Politically Motivated Labor Actions in the United States and England: A Comparison of Judicial and Legislative Treatment

I. INTRODUCTION

American and English courts have recently confronted the issue of the legality of politically motivated labor actions. Because such actions involve more than the economic relationship between a union and an employer, the courts in both countries have had difficulty in applying labor legislation and case law to these politically motivated activities.[1]

In the United States, recent foreign events produced litigation concerning such politically motivated labor actions. In December 1979, the Soviet Union invaded Afghanistan.[2] On January 4, 1980, President Carter responded by imposing an embargo on certain exports to the Soviet Union.[3] On January 9, 1980, the President of the International Longshoremen's Association (ILA) issued a directive to ILA members ordering them to stop handling cargo bound to or from the Soviet Union or carried on Soviet vessels.[4] ILA locals in ports along the Great Lakes, the Atlantic, and the Gulf Coast then refused to refer ILA members for any work on Russian vessels or cargoes.[5]

The ILA boycott raised questions concerning the extent to which a labor union can voice a political protest through a work stoppage or other action. In the

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1. *See* Allied International, Inc. v. International Longshoremen's Ass'n, 640 F.2d 1368, 1372 n.3 (1st Cir. 1981); Sherard v. Amalgamated Union of Engineering Workers, 1973 Indus. Ct. R. 421, 435.

2. N.Y. Times, Dec. 22, 1979, at 1, col. 5.

3. Soviet Invasion of Afghahistan, 16 WEEKLY COMP. PRES. DOC. 25, 26-27 (Jan. 11, 1980).

4. International Longshoremen's Ass'n v. Allied International, Inc., 456 U.S. 212, 214-15 n.1 (1982). This broad directive stated:

> In response to overwhelming demands by the rank and file members of the union, the leadership of the ILA today ordered immediate suspension in handling all Russian ships and all Russian cargoes in ports from Maine to Texas and Puerto Rico where ILA workers are employed. . . .
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> The reason for this action should be apparent in light of international events that have affected relations between the U.S. and the Soviet Union.
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> However, the decision by the Union leadership was made necessary by the demands of the workers.
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> It is their will to refuse to work Russian vessels and Russian cargoes under present conditions in the world.
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> People are upset and they refuse to continue the business as usual policy as long as the Russians insist on being international bully boys. It is a decision in which the Union leadership concurs.

5. Comment, *Protest Boycotts and Federal Labor Laws: The Russian Trade Boycott Litigation*, 3 NW. J. INT'L L. & BUS. 211, 229 (1981).

United States, the Supreme Court answered these questions in two recently decided cases. In the first, *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*,[6] the Court held that the employer could not obtain an injunction to halt the boycott for the limited period pending an arbitrator's determination of whether the work stoppage violated the specific terms of a collective bargaining agreement between the employer and the union.[7] In the second, *International Longshoremen's Ass'n v. Allied International, Inc.*,[8] the Court held that the ILA's boycott was an illegal secondary boycott[9] under Section 8(b)(4)(ii)(B) of the Labor Management Relations Act (LMRA)[10] and that the political motivation behind this activity did not exempt it from these provisions.[11]

English trade unions have engaged in political protests over both foreign events and their own government's policies and legislation.[12] Under English law, the legality of a trade union's action is determined according to a two-pronged test. First, the dispute involved must fall within the statutory definition of a "trade dispute."[13] Second, the action must be one taken "in contemplation or

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6. 457 U.S. 702 (1982).

7. *Id.* at 723-24.

8. 456 U.S. 212 (1982).

9. A secondary boycott has been defined as the "refusal to work for, purchase from or handle products of a secondary employer with whom the union has no dispute with an object of forcing that employer to stop doing business with the primary employer with whom the union has a dispute." C. Comella, Inc. v. United Farmworkers Organizing Committee, 33 Ohio App. 2d 61, 72, 292 N.E.2d 647, 656 (1972).

10. Congress enacted the Labor Management Relations Act, popularly known as the Taft-Hartley Act, in 1947. Pub. L. No. 101, 61 Stat. 136 (1974) (codified as amended at 29 U.S.C. §§ 141-197 (1976 & Supp. V 1981)). The LMRA amended and re-enacted the National Labor Relations Act (NLRA), which Congress had passed in 1935. Pub. L. No. 198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169 (1976 & Supp. V 1981)). Except when discussing specific court findings, this Comment shall refer to the NLRA provisions as part of the LMRA.

