A REVIEW OF THE LEGAL STATUS OF THE SECONDARY BOYCOTT

IN THE UNITED STATES

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IN THE UNITED STATES

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I.</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>BACKGROUND OF BOYCOTTING</td>
</tr>
<tr>
<td></td>
<td>IN THE UNITED STATES</td>
</tr>
<tr>
<td>II.</td>
<td>23</td>
</tr>
<tr>
<td></td>
<td>THE SECONDARY BOYCOTT UNDER</td>
</tr>
<tr>
<td></td>
<td>THE TAPFT-HARTLEY ACT</td>
</tr>
<tr>
<td>III.</td>
<td>49</td>
</tr>
<tr>
<td></td>
<td>THE IMPACT OF THE LANDRUM-GRIFEN</td>
</tr>
<tr>
<td></td>
<td>ACT ON SECONDARY BOYCOTTS</td>
</tr>
<tr>
<td>IV.</td>
<td>65</td>
</tr>
<tr>
<td></td>
<td>BOARD AND COURT INTERPRETATIONS OF</td>
</tr>
<tr>
<td></td>
<td>THE LANDRUM-GRIFEN ACT'S PROHIBITIONS</td>
</tr>
<tr>
<td></td>
<td>ON SECONDARY BOYCOTTS</td>
</tr>
<tr>
<td>V.</td>
<td>83</td>
</tr>
<tr>
<td></td>
<td>SUMMARY AND CONCLUSIONS</td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>101</td>
</tr>
</tbody>
</table>
CHAPTER I

BACKGROUND OF BOYCOTTING IN THE UNITED STATES

The term "boycott" was first used during the agitation against landlords by the Irish Land League in 1880. A mass meeting was held by the tenants of one of the landlords whose agent was a retired army captain named Charles Cunningham Boycott. The workers had harvested the crops on reduced wages, and Captain Boycott, who had used the lowered wages as a means to drive them off the land, attempted to evict them. At the meeting the workers agreed to desert him and have no further dealings with him or his family. The designation of this type of action as a "boycott" was coined by an Irish priest named John O'Malley and an American journalist named James Redpath, both of whom were sympathetic with the laborers. In their discussion and writings concerning the action of the Irish workers, these men realized the necessity for a term to represent such action; thus the term "boycott" was coined.¹

Shortly after the Irish incident the term "boycott" was adopted by the Knights of Labor in the United States to describe a type of union activity which American workers

had been using; thus the term began its long and complicated history in the United States. Before going into the actual history of the boycott, however, some explanation as to exactly what a boycott is, what forms it takes, and why and how it is used is necessary.

Harry W. Laidler, author of the first major book on the subject, defined the boycott as follows:

Boycotts are combinations of workmen to cease all dealings with another, an employer, or, at times, a fellow worker, and usually also to induce or coerce third parties to cease such dealings, the purpose being to persuade or force such other to comply with some demand or to punish him for non-compliance in the past.

Dr. Leo Wolman, an early authority on the subject, defined the boycott as "a combination formed for the purpose of restricting the markets of an individual or group of individuals." Charles O. Gregory defined the boycott as "... an organized refusal to deal with someone in order to make him change some practice which he follows."

One can conclude from examining the three preceding definitions that there is no satisfactory definition of the term boycott. Each of the definitions is so different in its terminology that one is led to agree with Attorney

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2 Ibid., p. 77. 3 Ibid., p. 60.


45 Charles O. Gregory, Labor and the Law (New York, 1946), p. 120.
Edwin Oakes' statement concerning the boycott, which is as follows:

"The word "boycott" is a term of vague signification, of which no accurate and exhaustive definition has ever been given; although various attempts have been made to describe its content of meaning. . . . Such definitions show that it is a term of elastic meaning used to describe a variety of actions, ranging from mere withdrawal of business intercourse by an individual, to an organized effort by associated individuals to procure all others to withdraw from such intercourse, by means ranging from simple persuasion to disturbance of their business relations with third persons and physical intimidation. It is accordingly necessary to read decisions which condemn boycotting as illegal per se, and those which hold that the word "boycott" does not necessarily impart illegality, in the light of the meaning attached to the word by the judges pronouncing them."

The first definition given, Laidler's, is probably the best of the three cited in that Laidler attempted to define specifically a labor boycott whereas Gelman and Gregory both generalized in their definitions. Therefore, Laidler's definition of the term boycott will be used as a working definition in this thesis.

The boycott is further defined by differentiating between primary and secondary boycotts. The primary boycott is one in which the pressure is directly on the employer with whom the union is engaged in the dispute, and the secondary boycott is one in which the pressure, in one form or another, is exerted on employers who are presumed not directly involved.

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in the dispute. Such definitions seem to indicate an unmistakable line between primary and secondary boycotts, but the placing of the line has proved through the years to be a somewhat difficult task. Indeed, one of the chief problems of the National Labor Relations Board has been the development of a consistently usable distinction between primary and secondary boycotts.

Since the primary boycott has generally been accepted as "a simple combination of persons to suspend dealings with a party obnoxious to them, involving no attempt to persuade or coerce third parties to suspend dealings also" and since the primary boycott has generally been accepted as a legitimate weapon of unions, the important problem has been to find a workable definition of the secondary boycott. Numerous attempts have been made by researchers in labor problems to define the term secondary boycott.

Harry W. Laidler defined the secondary boycott as "a combination of workmen to induce or persuade third parties to cease business relations with those against whom there is a grievance." Leo Wolman defined the term as "a combination to withdraw patronage from a person in order to force that

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8Laidler, op. cit., p. 64.

9Ibid.
person in turn to withdraw his patronage from that individual or firm with whom the union was primarily at odds. 10

Such definitions as Laidler's and Wolman's appear to leave little doubt as to what the term secondary boycott means; however, this has not been the case. Even the 1947 attempt of the Taft-Hartley Law failed to clarify the definition. Probably the main reason for the difficulty in defining the term is the fact that there are so many forms which a secondary boycott can take, and the forms are of varying degrees of legality. The precise form varies from situation to situation and may include elements of several different forms. Illustrative of the complexity of the problems are the following examples: The "refusal to handle" is a type of secondary boycott which the Typographical Union and the Teamsters have used a great deal in the past. Ordinarily this type of secondary boycott takes the form of a clause in the labor contract which states that the employees will not be required to handle material from, or destined for, plants where a union is conducting a strike. The Teamsters usually call such clauses "hot cargo" 11 clauses, and under the Landrum-Griffen Amendments to the Taft-Hartley Act, such agreements are illegal. 12

11 Goods declared by the union to be unfair.
The "refusal to work" is sometimes considered a secondary boycott. This is the refusal by union members to work with non-union employees. In states which have not adopted a "right to work" law, the "refusal to work," in order to promote a union shop, is a legal instrument of union power.13

The "unfair list" is a type of secondary boycott in which unions make a list of employers who are considered to be unfair. It is a means of notifying individuals not to patronize or work for those on the list and also a means of notifying other unions not to permit their members to work for the listed employers.14 Unfair lists are protected by the first amendment to the United States Constitution as freedom of speech.

A "consumer" boycott is a secondary boycott in which unions try to persuade consumers not to buy the boycotted product. This type of secondary boycott sometimes takes the form of an unfair list posted in the headquarters of the central labor body or published in the local labor paper.15 Such boycotts are considered to be primary unless the union attempts to discourage the purchase of the employer's product

13 U. S. Statutes at Large, LXXI, Part I, 151 (1947).
14 Lovell v. City of Griffin, 303 U. S., 444 (1938).
at his retail outlets. It is then called a "product" boycott and is considered to be secondary and, therefore, illegal.\textsuperscript{16}

Although the aforementioned forms of boycotts are generally known by the people in labor circles, one must keep in mind that the rules governing boycotts have evolved over a period of years and are an important part of the history of American labor.

In 1890, after the boycott had been adopted in the United States by the Knights of Labor as an instrument of American union power, the Sherman Antitrust Act was passed, and the courts then had something substantial on which to base their decisions concerning boycotts as restraints of trade.

The boycott at this time quickly came to be used by other labor groups such as the American Federation of Labor and the railroad employees. The use of the boycott by the railroad employees was especially important in 1894 during the famous Pullman Strike. In this case Eugene V. Debs, president of the railroad workers, an industrial union, appealed to Samuel Gompers, president of the American Federation of Labor, for help in the form of a sympathetic strike. Gompers, who favored craft organization, refused

to help the railroad workers, who had agreed not to handle goods on a railroad which was involved in a strike.

The American Federation of Labor, which refused aid to the railroad workers, became one of the greatest advocates of the boycott. The A. F. of L. began to publish its "we don't patronize" list and came to rely heavily on the boycott as a device to be used in attaining aims of union recognition. With the turn of the century, however, there was a notable change in the use of boycotts. Realizing that the courts usually ruled against labor in boycott cases, the unions began to depend more upon veiled threats as a type of quasi-boycott. Later, because of continued legal pressure against boycotts, unions substituted peaceful persuasion or education instead of veiled threats as another type of quasi-boycott.

In 1902 the United Hatters declared a nationwide boycott of the D. E. Loewe Company of Danbury, Connecticut, in support of a strike by a local union to win recognition. The company instituted a suit against the union, charging it with conspiring to restrain trade in violation of the terms of the Sherman Act and claiming it should be paid triple damages from the individual members of the local union who had


gone on strike. After a long period of legal haggling, the company was upheld in 1916 and allowed total damages and costs of $252,000. The bank accounts of the union members were attached, and foreclosure proceedings were introduced against their homes. The fines, however, were eventually paid through contributions from the national union and the American Federation of Labor.

The Danbury Hatters case caused great resentment within labor, not only because it had the effect of bringing secondary boycotts under the ban of the Sherman Act, but also because it made the individual members of a union subject to damage suits.

Before the Danbury Hatters case was even settled, another dispute, this time directly involving the American Federation of Labor, had wider repercussions. In 1906 the metal polishers employed by the Buck Stove and Range Company of St. Louis went on strike for a nine hour day and appealed for aid from the A. F. of L. The A. F. of L. responded by placing the company on its "we don't patronize" list in the American Federationist and advised all union members to boycott the company's products. J. W. Van Cleave, president of the Buck Stove and Range Company and president of the National Association of Manufacturers, secured an injunction not only restraining

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20 Dulles, op. cit., p. 197.
21 Ibid., p. 198.
the officers and members of the A. F. of L. from placing the firm on the "we don't patronize" list but also from in any way calling attention to the metal polishers strike, either by written or spoken word.

The A. F. of L. refused to obey the sweeping court order. The firm was not removed from the list, and Gompers continued to state that union men could not be coerced into buying Buck stoves and ranges. Thus Gompers was found to be in contempt of court and was sentenced to a year of imprisonment. Two other officers of the A. F. of L. were also found guilty and were given lighter sentences. The case eventually was appealed to the Supreme Court. In the meantime Van Cleave died, and the new president of the company was able to reach an agreement with the union. This meant there was no longer a dispute for the court to judge. Under these circumstances the Supreme Court dismissed the case, and Gompers and the other union officers did not have to serve their terms.22

Thus the courts had held that the constitutional guarantee of free speech and free press was not absolute and was, in fact, of no avail when spoken or written words were used to bring about a boycott which should be judged unlawful by a court.23


The fact that all courts did not accept boycotts as being illegal per se is notable. Some courts in rendering decisions applied what was called the "economic approach doctrine"; others, the "civil rights doctrine." Courts which adhered to the economic approach doctrine acknowledged that unions, like other business groups, might justify their economic activities as an exercise of the right of free competition. Unions were permitted to inflict harm on employers as long as the facts of the particular case seemed to justify their doing so.

Courts which adhered to the civil rights doctrine held that the boycott itself was not necessarily unlawful unless a specific tort or crime was involved. As long as unions refrained from violations of the law, these courts declared them to be within the law when they boycotted their employers. This left the creation of new controls to the legislative branch of government.24

Almost all courts, however, followed the Supreme Court's ruling in the Gompers v. Buck Stove and Range case. Consequently, in March of 1908, Samuel Gompers, because of the pressure from the Supreme Court, suspended the use of the unfair list by the American Federation of Labor. Although organized labor had no choice but to back down, it continued to have discussions, at the annual A. F. of L. Convention,

24Gregory, op. cit., pp. 81-82.
pertaining to employers who appeared to be antagonistic to unions. No formal action was ever taken on these discussions even though the principle was the same as placing employers on an unfair list since all who attended the convention went away from them knowing which employers were considered unfair by the federation. Such a boycott, however, naturally lacked effectiveness since there was no systematic publication of the dispute.

The use of the boycott declined drastically from 1910 to the mid-1930's in spite of the passage of the Clayton Act in 1914. This Act attempted to strengthen earlier anti-trust legislation and at the same time incorporate important clauses protecting the rights of labor. It specifically declared that "the labor of a human being is not a commodity or article of commerce." The law also stated that nothing in the anti-trust laws should be construed to forbid the existence of unions, to prevent them from lawfully carrying out their legitimate objectives, or to hold them to be illegal combinations or conspiracies in restraint of trade. Furthermore, it outlawed the use of injunctions in all disputes between employers and employees "unless necessary to prevent irreparable injury to property right . . . for which injury there is no adequate

remedy at law." The rejoicing by labor leaders that followed the passage of the Clayton Act was short-lived. In 1921 the Supreme Court stated in *Duplex Printing Press v.* Deering that nothing in the act legalized secondary boycotts.

