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federal-state cooperative actions. Inevitably, where these policies conflict, either the federal courts or the states will have to compromise if an efficient procedure for joint searches is to emerge. In light of the comity principles of *Stefanelli* and in order to promote cooperative actions, it would appear that federal courts should use their injunctive power more sparingly in situations involving joint searches. Such reluctance would prevent disruption of state criminal proceedings, and leave the question of the admissibility of the evidence discovered in the joint search to the state courts. Congressional legislation or, more likely, a Supreme Court decision could go far in alleviating the conflict of the policies which are brought into play by the federal-state cooperative action.

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TAFT-HARTLEY'S ILLEGAL OBJECT TEST AND A PARTIAL CEASE TO DO BUSINESS

Labor's right to strike and bring concerted pressure on neutral employers was circumscribed by the secondary boycott provisions of the Taft-Hartley Act.[1] Section 8(b)(4)(B)[2] states that a union may not engage in, or induce or encourage employees to engage in, a concerted refusal to

[1]Labor Management Relations Act, 29 U.S.C. § 158(b)(4)(B) (1964). A neutral or secondary employer is defined as one who is wholly unconnected with a labor dispute between an employer and his employees. A primary employer is an immediate party to a dispute with a labor union, and stands in the relationship of employer to the members of that union. National Woodwork Mfg. Ass'n v. NLRB, 386 U.S. 612 (1967).

[2]29 U.S.C. § 158(b) (1964) is the applicable section which makes it unlawful for a labor union to exert pressure on a neutral for an unlawful purpose. This section reads in pertinent part:

> (b) It shall be an unfair labor practice for a labor organization or its agents . . . (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce . . . to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services (ii) . . . where . . . an object thereof is—(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees . . . .*Provided,* That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing.

Prior to the 1959 Amendment of this Act, this provision appeared as section 8(b)(4)(A). No substantive changes were made in this section by the insertion of the cease business object in section 8(b)(4).

work, where an object of the union's refusal or inducement is to make an employer cease doing business with any other person. In construing this statute, the courts have had difficulty in determining whether an objective of union pressure has been to cause one employer to cease doing business with another.[3] Union pressure with an object of causing a complete termination of business relations has been held to be a clear violation of the Act,[4] but where union activity may only foreseeably result in such termination, it is uncertain whether such conduct will be held to violate the meaning of the "cease doing business" phrase of 8(b)(4)(B).[5]

In a recent case, *NLRB v. Operating Engineers Local 825*,[6] the United States Supreme Court held that union secondary pressure had violated the statutory "cease doing business" language of 8(b)(4)(B) because the foreseeable consequence of such pressure was to induce a secondary or neutral employer to cease doing business with a primary employer.[7] In this case, Burns, the general contractor, employed three subcontractors, Chicago Bridge, Porier, and White, on a common situs. A dispute arose between Local 825 of Operating Engineers and White over a welding machine work assignment made by White to the Ironworkers Union. Local 825 claimed the work for its members and demanded that White reassign the work and that Burns sign a contract giving Local 825 jurisdiction over all welding machine work on the site. After both employers refused to take any action, Local 825's members employed by all the subcontractors walked off the job. The union contended that the object of the strike was to force White to make the work assignment and to force Burns to change White's conduct, not to force White off the job.[8] After Burns filed a complaint, the National Labor Relations Board found that Local 825 had violated both sections 8(b)(4)(D)[9] and 8(b)(4)(B) of the

[3]*See, e.g.*, NLRB v. Denver Bldg. Council, 341 U.S. 675 (1951); Carpenters Union v. NLRB, 339 F.2d 142 (6th Cir. 1964); Seafarers Union v. NLRB, 265 F.2d 585 (D.C. Cir. 1959).

[4]NLRB v. Denver Bldg. Council, 341 U.S. 675 (1951); NLRB v. Nashville Building Council, 425 F.2d 385 (6th Cir. 1970); Teamsters Local 5 v. NLRB, 406 F.2d 439 (5th Cir. 1969); NLRB v. Hod Carriers Local 185, 389 F.2d 721, 725 (9th Cir. 1968). In each of these cases union conduct was held to have the object of causing a total cessation of business between primary and secondary employers.