Section 8(b)(4)(ii)(B) of the LMRA, Pub. L. No. 101, § 8(b)(4), 61 Stat. 136, 141 (1947) (codified as amended at 29 U.S.C. § 158(b)(4)(ii)(B) (1976)) provides in part:

> It shall be an unfair labor practice for a labor organization or its agents —
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> . . . .
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> 4 . . . (ii) to threaten, coerce, or restrain any person engaged in commerce or in any industry affecting commerce, where in either case an object thereof is —
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> . . . .
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> (B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person. . . .

Although the section does not specifically mention the term, the majority in Congress intended this language to prohibit the common law concept of a secondary boycott. *See* 93 CONG. REC. 3432 (1947) (comments of Mr. Landis); S. Rep. No. 105, 80th Cong., 1st Sess. (1947) (minority report), *reprinted in* 1 NLRB, LEGISLATIVE HISTORY OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, at 463, 481-83 (1948).

11. *Allied*, 456 U.S. at 226.

12. *See infra* notes 112-32 and accompanying text.

13. A trade dispute is defined in § 29 of the Trade Union and Labour Relations Act (T.U.L.R.A.) as:

> (I) . . . a dispute between workers and their employer which relates wholly or mainly to one or more of the following, that is to say —
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> (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;

furtherance of a trade dispute."[14] If an activity satisfies this test, its organizers are immune from common law criminal and civil liabilities.[15] English courts have interpreted the statutory immunities to exclude purely political disputes from the definition of a trade dispute,[16] but until recently the immunities system protected trade disputes with political elements.[17] In the Employment Bills of 1980 and 1982, however, Parliament greatly limited the definition of a trade dispute so that virtually all politically motivated trade union activity is now prohibited under English law.

This Comment examines American and English law relating to politically motivated strikes and boycotts. The American section focuses primarily on the ILA Russian trade boycott litigation. The Comment next discusses how the *Allied* and *Jacksonville* decisions reflect federal labor policies. The Comment also studies English statutory and case law governing politically motivated strikes and examines the effect of recent employment legislation on such strikes. The author concludes that the U.S. Supreme Court and the British Parliament have both virtually eliminated a union's ability to engage in a political strike. Unlike Parliament, however, the U.S. Supreme Court has made this determination without limiting employees' rights to engage in other concerted activities.

II. POLITICALLY MOTIVATED LABOR ACTIONS UNDER AMERICAN LAW

The ILA boycott produced litigation which raised the issue of the legality of union protest activities. In the past, the ILA has engaged in other protests, most of which were aimed at the actions and policies of communist governments.[18]

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
(c) allocation of work or the duties of employment as between workers or groups of workers . . . .

Trade Union and Labour Relations Act, 1974, ch. 52, § 29, *amended by* Employment Act, 1982, ch. 46, § 18.

14. This requirement is based on § 13 of T.U.L.R.A., as amended, which reads:

(1) An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on the ground only —
(a) that it induces another person to break a contract or interferes or induces any other person to interfere with its performance; or
(b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or its performance interfered with, or that he will induce another person to break a contract or to interfere with its performance.

Trade Union and Labour Relations Act, 1974, ch. 52, § 13, *amended by* Trade Union and Labour Relations (Amendment) Act, 1976, ch. 7.

15. SECRETARY OF STATE FOR EMPLOYMENT, TRADE UNION IMMUNITIES, Cmd. 8128, at 2 (1981) [hereinafter cited as TRADE UNION IMMUNITIES].

16. *See* British Broadcasting Corp. v. Hearn, [1977] 1 W.L.R. 1004, discussed *infra* at notes 119-22 and accompanying text.

17. *See infra* notes 124-32 and accompanying text.

18. For example, the ILA has engaged in boycotts to protest the role of the Soviet Union and the People's Republic of China in the Korean War, Comment, *supra* note 5, at 219-20; *see* N.Y. Times, Aug.

