound to, or coming from, the Soviet Union or carried on Russian ships.<sup>2</sup> In accordance with this resolution, respondent local union, an ILA affiliate, refused to load SPA bound for the Soviet Union aboard three ships that arrived at the shipping terminal operated by petitioner Jacksonville Bulk Terminals, Inc. (JBT) at the Port of Jacksonville, Florida during the month of January 1980.

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<sup>1</sup> On February 25, 1980, the embargo was extended to include SPA along with other products. On April 24, 1981, President Reagan lifted the SPA embargo as part of his decision to remove restrictions on the sale of grain to the Soviets. By telegrams dated April 24, 1981 and June 5, 1981, the ILA has recommended to its members that they resume handling goods to and from the Soviet Union. Although the work stoppage is no longer in effect, there remains a live controversy over whether the collective-bargaining agreement prohibits politically motivated work stoppages, and the Union may resume such a work stoppage at any time. As a result, this case is not moot. See *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397, 403, n. 8 (1976).

<sup>2</sup> The President of the ILA made the following announcement:

"In response to overwhelming demands by the rank and file members of the Union, the leadership of the ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.

"The reason for this action should be apparent in light of international events that have affected relations between the U. S. & Soviet Union.

"However, the decision by the Union leadership was made necessary by the demands of the workers.

"It is their will to refuse to work Russian vessels and Russian cargoes under present conditions of the world.

"People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs." Brief for Respondents 2, n. 2.



JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN 3

In response to this work stoppage, petitioners JBT, Hooker Chemical Corporation, and Occidental Petroleum Company (collectively referred to as the Employer)<sup>3</sup> brought this action pursuant to § 301(a) of the LMRA, 29 U. S. C. § 185(a), against respondents ILA, its affiliated local union, and its officers and agents (collectively referred to as the Union). The Employer alleged that the Union's work stoppage violated the collective-bargaining agreement between the Union and JBT. The Employer sought to compel arbitration under the agreement, requested a temporary restraining order and a preliminary injunction pending arbitration, and sought damages.

The agreement contains both a broad no-strike clause and a provision requiring the resolution of all disputes through a grievance procedure, ending in arbitration.<sup>4</sup> The no-strike clause provides:

"During the term of this Agreement, . . . the Union agrees there shall not be any strike of any kind or degree whatsoever, . . . for any cause whatsoever; such causes

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<sup>3</sup> JBT is a wholly owned subsidiary of Oxy Chemical Corporation, which is a subsidiary of Hooker. Ownership of all these corporations is ultimately vested in Occidental. Hooker Chemical Company manufactures SPA at a manufacturing facility in Florida. Pursuant to a bilateral trade agreement between Occidental and the Soviet Union, SPA is shipped to the Soviet Union from the JBT facility in Jacksonville.

<sup>4</sup> The grievance and arbitration clause provides in relevant part:

"Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall . . . be referred . . . to a Port Grievance Committee. . . . In the event this Port Grievance Committee cannot reach an agreement . . . the dispute shall be referred to the Joint Negotiating Committee. . . .

"A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator. . . ."



## 4 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. . . ."

The United States District Court for the Middle District of Florida ordered the Union to process its grievance in accordance with the contractual grievance procedure. The District Court also granted the Employer's request for a preliminary injunction pending arbitration, reasoning that the political motivation behind the work stoppage rendered the Norris-LaGuardia Act's anti-injunction provisions inapplicable.

The United States Court of Appeals for the Fifth Circuit affirmed the District Court's order to the extent it required arbitration of the question whether the work stoppage violated the collective-bargaining agreement. *New Orleans Steamship Association v. General Longshore Workers*, 626 F. 2d 455 (1980).<sup>5</sup> However, the Court of Appeals disagreed with the District Court's conclusion that the provisions of the Norris-LaGuardia Act are inapplicable to politically motivated work stoppages. Relying on *Buffalo Forge*, the Court of Appeals further held that the Employer was not entitled to an injunction pending arbitration because the underlying dispute was not arbitrable. We agree with the Court of Appeals that the provisions of the Norris-LaGuardia Act apply to this case, and that, under *Buffalo Forge*, an injunction pending arbitration may not issue.

## II

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<sup>5</sup>The Union concedes that the question whether the work stoppage violates the no-strike clause is arbitrable. In a consolidated case, the Court of Appeals upheld an injunction issued by the United States District Court for the Eastern District of Louisiana enforcing an arbitrator's decision that the ILA work stoppage violated a collective-bargaining agreement. *New Orleans Steamship Association v. General Longshore Workers*, 626 F. 2d 455, 469 (CA5 1980).



Section 4 of the Norris-LaGuardia Act provides in part:

“No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . 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.” 29 U. S. C. § 104.

Congress adopted this broad prohibition to remedy the growing tendency of federal courts to enjoin strikes by narrowly construing the Clayton Act’s labor exemption from the Sherman Act’s prohibition against conspiracies to restrain trade, see 29 U. S. C. § 52. See, *e. g.*, H.R. Rep. No. 669, 72d Cong., 1st Sess. 7–8, 10–11 (1931). This Court has consistently given the anti-injunction provisions of the Norris-LaGuardia Act a broad interpretation, recognizing exceptions only in limited situations where necessary to accommodate the Act to specific federal legislation or paramount congressional policy. See, *e. g.*, *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235, 249–253 (1970); *Railroad Trainmen v. Chicago River & Indiana R. Co.*, 353 U. S. 30, 39–42 (1957).

The *Boys Markets* exception, as refined in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), is relevant to our decision today. In *Boys Markets*, this Court re-examined *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195 (1962), which held that the Norris-LaGuardia Act precludes a federal district court from enjoining a strike in breach of a collective-bargaining agreement, even where that agreement contains provisions for binding arbitration of the grievance concerning which the strike was called. 398 U. S., at 237–238. The Court overruled *Sinclair* and held that, in order to accommodate the anti-injunction provisions of Norris-LaGuardia to the subsequently enacted provisions of § 301(a) and the



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strong federal policy favoring arbitration, it was essential to recognize an exception to the anti-injunction provisions for cases in which the employer sought to enforce the union's contractual obligation to arbitrate grievances rather than to strike over them. *Id.*, at 249-253.<sup>6</sup>

After *Boys Markets*, the Courts of Appeals divided on the question whether a strike could be enjoined under the *Boys Markets* exception to the Norris-LaGuardia Act pending arbitration, when the strike was not over a grievance that the union had agreed to arbitrate.<sup>7</sup> In *Buffalo Forge*, the Court resolved this conflict and held that the *Boys Markets* exception does not apply when only the question whether the strike violates the no-strike pledge, and not the dispute that precipitated the strike, is arbitrable under the parties' collective-bargaining agreement.<sup>8</sup>

The Employer argues that the Norris-LaGuardia Act does not apply in this case because the political motivation underlying the Union's work stoppage removes this controversy from that Act's definition of a "labor dispute." Alternatively, the Employer argues that this case fits within the exception to that Act recognized in *Boys Markets* as refined in *Buffalo Forge*. We review these arguments in turn.

## III

At the outset, we must determine whether this is a "case involving or growing out of any labor dispute" within the

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<sup>6</sup>In *Boys Markets*, the underlying dispute was clearly subject to the grievance and arbitration procedures of the collective-bargaining agreement, and the strike clearly violated the no-strike clause.

<sup>7</sup>See cases cited in *Buffalo Forge*, 428 U. S., at 404, n. 9.

<sup>8</sup>In *Buffalo Forge*, the strike at issue was a sympathy strike in support of sister unions negotiating with the employer. The Court reasoned that there was no need to accommodate the policies of the Norris-LaGuardia Act to § 301 and to the federal policy favoring arbitration when a strike is not called over an arbitrable dispute, because such a strike does not directly frustrate the arbitration process by denying or evading the union's promise to arbitrate. 428 U. S., at 407-412.



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meaning of § 4 of the Norris-LaGuardia Act, 29 U. S. C. § 104. Section 13(c) of the Act broadly defines the term labor dispute to include “any controversy concerning terms or conditions of employment.” 29 U. S. C. § 113(c).<sup>9</sup>

The Employer argues that the existence of political motives takes this work stoppage controversy outside the broad scope of this definition. This argument, however, has no basis in the plain statutory language of the Norris-LaGuardia Act or in our prior interpretations of that Act. Furthermore, the argument is contradicted by the legislative history of not only the Norris-LaGuardia Act but also the 1947 amendments to the National Labor Relations Act (NLRA).

## A

An action brought by an employer against the union representing its employees to enforce a no-strike pledge generally involves two controversies. First, there is the “underlying dispute,” which is the event or condition that triggers the work stoppage. This dispute may or may not be political, and it may or may not be arbitrable under the parties’ collective-bargaining agreement. Second, there is the parties’ dispute over whether the no-strike pledge prohibits the work stoppage at issue. This second dispute can always form the basis for federal court jurisdiction, because § 301(a) gives federal courts jurisdiction over “[s]uits for violation of contracts between an employer and a labor organization.” 29 U. S. C. § 185(a).

It is beyond cavil that the second form of dispute—whether the collective-bargaining agreement either forbids or permits the union to refuse to perform certain work—is a “contro-

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<sup>9</sup> Section 13(c) provides:

“(c) The term ‘labor dispute’ includes 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, regardless of whether or not the disputants stand in the proximate relation of employer and employee.”



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versy concerning the terms or conditions of employment.” 29 U. S. C. § 113(c). This § 301 action was brought to resolve just such a controversy. In its complaint, the Employer did not seek to enjoin the intervention of the Soviet Union in Afghanistan, nor did it ask the District Court to decide whether the Union was justified in expressing disapproval of the Soviet Union’s actions. Instead, the Employer sought to enjoin the Union’s decision not to provide labor, a decision which the Employer believed violated the terms of the collective-bargaining agreement. It is this contract dispute, and not the political dispute, that the arbitrator will resolve, and on which the courts are asked to rule.

The plain language of the Norris-LaGuardia Act does not except labor disputes having their genesis in political protests. Nor is there any basis in the statutory language for the argument that the Act requires that *each* dispute relevant to the case be a labor dispute. The Act merely requires that the case involve “any” labor dispute. Therefore, the plain terms of § 4(a) and § 13 of the Norris-LaGuardia Act deprive the federal courts of the power to enjoin the Union’s work stoppage in this § 301 action, without regard to whether the Union also has a nonlabor dispute with another entity.<sup>10</sup>

The conclusion that this case involves a labor dispute within the meaning of the Norris-LaGuardia Act comports with this Court’s consistent interpretation of that Act.<sup>11</sup> Our

<sup>10</sup> Of course, there are exceptions to the Act’s prohibitions against enjoining work stoppages. See, *e. g.*, *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970). The employer may obtain an injunction to enforce an arbitrator’s decision that the strike violates the collective-bargaining agreement and can recover damages for the violation, pursuant to § 301 of the Labor Management Relations Act (LMRA), 29 U. S. C. § 185. See, *e. g.*, *Buffalo Forge*, 428 U. S., at 405. See also 15–16, and note 18, *infra* (discussing Board’s authority under 29 U. S. C. §§ 160(k), 160(l), to petition for an injunction upon finding reasonable cause to believe that the strike is an unfair labor practice).