[5]*See, e.g.*, NLRB v. Operating Engineers Local 825, 326 F.2d 218, 219 (3d Cir. 1964); NLRB v. Carpenters Union, 261 F.2d 166, 172 (7th Cir. 1958).

[6]400 U.S. 297 (1971).

[7]*Id.* at 305.

[8]*Id.* at 301. Burns submitted the dispute to the National Joint Board for the Settlement of Jurisdictional Disputes which was created to settle jurisdictional disputes in the construction industry. For a discussion of the operation of the Joint Board *see* Lathers Local 2, 119 NLRB 1345 (1958). White's assignment to the ironworkers was affirmed and the operating engineers then physically prevented the operation of the welding machine.

[9]29 U.S.C. § 158(b)(4)(D) (1964). The Board held that the union violated this section

Taft-Hartley Act.[10] Upon application to the Court of Appeals for the Third Circuit[11] for an enforcement order, the Board's 8(b)(4)(D) finding, but not its 8(b)(4)(B) finding, was sustained.[12]

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by inducing the employees of the secondary employers to strike in order to force White to assign the disputed work to the operating engineers. Section 158(b) states:

> (b) It shall be an unfair labor practice for a labor organization or its agents—(4) to induce or encourage [the employees of any employer] to engage in, a strike or a refusal . . . to perform any service, (ii) . . . where . . . an object thereof is—. . . (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . . .

The Board contended that both sections 8(b)(4)(D) and 8(b)(4)(B) applied in this case. No authority can be found which supports the contention that the Board or the courts have ever considered either section to be mutually exclusive remedies. *See* NLRB v. IBEW Local 25, 383 F.2d 449, 454 (2d Cir. 1967); NLRB v. Longshoremen's Local 1291, 332 F.2d 559, 560 (3d Cir. 1964); Plumber's Local 5, 145 NLRB 1580, 1601-02 (1964); Plumber's Local 5, 137 NLRB 828, 832 (1962). Each case involved a union jurisdictional dispute over a work assignment which produced attending secondary pressure on neutral employers and both 8(b)(4)(B) and 8(b)(4)(D) were held to apply. It is true that 8(b)(4(D) does prohibit union pressure, whether primary or secondary, in support of a union demand forcing a work assignment. There is a very practical reason, however, why section 8(b)(4)(B) should also apply. Under that section, unlike 8(b)(4)(D), a union can be enjoined, and neutral employers relieved of secondary pressure once a determination is made by the Board that such pressure was for an illegal object. Once a union is enjoined from exerting further pressure, the Board or the Joint Board can proceed to determine the underlying dispute. Without a section 8(b)(4)(B) mandatory injunction, a union would be free to exert pressure pending a determination of the work assignment dispute and the issuance of an 8(b)(4)(D) order. *Cf.* Lesnick, *Job Security and Secondary Boycotts: The Reach of NLRA §§ 8(b)(4) and 8(e),* 113 U. PA. L. REV. 1000, 1039 (1965).

[10]Operating Engineers Local 825, 162 NLRB 1617 (1967). The Trial Examiner disagreed with the Board in its 8(b)(4)(B) finding. He felt that the NLRB General Counsel misled him by trying to show that union conduct had met the "cease doing business" test and could find no evidence which would support an 8(b)(4)(B) violation. He stated that the complaint that Local 825 had violated 8(b)(4)(B) was unfounded.

> Local 825 never made any request upon Chicago Bridge, Porier, or White to cease doing business with Burns. Such a request would have been totally irrational . . . . [The local] never indicated it wanted White off the job—it wanted to harass White to gain compliance with its requests. Nor was any demand made upon Burns to cease doing business with White . . . . All [the local] wanted was the work, not a substitution of contractors nor a termination of contractual relationships between the contractors.

Id. at 1630-31.

[11]NLRB v. Operating Engineers Local 825, 410 F.2d 5 (3d Cir. 1969).