These activities did not induce much litigation because of the uncertainty surrounding the LMRA's applicability to political union activities.[19] The 1980 boycott protesting the invasion of Afghanistan differed from previous protest activities because it incited numerous lawsuits, all of which involved the issue of the applicability of federal labor legislation to political protest activity.[20]

Employers attempted to end the 1980 ILA boycott using one of two approaches. Under the first, the "secondary boycott approach," those hurt by the boycott filed unfair labor practice charges with the National Labor Relations Board (NLRB)[21] or brought a private suit[22] charging that the ILA activity was an illegal secondary boycott under Section 8(b)(4)(ii)(B) of the LMRA. Under the second, the "section 301 approach," employers sought to enjoin the strike pending mandatory arbitration or to enforce an already rendered arbitration award pursuant to Section 301 of the LMRA.[23]

A. *The Secondary Boycott Approach*

Several employers sought to end ILA activity by characterizing it as an illegal secondary boycott. These employers argued that the action was secondary because union leadership had instructed its members not to handle Soviet products and the union had its primary dispute with the Soviet Union.[24] This litigation produced a conflict between the First and Fifth Circuits.

24, 1950, at 52, col. 2; N.Y. Times, Sept. 1, 1950, at 41, col. 1; to protest the Soviet invasion of Hungary in 1956, N.Y. Times, Oct. 30, 1956, at 10, col. 5; and to protest the occupation of Czechoslovakia in 1968, N.Y. Times, Aug. 24, 1968, at 16, col. 2. The ILA imposed similar boycotts to protest the South African policy of apartheid, *see* N.Y. Times, Mar. 20, 1972, at 2, col. 6 and *id.*, Mar. 22, 1972, at 5, col. 1, and to protest the seizure of the American hostages in Tehran in 1979, N.Y. Times, Nov. 9, 1979, at A12, col. 2.

19. *See* Comment, *supra* note 5, at 214. In NLRB v. International Longshoremen's Ass'n, 332 F.2d 992 (4th Cir. 1964), the NLRB sought to enforce its order requiring the ILA to resume working a vessel engaged in trade with Cuba. The Fourth Circuit held that the ILA's refusal did not involve a labor dispute, as required by the NLRA. Thus, the NLRB did not have jurisdiction over the activity. *Id.* at 996.

20. *See infra* notes 24-90 and accompanying text.

21. The LMRA forbids both employers and unions from engaging in certain defined labor related actions and empowers the NLRB to seek an injunction against these activities if a complaint is filed. 29 U.S.C. § 158, 160(*l*) (1976).

22. Section 303(b) of the LMRA gives an individual who is injured by union violations of § 8(b)(4) the power to bring a private suit. Pub. L. No. 101, § 303(b), 61 Stat. 136, 159 (1947) (codified at 29 U.S.C. § 187(b) (1976)).

23. Section 301(a) reads:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Pub. L. No. 101, § 301(a), 61 Stat. 136, 156 (1947) (codified at 29 U.S.C. § 185(a) (1976)).

24. Respondent's Brief at 10, International Longshoremen's Ass'n v. Allied International, Inc., 456 U.S. 212 (1982).

In *Baldovin v. International Longshoremen's Ass'n*,[25] the Fifth Circuit held that the ILA boycott was not "in commerce" and thus did not satisfy the NLRA's jurisdictional requirements.[26] Because the boycott was not subject to the NLRA's secondary boycott provisions, the court could not issue an injunction to halt the activity.[27] In contrast, the First Circuit in *Allied International, Inc. v. International Longshoremen's Ass'n*[28] found that the boycott was "in commerce" and thus subject to the NLRA.[29] The court held that the ILA had violated Section 8(b)(4) because it threatened Allied International, Inc., a neutral employer with whom it had no dispute.[30] Thus, the First Circuit's interpretation of the same political protest activity directly conflicted with that of the Fifth Circuit in *Baldovin*.[31]

The ILA appealed the First Circuit's decision to the Supreme Court. In *International Longshoremen's Ass'n v. Allied International, Inc.*,[32] the Court granted certiorari to determine the extent of the coverage of Section 8(b)(4) over the facts of the case[33] and thereby resolve the conflicts between the circuits. In a unanimous opinion, the Court analyzed the specific terms of Section 8(b)(4) and concluded that the plain language of the statute covered the ILA boycott because the boycott was designed to influence individuals employed in an industry affecting commerce, namely the importing and shipping industry.[34] The Court found the boycott was "secondary" because its purpose was to force Allied, Waterman, and Clark, the stevedore company, "to cease doing business" with each other and to cease dealing with Russian products.[35]

Despite the applicability of the language of the secondary boycott provisions, these provisions could only apply if the Court found NLRA jurisdiction. To

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25. 626 F.2d 445 (5th Cir. 1980).