<sup>11</sup> The Employer’s reliance on *Eastex, Inc. v. NLRB*, 437 U. S. 556 (1978), to argue that a politically motivated strike is not a labor dispute is



decisions have recognized that the term “labor dispute” must not be narrowly construed because the statutory definition itself is extremely broad and because Congress deliberately included a broad definition to overrule judicial decisions that had unduly restricted the Clayton Act’s labor exemption from the antitrust laws. For example, in *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U. S. 365, 369 (1960), the Court observed:

“Th[e] Act’s language is broad. The language is broad because *Congress was intent upon taking the federal courts out of the labor injunction business* except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act. The history and background that led Congress to take this view have

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misplaced. In *Easter*, we addressed whether certain concerted activity was protected under § 7 of the NLRA, 29 U. S. C. § 157, and we recognized that “[t]here may well be types of conduct or speech that are so purely political or so remotely connected to the concerns of employees as employees as to be beyond the protection of § 7.” *Id.*, at 570, n. 20. Although the definition of a “labor dispute” in § 2(9) of the NLRA, 29 U. S. C. § 152(9), is virtually identical to that in § 13(c) of the Norris-LaGuardia Act, 29 U. S. C. § 113(c), and the two provisions have been construed consistently with one another, *e. g.*, *United States v. Hutcheson*, 312 U. S. 219, 234, n. 4 (1941), this similarity does not advance the Employer’s argument. Union activity that prompts a “labor dispute” within the meaning of these sections may be protected by § 7, prohibited by § 8(b), 29 U. S. C. § 158(b), or neither protected nor prohibited. The objective of the concerted activity is relevant in determining whether such activity is protected under § 7 or prohibited by § 8(b), but *not* in determining whether the activity is a “labor dispute” under § 2(9).

Moreover, the conclusion that a purely political work stoppage is not protected under § 7 means simply that the employer is not prohibited by § 8(a)(1) of the NLRA, 29 U. S. C. § 158(a)(1), from discharging or disciplining employees for this activity. It hardly establishes that no “labor dispute” existed within the meaning of § 2(9). Similarly, if the employees protested such sanctions under the collective-bargaining agreement, an arbitrator might ultimately conclude that the sanctions were proper, but this would not alter the obvious fact that the matter is a labor dispute.



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been adverted to in a number of prior opinions of this Court in which we refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts." (emphasis added; footnote omitted)

The critical element in determining whether the provisions of the Norris-LaGuardia Act apply is whether "the employer-employee relationship [is] the matrix of the controversy." *Columbia River Packers Association v. Hinton*, 315 U. S. 143, 147 (1942). In this case, the Employer and the Union representing its employees are the disputants, and their dispute concerns the interpretation of the labor contract that defines their relationship.<sup>12</sup> Thus, the employer-employee relationship is the matrix of this controversy.

Nevertheless, the Employer argues that a "labor dispute" exists only when the Union's action is taken in its own "economic self-interest." The Employer cites *American Federation of Musicians v. Carroll*, 391 U. S. 99 (1968), and *Columbia River Packers Association*, *supra*, for this proposition. In these cases, however, the Court addressed the very different question whether the relevant parties were "labor" groups involved in a labor dispute for the purpose of determining whether their actions were exempt from the antitrust laws.<sup>13</sup> These cases do not hold that a union's noneconomic

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<sup>12</sup> A labor dispute might be present under the facts of this case even in the absence of the dispute over the scope of the no-strike clause. Regardless of the political nature of the Union's objections to handling Soviet-bound cargo, these objections were expressed in a work stoppage by employees against their employer, which focused on particular work assignments. Thus, apart from the collective-bargaining agreement, the employer-employee relationship would be the matrix of the controversy. We need not decide this question, however, because this case does involve a dispute over the interpretation of the parties' collective-bargaining agreement.

<sup>13</sup> In *American Federation of Musicians*, the Court held that, although orchestra leaders acted as independent contractors with respect to certain



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motive inevitably takes the dispute out of the Norris-LaGuardia Act, but only that that protections of that Act do not extend to labor organizations when they cease to act as labor groups or when they enter into illegal combinations with nonlabor groups in restraint of trade.<sup>14</sup> Here, there is no question that the Union is a labor group, representing its own interests in a dispute with the Employer over the employees' obligation to provide labor.

Even in cases where the disputants did not stand in the relationship of employer and employee, this Court has held that the existence of noneconomic motives does not make the Norris-LaGuardia Act inapplicable. For example, in *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552 (1938), this Court held that the Norris-LaGuardia Act prohibited an injunction against picketing by members of a civic group, which was aimed at inducing a store to employ Negro employees. In determining that the group and its members were "persons interested in a labor dispute" within the mean-

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"club-date" engagements, the union's involvement with the leaders was not a combination with a nonlabor group in violation of the Sherman Act. In finding that leaders were a "labor group," and a party to a labor dispute, the Court relied on the "presence of a job or wage competition or some other economic interrelationship affecting legitimate union interests between the union members and the independent contractors." 391 U. S., at 106 (quoting the opinion of the District Court). In *Hinton*, the Court found that the union was merely an association of independent fish sellers involved in a controversy with fish buyers over a contract for the sale of fish; they were not employees of the buyers, nor did they seek to be. 315 U. S., at 147.

The Employer's reliance on *Bakery Drivers Union v. Wagshal*, 333 U. S. 437 (1948), is similarly misplaced. In that case, the Court held only that a controversy between two businessmen over delivery times or methods of payment does not become a labor dispute merely because a union representative, with or without his employer's consent, sought to obtain payment pursuant to a particular method. *Id.*, at 443-444.

"The Employer's economic-motive analysis also leads to the untenable result that strikes in protest of unreasonably unsafe conditions and some sympathy strikes are not "labor disputes."



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ing of § 13, the Court found it immaterial that the picketers, who were neither union organizers nor store employees, were not asserting economic interests commonly associated with labor unions—*e. g.*, terms and conditions of employment in the narrower sense of wages, hours, unionization or betterment of working conditions. *Id.*, at 560. Although the lower courts found Norris-LaGuardia inapplicable because the picketing was motivated by the group's "political" or "social" goals of improving the position of Negroes generally, and not by the desire to improve specific conditions of employment, this Court reasoned: "The Act does not concern itself with the background or the motives of the dispute." 303 U. S., at 561.

## B

The Employer's argument that the Union's motivation for engaging in a work stoppage determines whether the Norris-LaGuardia Act applies is also contrary to the legislative history of that Act. The Act was enacted in response to federal court intervention on behalf of employers through the use of injunctive powers against unions and other associations of employees. This intervention had caused the federal judiciary to fall into disrepute among large segments of this Nation's population. See generally S. Rep. No. 163, 72d Cong., 1st Sess. 8, 16-18 (1932); 75 Cong. Rec. 4915 (1932) (remarks of Sen. Wagner).

Apart from the procedural unfairness of many labor injunctions, one of the greatest evils associated with them was the use of tort-law doctrines, which often made the lawfulness of a strike depend upon judicial views of social and economic policy. See, *e. g.*, Cox, Current Problems in the Law of Grievance Arbitration, 30 Rocky Mountain L. Rev. 247, 256 (1958). In debating the Act, its supporters repeatedly expressed disapproval of this Court's interpretations of the Clayton Act's labor exemption—interpretations which permitted a federal judge to find the Act inapplicable based on



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his or her appraisal of the "legitimacy" of the union's objectives.<sup>15</sup> See, *e. g.*, 75 Cong. Rec. 4916 (1932) (remarks of Sen. Wagner) (definition of labor dispute expanded to overrule *Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921)) (holding a strike and picketing with the purpose of unionizing a plant not a labor dispute because the objectives were not legitimate and there was no employer-employee relationship between the disputants)); *id.*, at 5487-5488 (remarks of Sen. Celler) (bill brought forth to remedy decisions allowing injunction in *Duplex* and in *Bedford Cut Stone Co. v. Stone Cutters Association*, 274 U. S. 37 (1927)) (holding that decision by workers not to work on nonunion goods not a labor dispute)). See also *id.*, at 4686 (remarks of Sen. Hebert) (committee minority agreed that injunctions should not have issued in *Bedford* and *Duplex*). See generally H.R. Rep. No. 669, 72d Cong., 1st Sess. 8, 10-11 (1932). The legislative history is replete with criticisms of the ability of powerful employers to use federal judges as "strike-breaking" agencies; by virtue of their almost unbridled "equitable discretion," federal judges could enter injunctions based on their disapproval of the employees' objectives, or on the theory that these objectives or actions, although lawful if pursued by a single employee, became unlawful when pursued through the "conspiracy" of concerted activity. See, *e. g.*, 75 Cong. Rec. 4928-4938 (1932); *id.*, at 5466-5468; *id.*, at 5478-5481; *id.*, at 5487-5490.

Furthermore, the question whether the Norris-LaGuardia Act would apply to politically motivated strikes was brought to the attention of the 72nd Congress when it passed the Act. Opponents criticized the definition of "labor dispute" in § 13(c) on the ground that it would cover politically motivated strikes. Representative Beck argued that federal courts

<sup>15</sup> See *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 468-469 (1921). See also *Bedford Cut Stone Co. v. Stone Cutters Association*, 274 U. S. 37, 54-55 (1927).



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should have jurisdiction to enjoin political strikes like those threatened by labor unions in Europe. 75 Cong. Rec. 5471-5473 (1932) (discussing threatened strike by British unions protesting the cancellation of leases held by Communist Party members, and threatened strikes by Belgian unions protesting a decision to supply military aid to Poland).<sup>16</sup> In response, Representative Oliver argued that the federal courts should not have the power to enjoin such strikes. *Id.*, at 5480-5481. Finally, Representative Beck offered an amendment to the Act that would have permitted federal courts to enjoin strikes called for ulterior purposes, including political motives. This amendment was defeated soundly. See *id.*, at 5507.

Further support for our conclusion that Congress believed that the Norris-LaGuardia Act applies to work stoppages instituted for political reasons can be found in the legislative history of the 1947 amendments to the NLRA. That history reveals that Congress rejected a proposal to repeal the Norris-LaGuardia Act with respect to one broad category of political strikes.<sup>17</sup> The House bill included definitions of various kinds of labor disputes. See H.R. 3020, 80th Cong., 1st Sess., 1 Legislative History of the LMRA 158 (1947) (Leg. His.); H.R. Rep. No. 245, 80th Con., 1st Sess., 18-19, 1 Leg.

<sup>16</sup> The thrust of this objection was that the Act's definition of a labor dispute "takes no account whatever of the motives and purposes with which a nation-wide strike or boycott can be commenced and prosecuted." 75 Cong. Rec. 5472 (1932) (remarks of Rep. Beck).