In the *Duplex v. Deering* case the workers of some unionized printing press companies called a strike and instituted and maintained a boycott against the non-union Duplex Company. The union also directed its members in other cities not to install Duplex printing presses. The company appealed to the Supreme Court for an injunction against the Machinists Union. Justice Pitney, who wrote the opinion of the court, not only granted the injunction, but also initiated the interpretation that the Clayton Act only prevented injunctions when the dispute was between an employer and his immediate employees. Thus the act did not apply in the case of a sympathetic strike. The court further stated:

"Terms or conditions of employment are the only grounds of dispute recognized as adequate to bring into play the exemptions, and it would do violence to the guarded language employed were the exemption extended beyond the parties affected in a proximate and substantial, not merely a sentimental or sympathetic, sense by the cause of the dispute.

The court went on to say, "To instigate a sympathetic strike in aid of a secondary boycott cannot be deemed

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peaceful, lawful persuasion."27 This opinion was by no means unanimous. Justice Brandeis, Holmes, and Clarke, in dissenting, stated:

This statute was the fruit of unceasing agitation, which extended over more than twenty years and was designed to equalize before the law the position of working men and employer as industrial combatants. . . . I have come to the conclusion that both the common law of a State and a statute of the United States declare the rights of industrial combatants to push their struggle to the limits of the justification of self-interest, . . . The conditions developed in industry may be such that those engaged in it cannot continue the struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which, while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat.28

Besides the dissenting opinion, there has been a considerable amount of authoritative criticism of the Court's interpretation of the Clayton Act in the Duplex v. Deering case. Charles O. Gregory, whose comment could be considered typical of such opposition, stated:

It is hard to believe that Congress meant to have the words "peaceful," "peacefully," "peaceably," "lawful," and "lawfully," construed in accordance with the rationale of the same antitrust decisions which Section 20 was presumably designed to correct. Thus, just because the conduct described in (a), [of the Clayton Act] as it was practiced in some strikes and secondary labor boycotts, had been held unlawful, even though it involved only purely economic coercion and no vestige.

28bid.
of illegality under traditional or statutory categories of tort or crime, was no reason to suppose that Congress was intending to perpetuate such judicial qualifications in a statute designed to curb more judicial intemperance in labor cases. Indeed, the natural supposition would be that Congress, the Supreme Court’s superior in law-making, was ordering the federal courts, including the Supreme Court, to abandon these factitious judicial rules of illegality and get back to their proper business of applying the real common law, . . . .

At this point the apparent inconsistency by the courts in their interpretation of the Sherman Act’s application to a business, instead of a union, is indicated in Deen v. Kirby Lumber Company which occurred in 1927 in Louisiana. The Kirby Lumber Company operated a general merchandise store in connection with its sawmill plant. A competitor opened a similar store on ground close to the plant owned by the lumber company. The lumber company notified its employees not to deal or trade with its competitor or to visit its store or family under penalty of discharge. The competitor sued and alleged that these acts amounted to a conspiracy and an illegal boycott in restraint of trade. In this case the Supreme Court of Louisiana held that the parties were competitors and that the acts were not malicious because anyone has a right to enjoy the rights of his own enterprise; however, such rights cannot be extended to protect him against lawful competition. Therefore, since there is no law to compel one to part with his property, the company could

29Gregory, op. cit., p. 165.
induce its employees to discontinue trading at the Deon Store without making itself civilly liable to him.30

The Railway Labor Act, which was passed in 1926, marked the beginning of a more liberal attitude toward labor by the federal government. Actually, this act was the culmination of events over a period of years. The liberal attitude really began in 1888 with the passage of the first federal labor relations law, a law which provided for arbitration and federal boards of investigation for resolving disputes in the railroad industry. Then in 1893 the attitude was furthered by the passage of the Erdman Act, which made it a criminal offense to discriminate against employees for union activities. The Erdman Act, however, was declared unconstitutional in 1908 in United States v. Adair because it outlawed the yellow-dog31 contract and the discharging of an employee for union activity. This was an obvious setback for labor.

In 1913 the liberal attitude was once more expressed when Congress created the Department of Labor and the Secretary of Labor was given the power to mediate and appoint

30Deon v. Kirby Lumber Company, 111 So., 55 (1927). A search of Fourth Decennial Digest, 1926 to 1939, XXXIV (St. Paul, 1939) does not reveal that the case was appealed beyond the Supreme Court of Louisiana.

31An employer-employee contract by which a person being hired is first made to agree that he will not join a labor union while employed.
conciliators in labor disputes. During World War I (on April 18, 1918), President Wilson created the National War Labor Board to mediate and conciliate controversies in those areas which would affect the war effort. This Board began policies which were the forerunners to the policies of present day labor law. The War Labor Board asserted the right of employees to organize without employer interference, and employers were prohibited from discriminating against employees for their union activity. However, the Board lacked the power of enforcement.

Thus the Railway Labor Act was a long-awaited move in favor of labor. The Act required unions and employers to bargain in good faith through representation of their own choosing, free from interference with each other. The right to strike was limited, and provision was made for mediation and voluntary arbitration.32

The next development in this sequence was the passage of the Norris-La Guardia Anti-Injunction Act in 1932. This Act came just as the depression began and just at the time when the boycott seemed about to disappear as a union weapon. The Act was a highly significant victory for labor.

The Norris-La Guardia Act declared it to be public policy that labor should have full freedom of association.

without interference by employers, it outlawed yellow-dog contracts, and it prohibited federal courts from issuing injunctions in labor disputes, except under carefully defined conditions. The Act was designed to limit and regulate the granting of temporary restraining orders and labor injunctions and to provide for jury-trials and possible change of trial judge in contempt cases.\(^{33}\)

With the passage of the Norris-La Guardia Act, the courts began to hand down rulings which were more liberal toward action by labor. No significant boycott case was decided, however, until United States v. Hutcheson in February of 1941. In this case union carpenters refused to work for the Anheuser-Busch Brewing Company. The union members also refrained from drinking the beer produced by the company and encouraged members of other unions to do the same.

In the majority opinion Justice Frankfurter stated:

> It is at once apparent that the acts with which the defendants are charged are the kind of acts protected by Section 20 of the Clayton Act. The refusal of the Carpenters to work for Anheuser-Busch or on construction work being done for it and its adjoining tenant, and the peaceful attempt to get members of other unions similarly to refuse to work, are plainly within the free scope accorded to workers by Section 20 for "terminating any relation of employment," or "ceasing to perform any work or labor," or "recommending, advising, or persuading others by peaceful means so to do." The picketing of Anheuser-Busch premises with signs to indicate that Anheuser-Busch was unfair to organized labor, a familiar practice in these situations,

comes within the language "attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working." Finally the recommendation to union members and their friends not to buy or use the product of Anheuser-Busch is explicitly covered by "ceasing to patronize . . . any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do."34

Justice Frankfurter's statement, in the majority opinion, was a clear indication of the more liberal interpretation of labor's right to boycott.

The court reaffirmed its position on boycotts in Allen Bradley v. Local No. 3, International Brotherhood of Electrical Workers in 1945. In this case the union had been indicted for trying to aid the manufacturers of electrical equipment, with which they had a contract in New York City, to gain control of the market. The manufacturers were clearly violating the Sherman Antitrust Law, but the question was whether or not the union was also violating that law. Justice Black, in rendering the majority opinion of the court, stated:

Aside from the fact that the labor union here acted in combination with the contractors and manufacturers, the means it adopted to contribute to the combination's purpose fall squarely within the "specified Acts" declared by Section 20 not to be violations of federal law. For the union's contributions to the trade boycott was accomplished through threats that unless their employers bought their goods from local manufacturers the union laborers would terminate the "relation of employment" with them and cease to perform "work or labor" for

them; and through their "recommending, advising, or persuading others by peaceful and lawful means" not to "patronize" sellers of the boycotted electrical equipment. Consequently, under our holding in the Hutcheson case and other cases which followed it, had there been no union-contractor-manufacturer combination the union's actions here, coming as they did within the exemptions of the Clayton and Norris-La Guardia Acts would not have been violations of the Sherman Act.35

The foregoing major decisions greatly altered the legal position of the boycott, but the use of boycotting had already begun to reappear as a union weapon. The unfair list had become important again, but, to protect the federation, it was being used on an individual union basis.36

Due partly to the court ruling in Lovell v. City of Griffen in 1938, the use of unfair lists and the display of cards, handbills, placards, and banners were recognized as lawful, provided the statements are not false, libelous or coercive in nature, and provided that the end in view is lawful. In this case Alma Lovell had been convicted by a Georgia State Court of violating a city ordinance against passing out handbills in the city of Griffen, Georgia. The handbills were designed to persuade other people to adhere to her religious beliefs. The federal court upheld her right to pass out handbills under the first amendment,37 thus recognizing the legality of "unfair lists."

36Millis and Montgomery, op. cit., p. 586.
The most important instrument for applying the boycott in this period was the use of picketing. Although this device had been unimportant in earlier years, it became one of the union's strongest means of carrying out a boycott.38 An example of the court's liberality in the case of picketing is the New Negro Alliance v. Sanitary Grocery Co. In this case a Negro civic group picketed a grocery store which was patronized mostly by Negroes but which employed no Negro help. The store owner maintained that this amounted to secondary activity since the New Negro Alliance group was not a union representing workers in the store. In the majority opinion, Justice Roberts stated:

Short of fraud, breach of the peace, violence or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices.39

The climax of this liberality came in 1940 with A. F. of L. v. Swing. In this case a union had failed to organize the workers of a beauty shop. Picketing followed and the owner, Swing, and his employees sued the union, charging that the union's placards were false. The union denied the falsity

38Morris L. Cook and Philip Murray, Organized Labor and Production (New York, 1940), pp. 61-62.

of the placards. Justice Frankfurter, in rendering the deci-
don of the court, said:

We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no "peaceful picketing or peaceful persuasion" in relation to any dispute between an employer and a trade union unless the employer's own employees are in the controversy with him.

Such a ban of free communication is inconsis-
tent with the guarantee of free speech.\(^{40}\)

Picketing thus became the major device for applying the boycott, rather than the unfair lists of earlier periods.

The boycott, as indicated by the foregoing, passed through three basic stages before the Taft-Hartley Act in 1947. The three stages were the period of emergence when unions came to recognize the importance of the boycott as a strong weapon to be used extensively against employers; the period of illegality when the courts, through conservative application of common law, the Sherman Act and the Clayton Act, reduced the boycott to the status of an ineffectual weapon; and the period of legal acceptance by the courts, through liberal interpretation of the Norris-
La Guardia and Clayton Acts. In Chapters II and III it will be evident that the Taft-Hartley Act, as amended by the Landrum-Griffen Act, has restricted again the use of boy-
cotts by unions.

\(^{40}\text{American Federation of Labor v. Swing, 312 U. S., 325 (1941).}\)
CHAPTER II

THE SECONDARY BOYCOTT UNDER THE TAFT-HARTLEY ACT

During the twelve years that intervened between the passage of the Wagner and the Taft-Hartley Acts, labor's image deteriorated in the eyes of many American people. Anti-union feeling stemmed partly from the belief that strikes such as the ones in 1943 and 1945 by the United Mine Workers had materially impeded the war effort. Most unions, however, had closely adhered to a no-strike pledge for the duration of the war.

When the war ended, the inflation which resulted from the high level of consumer demand and the low level of consumer goods production caused many unions to attempt to "keep up with the cost of living." The result was a wave of strikes which further alienated much of the public.¹

Besides the anti-union feeling generated by the war and the postwar strikes, there was also the fact that union membership had grown from 3,700,000 at the time of the passage of the Wagner Act in 1935 to approximately 15,000,000 in 1947.² As a result of this rapid growth, the working

man was no longer pictured as an "underdog" by much of the public and a majority of Congress as he had been during the depression of the 1930's.3

There was much bitter and vigorous controversy within Congress preceding the development of the provisions of the Taft-Hartley Act. The opposition to the Bill was exemplified by Senator Wagner when he said:

Let's not fool ourselves for even a moment. The labor relations bill . . ., camouflaged as it is, is political legislation pure and simple. Its whole design, its whole purpose is one of effectively disfranchising and weakening the political power and influence of the wage and salary classes in our society.4

During the congressional debates, it was obvious that the "secondary boycott" was viewed unfavorably by many members of Congress. There was a tendency to accept as a truism the idea that all secondary boycotts are socially undesirable and morally indefensible.5 During the debates on the secondary boycott provision of the Bill, Senator Robert Taft made a statement which reiterated an earlier statement made by his father, Chief Justice Taft. Senator Taft stated:


It has been set forth that there are good secondary boycotts and bad secondary boycotts. Our committee heard evidence for weeks and never succeeded in having anyone tell us any difference between different kinds of secondary boycotts. So we have so broadened the provisions dealing with secondary boycotts as to make them an unfair labor practice.\(^6\)

Senator Taft had been told by responsible persons, whose labor philosophy differed from his, of the difference between different kinds of secondary boycotts. For example, President Harry S. Truman stated in his "State of the Union Message to Congress" in 1947:

> Not all secondary boycotts are unjustified. We must judge them on the basis of their objectives. For example, boycotts intended to protect wage rates and working conditions should be distinguished from those in furtherance of jurisdictional disputes. The structure of industry sometimes requires unions, as a matter of self-preservation, to extend the conflict beyond a particular employer. There should be no blanket prohibition against boycotts. The appropriate goal is legislation which prohibits secondary boycotts in pursuance of unjustifiable objectives, but does not impair the union's right to preserve its own existence and the gains made in genuine collective bargaining.\(^7\)

However, in enacting the Taft-Hartley Law, Congress appears to have adopted the more restrictive point of view that all secondary boycotts are evil. The Act contains four sections that relate directly with the issue of boycotts. Section 8(b)(4) deals with boycott actions of unions which


are banned by the Act. Sections 10(j) and 10(l) are concerned
with the method whereby unions may be restrained from engaging
in actions prohibited under Section 8(b)(4), while Section 303
permits suits to be brought in court by parties injured by
unions who have engaged in illegal boycott activities as spe-
cified by the Act.8

Through Section 8(b)(4) the right of employees to engage
in concerted activities for their mutual aid was sharply
restricted. Since the statutory language chosen to accom-
plish the restrictive objectives proved to be very ambiguous
and especially since the issue was so inherently complex,
many years of NLRB and court decisions were required to decide
the meaning of the section of the law concerning secondary
boycotts. Section 8(b)(4) says it is unlawful to

... engage in, or to induce or encourage the employees
of any employer to engage in, a strike or a concerted
refusal in the course of their employment to use, manu-
facture, process, transport, or otherwise handle or work
on any goods, articles, materials, or commodities or to
perform any services, with the object of forcing any
employer or other person to cease using, selling, han-
dling, transporting, or otherwise dealing in the product
of any other producer ... or to cease doing business
with any other person.9

The ambiguous language used in Section 8(b)(4) is prob-
ably a result of the method by which labor law is usually
written. Sanford Cohen states:

8U. S. Statutes at Large, LXI, Part I, 158-59 (1947).
9Ibid.
The method usually used by Congress to write labor law is from the floor in the heat of reaction to some industrial relations crisis. Since labor law is inherently controversial, this almost guarantees that new legislation will be full of compromises and imprecise draftsmanship.