26. *Id.* at 453-54. The secondary boycott provisions of the LMRA apply to actions aimed at a "person engaged in commerce or in an industry affecting commerce." 29 U.S.C. § 158(b)(4)(i) (1976). In finding that the boycott was not "in commerce" the court cited a line of Supreme Court cases beginning with Benz v. Compania Naviera Hidalgo, 353 U.S. 138, 143 (1957), which held that the NLRA does not apply to "labor disputes between nationals of other countries operating ships under foreign laws." *Baldovin*, 626 F.2d at 450. *See also* McCulloch v. Sociedad Nacional de Marineros de Honduras, 372 U.S. 10 (1963); Incres Steamship Co. v. International Maritime Workers Union, 372 U.S. 24 (1963). The Court also found the *Benz* reasoning applicable when American unions picketed foreign ships. The picketing was not "in commerce" because its primary object was to raise the operating costs of the foreign vessels. *Baldovin*, 626 F.2d at 451. *See* Windward Shipping (London) Ltd. v. American Radio Ass'n, 415 U.S. 104 (1974); American Radio Ass'n v. Mobile Steamship Ass'n, 419 U.S. 215 (1974).

27. *Baldovin*, 626 F.2d at 454.

28. 640 F.2d 1368 (lst Cir. 1981).

29. *Id.* at 1374. The court found the boycott subject to the NLRA because "the *only* labor-related activity in issue has been played out by an all-American cast" and the application of the NLRA would not interfere with any foreign entities. *Id.*

30. *Id.* at 1377.

31. *Baldovin*, 626 F.2d 445.

32. 456 U.S. 212 (1982).

33. *Id.* at 218.

34. *Id.* at 218-19.

35. *Id.* at 219.

determine whether the boycott satisfied the statutory standards, the Court analyzed the meaning of the words "in commerce" according to its line of cases dealing with foreign commerce.[36] These cases, beginning with *Benz v. Compania Naviera Hidalgo*,[37] held that neither the activities aboard foreign ships nor American picketing of these ships is "in commerce."[38] The *Allied* Court determined that the purpose of these decisions was to prevent U.S. labor legislation from interfering with the maritime operations of foreign ships. The tradition of restraint in applying U.S. law to foreign ships was irrelevant to this case, however, because the action involved an American union, importer, and vessel.[39] Thus, the Court held that the ILA boycott was within the jurisdiction established by the Act.[40]

The Court next determined that the boycott was the exact type of conduct prohibited by the secondary boycott provisions because its object was to force a neutral party to stop doing business with another business or entity.[41] Although the union claimed that its object was not to halt Allied's business with respect to Russian goods, the Court determined that the pressure placed on secondary parties was foreseeable and thus one of the objects of the boycott.[42] Responding to the ILA's argument that the boycott was caused by a political dispute with the Soviet Union rather than by a labor dispute with a primary employer, the Court declined to limit the scope of Section 8(b)(4) by creating a "political exception" to the statute[43] which Congress did not intend to create.[44] Finally, the Court held that the ILA boycott was not protected as free speech under the First Amendment.[45]

Thus, the Supreme Court in *Allied* affirmed the First Circuit and held that the ILA's politically motivated boycott was "in commerce" and within the scope of

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36. *Id. See supra* note 26.

37. 353 U.S. 138 (1957).

38. *See supra* note 26.

39. *Allied*, 456 U.S. at 221-22.

40. The Court supported its finding of jurisdiction with two other considerations. First, if the NLRA was not applicable to this boycott, conflicting state decisions could frustrate the NLRA's purpose of establishing a uniform national labor policy. Second, because the boycott differed significantly from President Carter's embargo, the action affected U.S. foreign policy, thus supporting a finding of federal jurisdiction. *Id.* at n.17.