<sup>17</sup> In relying on this history, we do not argue that congressional rejection of a broad repeal of the Norris-LaGuardia Act precludes accommodation of that Act to the LMRA. See *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195, 204-210 (1962). In *Boys Markets Co. v. Retail Clerks Union*, 398 U. S. 235, 249 (1970), this Court put that argument to rest. Rather, we rely on this legislative history because it demonstrates that Congress believed that the Norris-LaGuardia Act did apply to controversies concerning politically motivated work stoppages. Furthermore, in this case, unlike *Boys Markets*, we are not asked to accommodate the Norris-LaGuardia Act to a specific federal act or to the strong policy favoring arbitration.



His. 292, 309–310. Of relevance here, § 2(13) defined a “sympathy” strike as a strike “called or conducted not by reason of any dispute between the employer and the employees on strike or participating in such concerted interference, but rather by reason of either (A) a dispute involving another employer or other employees of the same employer, or (B) *disagreement with some governmental policy*.” H.R. 3020, § 2(13), 1 Leg. His. 168 (emphasis added). Section 12 of the House bill made this kind of strike “unlawful concerted activity,” and “it remove[d] the immunities that the present laws confer upon persons who engage in them.” H.R. Rep. No. 245, 80th Cong., 1st Sess. 23, 1 Leg. His. 314. In particular, the Norris-LaGuardia Act would not apply to suits brought by private parties to enjoin such activity, and damages could be recovered. See *id.*, at 23–24, 43–44, 1 Leg. His. 314–315, 334–335. In explaining these provisions, the House Report stated that strikes “against a policy of national or local government, which the employer cannot change,” should be made unlawful, and that “[t]he bill makes inapplicable in such suits the Norris-LaGuardia Act, which heretofore has protected parties to industrial strife from the consequences of their lawlessness.” *Id.*, at 24, 44, 1 Leg. His. 315, 335.

The Conference Committee accepted the Senate version, which had eliminated these provisions of the House bill.<sup>18</sup> The Conference Report explained that its recommendation did not go as far as the House bill, that § 8(b) prohibits juris-

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<sup>18</sup> The Senate had declined to adopt these provisions of the House bill. The Senate Report explained that it did not want to impair labor’s social gains under the Norris-LaGuardia Act and the NLRA of 1935, but instead wanted to remedy “specific types of injustice” or “clear inequities” by “precise and carefully drawn legislation.” S. Rep. No. 105, 80th Cong., 1st Sess. 1, 1 Leg. His. 407. Some of the concerted activities listed in § 12 of the House bill were made unfair labor practices, and the National Labor Relations Board, *not private parties*, could petition a district court for injunctions against certain unfair labor practices. See *id.*, at 35, 40, 1 Leg. His. 441, 446 (reciting proposed revisions to NLRA, §§ 8(b), 10(k), 10(l)).



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dictional strikes and illegal secondary boycotts, and that the Board, *not private parties*, may petition a district court under § 10(k) or § 10(l) to enjoin these activities notwithstanding the provisions of the Norris-LaGuardia Act. H.R. Conf. Rep. No. 510, 80th Cong. 1st Sess. 36, 42-43, 57, 58-59, 1 Leg. His. 540, 546-547, 561, 562-563. In short, Congress declined in 1947 to adopt a broad "political motivation" exception to the Norris-LaGuardia Act for strikes in protest of some governmental policy. Instead, if a strike of this nature takes the form of a secondary boycott prohibited by § 8(b), Congress chose to give the Board, not private parties, the power to petition a federal district court for an injunction. See 29 U. S. C. §§ 160(k), 160(l).

## C

This case, brought by the Employer to enforce its collective-bargaining agreement with the Union, involves a "labor dispute" within any common-sense meaning of that term. Were we to ignore this plain interpretation and hold that the political motivation underlying the work stoppage removes this controversy from the prohibitions of the Norris-LaGuardia Act, we would embroil federal judges in the very scrutiny of "legitimate objectives" that Congress intended to prevent when it passed that Act. The applicability not only of § 4, but of all of the procedural protections embodied in that Act, would turn on a single federal judge's perception of the motivation underlying the concerted activity.<sup>19</sup> The Em-

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<sup>19</sup> This proposed exception does not limit the judge's discretion to consideration of specified external conduct or of provisions in a collective-bargaining agreement, as does the *Boys Markets* exception. It provides no guidance to judges in dealing with concerted activity arguably designed to achieve both political and labor-related goals. Such mixed-motivation cases are bound to arise. For example, in *United States Steel Corp. v. United Mine Workers*, 519 F. 2d 1236 (CA5 1975), miners picketed another employer for importing coal from South Africa. The Court of Appeals held that the Norris-LaGuardia Act applied, and that the *Boys Markets* ex-



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ployer's interpretation is simply inconsistent with the need, expressed by Congress when it enacted the Norris-LaGuardia Act, for clear "mileposts for judges to follow." 75 Cong. Rec. 4935 (1932) (remarks of Sen. Bratton).

In essence, the Employer asks us to disregard the legislative history of the Act and to distort the definition of a labor dispute in order to reach what it believes to be an "equitable" result. The Employer's real complaint, however, is not with the Union's political objections to the conduct of the Soviet Union, but with what the Employer views as the Union's breach of contract. The Employer's frustration with this alleged breach of contract should not be remedied by characterizing it as other than a labor dispute. We will not adopt by judicial fiat an interpretation that Congress specifically rejected when it enacted the 1947 amendments to the NLRA. See note 17, *supra*. In the past, we have consistently declined to constrict Norris-LaGuardia's broad prohibitions except in narrowly defined situations where accommodation of that Act to specific congressional policy is necessary. We refuse to deviate from that path today.

## IV

Alternatively, the Employer argues that the Union's work stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), because the dispute underlying the work stoppage is arbitrable under the collective-bargaining agreement. In

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ception was not available, because "the miners' action was not aimed at [their employer] at all, but rather at the national policy of this country's permitting the importation of South African coal." 519 F. 2d, at 1247 (footnote omitted). Under the political-motivation exception, even if the miners had picketed because slave labor was employed to mine the imported coal, the Norris-LaGuardia Act might not apply. Minor variations in the facts would endow the courts with, or divest them of, jurisdiction to issue an injunction, and would create difficult line-drawing problems.



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making this argument, the Employer disavows its earlier argument that the underlying dispute is purely political, and asserts that the Union's work stoppage was motivated by a disagreement with the Employer over the management-rights clause in the collective-bargaining agreement. The Solicitor General, in an amicus brief filed on behalf of the United States, agrees with the Employer that the work stoppage may be enjoined pending arbitration. He contends that in addition to the political dispute, disputes concerning both the management-rights clause and the work-conditions clause underlie the work stoppage, and that at least one of these disputes is arguably arbitrable.<sup>20</sup>

We disagree. *Buffalo Forge* makes it clear that a *Boys Markets* injunction pending arbitration should not issue unless the dispute underlying the work stoppage is arbitrable. The rationale of *Buffalo Forge* compels the conclusion that the Union's work stoppage, called to protest the invasion of Afghanistan by the Soviet Union, may not be enjoined pending the arbitrator's decision on whether the work stoppage violates the no-strike clause in the collective-bargaining agreement. The underlying dispute, whether viewed as an

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<sup>20</sup> The management-rights clause provides:

"The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers, and authority Employer had prior to signing of this Agreement are retained by the Employer."

The work-conditions clause provides:

"Where hardship is claimed by the Union because of unreasonable or burdensome conditions or where work methods or operations materially change in the future, the problem shall first be discussed between the local and Management involved. In the event an agreement cannot be reached, either party may refer the dispute to the Joint Negotiating Committee and, if the matter cannot be resolved by that Committee, either party may then refer the question to an arbitrator in accordance with the procedure set forth in Clause 15(B)."



expression of the Union's "moral outrage" at Soviet military policy or as an expression of sympathy for the people of Afghanistan, is plainly not arbitrable under the collective-bargaining agreement.

The attempts by the Solicitor General and the Employer to characterize the underlying dispute as arbitrable do not withstand analysis. The "underlying" disputes concerning the management-rights clause or the work-conditions clause simply did not trigger the work stoppage. To the contrary, the applicability of these clauses to the dispute, if any, was triggered by the work stoppage itself. Consideration of whether the strike intruded on the management-rights clause or was permitted by the work-conditions clause may inform the arbitrator's ultimate decision on whether the strike violates the no-strike clause. Indeed, the question whether striking over a nonarbitrable issue violates other provisions of the collective-bargaining agreement may itself be an arbitrable dispute. The fact remains, however, that the strike itself was not over an arbitrable dispute and therefore may not be enjoined pending the arbitrator's ruling on the legality of the strike under the collective-bargaining agreement.

The weaknesses in the analysis of the Employer and the Solicitor General can perhaps best be demonstrated by applying it to a pure sympathy strike, which clearly cannot be enjoined pending arbitration under the rationale of *Buffalo Forge*. If this work stoppage were a pure sympathy strike, it could be characterized alternatively as a dispute over the Employer's right to choose to do business with the employer embroiled in a dispute with a sister union, as a dispute over management's right to assign and direct work, or as a dispute over whether requiring the union to handle goods of the employer whose employees are on strike is an unreasonable work condition.<sup>21</sup> None of these characterizations, however,

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<sup>21</sup> In fact, the employer in *Buffalo Forge* made just such a claim. In addition to alleging breach of the no-strike clause, it claimed that the strike



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alters the fact, essential to the rationale of *Buffalo Forge*, that the strike was not over an arbitrable issue and therefore did not directly frustrate the arbitration process.

The Employer's argument that this work stoppage may be enjoined pending arbitration really reflects a fundamental disagreement with the rationale of *Buffalo Forge*, and not a belief that this rationale permits an injunction in this case. The Employer apparently disagrees with the *Buffalo Forge* Court's conclusion that, in agreeing to broad arbitration and no-strike clauses, the parties do not bargain for injunctive relief to restore the status quo pending the arbitrator's decision on the legality of the strike under the collective-bargaining agreement, without regard to what triggered the strike. Instead, they bargain only for specific enforcement of the union's promise to arbitrate the underlying grievance before resorting to a strike. See 428 U. S., at 410-412. The Employer also apparently believes that *Buffalo Forge* frustrates the arbitration process and encourages industrial strife. But see *id.*, at 412.<sup>22</sup> However, this disagreement with *Buffalo*

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was caused by "refusal to follow a supervisor's instructions to cross the . . . picket line." *Buffalo Forge*, *supra*, at 401. The district court found that the strike was in sympathy with the sister union and was not over a dispute that the parties were contractually bound to arbitrate. *Id.*, at 402-403. On appeal, the employer did not press its argument that the work stoppage was in part a protest over truck driving assignments. *Id.*, at 403, n. 8.