These factors, coupled with the ignorance that most congressmen have of industrial relations practices, have produced statutory language which often confuses rather than clarifies the rules covering the relationship between labor and management.10

As decisions were rendered under the Act, the particular legal status of the boycott was gradually clarified. In some of the early cases under the Taft-Hartley Act, the Board and the courts interpreted the Act very broadly. This policy is evident in some of the cases in which the law was interpreted to mean that sympathy strikes and refusals by union labor to work with non-union labor were illegal. Decisions in other early cases indicated that the Act outlawed peaceful picketing and "we don't patronize" lists when used to bring about an illegal secondary boycott.

In some of the later cases, however, the Board and courts seem to have interpreted the Act more narrowly. In these cases the wording of Section 6(b)(4) was interpreted to mean that municipal workers, railroad workers, farm workers, and workers who were acting alone were not covered by the Act.

The first issue concerning secondary boycotts under the Taft-Hartley Act to come before the Board was that of sympathy strikes; this arose in the case of Distillery Workers and

Schenley Distillers in 1948. In that case it was decided that Local 1 of the Wine, Liquor, and Distillery Workers Union had engaged in an unfair labor practice against certain liquor warehouses in the New York metropolitan area by aiding Local 38 of the union, in Frankfort, Kentucky, which was striking against the Schenley Distillers Corporation's Stagg Distillery over a contract disagreement. Local 1 of New York, in support of Local 38, refused to handle Schenley products in warehouses in New York. In its conclusion the Board said:

... the record leaves little doubt that the strike by Local 1 ... was conducted principally, if not solely in support of the strike at the Stagg refinery, and constituted a secondary boycott in violation of the [Taft-Hartley] Act.11

In upholding the Board's ruling, Judge Augustus Hand of the Second Circuit Court stated:

The acts of the union in inducing the distributors not to deal in Schenley products until the grievances of the employees of Stagg were settled seemed to have clearly been forbidden by the statute, and to have been incapable of justification through any intricate reasoning about rights at common law.12

The issue of union workers striking against an employer because non-union labor was working on the same job for

11 Wine, Liquor, and Distillery Workers Union and Schenley Distillers Corporation, 78 NLRB, 594 (1949).

12 NLRB v. Distillery Workers Union, 178 F2d, 584 (1949). A search of the Supreme Court cases indicates that the case was not appealed; thus the Circuit Court's ruling was final.
another employer came to the attention of the Board in 1948 in *Carpenters Union and Watson's Specialty Store*. The Board ruled that the Carpenters Union was engaged in an unfair labor practice under Section 8(b)(4) when the union attempted to organize employees of another employer by calling a strike of its own men. In that case the carpenters refused to work on a job due to the fact that the workers who were installing floor covering in the building were non-union. The Board said this was an illegal secondary boycott because the carpenters were bringing pressure to bear on an innocent third party (the store owner) to stop doing business with the floor company.\(^{13}\)

The Board's view was upheld in the Sixth Circuit Court,\(^ {14}\) and the case was appealed to the Supreme Court. Justice Burton, in upholding the Board's ruling, stated:

> The Statute did not require the individual carpenters to remain on this job. It did, however, make it an unfair labor practice for the union or its agent to engage in a strike, as they did here, when an object of doing so was to force the project owner to cancel his installation contract with Watson's.\(^ {15}\)

Peaceful picketing and "we don't patronize" lists were ruled illegal when used to implement an "unlawful" secondary boycott in the case of *Carpenters Union and Wadsworth Building*

\(^{13}\) *United Brotherhood of Carpenters and Joiners and Watson's Specialty Store*, 80 NLRB, 533 (1948).

\(^{14}\) *NLRB v. United Brotherhood of Carpenters and Joiners*, 181 F.2d, 126 (1950).

\(^{15}\) *United Brotherhood of Carpenters and Joiners v. NLRB*, 341 U. S., 737 (1951).
Co. The Carpenters Union picketed a building project in which Klassen and Hodgson, Inc. was the general contractor in an attempt to persuade Klassen and Hodgson, Inc. to stop buying materials from Wadsworth Building Co., with whom the union had a dispute. The union also had Klassen and Hodgson, Inc. added to its "we don't patronize" list. Employees of Klassen and Hodgson's other suppliers refused to cross the picket line.

The NLRB ruled not only that such action constituted an illegal secondary boycott but that the picketing and blacklisting were not protected by the First Amendment to the United States Constitution when used to bring about the illegal secondary boycott.

Chairman Herzog, concurring with the majority, stated:

It seems clear to me that Congress was attempting to deal a death blow to secondary boycotts, whether for economic or for other objectives and desired to use all the power at its command to eliminate them from the American industrial scene. Evidence of that intention runs through the legislative history in both Houses. Picketing and the use of unfair lists have been such traditional methods of implementing secondary boycotts that I find it impossible to believe that Congress was not deliberately aiming its shafts at these practices when it inserted the words "induce and encourage" in Section 8(b)(4).16

The Board's view was upheld by the Tenth Court of Appeals in 1950. Commenting on the contention that outlawing peaceful picketing and "we don't patronize" lists was an abridgement

of the union's constitutional rights under the First Amendment, Judge Bretton said that freedom of speech "... is limited to the expression of views, argument or opinion which do not contain any threat of reprisal or force or promise of benefit," and the union's picketing and blacklisting exceeded that limit.17

At this point there was a notable change in the Board's interpretive policy toward secondary boycotts. With the common-situs18 cases, the Board began a series of decisions which indicated that it was going to interpret the law in a less restrictive manner than before. This series of decisions led to the writing of the 1959 Landrum-Griffen Amendments to the Taft-Hartley Act.

The common-situs issue first appeared in the Moore Dry Dock case in California in 1950. The sailors aboard a ship at the Moore Dry Dock were not members of the Sailors Union. When members of the Sailors Union picketed the only gate to the Moore Ship Yard, employees of Moore Ship Yard refused to cross the picket line to go to work. The Labor Board pronounced the following criteria as applicable in determining the legality of such picketing:

17*United Brotherhood of Carpenters and Joiners v. NLRB, 184 F2d, 60 (1950). Since the Supreme Court denied certiorari in the case, the ruling of the Tenth Court of Appeals stood.

18*A situation where the primary and secondary employers occupy the same premises and use the same gate to enter and leave.
When a secondary employer is harboring the situs of a dispute between a union and a primary employer, the right of neither the union to picket nor the secondary employer to be free from picketing can be absolute. The enmeshing of premises and situs qualifies both rights. In the kind of situation that exists in this case, we believe that picketing of the premises of a secondary employer is primary if it meets the following conditions: (a) the picketing is strictly limited to times when the situs of dispute is located on the secondary employer's premises; (b) at the time of the picketing the primary employer is engaged in its normal business at the situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer. All these conditions were met in the present case.\(^\text{19}\)

Apparently the Moore Dry Dock case was not brought before a federal court,\(^\text{20}\) but the rules established by the Board were tested in other cases. In Teamsters and Otis Massey in 1964, the Teamsters picketed the gate to a construction site to which Otis Massey delivered building materials. Other unions refused to cross the Teamsters picket line, thus bringing up a test of the rules.

The NLRB ruled that such action was not protected by the Moore Dry Dock rules since the site of the picketing was not the primary employer's principle place of business.

The Fifth Circuit Court reversed the NLRB decision on the grounds that the pickets had clearly indicated that the

\(^{19}\) Sailors Union of the Pacific and Moore Dry Dock Company, 92 NLRB, 547 (1950).

\(^{20}\) A search of Court Decisions Relative to the National Labor Relations Act, VII-XI (Washington, D. C., 1955-82), covering January 1, 1950-December 31, 1960, does not reveal that the case was ever appealed to a federal court.
dispute was with the primary employer. The Court's decision was subsequently based on the Moore Dry Dock rules. In rendering the decision of the Court, Judge Rives stated:

... we think such peaceful picketing upon common premises directed solely against the primary employer with whom a labor dispute exists, is ... lawful under the Act, and that any adverse effect upon secondary, neutral employers must be viewed as incidental to the lawful exercise of that statutory right. 21

Other court decisions which dealt with the wording of Section 8(b)(4) of the Taft-Hartley Act also made it less restrictive. The debate caused by these decisions culminated in the 1959 amendments to Section 8(b)(4). One such decision, relating to the use of the word "concerted" in the Act, was involved in the Rice Milling case (1949). Section 8(b)(4), as it appeared in the original Act, said it is unlawful for a union to "induce or encourage employees of a neutral employer to engage in a strike or concerted refusal in the course of their employment to perform any service" for the proscribed objective.

The Teamsters Union Local 201 was picketing the Kaplan Rice Mills in Louisiana in connection with a recognition strike. When a truck from Sales and Service House, a customer of Kaplan Mills, appeared at the gate to make a pick up, the picketers attempted to persuade the driver not to enter the mill because it was "unfair to organized labor."

21 NLRB v. Teamsters, Local 933, 225 F.2d, 205 (1955). Since the Supreme Court denied certiorari in the case, the ruling of the Fifth Court of Appeals stood. 330 U. S., 914 (1956).
The complaint before the Board charged that the union, by trying to persuade a truck driver not to cross the picket line, had engaged in an unfair labor practice under Section 8(b)(4) of the Taft-Hartley Act. The Board, however, said that the facts of the case did not indicate a violation of Section 8(b)(4)(A) or (B) because the union's activities arose out of primary picketing at the employer's mill and were carried out in the vicinity of the mill.22

The International Rice Milling Company then appealed the case to the Fifth District Court of Appeals in New Orleans. The Court reversed the NLRB decision because, as the Court saw it, the union was "clearly attempting to induce and encourage the employees of the neutral employer to refuse to transport or otherwise handle the goods and commodities of the rice mills."23

When the case reached the United States Supreme Court, the Court decided that the union's picketing and its encouragement of the men on the truck did not amount to an inducement or encouragement to "concerted" activity as the section proscribed. The Court thus decided that a union's inducements or encouragements reaching employees only as they happen to approach the picketed place of business generally are not

22 International Rice Milling Co. Inc. and Teamsters Local 201, 47 NLRB, 84 (1949).

23 International Rice Milling Co. Inc. v. NLRB, 183 F2d, 21 (1950).
aimed at "concerted," as distinguished from individual, conduct by employees. Such actions do not come within the proscription of Section 8(b)(4).24

Interpretation of the terms "employee" and "employer" was involved in other court action. Under the original Taft-Hartley Act, it was unlawful to "... engage in or to induce or encourage the employees of any employer to engage in ..." practices which the Act considered to be unfair.25 In a group of decisions concerning this issue, the Supreme Court took into consideration the definitions given to the terms in Section 2(2) of the Taft-Hartley Act, which states:

The term "employer" ... shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, ... or any person subject to the Railway Labor Act, ... .26

Section 2(3) of the Taft-Hartley Act states:

The term "employee" shall not include any individual employed as an agricultural laborer, ... or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, ... .27

The term "person" was much more broadly defined so as to include "one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, [and] any person subject to the Railway Labor Act."26

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25 38 U. S. Statutes at Large, LXI, Part I, 158-59 (1947).
26 Ibid.
27 Ibid.
trustees, trustees in bankruptcy, or receivers," a definition which seems to cover almost everyone.

Since all of these terms were used in the original Taft-Hartley Act, a pattern of decisions developed in boycott cases which involved organizations excluded from the definition of "employer" and workers excluded from the definition of "employee."