41. The Court listed the elements of a § 8(b)(4) violation: "Employees must be induced; they must be induced to engage in a strike or concerted refusal; an object must be to force or require their employer or another person to cease doing business with a third person." *Allied*, 456 U.S. at 222, n.18, *quoting* Carpenters v. NLRB, 357 U.S. 93, 98 (1958).

42. *Id.* at 224.

43. The Court reasoned that "[w]e would create a large and undefinable exception to the statute if we accepted the argument that 'political' boycotts are exempt from the secondary boycott provision. The distinction between labor and political objectives would be difficult to draw in many cases." *Id.* at 225.

44. *Id.* at 225. *See generally* 93 CONG. REC. 4198 (1947).

45. *Id. Allied*, 456 U.S. at 227. "There are many ways in which a union and its individual members may express their opposition to Russian foreign policy without infringing upon the rights of others." *Id.*

the NLRA.[46] Because of the foreseeable burden it placed upon neutral employers, it fell within the Act's secondary boycott provisions.[47] Since the language and legislative history of these provisions contain no exceptions for political secondary boycotts, the ILA action was an illegal secondary boycott under Section 8(b)(4)(ii)(B) of the NLRA.[48]

B. *The Section 301 Approach*

Several employers adversely affected by the ILA boycott attempted to enjoin the work stoppage through Section 301[49] proceedings to enforce the arbitration clauses contained in their respective collective bargaining agreements.[50] These suits sought to enjoin the boycott pending mandatory arbitration proceedings.[51]

Section 301, enacted in 1947 as part of the LMRA, grants federal courts jurisdiction over suits for violations of contracts between employers and unions,[52] and allows a labor union to "sue or be sued as an entity and in behalf of the employees whom it represents. . . ."[53] Congress hoped Section 301 would encourage the peaceable settlement of contract disputes through judicially enforceable grievance procedures and no-strike clauses contained in collective bargaining agreements.[54]

The congressional policy favoring arbitration and judicial involvement often

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46. *Id.* at 221.

47. *Id.* at 224.

48. *Id.* at 226.

49. 29 U.S.C. § 185 (1976); *See supra* note 23 for text.

50. The collective bargaining agreement is a written agreement between the employer and the union which sets out the relationship between them and among the employees themselves. The agreement generally contains provisions such as those dealing with union recognition, grievance procedures, wages, hours, discipline, and seniority. The agreement regulates the terms and tenure of individual employees' employment, although each is hired separately under an individual contract of employment. R. GORMAN, BASIC TEXT ON LABOR LAW 540 (1976).

51. Most collective bargaining agreements contain express provisions for the resolution of contract disputes through internal company machinery rather than by court procedures. Complaints are generally brought by the union or an individual grievant to low level supervisors. If the dispute remains unresolved after being brought to higher levels, the question is usually submitted to an arbitrator selected by the parties to the agreement. R. Gorman, *supra* note 50, at 541-42.

52. 29 U.S.C. § 185(a) (1976). *See supra* note 23.

53. 29 U.S.C. § 185(b) (1976).

54. *See* the Steelworkers Trilogy: United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Corp., 363 U.S. 593 (1960). The Supreme Court has interpreted § 301 as a basis for affirmative relief for violations of the collective bargaining agreement. *See* Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957). This relief has primarily been in the form of court orders to arbitrate or to enforce or set aside an arbitrator's award. *See American Manufacturing*, 363 U.S. at 569, *Warrior Gulf*, 363 U.S. at 585, and *Enterprise*, 363 U.S. at 599. Section 301 has also been held to govern actions for breaches of no-strike clauses, damage awards against unions in cases where the employer had no other means of enforcing the no-strike promise, *see* Atkinson v. Sinclair Ref. Co., 370 U.S. 238 (1967), and an action for an injunction, *see* Boys Markets, Inc. v. Retail Clerks Union, 398 U.S. 235 (1970). *See also infra* notes 58-60 and accompanying text.

clashed with the earlier national policies embodied in Section 4 of the Norris-LaGuardia Act.[55] Congress enacted the Norris-LaGuardia Act in 1932 in order to protect employees engaged in peaceful concerted activities from injunctions issued by federal courts at the request of employers.[56] By removing jurisdiction to issue injunctions from federal courts, Congress attempted to limit judicial regulation of labor activities in order to give employees the freedom to organize and engage in concerted activities.[57]