<sup>22</sup> The Employer argues that industrial strife is encouraged because employers are given the incentive to discharge or discipline the workers for refusing to work, which is likely to precipitate further strikes. According to this argument, the strike, which began over a nonarbitrable dispute, is transformed into a dispute over an arbitrable issue, *i. e.* the employer's right under the collective-bargaining agreement to discipline these workers, and may be enjoined under the *Boys Markets/Buffalo Forge* exception. See, *e. g.*, *Complete Auto Transit, Inc. v. Reis*, 614 F. 2d 1110, 1113-1114 (CA6 1980), *aff'd on other grounds* 451 U. S. 401 (1981). This Court has not addressed the validity of this "transformation" analysis. See *Complete Auto Transit, Inc. v. Reis*, 451 U. S., at 405, n. 4.



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*Forge* only argues for reconsidering that decision.<sup>23</sup> It does not justify distorting the rationale of that case beyond recognition in order to reach the result urged by the Employer.

## V

In conclusion, we hold that an employer's § 301 action to enforce the provisions of a collective-bargaining agreement allegedly violated by a union's work stoppage involves a "labor dispute" within the meaning of the Norris-LaGuardia Act, without regard to the motivation underlying the union's decision not to provide labor. Under our decisions in *Boys Markets* and *Buffalo Forge*, when the underlying dispute is not arbitrable, the employer may not obtain injunctive relief pending the arbitrator's ruling on the legality of the strike under the collective-bargaining agreement.

*Affirmed.*

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<sup>23</sup> The Employer has also requested that we reconsider our decision in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976). We decline this invitation.



PP. 1, 13, 17, 21

Norris-LaGuardia - 6-17

Buffalo Forge - 17-22

Underlying dispute  
is not arbitrable - 18, 19

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

L.F.P.

From: Justice Marshall

Circulated: MAY 26 1982

Recirculated:

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS, v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[May —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, we consider the power of a federal court to enjoin a politically motivated work stoppage in an action brought by an employer pursuant to § 301(a) of the Labor Management Relations Act (LMRA), 29 U. S. C. § 185(a), to enforce a union's obligations under a collective-bargaining agreement. We first address whether the broad anti-injunction provisions of the Norris-LaGuardia Act, 29 U. S. C. § 101 *et seq.*, apply to politically motivated work stoppages. Finding these provisions applicable, we then consider whether the work stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), pending an arbitrator's decision on whether the strike violates the collective-bargaining agreement.

I

On January 4, 1980, President Carter announced that, due to the Soviet Union's intervention in Afghanistan, certain trade with the Soviet Union would be restricted.

Received  
6/2

I can't  
join  
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See, e.g.,  
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The problem  
is Buffalo Forge



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Superphosphoric acid (SPA), used in agricultural fertilizer, was not included in the Presidential embargo.<sup>1</sup> On January 9, 1980, respondent International Longshoremen's Association (ILA) announced that its members would not handle any cargo bound to, or coming from, the Soviet Union or carried on Russian ships.<sup>2</sup> In accordance with this resolution, respondent local union, an ILA affiliate, refused to load SPA bound for the Soviet Union aboard three ships that arrived at the shipping terminal operated by petitioner Jacksonville Bulk Terminals, Inc. (JBT) at the Port of Jacksonville, Florida during the month of January 1980.

<sup>1</sup> On February 25, 1980, the embargo was extended to include SPA along with other products. On April 24, 1981, President Reagan lifted the SPA embargo as part of his decision to remove restrictions on the sale of grain to the Soviets. By telegrams dated April 24, 1981 and June 5, 1981, the ILA has recommended to its members that they resume handling goods to and from the Soviet Union. Although the work stoppage is no longer in effect, there remains a live controversy over whether the collective-bargaining agreement prohibits politically motivated work stoppages, and the Union may resume such a work stoppage at any time. As a result, this case is not moot. See *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397, 403, n. 8 (1976).

<sup>2</sup> The President of the ILA made the following announcement:

"In response to overwhelming demands by the rank and file members of the Union, the leadership of the ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed.

"The reason for this action should be apparent in light of international events that have affected relations between the U. S. & Soviet Union.

"However, the decision by the Union leadership was made necessary by the demands of the workers.

"It is their will to refuse to work Russian vessels and Russian cargoes under present conditions of the world.

"People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs." Brief for Respondents 2, n. 2.



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In response to this work stoppage, petitioners JBT, Hooker Chemical Corporation, and Occidental Petroleum Company (collectively referred to as the Employer)<sup>3</sup> brought this action pursuant to §301(a) of the LMRA, 29 U. S. C. §185(a), against respondents ILA, its affiliated local union, and its officers and agents (collectively referred to as the Union). The Employer alleged that the Union's work stoppage violated the collective-bargaining agreement between the Union and JBT. The Employer sought to compel arbitration under the agreement, requested a temporary restraining order and a preliminary injunction pending arbitration, and sought damages.

The agreement contains both a broad no-strike clause and a provision requiring the resolution of all disputes through a grievance procedure, ending in arbitration.<sup>4</sup> The no-strike clause provides:

"During the term of this Agreement, . . . the Union agrees there shall not be any strike of any kind or degree whatsoever, . . . for any cause whatsoever; such causes including but not limited to, unfair labor practices by the

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<sup>3</sup>JBT is a wholly owned subsidiary of Oxy Chemical Corporation, which is a subsidiary of Hooker. Ownership of all these corporations is ultimately vested in Occidental. Hooker Chemical Company manufactures SPA at a manufacturing facility in Florida. Pursuant to a bilateral trade agreement between Occidental and the Soviet Union, SPA is shipped to the Soviet Union from the JBT facility in Jacksonville.

<sup>4</sup>The grievance and arbitration clause provides in relevant part:

"Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall . . . be referred . . . to a Port Grievance Committee. . . . In the event this Port Grievance Committee cannot reach an agreement . . . the dispute shall be referred to the Joint Negotiating Committee. . . .

"A majority decision of this Committee shall be final and binding on both parties and on all Employers signing this Agreement. In the event the Committee is unable to reach a majority decision within 72 hours after meeting to discuss the case, it shall employ a professional arbitrator. . . ."



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Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. . . ."

The United States District Court for the Middle District of Florida ordered the Union to process its grievance in accordance with the contractual grievance procedure. The District Court also granted the Employer's request for a preliminary injunction pending arbitration, reasoning that the political motivation behind the work stoppage rendered the Norris-LaGuardia Act's anti-injunction provisions inapplicable.

The United States Court of Appeals for the Fifth Circuit affirmed the District Court's order to the extent it required arbitration of the question whether the work stoppage violated the collective-bargaining agreement. *New Orleans Steamship Association v. General Longshore Workers*, 626 F. 2d 455 (1980).<sup>5</sup> However, the Court of Appeals disagreed with the District Court's conclusion that the provisions of the Norris-LaGuardia Act are inapplicable to politically motivated work stoppages. Relying on *Buffalo Forge*, the Court of Appeals further held that the Employer was not entitled to an injunction pending arbitration because the underlying dispute was not arbitrable. We agree with the Court of Appeals that the provisions of the Norris-LaGuardia Act apply to this case, and that, under *Buffalo Forge*, an injunction pending arbitration may not issue.

## II

Section 4 of the Norris-LaGuardia Act provides in part:

"No court of the United States shall have jurisdiction

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<sup>5</sup>The Union concedes that the question whether the work stoppage violates the no-strike clause is arbitrable. In a consolidated case, the Court of Appeals upheld an injunction issued by the United States District Court for the Eastern District of Louisiana enforcing an arbitrator's decision that the ILA work stoppage violated a collective-bargaining agreement. *New Orleans Steamship Association v. General Longshore Workers*, 626 F. 2d 455, 469 (CA5 1980).



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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 . . . 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." 29 U. S. C. § 104.

Congress adopted this broad prohibition to remedy the growing tendency of federal courts to enjoin strikes by narrowly construing the Clayton Act's labor exemption from the Sherman Act's prohibition against conspiracies to restrain trade, see 29 U. S. C. § 52. See, *e. g.*, H.R. Rep. No. 669, 72d Cong., 1st Sess. 7-8, 10-11 (1931). This Court has consistently given the anti-injunction provisions of the Norris-LaGuardia Act a broad interpretation, recognizing exceptions only in limited situations where necessary to accommodate the Act to specific federal legislation or paramount congressional policy. See, *e. g.*, *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235, 249-253 (1970); *Railroad Trainmen v. Chicago River & Indiana R. Co.*, 353 U. S. 30, 39-42 (1957).

The *Boys Markets* exception, as refined in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), is relevant to our decision today. In *Boys Markets*, this Court re-examined *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195 (1962), which held that the Norris-LaGuardia Act precludes a federal district court from enjoining a strike in breach of a collective-bargaining agreement, even where that agreement contains provisions for binding arbitration of the grievance concerning which the strike was called. 398 U. S., at 237-238. The Court overruled *Sinclair* and held that, in order to accommodate the anti-injunction provisions of Norris-LaGuardia to the subsequently enacted provisions of § 301(a) and the strong federal policy favoring arbitration, it was essential to recognize an exception to the anti-injunction provisions for



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cases in which the employer sought to enforce the union's contractual obligation to arbitrate grievances rather than to strike over them. *Id.*, at 249-253.<sup>6</sup>

After *Boys Markets*, the Courts of Appeals divided on the question whether a strike could be enjoined under the *Boys Markets* exception to the Norris-LaGuardia Act pending arbitration, when the strike was not over a grievance that the union had agreed to arbitrate.<sup>7</sup> In *Buffalo Forge*, the Court resolved this conflict and held that the *Boys Markets* exception does not apply when only the question whether the strike violates the no-strike pledge, and not the dispute that precipitated the strike, is arbitrable under the parties' collective-bargaining agreement.<sup>8</sup>

The Employer argues that the Norris-LaGuardia Act does not apply in this case because the political motivation underlying the Union's work stoppage removes this controversy from that Act's definition of a "labor dispute." Alternatively, the Employer argues that this case fits within the exception to that Act recognized in *Boys Markets* as refined in *Buffalo Forge*. We review these arguments in turn.

## III

At the outset, we must determine whether this is a "case involving or growing out of any labor dispute" within the meaning of § 4 of the Norris-LaGuardia Act, 29 U. S. C.

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<sup>6</sup> In *Boys Markets*, the underlying dispute was clearly subject to the grievance and arbitration procedures of the collective-bargaining agreement, and the strike clearly violated the no-strike clause.

<sup>7</sup> See cases cited in *Buffalo Forge*, 428 U. S., at 404, n. 9.

<sup>8</sup> In *Buffalo Forge*, the strike at issue was a sympathy strike in support of sister unions negotiating with the employer. The Court reasoned that there was no need to accommodate the policies of the Norris-LaGuardia Act to § 301 and to the federal policy favoring arbitration when a strike is not called over an arbitrable dispute, because such a strike does not directly frustrate the arbitration process by denying or evading the union's promise to arbitrate. 428 U. S., at 407-412.



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§ 104. Section 13(c) of the Act broadly defines the term labor dispute to include “any controversy concerning terms or conditions of employment.” 29 U. S. C. § 113(c).<sup>9</sup>

The Employer argues that the existence of political motives takes this work stoppage controversy outside the broad scope of this definition. This argument, however, has no basis in the plain statutory language of the Norris-LaGuardia Act or in our prior interpretations of that Act. Furthermore, the argument is contradicted by the legislative history of not only the Norris-LaGuardia Act but also the 1947 amendments to the National Labor Relations Act (NLRA).