[12]*Id.* at 10-11. The court held that union activity aimed at a disruption of business relations without more was insufficient to establish an effort to compel a neutral employer to cease doing business with a primary employer.

The Supreme Court reversed and remanded the circuit court decision, and stated that the lower court's interpretation of the cease doing business phrase of 8(b)(4)(B) was too narrow.[13] The Court reasoned that it was irrelevant that the union did not demand a total termination of the business relations between the employers, because it was foreseeable that the consequence of the union secondary pressure would be to induce the neutral employers to cease doing business with the primary. While conceding that the foreseeable consequences of some secondary pressure, although disruptive of business relations, could be so slight that the cease doing business requirement would not be met,[14] the court felt that by clear implication the object of Local 825's demands was either to force Burns to make a change in White's assignment or to terminate his contract.[15]

Prior Supreme Court cases have recognized the difficulty of determining when union secondary pressure can be said to have an illegal objective, and have attempted to reach decisions which reflect the congressional aim of balancing a union's right to strike and exert primary pressure with a secondary employer's right to protection.[16] *NLRB v. Denver Building Trades Council*[17] was the first case to pass on an application of the statutory meaning of the cease doing business phrase. In this case the union struck a general contractor who hired a non-union subcontractor to work at a common jobsite. The union disclaimed any illegal object and contended that its only aim was to force the general contractor to make the project all-union.[18] The Court dealt with the

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[13]NLRB v. Operating Engineers Local 825, 400 U.S. 297, 304 (1971).

[14]*Id.* at 304.

[15]For the purpose of an 8(b)(4)(B) violation, a union's object is the controlling criterion, and the nature of the dispute is immaterial. A union may strike for any reason and not come within the prohibition of this section, provided the union does not (i) engage in, induce or encourage, or (ii) threaten, coerce or restrain, for an illegal object proscribed in (B), that is to force an employer to cease doing business with any other employer. The key factor is the *objective* of the union activity, *NLRB v. International Rice Milling Co.*, 341 U.S. 665, 672 (1951). In *NLRB v. Longshoremen's Local 1291*, 332 F.2d 559 (3d Cir. 1964), the circuit court enforced the Board's 8(b)(4)(B) and 8(b)(4)(D) findings that a union strike over a work assignment of handling sugar produced secondary pressure. The court focused on whether an object of union pressure was to force one employer to cease doing business with another. In *Plumber's Local 5 v. NLRB*, 321 F.2d 366 (D.C. Cir. 1963) the court enforced the Board's 8(b)(4)(B) and (D) order when union secondary pressure was applied to neutral employers to protest the subcontracting and assignment of union jobs. Justice Douglas' dissent in the principal case indicated that no violation existed because there was no indication that an object of union pressure was anything but the work assignment. He could find no illegal object in the union's conduct. 400 U.S. at 406-08.

[16]*See* Steelworkers Union v. NLRB, 376 U.S. 492, 502 (1964); Electrical Workers Local 761 v. NLRB, 366 U.S. 667, 673-74 (1961).

[17]341 U.S. 675 (1951). In *Denver*, notwithstanding the union's contention, the only way it could achieve its purpose was to force the non-union contractor off the job. *Denver* dealt with a total and *not a partial* cessation of business.

[18]*Id.* at 688.

problem of determining whether an objective of union pressure was to force a secondary employer to cease doing business with a primary.[19] The union activity here was held to be unlawful. The Court said that the object, even if not the sole object, of the union pressure was for an illegal purpose because the only way that the union could achieve its objective was to force the subcontractor off the job and cause a cessation of business.[20]

The immediate effect of *Denver* was to immunize neutral employers against any secondary pressure by a labor union. The decision, however, could be construed to ban a union's right to exert traditional primary pressure whenever there are secondary effects.[21] In *Electrical Workers Local 761 v. NLRB*[22] [*General Electric*], the Court departed from *Denver* in order to permit union primary pressure which caused a work stoppage by the employees of a secondary employer.[23] The Court held that union activity at a gate reserved for the employees of a secondary employer whose work was related to the "normal" operations of the primary employer was protected regardless of how disruptive the effect was on business relations between the primary and secondary employer.[24] Recently, the Court in *National Woodwork Manufacturers Association v. NLRB*[25] also avoided *Denver*'s interpretation of the illegal objects test in order to allow union activity which produced secondary pressure. The Court held that union conduct aimed at preserving work traditionally performed by union members was protected primary activity even though neutral employers were incidentally affected.[26]

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[19]*Id.* at 689.