One such case was Teamsters v. New York, New Haven, and Hartford Railroad Co. The Teamsters Union was concerned about the loss of work to railroad workers and assumed they were exempt from the Taft-Hartley proscription under the Railway Labor Act. Thus, they persuaded truck drivers in Boston not to load trucks or trains to be hauled "piggy back." The case was heard by the Supreme Court of the State of Massachusetts, which decided in favor of the railroads. The Teamsters, who maintained that a State court had no jurisdiction in boycott cases, appealed directly to the United States Supreme Court. The Supreme Court upheld that contention but ruled that the railroad, even though subject to the Railway Labor Act, is entitled to protection by the NLRB from that kind of "unfair" labor practice under Section 8(b)(4) of the Taft-Hartley Act, which makes it an unfair labor practice to "cease doing business with any other person." Thus,

28 Ibid.
the Court was saying that the railroad, though not legally an employer, did qualify as a person and could be protected.29

A similar case involved the Electrical Workers Union in Delaware. In this case the union picketed the construction of a new airport in an attempt to persuade other unionized workers to boycott the project because non-union workers were employed on part of the electrical work. The union maintained that the picketing did not violate Section 8(b)(4) even though the union was not the certified bargaining agent for the offending contractor because an airport is not an "employer" according to the Act. The NLRB agreed that an airport does not come within the definition of "employer" under the Act, but said that it does qualify as a "person" under the Act and was protected, therefore, from such secondary picketing.30

The case was appealed to the Third Court of Appeals which upheld the Board, basing its decision partially on the Teamsters v. New York, New Haven, and Hartford Railroad case. In rendering the Court's decision, Judge Goodrich stated:

A governmental subdivision has no rights of its own; it is only an arm for carrying out the interest of the general public. If some individual or group of individuals has indulged in what the Congress has termed to be an unfair labor practice by which such entity is harmed we see no objection to the public interest being served by stopping the practice although not otherwise

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subjecting the municipal subdivision to the statutory obligation of an "employer." 31

In the two preceding cases, the employing agent in doubt was the intended victim of the boycott. It might be supposed, however, that the circumstances could be reversed, and the employing agency in doubt might itself be induced into secondary activity. Such a case occurred in Wisconsin as a result of the famous dispute between the United Auto Workers and Kohler Co. The union had been picketing the plant in Kohler, Wisconsin, for some time. In July of 1955, Local 833 started picketing a docked ship at the port of Milwaukee because the ship had a cargo imported by Paper Makers Importing Company which was destined for Kohler. The city of Milwaukee owned and operated the docks and facilities for loading and unloading ships at the port; therefore, the picketers were trying to induce the dock employees not to unload the ship with the purpose of putting pressure on the city (a neutral in this case) to cease doing business with Kohler.

When the case was brought to the attention of the NLRA on charges of violation of Section 8(b)(4), it was decided that since a municipality is a political subdivision of a State, it is specifically excluded from the definition of an employer in Section 2(2) of the Act and, therefore, is not

31 International Brotherhood of Electrical Workers v. NLRA, 254 F2d 221 (1958). A search of the Supreme Court cases indicates that the case was not appealed; thus the Third Court of Appeals' ruling appears to be final.
entitled to the Act's protection against secondary boycotts. The decision was also based on the fact that the dock workers were not employees according to the definition in Section 2(3) of the Act.  

A third issue raised by the wording of Section 8(b)(4) concerned the question of who can legally be induced to bring about secondary activity. The Board and the courts both read Section 8(b)(4) as not proscribing inducement by a union of supervisory employees of the secondary employer because supervisors are also excluded from the definition of employer under the Taft-Hartley Act. Consequently, it was permissible for a union to put pressure on supervisors working for the secondary employer to require them to cease handling the goods of the primary employer. This point was especially important in the trucking industry, in which the supervisors were usually either members of the rank-and-file workers union or, as ex-members of the union, were sympathetic to it. The union business agent could pass his instructions to engage in secondary boycotts to his member-supervisor without violating the provisions of the Act, unless there was proof that the supervisor was acting as the agent of the union in inducing the employees.

under him not to handle certain goods. This was one of the main points brought out in the Conway's Express case, in which the Teamsters Union's business agent made a telephone call to three member-supervisors of other companies and requested that they stop handling freight for Conway's Express. The Board stated:

As the individuals approached by the Union at Universal, Holland's and Glueck-Feabody were not 'employees' within the meaning of the Act and as Section 8(b)(4)(A) prohibits inducement or encouragement only of 'employees,' the respondent's conduct was not violative of this Section.

Another problem closely associated with the issue of inducement of supervisors also concerned the use of the term "employee." The Act stated that it is unlawful to induce the "employee" of a secondary employer. Nothing was said, however, about inducing the secondary employer himself. Thus, a union could simply write or call the employer and threaten a strike or other reprisal unless he ceased handling the goods of another employer, and in many cases could accomplish the desired boycott in this manner more effectively than by directing appeals to employees. This type of situation was present in the Conway's Express case, in which the Second Circuit Court of Appeals decided:


34Conway's Express and Teamsters Local 294, 87 NLRB, 972 (1949). A search of the Supreme Court cases reveals that the case was not appealed; thus the Second Circuit Court of Appeals' ruling was final.
Even if the demands carried with them an implicit threat to strike, we cannot agree that they tended to induce or encourage the employees to engage in a strike of concerted refusal forcing the employer to cease doing business with another. The embargo on Hubouin's [Conway's Express] goods was the product solely of request addressed to management or supervisory personnel. The former are clearly employers, and the latter have been so defined by the new Section 2(2).36

The final issue concerning the secondary boycott under the Taft-Hartley Act involved the use of what is known as a "hot cargo" clause. In labor terminology, "hot cargo" refers to goods produced or shipped by an "unfair" employer. Used in such a way, the term "unfair" may refer to a struck employer, to an employer whose goods bear no union label, or to an employer whose wages or other working conditions are deemed substandard by the union.36

A "hot cargo" clause is a clause contained in a labor contract which gives union members the right to refuse to handle or process "hot cargo." The legality of such contracts and their enforcement under the Taft-Hartley Act had to be judged under the technical language of Section 8(b)(4) of the Taft-Hartley Act.37

The first case which raised this question before the NLRB was the previously mentioned Conway's Express case, in

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36 Conway's Express v. NLRB, 195 F2d, 906 (1952).
37 ibid., pp. 91-92.
which an agreement between the employer and the union gave the union the right to refuse to handle the goods or freight of any employer involved in a labor dispute. When the union stewards of other employers covered by "hot cargo" agreements received notice that the employees of Conway's Express were on strike, they ordered the union members to cease handling Conway's freight. Their employers, realizing that this was covered by their contracts, also refused to carry on business with Conway. The NLRB took the position that, by signing the agreement, the employer had already given consent to a boycott against "unfair" employers. Therefore, the action of the employees did not literally amount to a "strike" or "refusal to work," but was just an exercise of their privilege under the contract.38

In justifying its view that "hot cargo" contracts were not unlawful under the Taft-Hartley Act, the Board pointed out that Section 8(b)(4) only prohibited labor unions from forcing or requiring neutral employee support in secondary boycotts. It does not proscribe any other means of inducing the support of a neutral employer. An employer's voluntary refusal to deal with other persons, therefore, was clearly permissible. The argument goes on to say that nothing in the Act makes it illegal for a union and employer to include

38Conway's Express, NLRB.
voluntarily a "hot cargo" clause in their collective bargaining agreement.\textsuperscript{39}

The Conway doctrine was followed in the \textit{Pittsburgh Plate Glass Company} case in 1953, in which an "unfair goods" clause was held to constitute a valid defense to Section 8(b)(4). The Board considered the refusal to handle "hot goods" in that case, as it did in \textit{Conway's Express}, a permissible exercise of the rights of a contract.\textsuperscript{40}

This apparently settled approach to the problem did not last. In 1954 the NL\textsuperscript{RB}, whose composition had in the meantime changed, reversed itself in the \textit{McAllister Transfer} case. McAllister was involved in a labor dispute with the Teamsters. It alleged that the union engaged in secondary activity in violation of Section 8(b)(4) since the Teamsters had directed employees of several other common carriers to cease handling McAllister freight. Though these employees were covered by a contract containing a "hot cargo" clause, these secondary employers refused to help the Teamsters and ordered their employees to handle McAllister freight. The employees ignored the instructions on the grounds that the "hot cargo" agreement said they did not have to do so.

In a three to two decision, the Board concluded that the "hot cargo" clauses were invalid. Two members of the

\textsuperscript{39}ibid.

\textsuperscript{40}Local 135, Chauffeurs Union and \textit{Pittsburgh Plate Glass Co.}, 105 NLRB, 740 (1953).
majority and two dissenting members split over the issue, and
the deciding vote had to be cast by the Chairman, Guy Farmer.
The Board did not, however, find it necessary to overrule
Conway's Express. Instead, it found that the facts showed
the union had induced and encouraged their members to refuse
to handle McAllister freight and, thereby, had disobeyed the
orders given by the employers. This, it was concluded, consti-
tuted a clear refusal by the employees to handle McAllister
freight and was, therefore, a violation of the law.41

This theory, therefore, left the effectiveness of "hot
cargo" clauses in the hands of the employer since he had the
right to choose whether or not to honor the clause. If he
honored such a clause, no law would be violated; however, if
he chose not to honor it, union inducement of employees to
disregard their employer's instructions would amount to enough
insubordination to constitute a violation.42

A further development of the "hot cargo" issue concerned
the Genuine Parts case in 1957. It involved another trucking
company which had signed a "hot cargo" agreement with the
Teamsters Union. The Board decided in that case that all
such agreements between common carriers and unions are invalid

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41 International Brotherhood of Teamsters and McAllister
Transfer, 110 NLRB, 1769 (1954).

42 Bureau of National Affairs, The Labor Reform Law,
p. 92.
at their inception since they are unenforceable on the part of the union.43

In upholding the Board's decision, Judge Wisdom of the Fifth District Court stated:

... a hot cargo clause, although not illegal per se, is not a shield of immunity to conduct prohibited in Section 8(b)(4)(A). Thus inducements of employees that are prohibited under Section 8(b)(4)(A) in the absence of a hot cargo provision were likewise prohibited when there is such a provision in a labor contract.44

The Supreme Court denied certiorari in the case.45 However, in the Sand Door case, the Supreme Court did hand down a decision. The Court held that "hot cargo" clauses did not constitute a valid defense to an unfair labor practice charge under Section 8(b)(4) of the Act. The Court said that it would be legal for one employer to decide voluntarily to refrain from dealing with another and that a union could lawfully attempt to persuade an employer to boycott another employer. The Court also concluded that there was nothing necessarily invalid about agreements which contained "hot cargo" clauses. However, it held that these contracts could not be enforced by "means specifically prohibited in Section 8(b)(4)(A)." In its decision the Court stated:

... to allow the union to invoke the provision to justify conduct that in the absence of such a provision

43Teamsters Local 728 and Genuine Parts Co., 119 NLRB, 399 (1957).
44Teamsters Local 728 v. NLRB, 265 F2d, 439 (1959).
would be a violation of the statute might give it the means to transmit to the moment of the boycott, through the contract, the very pressures from which Congress had determined to relieve the secondary employer.46

In summation it can be stated that, with the passage of the Taft-Hartley Act, the right of employees to engage in concerted activity for their mutual aid appeared to have been sharply restricted. However, after being interpreted by the National Labor Relations Board and the federal courts, the Law proved to be less restrictive than its proponents had hoped or organized labor had feared.

The Board and courts at first appeared to interpret the Law broadly by ruling in the Distillery Workers v. Schenley case that sympathy strikes were illegal; in the Watson's Specialty Store case that it is illegal for union workers to refuse to work on the same job with non-union workers; and in the Carpenters v. Wadsworth Building Co. case that peaceful picketing and "we don't patronize" lists are illegal when used to aid an illegal secondary boycott.

In the Moore Dry Dock case the Board and courts began the series of decisions which restricted the scope of the law. In that case, the Board ruled that "common-situs" picketing is legal if the picketing is strictly limited to times when the situs of the dispute is located on the secondary employer's premises, if at the time of the picketing the primary

employer is engaged in its normal business at the situs, if the picketing is limited to places reasonably close to the location of the situs, and if the picketing discloses clearly that the dispute is with the primary employer. The Board's ruling on "common-situs" picketing was affirmed in the Teamsters v. Otis Nashay case.

The next group of cases involved interpretation of certain words in the Act. The use of the word "concerted" was interpreted in the Rice Milling case to mean that union secondary boycott activity was illegal only if more than one worker was involved.

A second issue concerned the use of the terms "employee" and "employer." As used in the Act, the terms were interpreted in the Teamsters v. New York, New Haven, and Hartford Railroad case to mean that railroad workers, farm workers, and municipal workers were exempt from the Act's proscription.

A third issue also based on the legal definition of the term "employee" arose in the Conway's Express case in which the Board and courts ruled that supervisors were not "employees" under the definition of the term in the Act and were, therefore, outside its proscription.

A fourth issue concerned the legality of "hot cargo" agreements. According to the Board's and Court's interpretation of the law in the Rand Door case, "hot cargo" agreements were legal, but any attempt by a union to enforce such an agreement would be considered as illegal coercion.
The preceding account describes the status of the secondary boycott law at the time of the passage of the 1959 amendments to the Taft-Hartley Act.
CHAPTER III

THE IMPACT OF THE LANDRUM-GRIFFEN ACT ON SECONDARY BOYCOTTS

The main purposes of the Landrum-Griffen Act were to cause improvements in the internal financial and political practices of unions. The law, which is officially called the Labor-Management Reporting and Disclosure Act of 1959, is divided into seven Titles, most of which relate to the conduct of union affairs. Section 704 of Title VII specifically attempts to reverse the effect of the decisions discussed in the previous chapter. It should seem apparent that the subject of secondary boycotts is in no way related to the subject of reporting and disclosure of financial operations; thus, some members of Congress urged that Taft-Hartley amendments be treated separately from the reporting and disclosure law.1

Numerous attempts had been made before 1959 to amend the Taft-Hartley Act. Amendments of the type that finally emerged were included with other recommendations in President Eisenhower's 1954 State of the Union Address. The Administration repeatedly tried to have amendments added to the

Taft-Hartley Act; however, no successful congressional action occurred until 1959. Secretary of Labor, James P. Mitchell, had made the announcement, at the 1957 AFL-CIO convention, that the Administration intended to support legislation to amend the Taft-Hartley Act in 1955. The Secretary stated that, along with a bill intended to control racketeering in unions, the secondary boycott clause of the National Labor Relations Act would be amended to further protect employers from secondary boycott activities.