## A

An action brought by an employer against the union representing its employees to enforce a no-strike pledge generally involves two controversies. First, there is the “underlying dispute,” which is the event or condition that triggers the work stoppage. This dispute may or may not be political, and it may or may not be arbitrable under the parties’ collective-bargaining agreement. Second, there is the parties’ dispute over whether the no-strike pledge prohibits the work stoppage at issue. This second dispute can always form the basis for federal court jurisdiction, because § 301(a) gives federal courts jurisdiction over “[s]uits for violation of contracts between an employer and a labor organization.” 29 U. S. C. § 185(a).

It is beyond cavil that the second form of dispute—whether the collective-bargaining agreement either forbids or permits the union to refuse to perform certain work—is a “contro-

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<sup>9</sup> Section 13(c) provides:

“(c) The term ‘labor dispute’ includes 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, regardless of whether or not the disputants stand in the proximate relation of employer and employee.”



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versy concerning the terms or conditions of employment.” 29 U. S. C. § 113(c). This § 301 action was brought to resolve just such a controversy. In its complaint, the Employer did not seek to enjoin the intervention of the Soviet Union in Afghanistan, nor did it ask the District Court to decide whether the Union was justified in expressing disapproval of the Soviet Union’s actions. Instead, the Employer sought to enjoin the Union’s decision not to provide labor, a decision which the Employer believed violated the terms of the collective-bargaining agreement. It is this contract dispute, and not the political dispute, that the arbitrator will resolve, and on which the courts are asked to rule.

The plain language of the Norris-LaGuardia Act does not except labor disputes having their genesis in political protests. Nor is there any basis in the statutory language for the argument that the Act requires that each dispute relevant to the case be a labor dispute. The Act merely requires that the case involve “any” labor dispute. Therefore, the plain terms of § 4(a) and § 13 of the Norris-LaGuardia Act deprive the federal courts of the power to enjoin the Union’s work stoppage in this § 301 action, without regard to whether the Union also has a nonlabor dispute with another entity.<sup>10</sup>

The conclusion that this case involves a labor dispute within the meaning of the Norris-LaGuardia Act comports with this Court’s consistent interpretation of that Act.<sup>11</sup> Our

<sup>10</sup> Of course, there are exceptions to the Act’s prohibitions against enjoining work stoppages. See, e. g., *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970). The employer may obtain an injunction to enforce an arbitrator’s decision that the strike violates the collective-bargaining agreement and can recover damages for the violation, pursuant to § 301 of the Labor Management Relations Act (LMRA), 29 U. S. C. § 185. See, e. g., *Buffalo Forge*, 428 U. S., at 405. See also 15–16, and note 18, *infra* (discussing Board’s authority under 29 U. S. C. §§ 160(k), 160(l), to petition for an injunction upon finding reasonable cause to believe that the strike is an unfair labor practice).

<sup>11</sup> The Employer’s reliance on *Eastex, Inc. v. NLRB*, 437 U. S. 556 (1978), to argue that a politically motivated strike is not a labor dispute is



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decisions have recognized that the term "labor dispute" must not be narrowly construed because the statutory definition itself is extremely broad and because Congress deliberately included a broad definition to overrule judicial decisions that had unduly restricted the Clayton Act's labor exemption from the antitrust laws. For example, in *Marine Cooks & Stewards v. Panama Steamship Co.*, 362 U. S. 365, 369 (1960), the Court observed:

"Th[e] Act's language is broad. The language is broad because *Congress was intent upon taking the federal courts out of the labor injunction business* except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act. The history and background that led Congress to take this view have

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misplaced. In *Eastex*, we addressed whether certain concerted activity was protected under § 7 of the NLRA, 29 U. S. C. § 157, and we recognized that "[t]here may well be types of conduct or speech that are so purely political or so remotely connected to the concerns of employees as employees as to be beyond the protection of § 7." *Id.*, at 570, n. 20. Although the definition of a "labor dispute" in § 2(9) of the NLRA, 29 U. S. C. § 152(9), is virtually identical to that in § 13(c) of the Norris-LaGuardia Act, 29 U. S. C. § 113(c), and the two provisions have been construed consistently with one another, *e. g.*, *United States v. Hutcheson*, 312 U. S. 219, 234, n. 4 (1941), this similarity does not advance the Employees' argument. Union activity that prompts a "labor dispute" within the meaning of these sections may be protected by § 7, prohibited by § 8(b), 29 U. S. C. § 158(b), or neither protected nor prohibited. The objective of the concerted activity is relevant in determining whether such activity is protected under § 7 or prohibited by § 8(b), but *not* in determining whether the activity is a "labor dispute" under § 2(9).

Moreover, the conclusion that a purely political work stoppage is not protected under § 7 means simply that the employer is not prohibited by § 8(a)(1) of the NLRA, 29 U. S. C. § 158(a)(1), from discharging or disciplining employees for this activity. It hardly establishes that no "labor dispute" existed within the meaning of § 2(9). Similarly, if the employees protested such sanctions under the collective-bargaining agreement, an arbitrator might ultimately conclude that the sanctions were proper, but this would not alter the obvious fact that the matter is a labor dispute.



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been adverted to in a number of prior opinions of this Court in which we refused to give the Act narrow interpretations that would have restored many labor dispute controversies to the courts.” (emphasis added; footnote omitted)

The critical element in determining whether the provisions of the Norris-LaGuardia Act apply is whether “the employer-employee relationship [is] the matrix of the controversy.” *Columbia River Packers Association v. Hinton*, 315 U. S. 143, 147 (1942). In this case, the Employer and the Union representing its employees are the disputants, and their dispute concerns the interpretation of the labor contract that defines their relationship.<sup>12</sup> Thus, the employer-employee relationship is the matrix of this controversy.

Nevertheless, the Employer argues that a “labor dispute” exists only when the Union’s action is taken in its own “economic self-interest.” The Employer cites *American Federation of Musicians v. Carroll*, 391 U. S. 99 (1968), and *Columbia River Packers Association*, *supra*, for this proposition. In these cases, however, the Court addressed the very different question whether the relevant parties were “labor” groups involved in a labor dispute for the purpose of determining whether their actions were exempt from the antitrust laws.<sup>13</sup> These cases do not hold that a union’s noneconomic

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<sup>12</sup> A labor dispute might be present under the facts of this case even in the absence of the dispute over the scope of the no-strike clause. Regardless of the political nature of the Union’s objections to handling Soviet-bound cargo, these objections were expressed in a work stoppage by employees against their employer, which focused on particular work assignments. Thus, apart from the collective-bargaining agreement, the employer-employee relationship would be the matrix of the controversy. We need not decide this question, however, because this case does involve a dispute over the interpretation of the parties’ collective-bargaining agreement.

<sup>13</sup> In *American Federation of Musicians*, the Court held that, although orchestra leaders acted as independent contractors with respect to certain



motive inevitably takes the dispute out of the Norris-LaGuardia Act, but only that that protections of that Act do not extend to labor organizations when they cease to act as labor groups or when they enter into illegal combinations with nonlabor groups in restraint of trade.<sup>14</sup> Here, there is no question that the Union is a labor group, representing its own interests in a dispute with the Employer over the employees' obligation to provide labor.

Even in cases where the disputants did not stand in the relationship of employer and employee, this Court has held that the existence of noneconomic motives does not make the Norris-LaGuardia Act inapplicable. For example, in *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552 (1938), this Court held that the Norris-LaGuardia Act prohibited an injunction against picketing by members of a civic group, which was aimed at inducing a store to employ Negro employees. In determining that the group and its members were "persons interested in a labor dispute" within the mean-

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"club-date" engagements, the union's involvement with the leaders was not a combination with a nonlabor group in violation of the Sherman Act. In finding that leaders were a "labor group," and a party to a labor dispute, the Court relied on the "presence of a job or wage competition or some other economic interrelationship affecting legitimate union interests between the union members and the independent contractors." 391 U. S., at 106 (quoting the opinion of the District Court). In *Hinton*, the Court found that the union was merely an association of independent fish sellers involved in a controversy with fish buyers over a contract for the sale of fish; they were not employees of the buyers, nor did they seek to be. 315 U. S., at 147.

The Employer's reliance on *Bakery Drivers Union v. Wagshal*, 333 U. S. 437 (1948), is similarly misplaced. In that case, the Court held only that a controversy between two businessmen over delivery times or methods of payment does not become a labor dispute merely because a union representative, with or without his employer's consent, sought to obtain payment pursuant to a particular method. *Id.*, at 443-444.

<sup>14</sup>The Employer's economic-motive analysis also leads to the untenable result that strikes in protest of unreasonably unsafe conditions and some sympathy strikes are not "labor disputes."



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ing of § 13, the Court found it immaterial that the picketers, who were neither union organizers nor store employees, were not asserting economic interests commonly associated with labor unions—*e. g.*, terms and conditions of employment in the narrower sense of wages, hours, unionization or betterment of working conditions. *Id.*, at 560. Although the lower courts found Norris-LaGuardia inapplicable because the picketing was motivated by the group's "political" or "social" goals of improving the position of Negroes generally, and not by the desire to improve specific conditions of employment, this Court reasoned: "The Act does not concern itself with the background or the motives of the dispute." 303 U. S., at 561.

## B

The Employer's argument that the Union's motivation for engaging in a work stoppage determines whether the Norris-LaGuardia Act applies is also contrary to the legislative history of that Act. The Act was enacted in response to federal court intervention on behalf of employers through the use of injunctive powers against unions and other associations of employees. This intervention had caused the federal judiciary to fall into disrepute among large segments of this Nation's population. See generally S. Rep. No. 163, 72d Cong., 1st Sess. 8, 16-18 (1932); 75 Cong. Rec. 4915 (1932) (remarks of Sen. Wagner).

Apart from the procedural unfairness of many labor injunctions, one of the greatest evils associated with them was the use of tort-law doctrines, which often made the lawfulness of a strike depend upon judicial views of social and economic policy. See, *e. g.*, Cox, Current Problems in the Law of Grievance Arbitration, 30 Rocky Mountain L. Rev. 247, 256 (1958). In debating the Act, its supporters repeatedly expressed disapproval of this Court's interpretations of the Clayton Act's labor exemption—interpretations which permitted a federal judge to find the Act inapplicable based on



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his or her appraisal of the "legitimacy" of the union's objectives.<sup>15</sup> See, e. g., 75 Cong. Rec. 4916 (1932) (remarks of Sen. Wagner) (definition of labor dispute expanded to overrule *Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921) (holding a strike and picketing with the purpose of unionizing a plant not a labor dispute because the objectives were not legitimate and there was no employer-employee relationship between the disputants)); *id.*, at 5487-5488 (remarks of Sen. Celler) (bill brought forth to remedy decisions allowing injunction in *Duplex* and in *Bedford Cut Stone Co. v. Stone Cutters Association*, 274 U. S. 37 (1927) (holding that decision by workers not to work on nonunion goods not a labor dispute)). See also *id.*, at 4686 (remarks of Sen. Herbert) (committee minority agreed that injunctions should not have issued in *Bedford* and *Duplex*). See generally H.R. Rep. No. 669, 72d Cong., 1st Sess. 8, 10-11 (1932). The legislative history is replete with criticisms of the ability of powerful employers to use federal judges as "strike-breaking" agencies; by virtue of their almost unbridled "equitable discretion," federal judges could enter injunctions based on their disapproval of the employees' objectives, or on the theory that these objectives or actions, although lawful if pursued by a single employee, became unlawful when pursued through the "conspiracy" of concerted activity. See, e. g., 75 Cong. Rec. 4928-4938 (1932); *id.*, at 5466-5468; *id.*, at 5478-5481; *id.*, at 5487-5490.