Because the Norris-LaGuardia Act and Section 301 of the LMRA differ in their treatment of judicial involvement in labor disputes, courts have had to balance the two legislative policies. In order to encourage arbitration and the enforcement of no-strike promises as ways of resolving labor disputes, the Supreme Court in *Boys Markets, Inc. v. Retail Clerks Union*[58] provided a narrow exception to the Norris-LaGuardia Act. The Court held that a court may issue an injunction halting a strike when the collective bargaining contract contains a mandatory grievance adjustment or arbitration procedure, the petitioner is ready to arbitrate, and the petitioner has suffered and will continue to suffer irreparable injury.[59] The Court based its reasoning on the federal policy favoring arbitration as an effective, peaceful method of resolving industrial disputes.[60]

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55. Pub. L. No. 65, 47 Stat. 70, 70-71 (1932) (codified at 29 U.S.C. § 104 (1976)), which provides in part:

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

Id.

56. *See* 75 CONG. REC. 4618-30, 5463-68 (1932). At common law, an employer sought an injunction against concerted labor activity because it

> could promptly put an end to the strike, picketing or boycott. Although often issued only temporarily, or pending a full hearing on the merits of the case, the injunction would usually succeed in breaking the momentum and the will of the employees and effectively terminating the activities permanently. . . . [T]he employer could frequently secure the injunction without notice to or hearing for the union, with proof based on dubious and stylized affidavits, with proceedings before a judge rather than a jury which might be more sympathetic to the defendant workingman. . . .

R. GORMAN, *supra* note 50, at 604.

57. *See* 75 CONG. REC. 4509 (1932) (remarks of Sen. Norris). *See also* R. KORETZ & B. SCHWARTZ, STATUTORY HISTORY OF THE U.S.: LABOR ORGANIZATION 173-74 (1970).

58. 398 U.S. 235 (1970).

59. *Id.* at 253-54.

60. *Id.* at 253. The Court concluded:

> [T]he unavailability of equitable relief in the arbitration context presents a serious impediment to the Congressional policy favoring the voluntary establishment of a mechanism for the peaceful resolution of labor disputes . . . [T]he core purpose of the Norris-LaGuardia Act is not sacrificed by the limited use of equitable remedies to further this policy, and consequently . . . the Norris-LaGuardia Act does not bar the granting of injunctive relief in the circumstances of the instant case.

Id.

Following *Boys Markets*, the courts faced the problem of whether a court may enjoin a strike involving issues not covered by the arbitration provisions.[61] In such cases, the act of striking itself is the only alleged breach of contract the employer can challenge under the arbitration clause of the collective bargaining agreement.[62] In *Buffalo Forge Co. v. United Steelworkers*,[63] the Court held that *Boys Markets* did not permit a court to enjoin a strike over a nonarbitrable issue.[64] While the question of whether the strike itself violated a no-strike clause might be subject to arbitration, a court cannot enjoin the strike pending the arbitrator's decision on that question.[65] Thus, in *Buffalo Forge*, the Supreme Court further defined the limited scope of the *Boys Markets* exception to the Norris-LaGuardia Act.

Several employers injured by the ILA boycott attempted to enjoin the boycott pursuant to Section 301 pending arbitration as to whether the work stoppage violated the no-strike clauses of their collective bargaining agreements. In *Hampton Roads Shipping Ass'n v. International Longshoremen's Ass'n*,[66] the Fourth Circuit held that because the underlying political dispute between the ILA and the Soviet Union clearly was not arbitrable, a *Boys Markets* injunction could not be issued.[67] The Fifth Circuit reached a similar conclusion in *New Orleans Steamship Ass'n v. General Longshore Workers*,[68] in which the court held that a strike called to further a political goal is a labor dispute within the meaning of the Norris-LaGuardia Act.[69] Because the underlying (political) dispute was not arbitrable, the court could not issue an injunction pending arbitration.[70]

One employer appealed the Fifth Circuit's decision to the Supreme Court. In

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61. R. GORMAN, *supra* note 50, at 612.

62. *Id.*

63. 428 U.S. 397 (1976).

64. *Id.* at 404.