In the time between the recommendations made by President Eisenhower in 1954 and Secretary Mitchell's announcement in 1957, several important events took place which altered the image of labor in the eyes of the public and Congress. First of all, the American Federation of Labor and the Congress of Industrial Organizations agreed in 1955 to unite in a common federation for the mutual benefit of both organizations. By this consolidation the AFL-CIO became a single unit of about sixteen million workers. In the eyes of many observers, the merger marked the end of the concept of a weak labor movement struggling against a powerful employer. Many

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people, for various real or imaginary reasons, were concerned about "big unionism" and felt that unions should be strictly controlled by the government.5

Secondly, organized labor's image of political strength was damaged by its failure to get the Taft-Hartley Act repealed.6 Concerning this fact Professor Benjamin Aaron of Cornell University said:

Their "all or nothing" demands seemed arrogant and unreasonable, especially when contrasted with the deceptively conciliatory proposals of Taft to discuss and, if need be, amend or eliminate any provisions of the existing law that were demonstrably unworkable or prejudicial to labor's legitimate interests. Whatever slight hope there might have been for popular support of substantial revision of Taft-Hartley was shattered by the unions' intransigent position.7

By following this strategy labor lost a great deal of support. Those congressmen who supported a more restrictive law made a number of suggested "concessions" designed to gain support of a broad spectrum of legislators in revising the law. These included provisions to limit the liability of unions for the acts of their agents, restricting the authority of the General Counsel of the National Labor Relations Board to seek injunctions against unfair labor practices, increasing the protection of job rights of economic strikers, and

5Alfred Kuhn, Labor Institutions and Economics (New York, 1957), pp. 74-75.
6Congressional Almanac, XV, p. 158.
validating secondary strikes and boycotts which are initiated in connection with "hot cargo" agreements. 3

The third and probably most important event was the discovery and publicizing of "large scale racketeering" in the highest levels of the nation's largest national labor union, the International Brotherhood of Teamsters. The investigation of the Teamsters was made by the Select Committee on Improper Activities in Labor-Management Affairs, which is better known as the McClellan Committee. The findings of the Committee had a great impact on the image of labor since, in the words of Professor Alan K. McAdams of Columbia University:

To many Americans "labor" came to mean Teamsters, Teamsters to mean Hoffa, 9 and Hoffa to mean arrogance and Bossism. In the simplification and generalization process which becomes a part of any complex society the hearings of the committee had "proved" that "labor was corrupt" and had demonstrated that "something ought to be done." 10

Since the findings and recommendations of the McClellan Committee had so much to do with the content of the law which was eventually passed, the composition of the committee is of some importance. To insure that the committee would be non-partisan, it was composed of four Democrats and four Republicans; however, only three of the eight senators on the Committee were


9 James Hoffa, President of the Teamsters Union following the imprisonment of former Teamster President, David Beck.

considered "friendly" by organized labor. This included two Democrats, Kennedy of Massachusetts and McNamara of Michigan, and one Republican, Senator Ives of New York. Two of the committee's Democratic members were southerners and were considered by organized labor to be "unfriendly." These two senators were Ervin of North Carolina and the chairman, McClellan of Arkansas. The three Republicans who were considered "unfriendly" by organized labor were Mundt of South Dakota, Joseph McCarthy of Wisconsin and Goldwater of Arizona. One other individual closely associated with the committee was Robert Kennedy, younger brother of Senator John F. Kennedy, who was made chief counsel. Such a combination of Senators investigating labor was bound to worry labor leaders for, as in the words of Professor McAdams

Labor still had some "friends," but the combined impact of equal party representation, ostensibly to provide a "nonpartisan committee," and the inclusion of the two Southern Democrats gave majority representation to a coalition of conservative senators. If this coalition was not "unfriendly" to labor, it was known to be "friendly" to management. The selection of Senator McClellan as the chairman, with the powers which accrue to the chairman, made this virtually certain.11

The role of the McClellan Committee in the history of the Labor-Management Reporting and Disclosure Act of 1959 was extremely complex and would itself be a suitable topic for research. The committee is important to this thesis,

11Ibid., p. 38.
however, only in so far as it investigated unions for the
misuse of the secondary boycott. The Committee held hearings
on the secondary boycott issue from November 13 through
November 20 of 1958. The Committee heard testimony which
indicated that several forms of secondary boycotts, which
the majority found objectionable even though they did not
violate the law, had been taking place. The union which
appeared to be most guilty of such practices was the Team-
sters Union.12

One of the censured practices was secondary organi-
sational picketing. Robert Verdena, former secretary of Local
760 of the Barber's Union, testified that the union's president,
William Birthright, arranged with former Teamsters Union
president, David Beck, to have the Teamsters picket the
Waldorf-Astoria Hotel in New York when other picketing proved
ineffective in a 1956 labor dispute. The dispute concerned
a Barbers Union attempt to organize the forty employees of
the Waldorf Hotel's Terminal Barber shop.

Joseph P. Binns, Waldorf general manager, said the
hotel had no direct interest in the dispute until Teamster
pickets halted garbage removal and delivery of food and drink.
After this happened, Binns said that he told the Terminal
Barbershop's president, J. L. Bauman, that if the dispute

12Hearings Before the Select Committee on Improper
Activities in the Labor-Management Field, 85th Congress,
continued, the shop might lose its lease. The shop then voted to join the Barbers Union.13

A second practice to which the Committee objected was the use of boycotts in jurisdictional disputes. F. C. Sawyer, executive vice-president of the Burt Manufacturing Co. in Akron, Ohio, testified that his firm had lost over three million dollars from boycotts resulting from a jurisdictional fight between the United Steelworkers Union, which represented his employees, and the Sheet Metal Workers International Association, which wanted to represent them. He said the AFL-CIO had ruled in favor of the Steelworkers, but did nothing to enforce its ruling.14

The Committee also heard testimony that violence had taken place in connection with secondary boycotts. Roy J. Gilbert, head of Southwestern Motor Transport, Inc. of San Antonio, Texas, told of beatings and other violence which occurred after his refusal to sign a labor contract with Teamster Local 657 without a plant election. He said he had lost one million dollars in a secondary boycott in 1954.

Buck Owens of Odessa, Texas, a one-time Teamster organizer, said he went to work for Local 657's business agent, Raymond C. Shafer, after the strike against Southwestern began, and Shafer told him that the way to get Gilbert's contract was to destroy his property and trucks. Owens said

13 Ibid., pp. 15383-408. 14 Ibid., pp. 15413-437.
Shafer paid him eight hundred dollars for sixteen hundred pounds of stolen dynamite.15

Despite the disclosure of these and other practices during the hearings on secondary boycotts, nowhere in its recommendations did the McClellan Committee suggest that any new laws be passed to govern the use of secondary boycotts. However, there can be little doubt that the disclosures did have a great deal of influence on Congress when it did vote on the Landrum-Griffen proposals dealing with secondary boycotts.

As was mentioned earlier in this chapter, Secretary of Labor James P. Mitchell made the suggestion that amendments be added to the Taft-Hartley Act. He said:

We will propose, . . . that any secondary boycott instigated by a union now covered by the Act should be prohibited if it coerces an employer directly, or induces individual employees, in the course of their employment, to refuse to perform services in order to coerce an employer to cease doing business with others. This proposal would apply to coercion of all employers, including those not now under the Act's definition of "employer," such as railroads and municipalities. It would prevent an employer from being coerced to enter into or perform on [sic] agreements with any other person.16

Although it is clear that some Congressmen wanted to change the language in the Taft-Hartley Act, they could not agree on precisely what they wanted to change. There were

15Ibid., pp. 15454-515.

from the beginning differences of opinion as to whether or not the issue of inducement of supervisors would be covered by the law.

The sponsors of the Administration Bill\textsuperscript{17} stated that it was necessary to "plug up the loopholes" which, under the definition of "employees" in the old law, had allowed inducement of railroad employees, agricultural workers and municipal employees.\textsuperscript{18} Supervisors were to be covered by subsection (ii), which was intended to close what Senator Goldwater described as the "biggest loophole in the present law," which had permitted threats to secondary employers and their agents such as "supervisory and management personnel."\textsuperscript{19}

At the hearings on the Administration Bill, under questioning by Senators Kennedy and Morse, Secretary Mitchell made it clear that supervisors were not supposed to be covered by Section (ii) unless a union threatened to use force against the employer.\textsuperscript{20} In his further testimony, Secretary Mitchell said that requests of a plant manager of a secondary employer not to order non-union goods or materials would not be a violation of the new law. In his letter of

\textsuperscript{17}Introduced by Senator Goldwater on January 29, 1960.


\textsuperscript{19}ibid., p. 476.

\textsuperscript{20}ibid., p. 280.
February 16, 1960, to the Chairman of the Committee on Labor and Public Welfare, he stated:

Section [8(b)(4)(ii)] would make it an unfair labor practice for a union or its agents "to induce or encourage any individual employed by any person engaged in commerce" to engage in a strike or refusal to perform services for the proscribed object. This is intended to reach secondary activity which is directed at a single employee and not primary activity. It is not intended to include any person acting as an agent of an employer, such as supervisory or managerial personnel.21

In the same letter, the Secretary wrote in answer to a question concerning a request made of a secondary employer not to use non-union goods:

Although the superintendent is employed by the school board, it is assumed that he is a supervisor in which case only the "threat," "coercion" and "restraint" provision of the proposed section 8(b)(4)(ii), and not the "inducement" or "encouragement" provision of the proposed section 8(b)(4)(i), is applicable to him, as it is the intent of the proposed bill that only section 8(b)(4)(ii), and not section 8(b)(4)(i), is to apply to employers and to their agents, such as supervisors.22

This distinction between the coverage of (ii), which included supervisors, and (i), which did not, was also recognized by the sponsors of the Administration Bill, Senators Goldwater and Curtis. At the time the "Administration Bill" was introduced in the Senate, several senators spoke about secondary boycotts and the defects which they thought they

21ibid., pp. 408-09.
22ibid., p. 416.
had discovered in the old law. Senator Curtis, a co-sponsor, stated:

Sophisticated unions avoid the proscriptions of the act by directly threatening or coercing the secondary employer or his supervisory personnel. They also avoid these proscriptions by inducing individual employees, or workers not defined as employees by the act—railroad and agricultural workers—to refuse to handle the products of the primary employer or by pre-employment inducements of workers not to handle certain products. . . . I commend the administration for its efforts to make more effective the secondary boycott provisions of the act.23

At the time the Landrum-Griffen Bill was introduced in the House of Representatives on July 27, 1959, with subsections (1) and (ii) in Section 8(b)(4), Representative Griffen made an analysis of it, in which for the first time "supervisors" were included with "farm laborers" and "railway labor" as individuals who could not be induced under the bill he was sponsoring. He stated:

Since farm laborers, railway labor, and supervisors are not "employees" within the meaning of the Act, unions may now without penalty induce them to engage in secondary boycotts. This bill corrects this by changing the word "employees" in the phrase quoted above to "any individual employed by any person." This change appears in clause 4(1).24

In the House debate, Congressman Rhodes also referred to clause 4(1) as covering supervisors along with farm laborers and railway labor.25

23Ibid., II, p. 989.
24Ibid., pp. 1522-23.
25Ibid., p. 1581.
The Landrum-Griffen Bill was passed in the House of Representatives on August 14, 1959, and then sent to the conference committees. Senator Kennedy and his conference associate, Representative Thompson, submitted a joint analysis of the secondary boycott provision in which they interpreted the bill as outlawing inducement of railway and public employees and also supervisors. In the Senate, the committee also stated in part, "the proposal completely accepts the basic House position. Specifically, the proposal would ... prohibit secondary boycotts by supervisory employees." When the House version of the bill was accepted by the Conference Committee, Senator Morse indicated that he thought it did not cover the inducement of supervisors when he stated:

There are many instances also where a secondary boycott is conducted by a union agent going to a supervisor of employees, who often is a union member, and inducing him to shut off deliveries. Since the supervisor is subject to union discipline, such inducement would be clearly as effective as though inducement were applied to employees themselves. To close these loopholes would seem to me to have been important legislation in this field.

However, when the joint summary of the action taken by the conferees on the bill was printed in the Congressional Record, it completely ignored supervisors, for it stated that the revision of Section 8(b)(4) "closes loopholes which

26 ibid., p. 1707.
27 ibid., p. 1383.
28 ibid., p. 1486.
permitted secondary boycotts involving railroads, municipalities, and governmental agencies because their employees were not 'employees' under the definition in the act."

Senator Humphrey, who was critical of the Bill in general, maintained that the new subsection would cause a whole list of new and unnecessary problems for the NLRA and the federal courts. He stated:

As it now stands, section 9(b)(4) does not prohibit appeals or requests directed to supervisory or managerial employees, because those individuals are not employees within the statutory definition. But they are surely individuals; and to substitute the word "individual" for the word "employees" would place requests and appeals to them within the prohibition of the law. For example, an appeal to a supervisor to decline to accept a shipment from a struck employer is inducement of "any individual employed by any person" to engage in a "refusal" to work.