Furthermore, the question whether the Norris-LaGuardia Act would apply to politically motivated strikes was brought to the attention of the 72nd Congress when it passed the Act. Opponents criticized the definition of "labor dispute" in § 13(c) on the ground that it would cover politically motivated strikes. Representative Beck argued that federal courts

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<sup>15</sup> See *Duplex Printing Press Co. v. Deering*, 254 U. S. 443, 468-469 (1921). See also *Bedford Cut Stone Co. v. Stone Cutters Association*, 274 U. S. 37, 54-55 (1927).



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should have jurisdiction to enjoin political strikes like those threatened by labor unions in Europe. 75 Cong. Rec. 5471-5473 (1932) (discussing threatened strike by British unions protesting the cancellation of leases held by Communist Party members, and threatened strikes by Belgian unions protesting a decision to supply military aid to Poland).<sup>16</sup> In response, Representative Oliver argued that the federal courts should not have the power to enjoin such strikes. *Id.*, at 5480-5481. Finally, Representative Beck offered an amendment to the Act that would have permitted federal courts to enjoin strikes called for ulterior purposes, including political motives. This amendment was defeated soundly. See *id.*, at 5507.

Further support for our conclusion that Congress believed that the Norris-LaGuardia Act applies to work stoppages instituted for political reasons can be found in the legislative history of the 1947 amendments to the NLRA. That history reveals that Congress rejected a proposal to repeal the Norris-LaGuardia Act with respect to one broad category of political strikes.<sup>17</sup> The House bill included definitions of various kinds of labor disputes. See H.R. 3020, 80th Cong., 1st Sess., 1 Legislative History of the LMRA 158 (1947) (Leg. His.); H.R. Rep. No. 245, 80th Cong., 1st Sess., 18-19, 1 Leg.

<sup>16</sup> The thrust of this objection was that the Act's definition of a labor dispute "takes no account whatever of the motives and purposes with which a nation-wide strike or boycott can be commenced and prosecuted." 75 Cong. Rec. 5472 (1932) (remarks of Rep. Beck).

<sup>17</sup> In relying on this history, we do not argue that congressional rejection of a broad repeal of the Norris-LaGuardia Act precludes accommodation of that Act to the LMRA. See *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195, 204-210 (1962). In *Boys Markets Co. v. Retail Clerks Union*, 398 U. S. 235, 249 (1970), this Court put that argument to rest. Rather, we rely on this legislative history because it demonstrates that Congress believed that the Norris-LaGuardia Act did apply to controversies concerning politically motivated work stoppages. Furthermore, in this case, unlike *Boys Markets*, we are not asked to accommodate the Norris-LaGuardia Act to a specific federal act or to the strong policy favoring arbitration.



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 15

His. 292, 309-310. Of relevance here, § 2(13) defined a "sympathy" strike as a strike "called or conducted not by reason of any dispute between the employer and the employees on strike or participating in such concerted interference, but rather by reason of either (A) a dispute involving another employer or other employees of the same employer, or (B) *disagreement with some governmental policy*." H.R. 3020, § 2(13), 1 Leg. His. 168 (emphasis added). Section 12 of the House bill made this kind of strike "unlawful concerted activity," and "it remove[d] the immunities that the present laws confer upon persons who engage in them." H.R. Rep. No. 245, 80th Cong., 1st Sess. 23, 1 Leg. His. 314. In particular, the Norris-LaGuardia Act would not apply to suits brought by private parties to enjoin such activity, and damages could be recovered. See *id.*, at 23-24, 43-44, 1 Leg. His. 314-315, 334-335. In explaining these provisions, the House Report stated that strikes "against a policy of national or local government, which the employer cannot change," should be made unlawful, and that "[t]he bill makes inapplicable in such suits the Norris-LaGuardia Act, which heretofore has protected parties to industrial strife from the consequences of their lawlessness." *Id.*, at 24, 44, 1 Leg. His. 315, 335.

The Conference Committee accepted the Senate version, which had eliminated these provisions of the House bill.<sup>18</sup> The Conference Report explained that its recommendation did not go as far as the House bill, that § 8(b) prohibits juris-

<sup>18</sup> The Senate had declined to adopt these provisions of the House bill. The Senate Report explained that it did not want to impair labor's social gains under the Norris-LaGuardia Act and the NLRA of 1935, but instead wanted to remedy "specific types of injustice" or "clear inequities" by "precise and carefully drawn legislation." S. Rep. No. 105, 80th Cong., 1st Sess. 1, 1 Leg. His. 407. Some of the concerted activities listed in § 12 of the House bill were made unfair labor practices, and the National Labor Relations Board, *not private parties*, could petition a district court for injunctions against certain unfair labor practices. See *id.*, at 35, 40, 1 Leg. His. 441, 446 (reciting proposed revisions to NLRA, §§ 8(b), 10(k), 10(l)).



16 JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN

dictional strikes and illegal secondary boycotts, and that the Board, *not private parties*, may petition a district court under § 10(k) or § 10(l) to enjoin these activities notwithstanding the provisions of the Norris-LaGuardia Act. H.R. Conf. Rep. No. 510, 80th Cong. 1st Sess. 36, 42-43, 57, 58-59, 1 Leg. His. 540, 546-547, 561, 562-563. In short, Congress declined in 1947 to adopt a broad "political motivation" exception to the Norris-LaGuardia Act for strikes in protest of some governmental policy. Instead, if a strike of this nature takes the form of a secondary boycott prohibited by § 8(b), Congress chose to give the Board, not private parties, the power to petition a federal district court for an injunction. See 29 U. S. C. §§ 160(k), 160(l).

## C

This case, brought by the Employer to enforce its collective-bargaining agreement with the Union, involves a "labor dispute" within any common-sense meaning of that term. Were we to ignore this plain interpretation and hold that the political motivation underlying the work stoppage removes this controversy from the prohibitions of the Norris-LaGuardia Act, we would embroil federal judges in the very scrutiny of "legitimate objectives" that Congress intended to prevent when it passed that Act. The applicability not only of § 4, but of all of the procedural protections embodied in that Act, would turn on a single federal judge's perception of the motivation underlying the concerted activity.<sup>19</sup> The Em-

<sup>19</sup> This proposed exception does not limit the judge's discretion to consideration of specified external conduct or of provisions in a collective-bargaining agreement, as does the *Boys Markets* exception. It provides no guidance to judges in dealing with concerted activity arguably designed to achieve both political and labor-related goals. Such mixed-motivation cases are bound to arise. For example, in *United States Steel Corp. v. United Mine Workers*, 519 F. 2d 1236 (CA5 1975), miners picketed another employer for importing coal from South Africa. The Court of Appeals held that the Norris-LaGuardia Act applied, and that the *Boys Markets* ex-



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 17

ployer's interpretation is simply inconsistent with the need, expressed by Congress when it enacted the Norris-LaGuardia Act, for clear "mileposts for judges to follow." 75 Cong. Rec. 4935 (1932) (remarks of Sen. Bratton).

In essence, the Employer asks us to disregard the legislative history of the Act and to distort the definition of a labor dispute in order to reach what it believes to be an "equitable" result. The Employer's real complaint, however, is not with the Union's political objections to the conduct of the Soviet Union, but with what the Employer views as the Union's breach of contract. The Employer's frustration with this alleged breach of contract should not be remedied by characterizing it as other than a labor dispute. We will not adopt by judicial fiat an interpretation that Congress specifically rejected when it enacted the 1947 amendments to the NLRA. See generally note 17, *supra*. In the past, we have consistently declined to constrict Norris-LaGuardia's broad prohibitions except in narrowly defined situations where accommodation of that Act to specific congressional policy is necessary. We refuse to deviate from that path today.

## IV

Alternatively, the Employer argues that the Union's work stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), because the dispute underlying the work stoppage is arbitrable under the collective-bargaining agreement. In

ception was not available, because "the miners' action was not aimed at [their employer] at all, but rather at the national policy of this country's permitting the importation of South African coal." 519 F. 2d, at 1247 (footnote omitted). Under the political-motivation exception, even if the miners had picketed because slave labor was employed to mine the imported coal, the Norris-LaGuardia Act might not apply. Minor variations in the facts would endow the courts with, or divest them of, jurisdiction to issue an injunction, and would create difficult line-drawing problems.



## 18 JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN

making this argument, the Employer disavows its earlier argument that the underlying dispute is purely political, and asserts that the Union's work stoppage was motivated by a disagreement with the Employer over the management-rights clause in the collective-bargaining agreement. The Solicitor General, in an amicus brief filed on behalf of the United States, agrees with the Employer that the work stoppage may be enjoined pending arbitration. He contends that in addition to the political dispute, disputes concerning both the management-rights clause and the work-conditions clause underlie the work stoppage, and that at least one of these disputes is arguably arbitrable.<sup>20</sup>

We disagree. *Buffalo Forge* makes it clear that a *Boys Markets* injunction pending arbitration should not issue unless the dispute underlying the work stoppage is arbitrable. The rationale of *Buffalo Forge* compels the conclusion that the Union's work stoppage, called to protest the invasion of Afghanistan by the Soviet Union, may not be enjoined pending the arbitrator's decision on whether the work stoppage violates the no-strike clause in the collective-bargaining agreement. The underlying dispute, whether viewed as an

<sup>20</sup> The management-rights clause provides:

"The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers, and authority Employer had prior to signing of this Agreement are retained by the Employer."

The work-conditions clause provides:

"Where hardship is claimed by the Union because of unreasonable or burdensome conditions or where work methods or operations materially change in the future, the problem shall first be discussed between the local and Management involved. In the event an agreement cannot be reached, either party may refer the dispute to the Joint Negotiating Committee and, if the matter cannot be resolved by that Committee, either party may then refer the question to an arbitrator in accordance with the procedure set forth in Clause 15(B)."

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expression of the Union's "moral outrage" at Soviet military policy or as an expression of sympathy for the people of Afghanistan, is plainly not arbitrable under the collective-bargaining agreement.