[20]*Id.* at 688. *Denver* did not apply a per se rule so as to declare unlawful all secondary activity. Instead, the Court merely tried to determine whether an unlawful object existed in union picketing of a secondary employer to protest the presence of a non-union subcontractor on a jobsite. In the principal case, the Court found an unlawful object in union secondary conduct aimed at forcing neutral employers to change a work assignment of a primary but not aimed at forcing the primary off the job.

[21]*See* Lesnick, *Job Security and Secondary Boycotts: The Reach of NLRA §§ 8(b)(4) and 8(e)*, 113 U. PA. L. REV. 1000 (1965); Note, *Secondary Boycotts and Work Preservation*, 77 YALE L.J. 1401, 1404-05 (1968).

[22]366 U.S. 667 (1961). In *General Electric*, the union which had a dispute with GE, picketed gates reserved for neutral contractors who performed maintenance work at GE's manufacturing plant. Union pressure was held unlawful as long as the neutral's work was related to that of the primary employer.

[23]*Id.* at 672-73. In *General Electric* the Court adopted the "work-related" test to say when and how a union may appeal to the employees of a secondary employer. In *Denver* the Court did not consider a work-related test but focused on whether an objective of union conduct was to cause a cessation of business between primary and secondary employers.

[24]*Id.* at 682.

[25]386 U.S. 612 (1967). In *National Woodwork*, carpenters refused to handle pre-fitted doors relying on the work preservation clause in their contract. The Court attempted to balance rights of employees to preserve jobsite work with protection of neutral employers.

[26]*Id.* at 644. The Court was aware that a strict application of the objects test as

The National Labor Relations Board has not followed the approach of either *General Electric* or *National Woodwork* in attempting to distinguish between unlawful primary and unlawful secondary union conduct.[27] Instead, the Board has followed the *Denver* rationale which imputes an illegal cessation of business objective to union conduct whenever secondary pressure on a neutral employer results from a union's dispute with a primary employer.[28] In addition, a significant number of cases decided by the courts of appeal have adopted the Board's interpretation of the meaning of the cease doing business phrase and have found an illegal object in union secondary pressure regardless of whether a total[29] or partial[30] cessation of business results. Few of these cases attempt to make any distinction between permissible primary and impermissible secondary union conduct.

In both *Douds v. International Longshoremen*[31] and *Retail Clerks Local 770 v. NLRB*,[32] the courts of appeal rejected the Board's ruling that a striking union should be deemed to have as an object the foreseeable consequence of its acts.[33] In each case the court stressed the need to protect

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developed in *Denver* would nullify employees' activities to pressure their own employers into improving the employees' wages, hours and working conditions. The Court found that the union objective of preserving work for its own members was protected activity and cautioned against any reading of the statute which would foreclose that right.

[27]*E.g.*, Operating Engineers Local 825, 168 NLRB 193 (1967); Northeastern Ind. Bldg. Council, 148 NLRB 854 (1964); Plumbers Local 598, 131 NLRB 787 (1961). Since Congress did not make any distinction between "good" and "bad" secondary pressure, the Board has presumed illegal union secondary pressure without making a distinction between legitimate primary activity and banned secondary activity. *See* 93 CONG. REC. 4198 (1947) (remarks of Senator Taft).

[28]Plumbers Local 5, 137 NLRB 828 (1962); Shingle Weavers Local 2580, 101 NLRB 1159 (1952). In both cases, union members walked off the job in protest of the primary employer's decision to use contracted out work. The Board said that an object of the strike was to cause cessation of business between employers.