65. *Id.* at 410. As the Court explained its reasoning:

> [I]t does not follow that the District Court was empowered not only to order arbitration but to enjoin the strike pending the decision of the arbitrator, despite the express prohibition of § 4(a) of the Norris-LaGuardia Act .... If an injunction could issue against the strike in this case, so in proper circumstances could a court enjoin any other alleged breach of contract pending the exhaustion of the applicable grievance and arbitration provisions even though the injunction would otherwise violate one of the express prohibitions of § 4. ... This would cut deeply into the policy of the Norris-LaGuardia Act. ...

Id.

66. 631 F.2d 282 (4th Cir. 1980), *cert. den.*, 458 U.S. 1105 (1982).

67. *Id.* at 286.

68. 626 F.2d 455 (5th Cir. 1980), *aff'd sub nom.* Jacksonville Bulk Terminals, Inc., v. International Longshoremen's Ass'n, 457 U.S. 702 (1982).

69. *Id.* at 465; a labor dispute is defined in § 13(c) of the Norris-LaGuardia Act:

> The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Pub. L. No. 65, 47 Stat. 70, 73 (1932) (codified at 29 U.S.C. § 113(c) (1976)).

70. *Id.* at 468-69.

Jacksonville Bulk Terminals v. International Longshoremen's Ass'n,[71] Justice Marshall[72] addressed the Section 301 approach to ending the ILA boycott. Before the Supreme Court, the ILA conceded that the question of whether the work stoppage violated the no-strike clause was arbitrable.[73] Therefore, the questions before the Court were whether the Norris-LaGuardia Act was applicable to politically motivated work stoppages and whether this boycott could be enjoined pending arbitration.[74]

The Court first considered whether the facts presented a "case involving or growing out of any labor dispute" as required by Section 4 of the Norris-LaGuardia Act.[75] This Act defines a labor dispute as one which concerns terms or conditions of employment.[76] The Court stated that the plain language of the Act does not except politically motivated labor disputes from its coverage.[77] In addition, Section 4 does not require that each dispute relevant to the case be a labor dispute; the case must merely involve "any" labor dispute.[78] Since the Norris-LaGuardia Act removes jurisdiction in labor disputes from federal courts, the ILA boycott could not be enjoined.[79] The Court further found that the case involved a labor dispute based on its prior interpretations of the Act. In previous decisions, the Court had held that the term "labor dispute" must not be narrowly construed,[80] that the necessary element is "whether the employer-employee relationship [is] the matrix of the controversy,"[81] and that "the existence of non-economic motives does not make the Norris-LaGuardia Act inapplicable."[82] The Court found all these factors relevant.[83]

The Court also stated that the legislative history of the Norris-LaGuardia Act supports the conclusion that it applies to politically motivated work stoppages.[84] The Court found that in the 1947 Taft-Hartley Amendments "Congress declined . . . to adopt a broad 'political motivation' exception to the Norris-LaGuardia Act for strikes in protest of some governmental policy."[85] Instead, in

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71. *Jacksonville,* 457 U.S. 702 (1982).

72. Justices Brennan, White, Blackmun, and Rehnquist joined in Marshall's opinion, while Justice O'Connor concurred. Chief Justice Burger and Justices Powell and Stevens dissented. *Id.* at 703.

73. *Id.* at 707 n.5.

74. *Id.* at 704.

75. 29 U.S.C. § 104 (1976); *see supra* note 55.

76. 29 U.S.C. § 113(c) (1976); *see supra* note 69.

77. *Jacksonville*, 457 U.S. at 711.

78. *Id.*

79. *Id.*

80. *Id.* at 712, *citing* Marine Cooks & Stewards v. Panama Steamship Co., 362 U.S. 365, 369 (1960).

81. *Id.* at 712-13, *quoting* Columbia Rivers Packers Ass'n v. Hinton, 315 U.S. 143, 147 (1942).

82. *Id.* at 714, *citing* New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552 (1938).

83. *Id.* at 711-15.

84. *Id.* at 715-17. *See* 75 CONG. REC. 5471-73 (1932), in which Representative Beck argued that the Act should not protect political strikes such as those threatened in Europe at the time. This idea was rejected, however, when Congress defeated the amendment Beck had proposed to the Act.

85. *Id.* at 718.