The attempts by the Solicitor General and the Employer to characterize the underlying dispute as arbitrable do not withstand analysis. The "underlying" disputes concerning the management-rights clause or the work-conditions clause simply did not trigger the work stoppage. To the contrary, the applicability of these clauses to the dispute, if any, was triggered by the work stoppage itself. Consideration of whether the strike intruded on the management-rights clause or was permitted by the work-conditions clause may inform the arbitrator's ultimate decision on whether the strike violates the no-strike clause. Indeed, the question whether striking over a nonarbitrable issue violates other provisions of the collective-bargaining agreement may itself be an arbitrable dispute. The fact remains, however, that the strike itself was not over an arbitrable dispute and therefore may not be enjoined pending the arbitrator's ruling on the legality of the strike under the collective-bargaining agreement.

The weaknesses in the analysis of the Employer and the Solicitor General can perhaps best be demonstrated by applying it to a pure sympathy strike, which clearly cannot be enjoined pending arbitration under the rationale of *Buffalo Forge*. If this work stoppage were a pure sympathy strike, it could be characterized alternatively as a dispute over the Employer's right to choose to do business with the employer embroiled in a dispute with a sister union, as a dispute over management's right to assign and direct work, or as a dispute over whether requiring the union to handle goods of the employer whose employees are on strike is an unreasonable work condition.<sup>21</sup> None of these characterizations, however,

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<sup>21</sup> In fact, the employer in *Buffalo Forge* made just such a claim. In addition to alleging breach of the no-strike clause, it claimed that the strike



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alters the fact, essential to the rationale of *Buffalo Forge*, that the strike was not over an arbitrable issue and therefore did not directly frustrate the arbitration process.

The Employer's argument that this work stoppage may be enjoined pending arbitration really reflects a fundamental disagreement with the rationale of *Buffalo Forge*, and not a belief that this rationale permits an injunction in this case. The Employer apparently disagrees with the *Buffalo Forge* Court's conclusion that, in agreeing to broad arbitration and no-strike clauses, the parties do not bargain for injunctive relief to restore the status quo pending the arbitrator's decision on the legality of the strike under the collective-bargaining agreement, without regard to what triggered the strike. Instead, they bargain only for specific enforcement of the union's promise to arbitrate the underlying grievance before resorting to a strike. See 428 U. S., at 410-412. The Employer also apparently believes that *Buffalo Forge* frustrates the arbitration process and encourages industrial strife. But see *id.*, at 412.<sup>22</sup> However, this disagreement with *Buffalo*

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was caused by "refusal to follow a supervisor's instructions to cross the . . . picket line." *Buffalo Forge*, *supra*, at 401. The district court found that the strike was in sympathy with the sister union and was not over a dispute that the parties were contractually bound to arbitrate. *Id.*, at 402-403. On appeal, the employer did not press its argument that the work stoppage was in part a protest over truck driving assignments. *Id.*, at 403, n. 8.

<sup>22</sup>The Employer argues that industrial strife is encouraged because employers are given the incentive to discharge or discipline the workers for refusing to work, which is likely to precipitate further strikes. According to this argument, the strike, which began over a nonarbitrable dispute, is transformed into a dispute over an arbitrable issue, *i. e.* the employer's right under the collective-bargaining agreement to discipline these workers, and may be enjoined under the *Boys Markets/Buffalo Forge* exception. See, *e. g.*, *Complete Auto Transit, Inc. v. Reis*, 614 F. 2d 1110, 1113-1114 (CA6 1980), *aff'd on other grounds* 451 U. S. 401 (1981). This Court has not addressed the validity of this "transformation" analysis. See *Complete Auto Transit, Inc. v. Reis*, 451 U. S., at 405, n. 4.



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 21

*Forge* only argues for reconsidering that decision.<sup>23</sup> It does not justify distorting the rationale of that case beyond recognition in order to reach the result urged by the Employer.

## V

In conclusion, we hold that an employer's § 301 action to enforce the provisions of a collective-bargaining agreement allegedly violated by a union's work stoppage involves a "labor dispute" within the meaning of the Norris-LaGuardia Act, without regard to the motivation underlying the union's decision not to provide labor. Under our decisions in *Boys Markets* and *Buffalo Forge*, when the underlying dispute is not arbitrable, the employer may not obtain injunctive relief pending the arbitrator's ruling on the legality of the strike under the collective-bargaining agreement. Accordingly, the decision of the Court of Appeals is

*Affirmed.*

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<sup>23</sup>The Employer has also requested that we reconsider our decision in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976). We decline this invitation.



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2<sup>nd</sup>

Draft: Jacksonville Bulk Terminals v. ILA: No. 80-1045

Justice Powell, dissenting.

The no-strike clause agreed to by the parties in this case could scarcely be more emphatic: "During the term of this Agreement, ... the Union agrees there shall not be any strike of any kind or degree whatsoever, ... for any cause whatsoever." This clause is one of the most significant provisions in the bargaining agreement. It



would seem beyond rational doubt that the dispute in this case is as much "over" the scope and enforcement of the no-strike clause as it is "over" Soviet policy in Afghanistan. In light of the strong federal policy in support of arbitration recognized in Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970), an injunction pending arbitration should be available.

Yet, as the Court argues, the decision in Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397

(1976), requires that <sup>we</sup> ~~we~~ divide disputes of this nature

into the "underlying" dispute over Soviet policy and the

"other" dispute over the scope of the no-strike clause. I

consider this method of analysis to be <sup>and unprincipled.</sup> ~~utterly~~ artificial.

And it appears that the Court agrees:

"[T]he Employer did not seek to enjoin the intervention of the Soviet Union in Afghanistan, nor did it ask the District Court to decide whether the Union was justified in expressing disapproval of the Soviet Union's actions. Instead, the Employer sought to enjoin the Union's decision not to provide labor, a decision which the Employer believed violated the terms of the collective-bargaining agreement. It is this contract dispute, and not the political dispute, that the arbitrator will resolve, and on which the courts are asked to rule." Ante, at 8.

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If the Court appears uncomfortable with the analysis in Buffalo Forge, this is understandable. On the one hand, the Court must characterize the dispute in this case as a labor dispute--involving the scope of the no-strike clause--to bring the dispute within the scope of the Norris-LaGuardia Act. But on the other hand, Buffalo Forge requires the Court ~~then to change tack and argue~~ *insisting that* <sup>1</sup> ~~that~~ the dispute is "really" over Soviet <sup>aggression</sup> ~~policy~~ and therefore that the rule of Boy's Market, and the federal policy in support of arbitration, are inapplicable.

The Court <sup>*should not*</sup> ~~cannot~~ have it both ways. So long as <sup>*LT*</sup> ~~the Court~~ <sup>1</sup> adheres to the aberrant analysis in Buffalo Forge, I agree with the Chief Justice that the dispute in this case must be viewed as a political dispute outside the scope of the Norris-LaGuardia Act. I therefore join his dissenting opinion.



80-1045 Jacksonville Bulk Terminals v. ILA

JUSTICE POWELL, dissenting.

The no-strike clause agreed to by the parties in this case could scarcely be more emphatic: "During the term of this Agreement, ... the Union agrees there shall not be any strike of any kind or degree whatsoever, ... for any cause whatsoever." (emphasis added). Such a clause ~~must be~~ <sup>is</sup> one of the most significant elements of the bargaining agreement. One can fairly assume that the employer gave considerable ground in other areas of the ~~bargaining~~ agreement to gain this apparent guarantee that all disagreements would go first to arbitration. <sup>Thus,</sup> ~~Under~~ the plain language of the agreement of the parties, the strike by the respondent should have been enjoined.

<sup>B</sup>ut in labor law - ~~at least~~ since this Court's decision in Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397 (1978) - plain language agreed to by a union does not bind it. Buffalo Forge is an <sup>aberration.</sup> ~~\_\_\_\_\_~~ Buffalo Forge cannot be reconciled with labor law policy to encourage industrial peace through arbitration. It



severely undercuts Boy's Market, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970). In a word, Buffalo Forge should be overruled.

The internal contradictions in today's decision by the Court further illustrate absence of principle in Buffalo Forge's reasoning.

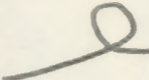
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Jacksonville Bulk Terminals v. ILA: No. 80-1045

Justice Powell, dissenting.

The no-strike clause agreed to by the parties in this case could scarcely be more emphatic: "During the term of this Agreement, ... the Union agrees there shall not be any strike of any kind or degree whatsoever, ... for any cause whatsoever." (emphasis added). Ante, at 3. Such a clause is one of the most significant provisions in the bargaining agreement. One can fairly assume that the



employer gave considerable ground in other areas of the agreement to gain this apparent guarantee that all disagreements would go first to arbitration. Thus, under the plain language of the agreement of the parties, the strike by the respondent should have been enjoined pending arbitration.

But in labor law--since this Court's decision in Buffalo Forge Co. v. United Steelworkers, 428 U.S. 397 (1976)--plain language agreed to by a union does not bind it. Buffalo Forge is an aberration. It cannot be reconciled with labor law policy to encourage industrial peace through arbitration. It severely undercuts Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970). In a word Buffalo Forge should be overruled.

The internal contradictions in today's decision by the Court further illustrate absence of principle in Buffalo Forge's reasoning. The Court argues that now we must divide the dispute in this case into the "underlying" dispute over Soviet policy and the "other" dispute over the scope of the no-strike clause. I consider this method of analysis artificial and unprincipled. On the one hand,



the Court must characterize the dispute in this case as a labor dispute--involving the scope of the no-strike clause--to bring the dispute within the scope of the Norris-LaGuardia Act. But on the other hand, Buffalo Forge requires the Court to contradict itself by insisting that the dispute is "really" over Soviet aggression and therefore that the rule of Boy's Market, and the federal policy in support of arbitration, are inapplicable.

The Court should not have it both ways. So long as it adheres to the aberrant analysis in Buffalo Forge, I agree with the Chief Justice that the dispute in this case must be viewed as a political dispute outside the scope of the Norris-LaGuardia Act. I therefore join his dissenting opinion.



To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Powell**

Circulated: **JUN 7 1982**

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE POWELL, dissenting.

The no-strike clause agreed to by the parties in this case could scarcely be more emphatic: "During the term of this Agreement, . . . the Union agrees there shall not be any strike of any kind or degree whatsoever, . . . for *any cause whatsoever*." (emphasis added). *Ante*, at 3. Such a clause is one of the most significant provisions in the bargaining agreement. One can fairly assume that the employer gave considerable ground in other areas of the agreement to gain this apparent guarantee that all disagreements would go first to arbitration. Thus, under the plain language of the agreement of the parties, the strike by the respondent should have been enjoined pending arbitration.

But in labor law—since this Court's decision in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976)—plain language agreed to by a union does not bind it. *Buffalo Forge* is an aberration. It cannot be reconciled with labor law policy to encourage industrial peace through arbitration. It severely undercuts *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970). In a word *Buffalo Forge* should be overruled.