[29]NLRB v. Nashville Bldg. Trades Council, 425 F.2d 385 (6th Cir. 1970); Teamsters Local 5 v. NLRB, 406 F.2d 438 (5th Cir. 1969).

[30]NLRB v. Carpenter's Union, 407 F.2d 804, 806 (5th Cir. 1969); Electrical Workers Local 3, 140 NLRB 729, 730 (1963), *enforced*, 325 F.2d 561 (2d Cir. 1963). In these cases union pressure on a neutral employer, a general contractor, was for the purpose of forcing him to add a condition to a preexisting contract with a subcontractor. The court found an illegal object because the addition of a term by the general contractor, even though not aimed at a total severance of business relations, would cause a serious disruption of the preexisting business relationship tantamount to requiring one party to cease doing business with the other.

[31]224 F.2d 255 (2d Cir.), *cert. denied*, 350 U.S. 873 (1955).

[32]296 F.2d 368 (D.C. Cir. 1961).

[33]Retail Clerks Local 770 v. NLRB, 296 F.2d 368, 373 (D.C. Cir. 1961); Douds v. International Longshoremen, 224 F.2d 455, 459 (2d Cir. 1955). In both cases a union strike for a work assignment had similar results in causing secondary pressure on a neutral employer, and the Board held in both cases that union pressure was for an illegal objective. Instead of applying a rule which invalidates all union secondary pressure, each court made a

a union's right to exert primary activity and refused to find an illegal object when secondary pressure arose out of a primary dispute.[34] A contrary holding, it was felt, would nullify labor's right to strike because all strikes necessarily result in some cessation of business between a primary and a secondary employer.[35]

NLRB v. Operating Engineers Local 825 is in accord with those Board and circuit court decisions, handed down since *Denver,* which have construed the illegal object test to declare unlawful secondary pressure by a labor union.[36] The court in *Operating Engineers Local 825,* in deciding when union conduct changes from lawful primary into unlawful secondary activity, stressed the element of foreseeability.[37] The Court does not adequately describe the situations in which it will be held foreseeable that union secondary pressure will have the illegal object of causing a cessation of business.[38] The decision may be read as equating union liability to that of a tort-feasor, which extends to damage which may reasonably be expected to result from the conduct involved.[39] Applying

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well-reasoned analysis of the "cease doing business-object" test. Secondary pressure may be a side effect of a strike, but this does not mean that an object of such pressure is to cause a cessation of business between the primary and secondary employer. If this were not so, nearly all strikes would be unlawful because some cessation of business almost always results. The object of an action is the concluding state which the actor seeks to bring about, but this does not mean that every action by a secondary employer which would satisfy a union dispute is an object of the strike.

[34]Cases cited note 33 *supra.*

[35]*E.g.,* NLRB v. Carpenters Union, 407 F.2d 804, 806 (5th Cir. 1969); NLRB v. Electrical Workers Union Local 3, 325 F.2d 561 (2d Cir. 1963). These cases indicate that secondary pressure often results from primary dispute between a union and his employer.

[36]*See* note 4 *supra.*

[37]400 U.S. at 304-05.

[38]In some labor conduct, the Court held, the foreseeable consequences of union pressure on secondary employers were so slight that a cease doing business object would not be found. In other instances, union pressure on a secondary employer was great enough that forcing him to cease doing business with another employer was a foreseeable consequence. 400 U.S. 305. The Court has said, however, that some disruption of business relations is the foreseeable result of the purest form of primary activity. United Steelworkers v. NLRB, 376 U.S. 492 (1964). An example of protected primary conduct would be where a union pickets a primary employer with whom the union has a dispute. Since all strikes involve some cessation of business, an unlawful object would not be found even if the purpose of the picketing is to dissuade all persons from entering upon the primary employer's premises. United Electrical Workers, 85 NLRB 417, 418 (1949); Oil Workers Local 346, 84 NLRB 315, 318 (1949). *See also* NLRB v. Fruit Packers Local 760, 377 U.S. 58 (1964).