If this is the effect of the proposal, its adoption would completely isolate the union from any effective approach to the neutral employer, to persuade him or to encourage him to cooperate with the union by declining to do business with the struck employer, for the supervisors are the arms and legs of management. . . . The normal . . . approach to the neutral employer is through his supervisory and managerial personnel present on the job. Therefore, to prohibit the union from approaching them would be to cut off the union from its normal channels of communication. It would be a mockery to say that the union is free to persuade a neutral employer to assist it, but to deny the union access to the employer's supervisory and managerial staff. . . . How high in the corporation's officialdom would a union have to go before it could find a corporate agent with whom it would be safe to talk?

This is not defined in the amendment. It would have to come under some board or some judicial definition or interpretation. It would require action by the National Labor Relations Board, and of course, such action would undoubtedly be appealed, and then there would be a whole

29 Ibid., p. 1454.
series of court decisions as to the meaning of the word
"individual," as it applies to labor-management relations.
I realize that these points may seem to amount to split-
ting hairs; but they indicate the problems involved in
connection with such matters in labor-management relations.30

In brief, the legislative history merely confirms Senator
Humphrey's prediction on subsection (1) when he stated, "This
can lead to all kinds of trouble."31

As Section 8(b)(4)(i) appeared in the final version of
the amended law, it changed the wording of 8(b)(4) to read
"engage in, or to induce or encourage any individual employed
by any person . . ." instead of "to induce or encourage the
employees of any employer . . ." as it appeared in the old
Section 8(b)(4). The word "person," it was reasoned, is much
broader than the word "employer," so that now there would be
no question but that inducement of persons or individuals
employed by railroad companies, political subdivisions, non-
profit hospitals, farms, etc., would be included within the
secondary boycott ban.32

The amended version of the law under Section 8(b)(4)(ii)
made it unlawful for a union to "threaten, coerce, or restrain
any person engaged in commerce." This made it an unfair labor
practice for a union having a dispute with employer A to go

30Ibid., pp. 1037-38.
31Ibid., p. 1038.
32Bernard Marcus, "Secondary Boycotts," Symposium on
LABDA, p. 982.
directly to employer B and threaten him with a strike if he continued to do business with employer A.33

Whether or not either subsection (i) or (ii) included supervisors was, therefore, left up to the future court decisions.

The issue which resulted from the use of the term "concerted" in Section 8(b)(4) did not cause a great deal of debate in Congress. The word "concerted" was eliminated from the section, thus making it an unfair labor practice if a union induces even one individual not to cross a picket line.34

The "hot cargo clauses" issue caused a considerable amount of debate over just how severely they should be restricted. Attempts were made, which were supported by labor, to outlaw "hot cargo contracts" between unions and common carriers, but at the same time allow contracts to be signed which would protect employees' right not to cross a primary picket line.35 However, the Landrum-Griffen Bill which was finally adopted attempted to outlaw all forms of "hot cargo" agreements. Section 8(e) of the law in its final form made it an unfair labor practice

for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void.36

"Hot Cargo" agreements were also attacked by Section 8(b)(4)(A), which made it an unfair labor practice for a union to force or require any employer or self-employed person to enter into an agreement prohibited by Section 8(e).37

In summary it can be said that a casual reading of the 8(b)(4) amendments of the Labor-Management Reporting and Disclosure Act of 1959 would seem to indicate certain unmistakable rules which had been established by Congress to govern the use of secondary boycotts. The amendments, however, like the language they replaced, were subject to court interpretation. This is especially true of the issue of the coverage of supervisors by Section 8(b)(4)(i) and (ii), which will be covered in Chapter IV.

37Ibid., Section 8(b)(4)(A).
CHAPTER IV

BOARD AND COURT INTERPRETATIONS OF THE LANDRUM-GRIFFEN ACT'S PROHIBITIONS OF SECONDARY BOYCOTTS

By enacting Section VII of the Landrum-Griffen Act, Congress provided the Board and the courts another set of rules by which to judge secondary boycott cases. Seven years have elapsed since the passage of the law, and it is now possible to draw some conclusions about its effect. This chapter attempts to discover the extent to which the law has effectively done what its proponents meant for it to do. For this purpose we shall discuss the important secondary boycott cases since 1939 in terms of the issues with which Congress attempted to deal.

The question of the legality of "inducing supervisory or managerial employees" to boycott another employer came before the Board in Teamsters and Carolina Lumber Co. in 1961. In that case the Teamsters had attempted to induce carpenters not to use material supplied by the Carolina Lumber Company, against whom the Teamsters were striking. The carpenters went to work anyway, whereupon the strikers approached the construction foreman and persuaded him to stop the work. At another job site strikers involved in the same dispute persuaded the superintendent on the job to cease
work. The NLRB decided that the inducement of the carpenters and the labor foreman was an unlawful labor practice because this was "inducement of an individual." The inducement of the project superintendent, however, was found to be lawful because he was not an "individual" within the meaning of the Act. The trial examiner found that, since the superintendent was in charge of contracts other than the one in question, and since he was free to exercise authority, requisition supplies, etc. without immediate supervision, he was more nearly related to the managerial level than to the rank-and-file individual employed by any person within the meaning of Section 8(b)(4)(i).

By contrast, the working foreman in charge of laborers at the job site had no authority beyond supervising a small group of laborers. Thus, the NLRB was saying that the term "individual" is not to be given its literal meaning, but rather is restricted to those individuals who are more closely related to the rank-and-file than to management. The Board had gone on to try and draw a dichotomy between "low level" and "high level" supervision, holding that inducement of "low level" supervisors is not permissible, but inducement of "high level" supervisors is permitted under Section 8(b)(4)(i).¹ To draw this conclusion the Board had used

¹Local 505, International Brotherhood of Teamsters and Carolina Lumber Co., 130 NLRB, 1439 (1961). A search of West's General Digest, 3rd series, XIV-XXXI (St. Paul, 1961-6), does not indicate that the case was ever appealed to a federal court.
the legal definition of the term "supervisor" which, as set
down by the United States House of Representatives, says:

The term "supervisor" means any individual having
authority, in the interest of the employer to hire,
transfer, suspend, lay off, recall, promote, discharge,
assign, reward, or discipline other employees, or re-
sponsibly direct them, or to adjust their grievances
or effectively to recommend such action, if in con-
nection with the foregoing the exercise of such authority
is not merely routine or clerical nature, but requires
the use of independent judgement.2

Since the Carolina Lumber case was not appealed to a fed-
eral court, the issue had to be decided in a later case. When
the NLRB reasserted its stand in the Servette case, the Ninth
Circuit Court reversed the ruling. In that case the Whole-
sale Delivery Drivers Union had a dispute with Servette Inc.,
a wholesale food distributor in Los Angeles, California. The
union asked supermarket chain store managers to refrain from
selling goods supplied by Servette, stating that handbills
would be distributed at noncooperating stores. The NLRB held
that the appeal to supermarket managers did not fall within
subsection (l), which makes it an unfair labor practice for
a union to induce any individual employed by any person "to
refuse to perform services with an object of forcing his em-
ployer to cease doing business with another."3

2Committee on the Judiciary of the House of Representa-
tives, United States Code, 1964 ed.; Vol. 7, Title 29, Section
152(11).

3Local 848, Wholesale Delivery Drivers Union and Servette
The Court of Appeals set aside the Board's decision and held that the term "individual" in Section 3(b)(1)(i) included the market managers because in this case they were requested to make decisions within their managerial authority.4

The United States Supreme Court ruled that the Court of Appeals had correctly read the term "individual" as including the market managers, but was wrong in holding the attempts to enlist their aid to be a violation of Section 3(b)(4)(i). The Supreme Court stated that in asking the managers not to handle Servette items, the Local was not attempting to induce or encourage them to stop performing their managerial duties.5

Thus, it may be concluded that under current court decisions, the legality of the inducement of a manager depends on two factors: whether the person induced is a low level supervisor or a high level supervisor and whether as a high level supervisor he is asked to stop performing his managerial duties.

Concerning the issue of "the inducement of employees of exempt employers," there can be little doubt that this important practice was limited; however, an exception to the limitation seems to be evident in the decision involving Local 5895, United Steelworkers and Carrier Corp. In that case the Board held that picketing of railroad employees by

4Servette Inc. v. NLRB, 310 F2d, 659 (1962).
a production union was permissible as primary picketing, because the picketed railroad property was adjacent to the struck plant. The Second Circuit Court reversed this ruling, and the case was appealed to the Supreme Court.

The Supreme Court decided that although the union's activities and objectives were literally within the Act's definition of secondary activities, the picketing, nevertheless, was within the area of primary picketing protected by the provision in Section 3(b)(4)(B) which states that "nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing." The Court went on to say that "protected primary picketing includes picketing at a gate reserved for employees of neutral delivery men furnishing day-to-day service essential to the employer's regular operation." Even though the gate in question was actually on the railroad's property, it was so closely related to the employee's day-to-day operation that to picket it was no more illegal than to picket a gate owned by the employer. Thus, the Supreme Court decided that the union's purpose in the picketing was

7Carrier Corp. v. NLRB, 311 F2d, 155 (1962).
not as important as the place of the picketing, and the case
did not become a true test of the new law.

The third major issue with which the Landrum-Griffen Act
attempted to deal was that of direct pressure being applied
to an employer instead of to his employees. The issue seems
to have been resolved by several cases which answered the
two biggest questions raised by the amendment, namely: (1) Is
picketing by its very nature a coercive act or must the employer
show that he has actually been injured, and (2) What consti-
tutes a producer?

The first of these questions was examined in a case in-
volving a dispute between the Fruit and Vegetable Packers
Union and the Tree Fruits Labor Relations Committee Inc. which
reached the Supreme Court under the title of Fruit and Vege-
table Packers v. NLRB. In that case the union had a dispute
with the Tree Fruits Labor Relations Committee over certain
modifications the employer wanted in the new contract which
was being negotiated in 1960. When contract negotiations
broke down, the union instituted a consumer boycott of Wash-
ington State apples. Two or three pickets appeared at the
entrance of several grocery stores after they had opened and
left before the stores closed. The picketers passed out
handbills to all people who would take them and made it clear
to the store employees and the public that the dispute was
with Washington State apples and not with the grocery stores.
The Board decided that this action constituted an unfair
labor practice because it was coercion and restraint aimed at the retail store which was a neutral third party.  

The District of Columbia Circuit Court reversed this finding and decided that the union had not unlawfully induced or encouraged employees of the store to stop working and held that unless the store could show that some actual economic injury had resulted from the picketing, nothing could legally be done about it.

The Supreme Court also decided in favor of the union. In its decision, the Court said that Section 8(b)(4) of the Act does not mean to outlaw all peaceful consumer picketing at secondary sites, but only picketing that is used to persuade customers of secondary employers to cease trading with him in order to force him to stop dealing with the primary employer or to put pressure upon the primary employer. The Court said that this did not include picketing that is used to persuade the secondary employer's customers to boycott the primary employer's goods. The Court went on to say that even though such picketing may cause economic loss to the stores, it does not violate Section 8(b)(4)(ii) of the Act.


11Fruit and Vegetable Packers v. NLRB, 308 F2d, 311 (1962).

Thus, it can be concluded that the purpose of picketing determines in part its lawfulness or unlawfulness. If the picketing is meant to make the secondary employer lose business, it is unlawful; however, if the picketing is meant to make the primary employer lose business, it is lawful regardless of the consequences to the secondary employer. This attitude of the Court is very significant in view of the fears of some Congressmen at the time of the writing of the Landrum-Griffen Act. For example, then Senator John F. Kennedy, in explaining the final compromise with the House on the secondary boycott provisions, stated:

Under the Landrum-Griffen bill it would have been impossible for a union to inform the customers of a secondary employer that that employer or store was selling goods which were made under racket conditions or sweatshop conditions, or in a plant where an economic strike was in progress. We were not able to persuade the House conferees to permit picketing in front of that secondary shop . . . .

The second of the key questions which had to be answered concerned the Board's and courts' interpretation of the publicity provision. This is the provision that permits publicity other than picketing for the purpose of advising the public that the goods were produced by an employer with whom the union has a primary dispute. The publicity must be truthful, and it must not interfere with pick-ups and

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deliveries or induce the employees of the distributor not to perform services at the distributor's store.

Since handbilling, circulating unfair lists, and otherwise urging a consumer boycott of a retail store can be just as effective as picketing in coercing the store owner to cease distributing the product of a producer designated by a union as "unfair," the question of whether the provision was to be given a broad interpretation became a crucial one. The question came before the Board in 1961 in the case of Milk Drivers and Dairy Employees and Lohman Sales Company. In that case the Teamsters asked several pharmacies around Denver, Colorado, to stop buying products from Lohman Sales, which was a distributor of tobacco products, candy, and related products. This was done as a result of a labor dispute between the union and Lohman Sales. When some of the pharmacies refused to cooperate with the union, the union distributed leaflets in front of the stores, asking customers not to buy any tobacco products, candy, or related products from the pharmacies because the products came from Lohman Sales Co. It was argued by the stores that the union had no right to handbill against the Lohman Sales Co. because the company was not the producer of the product but only a distributor of a product produced by others. This argument was based on the specific language of the provision which permits a union to advertise to the public that it is having a dispute with the
employer who is the producer of a product or products being distributed by another employer.14

In making its decision the Board consulted both Webster's Dictionary and Black's Law Dictionary to discover the legal meaning of the terms product, producer, and production. From such sources the Board concluded that, "so far as human effort is concerned, labor is the prime requisite of one who produces." A wholesaler, such as Lohman, need not be the actual manufacturer to add his labor in the form of capital, enterprise, and service to the product he furnishes the retailers. In this sense, therefore, Lohman, as well as other employers who "handled" the raw materials of the product before him, is one of the producers of the cigarettes distributed by his customers. The Board went on to say that any other view would attach a special importance to one form of labor over another and attempt to isolate fabricators of products from those who otherwise add to its value. This interpretation would, said the Board, lead to the exclusion of companies which assemble machine parts; the soft drink bottling industry; and communications such as newspapers, magazines, and television stations, which produce products of an abstract rather than physical nature.15 Thus, the Board had given the term "producer" a broad interpretation.