The internal contradictions in today's decision by the Court further illustrate absence of principle in *Buffalo Forge's* rea-



2 JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN

soning. The Court argues that now we must divide the dispute in this case into the “underlying” dispute over Soviet policy and the “other” dispute over the scope of the no-strike clause. I consider this method of analysis artificial and unprincipled. On the one hand, the Court must characterize the dispute in this case as a labor dispute—involving the scope of the no-strike clause—to bring the dispute within the scope of the Norris-LaGuardia Act. But on the other hand, *Buffalo Forge* requires the Court to contradict itself by insisting that the dispute is “really” over Soviet aggression and therefore that the rule of *Boy’s Market*, and the federal policy in support of arbitration, are inapplicable.

The Court should not have it both ways. So long as it adheres to the aberrant analysis in *Buffalo Forge*, I agree with the CHIEF JUSTICE that the dispute in this case must be viewed as a political dispute outside the scope of the Norris-LaGuardia Act. I therefore join his dissenting opinion.



To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

*Full* *LHP*

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: JUN 8 1982

*New Part II*

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

CHIEF JUSTICE BURGER, dissenting.

I

This case in no sense involves or grows out of a labor dispute as that term is defined in § 13(c) of the Norris-LaGuardia Act, 29 U. S. C. § 113(c) (1976). See *ante*, at 7 n. 9. Section 13(c) defines a labor dispute as "any controversy concerning terms or conditions of employment. . . ." <sup>1</sup> The dispute in this case is a political dispute and has no relation to any controversy concerning terms or conditions of employment. If Congress had intended to bar federal courts from issuing injunctions in political disputes, it could have simply prohibited federal courts from enjoining strikes rather than limiting its prohibition to controversies concerning terms or conditions of employment. Accordingly, I disagree with the Court's conclusion that the Norris-LaGuardia Act bars a federal court from enjoining this politically motivated work stoppage.

The International Longshoremen's Association objects to the Soviet Union's invasion of Afghanistan. As a conse-

<sup>1</sup> Section 13(c) also includes union organizational activity within its definition of labor dispute, but this case clearly does not involve such activity.

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2 JACKSONVILLE BULK TERMINALS *v.* LONGSHOREMEN

quence, it announced that it would not handle any cargo bound to, or coming from, the Soviet Union, or any cargo carried on Soviet ships. This case commenced after the union, pursuant to its political position, refused to load superphosphoric acid onto certain ships bound for the Soviet Union. The union has no objection to any terms or conditions of employment; it would have loaded the superphosphoric acid on any non-Soviet ship bound for a destination other than the Soviet Union. No one has suggested that the ILA's action is actually motivated to obtain concessions concerning employment conditions. The union refused to handle the cargo simply because a foreign country invaded a neighboring country and the union desired to express its opposition to the invasion. Thus the plain meaning of § 13(c) leads to the conclusion that this case does not involve or grow out of a labor dispute because the union members are not seeking to change their terms or conditions of employment.

As the Court recognizes, we have held that the test of whether the Norris-LaGuardia Act applies is whether "the employer-employee relationship [is] the matrix of the controversy." *Columbia River Packers Association v. Hinton*, 315 U. S. 143, 147 (1947); quoted *ante*, at 10. Federal courts of appeals have stated that unions are protected by the Norris-LaGuardia Act when they act to advance the economic interests of their members. See, *e. g.*, *Brotherhood of Railroad Trainmen v. Atlantic Coast Line Railroad Company*, 362 F. 2d 649, 654 (CA5 1966). These cases illustrate the plain meaning of § 13(c)'s definition of labor dispute—the Norris-LaGuardia Act protects union organizational efforts and efforts to improve working conditions.

The Court errs gravely in finding that the matrix of this controversy is the union's relationship with the petitioners. The ILA's dispute with the petitioners merely flows from its decision to demonstrate its opposition to the invasion of Afghanistan. No economic interests of union members are involved; indeed, the union's policy is contrary to its members' economic interests since it reduces the amount of available



## JACKSONVILLE BULK TERMINALS v. LONGSHOREMEN 3

work.<sup>2</sup> Thus, the cases generally explicating the meaning of § 13(c) lend no support to the notion that this case involves a labor dispute.

The federal courts have consistently recognized that the Norris-LaGuardia Act does not apply to politically motivated work stoppages concerning subjects over which employers have no control. These courts, in cases which are for all practical purposes indistinguishable from this case—and which often involved the International Longshoremen's Association—properly concluded that the Act only applies to economic disputes.<sup>3</sup> This Court has never before held, as it holds here, that the Norris-LaGuardia Act protects strikes resulting from political disputes rather than from labor disputes. Since the meaning of the words of the statute is plain, and since the applicable precedent supports the conclusion that this is not a labor dispute, we ought to conclude that politically motivated strikes are outside the coverage of the Norris-LaGuardia Act.<sup>4</sup>

<sup>2</sup>The Court's reliance on *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552 (1938), is misplaced. *Ante*, at 11-12. The picketers in that case might not have been seeking to better their own personal economic position, but their purpose was to affect the terms and conditions of employment of the picketed store, since their object was to persuade the store to employ negroes. Section 13(c) explicitly states that the coverage of the Act does not depend on whether "the disputants stand in the proximate relation of employer and employee." *Ante*, at 7 n. 9.

<sup>3</sup>See *Khedivial Line, S.A.E. v. Seafarers International Union*, 278 F. 2d 49, 50-51 (CA2 1960) (politically motivated blacklist of Egyptian ships to retaliate for Egyptian blacklist of American ships that dealt with Israel is not "labor dispute" triggering Norris-LaGuardia); *West Gulf Maritime Ass'n v. International Longshoremen's Ass'n*, 413 F. Supp. 372 (SD Tex. 1975, *aff'd* summarily, 531 F. 2d 574 (CA5 1976) (union's refusal, on political grounds, in violation of a no-strike agreement, to load grain on a ship bound for the Soviet Union does not present a "labor dispute").

<sup>4</sup>The excerpts from the legislative history relied upon by the Court fall short of the clear evidence required to overcome the plain language of § 13(c). See, e. g., *Bread Political Action Committee v. Federal Election Commission*, — U. S. —, — (1982). In 1947, Congress declined to amend the federal labor laws so that strikes protesting "disagreement with



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Finally, the Court argues that a common-sense interpretation of the meaning of the term labor dispute supports its conclusion. But the “common-sense” meaning of a term is not controlling when Congress has provided, as it provided in § 13(c), an explicit definition of a labor dispute. “Common sense” and legislative history ought not change the meaning of the unambiguous words of a statute. It is not contended that any act of petitioners to improve the terms or conditions of employment would have persuaded the union to load the ships. Hence there is no labor dispute under the Norris-LaGuardia Act.

## II

This case, together with our recent decision in *International Longshoremen's Association v. Allied International, Inc.*, — U. S. — (1982), illustrates the inherent flaw in the holding in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976). If the Court cannot give to ordinary words

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some government policy” would not be protected by the Norris-LaGuardia Act. I Legislative History of the LMRA 168 (1947); *ante*, at 15. However, the language of the rejected House version of the amendment was quite broad. There are cases in which unions might disagree with government policy and properly take collective action protesting it in order to advance the legitimate economic interests of union members if the terms or conditions of their employment would be affected. Congress might have rejected the House version because of fear that its broad reach would render legitimate union activity unprotected.

In 1932 Congress rejected an amendment which would have permitted federal courts to enjoin acts “performed or threatened for an unlawful purpose or with an unlawful intent . . .” 75 Cong. Rec. 5507 (1932); *ante*, at 14. This amendment would have swept more broadly than the plain language of § 13(c) as adopted. Indeed, Representative Beck’s amendment could have rendered the Norris-LaGuardia Act a nullity, since federal judges in the 1930’s would have been able to enjoin a strike merely by finding it motivated by an “unlawful purpose.” Thus the legislative history does not lead to or compel a conclusion in this case contrary to the plain language of § 13(c).



their ordinary meaning and grasp that the dispute in this case is a purely political dispute rather than having any relation to a labor dispute, it should overrule *Buffalo Forge*.

The controversy in *Allied International* also resulted from the International Longshoremen's Association's protest over the Soviet invasion of Afghanistan. There we held that the union's refusal to unload shipments from the Soviet Union was a secondary boycott prohibited by § 8(b)(4) of the National Labor Relations Act, 29 U. S. C. § 159(b)(4). The union is therefore liable for damages as a result of its refusal to unload the shipments. Yet the Court today holds that the union may not be enjoined from refusing to load cargo onto ships bound for the Soviet Union.

This is all the more perplexing because the union entered into an agreement with petitioner which contained an unequivocal no-strike clause: "During the term of this Agreement, . . . the Union agrees there shall not be any strike of any kind or degree whatsoever, . . . for any cause whatsoever." (Emphasis added). *Ante*, at 3. In *Allied International* this union was found liable for damages caused to a party with which it had no such agreement. Here, however, despite the existence of the no-strike agreement between petitioner and the union, the Court holds that the union's illegal acts may not be enjoined.

To reach this strange result, the Court first decides that this case involves a labor dispute rather than a political dispute, and therefore is within the scope of the Norris-LaGuardia Act. The Court then contradicts itself and concludes that, since the dispute is really a political protest over Soviet aggression, it may not be enjoined under the *Buffalo Forge* exception to the rule of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), since a federal court cannot resolve the actual dispute. This case, together with *Allied International*, persuades me that the artificial *Buffalo Forge* exception should be abolished. Rather than continuing to engage in mechanical and contradictory analyses as to



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the character of disputes such as this one, we should hold that a federal court may enjoin a strike pending arbitration when the striking union has agreed to a contract with a no-strike clause such as the one agreed to by petitioner and the ILA. That is what we seemed to hold in *Boys Markets*, and we should not have tinkered with that holding in *Buffalo Forge*.

There is no rational way to reconcile this holding with *Allied International*. If we must overrule *Buffalo Forge* to come to a consistent result, we should do so.



To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: **Justice O'Connor**

Circulated: **JUN 8 1982**

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June —, 1982]

JUSTICE O'CONNOR, concurring in the judgment.

Based on the legislative history of the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.*, and our previous cases interpreting it, *e. g.*, *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552 (1938), the Court correctly concludes that this case involves a labor dispute within the meaning of § 4 of the Act, 29 U.S.C. § 104. The Court also correctly determines that under *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), no injunction may issue pending arbitration because the underlying political dispute is not arbitrable under the collective bargaining agreement. Unless the Court is willing to overrule *Buffalo Forge*, the conclusion reached by the Court in this case is inescapable. Therefore, I concur in the judgment.



lfp/ss 06/08/82

MEMORANDUM

TO: David DATE: June 8, 1982  
FROM: Lewis F. Powell, Jr.

80-1045 Jacksonville Bulk Terminals v. ILA

I have now read the Chief's revised dissent in which he has added a new Part II.

As you say, he largely plagiarizes my little opinion. I am still inclined, however, to stay with it. Do you have a different view?

In Justice Marshall's recently circulated draft, he cites Allied (on a "cf." basis, as I recall). I assume this suggests no comment by me.

L.F.P., Jr.

ss