[39]400 U.S. at 304. The Court in determining when the necessary intent was present to prove an unfair labor practice under section 8(b)(4)(B), implied that proof of specific intent was not needed to prove a violation of the Act. The Court stressed the element of foreseeability, in that some conduct contains the implication of the required intent and that the natural and foreseeable consequences of certain union activity may warrant the inference of an illegal cease to do business object. Such a concept of foreseeability is similar to a tort

such a rule, an unlawful object might be found in union secondary pressure whenever a cessation of business between employers is likely to occur.[40]

In *Douds v. International Longshoremen*,[41] the Court of Appeals for the Second Circuit rejected the notion that a tort theory of liability should be applied to determine whether an object of union conduct was unlawful. The court held that since most strikes and primary activity conducted by a labor union result in some cessation of business between primary and secondary employers, the application of a tort rule would inhibit labor's right to strike because a union could then be said to have had as an objective of its conduct any cessation of business which resulted from its secondary pressure.[42]

Congress wanted to guarantee labor's right to strike and exert primary pressure,[43] but also sought to proscribe labor's use of the secondary boycott. The term was not expressly mentioned in the Act, but there is little doubt however that the main thrust of 8(b)(4)(B) was to outlaw the secondary boycott. Congress intended to outlaw the evil of expanding the scope of a labor dispute to a remote front by inducing the employees of a neutral employer to strike with the objective of forcing him to cease doing business with a primary employer.[44] Even though Congress was silent on

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concept whereby the tortfeasor is held liable for all results of his acts which could be anticipated at the time of his conduct. W. PROSSER, THE LAW OF TORTS 291 (3d ed. 1964).

[40]*See* NLRB v. Erie Resistor Corp., 373 U.S. 221, 227 (1963); Radio Officer's Union v. NLRB, 347 U.S. 17, 45 (1962).

[41]224 F.2d 455 (2d Cir. 1955).

[42]*Id.* at 459. Judge Hand said that an application of a tort rule to union secondary conduct was unworkable:

> All strikes and "concerted refusals" to work involve some cessation of business; that is the only sanction they can have. When Congress limited the wrong to occasions when the cessation was an "object" of the conduct, it excluded much indeed that the ordinary law of tort would have included. If it had not done so, it would have made nearly all strikes unlawful.

Id.

[43]*E.g.*, National Woodwork Mfg. Ass'n v. NLRB, 386 U.S. 612, 619 (1967); NLRB v. Fruit Packers Local 760, 377 U.S. 58, 63 (1964); Carpenters Local 1976 v. NLRB, 357 U.S. 93, 100 (1958). The Court has interpreted congressional intent as attempting to balance labor's rights with those of neutral employers. 29 U.S.C. § 163 (1967) preserves labor's right to strike. Furthermore, to show that Congress did not want any interpretation of 8(b)(4)(B) to foreclose a labor union's right to exert primary pressure, a proviso was added to this section that "nothing in this clause (B) shall be construed to make unlawful, where not otherwise unlawful any primary strike or primary picketing . . . ." 29 U.S.C. § 158(b)(4)(B) (1964).

[44]It was declared unlawful for a union to "strike against employer A for the purpose of forcing that employer to cease doing business with employer B (with whom the union had a dispute)." Senator Taft, who sponsored the Taft-Hartley Bill, stated that the purpose of 8(b)(4)(B) was "to protect those parties who were totally unconnected with a labor dispute between an employer and his employees." 93 CONG. REC. 4189 (1947) (Remarks of Senator Taft).

the intended scope and degree of pressure, either partial or total, that would satisfy the cease doing business phrase,[45] the courts have construed 8(b)(4)(B) as not completely immunizing neutral employers at the cost of depriving labor of its rights.[46]

The Court's recent decision will primarily affect construction unions on a common jobsite.[47] The Board and the courts, in this delicate situation, have found it difficult to balance union rights and those of neutral employers in the construction trades industry where the employees of both primary and secondary employers work side-by-side.[48] In this industry, unions have followed the custom of respecting an affiliate's picket line.[49] Thus when one union strikes, the whole site is usually closed and all work ceases. When a union strikes or pickets a primary employer, even if it does not intend that all persons on the job site will respect its picket line, the union knows that secondary pressure will be the result.[50] It would therefore seem foreseeable that during any primary strike on a job site in the construction trades industry, secondary pressure on a neutral employer will result, and under present law an unlawful object will be imputed to union pressure.