14. 5. Statutes at Large, LXI, Part 1, 158-59 (1947).

15. Milk Drivers and Dairy Employees, Local 537 and Lohman Sales Co., 132 NLRB, 901 (1961). A search of West's General Digest, 3rd series, XIV-XXXI (St. Paul, 1961-6) reveals that the case was never appealed to a federal court.
Following the same reasoning in 1961, the Board reaffirmed its view in Local 662, International Brotherhood of Electrical Workers and Middle South Broadcasting Co., by holding that a local broadcasting station was a "producer" of cars. This was because the automobile dealer was advertising over a station with which the union had a dispute.16

The most recent decision concerning the question of just who constitutes a producer was made by the Supreme Court in the 1963 Servette decision mentioned above. The Court decided in that case that the previously mentioned publicity provision was as broad in terms of employers covered as the rest of Section 8(b)(4) and was, therefore, not limited to manufacturers of products. In the majority decision the Court stated:

The term "produced" in other labor laws was not unfamiliar to Congress. Under the Fair Labor Standards Act, the term is defined as "produced, manufactured, mined, handled, or in any other way worked on . . . and has always been held to apply to the wholesale distribution of goods. The term "production" in the War Labor Disputes Act has been similarly applied to a general retail department and mail-order business.17

The last alleged "loophole" with which the Landrum-Griffen Act attempted to deal was, as indicated earlier, the

16 Local 662, International Brotherhood of Electrical Workers and Middle South Broadcasting Co., 135 NLRB, 1698 (1961). A search of West's General Digest, 3rd series, XIV-XXXI (St. Paul, 1961-8) reveals that the case was never appealed to a federal court.

so-called "hot cargo" clause. The new language caused the Board and courts many problems in interpretation before the issues were resolved. Since Congress intended to regulate contracts specifically called "hot cargo," it was to be expected that attempts would be made to draft agreements which, though technically not covered by the literal language of the section, would actually produce the effects that Congress was apparently trying to eliminate.

One union which has historically used "hot cargo" clauses in its contracts is the Amalgamated Lithographers of America. When the union was faced with the new Section 8(e), it attempted to draft new clauses which would not violate the language of the Act. Thus, in NLRA v. Amalgamated Lithographers, Local 17, the Ninth Circuit Court of Appeals in San Francisco had to decide the legality of several clauses under the language of Section 8(e).

The new clauses which developed became known as the "trade shop," "struck work," "chain shop," "termination," and "refusal to handle" clauses. Some employers, however, refused to incorporate these clauses in the agreements, claiming that they were in violation of Section 8(e). In order to force the issue, the union induced the employees of several lithographic firms to refuse to work overtime and eventually to strike against their employers. The question was thus raised as to whether these provisions were "hot cargo" clauses within the meaning of the law.
The first issue examined by the Court was the so-called "trade shop" clause. This type of agreement would have provided an opportunity for the union to reopen the contract for negotiations on any part if the employer were to request his employees to handle lithographic production work made in any non-union shop. In addition, if the parties were unsuccessful in their attempts to reach a new agreement within a stipulated time period, the union was given the right to terminate the contract. The Court viewed this type of clause as an "implied" agreement that the employer would not handle the non-union products of another employer since if he did, he would suffer the serious consequence of a possible termination of all his rights under the existing contract. Therefore, the effect of this agreement was considered identical to an expressed agreement not to deal with non-union work.

The union argued that the purpose of the clause was not to forbid employers from dealing with non-union shops, but to enable a reassessment of economic demands in the event the employer undertook such work. The Court gave little weight to this argument, noting that economic considerations would not be used to justify a violation of the Act. Thus, the Court held the "trade shop" clause to be a violation of Section 8(e).

The second issue under examination was the "struck work" clause. The purpose of this clause is to prevent the contracting employer from becoming an "ally" of a struck employer. The contract which the union had attempted to negotiate with the employer contained a clause which provided that the employees covered by the contract should not be required "to handle any lithographic work (other than work actually in process in the plant) that it would not ordinarily handle." 19

The Board considered the clause to be an implied agreement that the employer would not handle any lithographic work for any struck plant. They regarded the contention that the provision merely restricted the employers from handling the "farmed out" work of the struck plant as unreasonable. Therefore, the effect of the clause was held to be similar to those made illegal by the new section. 20

The Ninth District Court held that the Board had misconstrued the "struck work" clause. The court considered the words "such employer" to apply to the struck employer and not the contracting employer. This made the clause fall within the limits of the "ally" doctrine, under which the contracting employer would legally become the "ally" of the struck employer if he undertook work which is ordinarily done by the struck employer. In that type of situation, the contracting

19Ibid.
20Ibid.
employer loses the protection of the Act. Thus, it can be concluded that, when carefully written, a "struck work" clause is perfectly legal under the Landrum-Griffin Act's Section 8(e).

The third issue under examination was the so-called "chain shop" clause. The major purpose of this clause is to recognize the right of employees to strike in sympathy with striking lithographic employees in another plant of the same employer. The clause contained in the case under discussion provided that the company would not request its employees to handle any work in any plant if in another of its plants or its subsidiaries there existed a strike or lockout. The Board felt that there was reasonable cause to believe that the clause violated Section 8(e) because it would seem to include all employers whose common control and integration of operations effectively make them appear as one employer. The Board thus ruled that this clause would prevent the handling of a subsidiary's work and permit a sympathy strike even in the absence of common control between the parent and the subsidiary.

The Board's decision was rejected by the Ninth District Court. It looked upon the clause as a promise by the primary employer to refrain from requesting that his employees handle

21 Ibid.
22 Ibid.
his own work if in another of his plants or the plants of his subsidiaries the union was engaged in a strike or lockout. This was not considered to amount to an agreement by the primary employer to refrain from handling the work of another employer. This would be true even if the subsidiary could be considered an "other" person or employer within the meaning of Section 8(e) since the clause did not constitute an agreement to cease handling the work of that "other" person or employer.23 Thus, it can be concluded that, when well-written, a "chain shop" clause is legal under Section 8(e) of the Landrum-Griffin Act.

The so-called "termination" issue is closely associated with the "struck work" and "chain shop" clauses. It provides for the union's right to terminate an agreement in the event the employees are requested to handle any work which they have been excused from handling under the "struck work" and "chain shop" provisions. In the particular case in question, the clause permitted termination if the employer requested an employee to handle any work received from or destined for any employer involved in a strike or lockout as referred to in both the "struck work" and "chain shop" clauses. The Ninth Circuit Court concluded that this type of clause violated Section 8(e). It based its conclusion on the ground that the bounds of the permissible "struck work" clauses were

23 Ibid.
exceeded since the "termination" clause was applicable with respect to "any" work whether customarily performed for the primary employer or not. In effect the employer had agreed to refuse to handle work which he had customarily handled for another employer, thereby violating Section 8(e). Thus, it can be concluded that a "termination" clause is unlawful under Section 8(e) of the Landrum-Griffin Act.

The final issue involved in the case was the "refusal to handle" clause. It protected the employees from discharge, discipline or other discriminatory action in the event that they refused to handle any non-union production work or any struck work of the type described in the preceding clauses. The contention was made that this provision also was in violation of the "hot cargo" ban.

The Board found that since this issue was intended to implement other illegal clauses, it too must be considered unlawful. The Ninth Circuit Court adopted this same point of view. The Court also added that the insistence upon contract provisions known to be unlawful is evidence of a desire not to reach an agreement and is, therefore, a violation of Section 8(b)(3) pertaining to refusals to bargain collectively.

\[24 \text{Ibid.} \]
\[25 \text{Ibid.} \]
\[26 \text{Ibid.} \]
In summary, many of the features of boycotts which Congress attempted to eliminate in 1959 have been effectively eliminated. Firstly, the Landrum-Griffen Amendments prohibit the inducement of low level supervisors in all situations and the inducement of high level supervisors when they are asked to stop performing their managerial duties.

Secondly, the inducement of railroad workers, farm workers, and municipal workers is no longer beyond the proscription of the law.

Thirdly, the direct inducement of a secondary employer is unlawful if the secondary employer can prove that the union intended to cause him to lose business. If the union is trying to cause the primary employer to lose business, there is nothing that can be done about it, regardless of the consequences to the secondary employer.

Fourthly, the Landrum-Griffen Act makes "trade shop" and "termination" clauses illegal but does not affect "chain shop" and "struck work" clauses when they are properly worded.
CHAPTER V

SUMMARY AND CONCLUSIONS

The secondary boycott issue has been present in the history of the American labor movement throughout the twentieth century. It has, consequently, been subjected to many of the same changes in policy by Congress, interpretation by the courts, and attitude of the public as have strikes and picketing. Secondary boycotts, however, have been handicapped much more than the other instruments of union power in as much as they have usually been treated as though they were less legitimate. Congress and the courts have generally treated the boycott issue this way, in fact, because they have considered boycotts in terms of the effects on a sometimes innocent third party. This is evident in what has been called the "ally doctrine," by which a union is within legal rights if it uses a boycott against a secondary employer who has agreed to assume the union's work during a labor dispute.

Research reveals that the term "secondary boycott" is very vague in its meaning and is, consequently, extremely difficult to define. Therefore, the issue can be discussed best in terms of the different forms it may take: "refusal to handle," "refusal to work," "unfair lists," "consumer
boycotts," etc. Thus, the secondary boycott is actually divisible into several different issues, each of which may lead to different conclusions about legality.

Under present law "refusals to handle" are usually illegal, and "refusals to work," "unfair lists," and "consumer boycotts" are usually legal; however, the term usually qualifies each of the conclusions. There are possible circumstances under which the legality of each of the above terms could be reversed. Thus, it is impossible to describe secondary boycotts in general as "legal" or "illegal" per se; the legality depends upon the form and the circumstances.

The secondary boycott first emerged as an important weapon of American organized labor in the late nineteenth century when adopted by the Knights of Labor. In a short time other groups also began to use the secondary boycott, especially unions affiliated with the American Federation of Labor and unions of railway workers.

The Sherman Antitrust Act, coupled with the narrow interpretation first given the Clayton Act, almost brought about the complete disuse of the secondary boycott in the United States by 1932. With the passage of the Norris-La Guardia Anti-Injunction Act in 1932, however, the secondary boycott began to reappear. The court cases dealing with the legality of the weapon culminated in the 1940 United States v. Hutchison case in which the Supreme Court ruled that a
union's attempt to secure aid from another union to bring pressure on an employer was legal.

Thus, the boycott passed through three basic stages before the passage of the Taft-Hartley Act in 1947: the period of emergence when unions came to recognize the importance of the boycott as a strong weapon to be used extensively against employers; the period of erosion when the courts, through conservative application of common law, along with the Sherman and Clayton Acts, reduced the boycott to the status of an ineffectual weapon; and the period of increasing legal acceptance by the courts, through liberal interpretation of the Norris-La Guardia and Clayton Acts.

The boycott was used by American labor as early as the 1830's, although it was not at that time called a "boycott." It was not until the 1880's, however, that it became an official instrument of organized labor and was widely used. This was probably the logical time to expect the boycott to emerge as a union weapon since it was also the time of the emergence of American organized labor as we know it today. American labor adheres strongly to the principles of free enterprise economics, and it is thus normal for American labor to adopt the use of the boycott as an economic weapon analogous to those used by business firms.1

In the minds of many congressmen and judges in the late nineteenth and early twentieth centuries, labor's view of itself was in error. Many of these individuals believed that labor's actions, which required unity of workers and concerted activity, ran counter to the basic principles of free competition. The American Congress frequently has distrusted powerful combinations which seem to interfere with the working of competitive markets. This outlook is reflected in the Sherman Antitrust Act, which, though supposedly directed primarily at big business, outlawed all restraints of trade. It would not be surprising, therefore, that, during the early years of union organization, trade unions found that the techniques which they adopted to obtain members and to improve working conditions met with disfavor in the courts and were often equated with conspiracy. 2

The courts, however, were not unanimous in their early condemnation of union activities. Justices such as Brandeis and Holmes often wrote strong dissenting opinions to the majority ruling in labor cases. For example, in the Duplex v. Deering case, Brandeis and Holmes maintained that the members of the several affiliated unions had a common interest and should have been allowed to aid each other.

The Norris-La Guardia Anti-Injunction Act, which was passed in 1932, made the federal judiciary neutral in labor cases. However, a less restrictive attitude toward labor and, thus, toward the boycott, did not suddenly appear upon the scene in the form of the Norris-La Guardia Act. The realization of changes in the basic principles of economic life in the United States began in Congress as early as 1898. In that year the Erdman Act was passed by Congress. This Act stressed the idea of mediation and voluntary arbitration in order to bring about industrial peace rather than violent events such as the Pullman Strike of 1894.3

The shortage of workers during World War I improved the bargaining status of the working man, and the War Labor Board had the effect of encouraging unionism and collective bargaining. When the war was over and the Board disbanded, such principles could not be erased from the minds of workers and congressmen who realized that labor was an important source of political strength.4 The result was the passage of the Norris-La Guardia Act of 1932, which freed unions from injunctions. This Act barred all federal courts from passing judgement as to the lawfulness or unlawfulness of the objectives of labor's actions.5

3Ibid., p. 311.
4Ibid., p. 347.
5Ibid., p. 22.
It has been said that, with the passage of the Norris-La Guardia Act and the subsequent passage of the Wagner Act in 1935, the Taft-Hartley Act was inevitable.⁶ There is probably a great deal of truth in such a theory in that the freedom accorded to labor by the two laws did stimulate the counter action which sponsored the more restrictive legislation of 1947.

The Taft-Hartley Act was written at a time when organized labor's public image had deteriorated. Many people were led to believe that unions had been unpatriotic during World War II and were responsible for the inflation which came after the war. Much of the public was angry with labor for the series of strikes which followed the war. Thus, it is not surprising that the major legislation of the time would be of a restrictive type.⁷

Through Section 8(b)(4) of the Taft-Hartley Act, the right of workers to engage in secondary strikes and boycotts was sharply restricted. The issue proved to be so complex, however, that many years of NLRB and court decisions were required to decide the meaning of the section. As decisions were rendered under the Act, the legal status of various

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types of boycotts gradually was clarified. In the early years of the Taft-Hartley Act, the Board and the courts generally interpreted the law as very restrictive. This policy was evident in the early cases in which the law was surprisingly interpreted to ban sympathy strikes, refusals to work, and "we don't patronize" lists.

With the "common-situs cases," the Board began a series of decisions which marked a notable change in its interpretive policy. Speculation as to the Board's purpose in changing its policy toward the secondary boycott issue leads to the hypothesis that it might have been trying to influence future legislation. Chairman Herzog made it clear that he did not approve of the language used in Section 8(b)(4). By interpreting the section in a sweeping manner, the Board could have been trying to persuade Congress to repeal the law. It also appears possible that, since the Board was approaching the issue on a case by case basis, what appeared to be a change in policy was merely a result of the different circumstances in different types of cases.

Illustrative of the less restrictive interpretations which began to appear in 1950 was the Moore Dry Dock case in which the Board decided that "common-situs" picketing was not a violation of the law if the picketing met certain

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8 "What Kind of Board?" *Fortune*, XXXXVII (February, 1953), p. 84.
prescribed criteria. These less restrictive interpretations by the Board and courts indicated that the law was not necessarily as restrictive as many of the congressmen in 1959 wanted it to be.

Following the Moore Dry Dock case, a series of decisions occurred in which the language of the Taft-Hartley Act was interpreted less restrictively than formerly; consequently, many congressmen decided that the wording of the law should be changed in several ways. First, it was decided that the term "concerted refusal" meant that to violate the law a union had to induce more than one employee of a secondary employer. If only one employee of a secondary employer was induced, as in the Rice Milling case, this did not constitute a concerted refusal and, therefore, was not a violation of the law.

Secondly, the Board and courts ruled that the use of the term "employee" to describe which people could not be induced excluded railroad workers, farm workers, and municipal employees. This ruling was based on the definition of the term "employee" found in Section 2(2) of the Act in which all workers covered by the Railway Labor Act were specifically excluded from the definition of employee.

Thirdly, the Board and courts ruled that although the Act prohibited the inducement of "employees," nothing in the language of the Act prohibited the inducement of the secondary employer himself. This policy led to problems concerning
the definition of "employer," which was found also to cover some individuals who worked in a supervisory capacity. Thus, unions could induce their employers and some immediate supervisors.

The fourth issue in the series of Board and court decisions concerned the use of "hot cargo" agreements. The Board and courts ruled that a clause in a collective bargaining contract which gave workers the right to refuse to handle "unfair" goods was not a violation of the law. However, the same court ruled that an attempt by the union to enforce such an agreement would be an unlawful act.

Thus, it can be concluded that, although the Taft-Hartley Act greatly restricted the use of secondary boycotts, as interpreted by the Board and courts it was not as restrictive as many of the law's proponents had hoped and organized labor had feared.

By 1959 the public image of American organized labor was again in a state of deterioration. This time the main impetus to public and congressional disfavor was the exploitation of the findings of the McClellan Committee concerning labor "racketeering." The conviction of Teamster President, David Beck, of larceny and the accusations made by the committee concerning his successor, James Hoffa, caused many American people to accept the view that "labor meant Teamsters and Teamsters meant Hoffa, and Hoffa meant arrogance and bossism."
The McClellan Committee's hearings touched only briefly on the issue of secondary boycotts. The hearings that were held on the issue did indicate that some practices such as jurisdictional strikes, organizational picketing, and violence connected with secondary boycotts were occurring. However, the Committee did not recommend to Congress new legislation concerning secondary boycotts.

The boycott proposals were made, instead, on behalf of the Eisenhower Administration, by Secretary of Labor James P. Mitchell. Thus, it might be concluded that the Administration introduced the legislation at a time when restriction of the boycott would be most easily passed. By attaching the proposals to the Reporting and Disclosure Act, passage of the measure, which had consistently failed to bring congressional action since 1954, was assured.

The congressional debates that followed the introduction of the Administration's proposals concerning secondary boycotts revealed that many congressmen did not seem to agree concerning the effect of the changes. At the time the law was written, there was much doubt, for example, whether or not the law made it illegal for a union to "induce" the supervisors of secondary employers.

However, the writers of the Landrum-Griffin Act undoubtedly attempted to make illegal at least three types of activity, which had been ruled legal under the Taft-Hartley Act. First, the term "concerted" was eliminated
from Section 8(b)(4) so that the inducement of only one individual would constitute an unfair labor practice. Second, the word "employee" was replaced by "individual," and the word "employer" was replaced by "person." This left little doubt that the new law was intended to cover the "induce- ment" of railroad workers, farm workers, and municipal workers. Third, the Landrum-Griffen Act attempted to outlaw "hot cargo" clauses in collective bargaining contracts.

A casual reading of the 8(b)(4) amendments of the Labor-Management Reporting and Disclosure Act of 1959 would seem to indicate certain unmistakable rules which had been established by Congress to govern the use of secondary boycotts. However, the amendments, like the language they replaced, were subject to court interpretation. This is especially true of the issue of the coverage of supervisors by Section 8(b)(4)(i).

Examination of some of the key cases which have come before the NLRB and the courts since the passage of the Landrum-Griffen Act indicates that many of the features which Sections 8(b)(4)(i) and (ii) were intended to eliminate have been effectively ended.

Those congressmen who felt that the inducement of supervisors of secondary employers should be eliminated should have felt at least partially satisfied. In dealing with this issue, the NLRB devised a "high level," "low level" dichotomy by which to test such cases. If the
individual who is induced has the "authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign reward, or discipline other employees, or responsibly direct them, or to adjust their grievances or effectively to recommend such action," he is considered to be a "high level" supervisor who is more closely associated to management than to labor. He can, therefore, legally be "induced."

However, such inducement is only legal if the union does not request that the individual stop performing his managerial duties. Thus, the term "individual" is not given its literal meaning, but rather is restricted to those individuals who are more closely related to the rank-and-file than to management. By this reasoning the NLRB ruled and was upheld in contending that a construction foreman was a "low level" supervisor who could not be induced legally and a construction superintendent was a "high level" supervisor who could be induced.

The issue of direct pressure being applied to a secondary employer seems to have been resolved by several cases which answered the two biggest questions raised by the amendment: (1) Is picketing itself a coercive act or must the secondary employer show that he has actually been injured? and (2) What constitutes a producer?

In answering the first question, the Supreme Court ruled that the purpose of picketing determines its lawfulness
or unlawfulness. If the picketing is meant to make the secondary employer lose business, it is unlawful; however, if the picketing is meant to make the primary employer lose business, it is legal regardless of the consequences to the secondary employer.

In answering the second question, the Supreme Court ruled that the term "producer" referred to anyone who "manufactured, mined, handled, or in any other way worked on" a product. Thus, a wholesaler or a distributor of a product is as much a "producer" as is the manufacturer.

In attempting to outlaw "hot cargo" clauses, the language of Section 8(e) appeared to be so sweeping that a literal reading would appear to even prohibit an agreement which could have the effect of causing the employer to cease or refrain from doing business with another employer. Thus, a literal reading would even bar an agreement not to subcontract work which had been or could be performed by the employees in the bargaining unit.

Both the Board and the courts held that they would not adopt such a broad interpretation. Rather, they would examine each agreement to determine whether its purpose was primary or secondary. Thus, the Board and courts upheld clauses preserving primary work for primary employees but ruled against clauses which attempt to limit all subcontracting to union shops.
It might be argued that Section 3(e) was largely unnecessary legislation. The individuals who backed the passage of the section maintained that such agreements made it possible for unions to bar subcontracting to (1) non-union employers, (2) employers not approved of by the union, and (3) employers not represented by a particular union. In light of the case history in Chapter IV of this thesis, such bans on subcontracting by unions were technically impossible since the Supreme Court ruled, in the Sand Door case, that although such clauses were not illegal at their inception, any attempt to enforce them would be illegal. Thus, even if an employer signed such an agreement, it was entirely up to his own discretion to abide by it.

Thus far, this final chapter has dealt with the history of secondary boycotts and conclusions about the laws which govern their use, but has not mentioned what most authorities consider to be the worst purpose of secondary boycotts, bringing pressure to bear on an employer in a jurisdictional dispute. As was noted in Chapter II of this thesis, boycotts for jurisdictional disputes were condemned by President Truman in 1947.

The typical situation which many people think of when the term "jurisdictional dispute" is mentioned is one where the employer is caught between the fire of disputing unions. He may be bound by his collective bargaining agreement to assign the disputed work to one union only to find that his
production is being boycotted by another union. He may be
compelled by law to recognize one union only to find that he
cannot market his product because another union will not
handle it. It should, however, be recognized that all of
the criticism cannot rest with the union in many cases of
jurisdictional disputes. This is because in many cases the
disputes may be indirectly caused by the employer. For ex-
ample, disputes may be caused by introduction of new machinery
or materials. Such changes by management may involve problems
as to which union will have jurisdiction over the work to be
performed.9

The Taft-Hartley Act makes it an unfair labor practice
for a union to engage in a jurisdictional dispute. The Act
requires that the Board inquire into the merits of a dispute
and make an award of the work to one of the unions involved.
If the Board's award is upheld by a federal court, it is
binding. Thus, jurisdictional disputes are dealt with by
what amounts to compulsory arbitration.10

Besides these legal restraints against jurisdictional
disputes, the AFL-CIO has repudiated their use and has set
up arbitral machinery to handle such issues.11

9Nathaniel R. Whitney, "Jurisdiction in American Building
Trade Unions," Studies in Political Science (Baltimore, 1914),
p. 105.

10Herbert R. Northrup and Gordon F. Bloom, Government
and Labor (Homewood, 1963), pp. 100-01.

11Bureau of National Affairs, Labor Relations Expediter
In light of the foregoing it appears that the issue of jurisdictional boycotts has been given too much attention by writers on the subject of secondary boycotts.

Another important question which warrants examination, when drawing conclusions about the issue of secondary boycotts, is that of equity. Since the National Labor Relations Act was passed in 1935, the general philosophy behind most labor law has been the equalization of power between labor and management; thus, an examination of the equity of outlawing the boycott would seem to be germane to this thesis.

One apparent inequitable aspect of the secondary boycott provisions is what might be called their "verdict first—trial later" procedure. At a point during a strike, the employer can file a secondary boycott charge. After a brief investigation showing a possible unfair labor practice, the NLRB will seek an injunction, and a prompt hearing is held before a United States district court judge. If the judge finds a reasonable cause for the Board's complaint, he will issue the injunction. At some later date a full hearing is held before the NLRB trial examiner, who makes a report to the Board which hears the case. If the union loses the case before the Board, it may be appealed to a federal circuit court and eventually, if necessary, to the United States

Supreme Court. Such a case might take several years before the last court has arrived at a decision.13

The reverse is not true in unfair labor practice cases brought by union against an employer. There is no injunction which a union can secure to stop unfair labor practice on the part of an employer. The union must, instead, wait until the case can be brought before the Board and the courts, and as has already been indicated, this can take many years.

In examining the issue of equity further, one is likely to find other discrepancies. For example, the secondary boycott is condemned as a weapon of labor because it extends the area of the primary dispute to third parties which are presumed innocent of any part in the primary dispute. There are, however, many ways a struck employer may extend the area of the primary dispute to other employers, all of which are legal under the Landrum-Griffen Act. The employer may subcontract the work to other firms over a large area for the duration of the strike. He may enter agreements with other employers not to take away their customers during a strike. He can make agreements with his competitors that when the strike ends their customers will be returned to them. Other employers may pay a portion of their earnings to the struck employer. He can seek the aid of Chambers of Commerce and banks to help break the strike through financial support.

13Ibid., pp. 852-53.
propaganda, and direct pressure on strikers. Under these circumstances the argument for the secondary boycott provisions on the theory that a strike should be an insulated struggle between the striking employees and the struck company does not appear to stand up well. More likely it appears that the rules of the Landrum-Griffin Act against the involvement of other employers in the dispute are only against the union and never the employer.

In final conclusion it can be said that the legal vacillations to which the boycott has been subjected indicate, if nothing else, the uncertainty in the minds of congressmen and judges as to which attitude is correct. In light of this legal disagreement, it becomes obvious that the secondary boycott matter is still not settled. There are still many disagreements, legal and otherwise, as to the status that the boycott should enjoy. Careful investigation of cases over the years indicates that misunderstanding and vagueness exist not only in the minds of legislators, but court justices, administrators and others. This is a problem area that perhaps will never be resolved to the satisfaction of everyone. There can be hope, however, that future handling of the problem will be subjected less to the severe extremes which have been noted and that a more consistent treatment will be given this vital legal area.

14Ibid., pp. 849-51.
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