A bill[51] was introduced in Congress in 1969 which, if enacted, would exempt construction site picketing from the activity proscribed by 8(b)(4)(B).[52] The bill's passage has been defeated due to the confusion relating to the law of secondary boycotts, and the effect that these new proposals will have on labor union activity and neutral employers.[53]

In *Operating Engineers Local 825,* the Court does not delineate the permissible limits of union secondary activity. The decision does more than reaffirm *Denver*;[54] rather, it implies that all union secondary pressure, regardless of union intent, is unlawful per se whenever a

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[45]105 CONG. REC. 6556-57 (1959).

[46]United Steelworkers v. NLRB, 376 U.S. 492, 500 (1964); *cf.* NLRB v. Teamsters Local 294, 284 F.2d 887, 890 (2d Cir. 1960).

[47]*See generally* National Woodworkers Mfg. Ass'n v. NLRB, 386 U.S. 612 (1967); Carpenters Union v. NLRB, 332 F.2d 636 (2d Cir. 1964).

[48]*See* Electrical Workers Local 761 v. NLRB, 366 U.S. 667, 676 (1961). The Court recognized the complex problem involved in common situs cases where both secondary and primary employers work on common premises.

[49]Comment, *Impact of the Taft-Hartley Act,* 60 YALE L.J. 673, 688 (1951).

[50]*See* NLRB v. Teamsters Local 294, 284 F.2d 887, 890 (2d Cir. 1960); Seafarers Union v. NLRB, 265 F.2d 585, 591 (D.C. Cir. 1959).

[51]H.R. 100, 91st Cong., 1st Sess. (1969). As of the date of this comment, no bill has been enacted. For a discussion of H.R. 100 *see* 1969 LABOR RELATIONS YEARBOOK, at 535 (BNA ed. 1970).

[52]1969 LABOR RELATIONS YEARBOOK 537 (BNA ed. 1970).

[53]*Id.* at 540.

[54]NLRB v. Denver Bldg. Trades Council, 341 U.S. 675, 692 (1951). Even though the Court relied upon *Denver* in the principal case, *Denver* can be distinguished. Notes 17-20 and accompanying text *supra.*

cessation of business is foreseeable. The Court is silent as to when an illegal object will be held foreseeable, and therefore offers no viable test by which a labor union can predict the lawfulness of its behavior.

Though the Court's application of the cease doing business phrase will result in inequalities for labor unions, any balancing test must involve a consideration of the protection of neutral employers who are innocent parties to a labor dispute.[55] The Board and the courts should attempt to more effectively harmonize the rights of labor and secondary employers. A strict adherence to a test which may have the effect of banning all union secondary pressure is a threat to labor's right to strike. A more flexible approach to this problem is the test developed in the *General Electric* line of cases, which allows secondary pressure on a neutral employer so long as such pressure is reasonably related or connected to a primary dispute between a union and an employer.[56] Congressional clarification may be the ultimate means by which to resolve this conflict and the uncertainty which has permeated the law of secondary boycotts and the permissible scope of union conduct.

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[55]Congress has expressed its concern over the unlimited use by labor of the strike and the secondary boycott as weapons to cause wholesale disruptions and closings on jobsites. Congress has evinced its intent to protect innocent parties to a labor dispute and limit labor's use of economic pressure. *See* 117 CONG. REC. 869-70 (1971); 93 CONG. REC. 4198 (1947).

[56]In *General Electric* the Court attempted to balance union rights with those of neutral employers in an effort to indicate when union secondary pressure will be held lawful. *See* Notes 22-23 *supra*. It has been held, however, that the "work-related" test of *General Electric* does not apply to a common situs in the construction industry. Markwell Hartz, Inc. v. NLRB, 387 F.2d 79 (5th Cir. 1967).