Section 10(*l*) Congress gave power to the NLRB, not private parties, to petition for an injunction against such activities if they took the form of secondary boycotts.[86] Thus, the Court interpreted the plain language, past decisions, and legislative history of the Act to hold that a politically motivated work stoppage is a labor dispute within the meaning of the Norris-LaGuardia Act. In so doing, the Court declined to remove the dispute from the Act's coverage because it did not want to "embroil federal judges in the very scrutiny of 'legitimate objectives' that Congress intended to prevent when it passed the Act."[87]

Since the Norris-LaGuardia Act was applicable, the Court next considered whether the boycott could be enjoined pending arbitration under the rationale of the *Boys Markets* case. The Court rejected the employer's argument that the underlying dispute which caused the boycott was over conflicting interpretations of the management rights clause of the agreement[88] and was thus an arbitrable issue. The Court stated that the union called the boycott to protest the Soviet invasion of Afghanistan and that this underlying dispute was not arbitrable under the collective bargaining agreement. Following *Buffalo Forge*, the boycott could not be enjoined pending the arbitrators decision on whether the no-strike clause had been violated.[89] Thus, in *Jacksonville,* the Supreme Court held that an employer's Section 301 action to enforce the provisions of a collective bargaining agreement allegedly violated by a politically motivated strike involved a labor dispute within the meaning of the Norris-LaGuardia Act, and that no injunction could issue pending arbitration.[90]

C. *Allied and Jacksonville as a Reflection of National Labor Policies*

In his *Jacksonville* dissent, Chief Justice Burger stated that the *Allied* and *Jacksonville* decisions could not be reconciled in a rational way.[91] These two cases are not inconsistent, however, if they are viewed as an attempt by the Court to balance federal labor policies which restrict the judiciary's use of injunctions[92] on the one hand, but favor judicial enforcement of arbitration clauses in collective bargaining agreements[93] and the provisions of the LMRA[94] on the other.

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86. *Id.* at 719.

87. *Id.*

88. *Id.* at 721. This clause vested management with the exclusive power to control the business, except as provided in the agreement.

89. *Id.*

90. *Id.* at 723-24.

91. *Id.* at 729. The Chief Justice argued that it is inconsistent for the Court to hold the union liable for damages caused by its violation of § 8(b)(4) of the NLRA in *Allied* and, at the same time, to hold that the boycott could not be enjoined under the *Boys Markets* case. Burger blamed this inconsistency on "the artificial *Buffalo Forge* exception," which he stated should be overruled because it forces the Court to "engage in mechanical and contradictory analyses as to the character of disputes such as this one . . . ." *Id.*

92. *See supra* notes 55-57 and accompanying text.

93. *See supra* notes 52-54 and accompanying text.

Under *Jacksonville*, the federal courts are limited in their ability to enjoin the union's activity, if only for the period pending arbitration. Arbitration remains important, however, since the parties must arbitrate the question of whether the work stoppage violates the no-strike clause. Yet it is not clear how the Court would decide the issue if there were no such clause in the collective bargaining agreement.[95] Under *Allied*, neutral parties are protected from damage due to politically motivated strikes because the LMRA's secondary boycott provisions are applicable if the boycott is a secondary boycott.[96] Through these decisions, the Supreme Court has determined that politically motivated actions by labor unions are subject to the same protections and liabilities as other labor actions. The extent of protection or liability will depend upon the facts of the case and the terms of the collective bargaining agreement involved.

III. POLITICALLY MOTIVATED LABOR ACTIONS UNDER ENGLISH LAW

In England, courts and commentators have had difficulty in precisely defining a "political strike."[97] Such actions have generally been political in the sense that unions carried them out either in opposition to government legislation or policies, or in support of social or political objectives.[98] In England, industrial relations are governed by a system of statutory immunities which exempt trade unions and individuals involved in trade disputes from common law liabilities.[99] Rather than enacting legislation granting defined legal rights to trade unions, Parliament developed the system of immunities in response to a history of judicial interference in industrial conflict on behalf of employers.[100] English workers did not pressure Parliament for positive protection because, unlike their American counterparts, English trade unions developed before many workers were given the right to vote.[101] The legality of political strikes has depended on the "negative" protection of the statutory immunities. Although the immunities excluded purely political disputes from the definition of a trade dispute[102] prior

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94. *See supra* notes 9-10 and accompanying text.

95. *Jacksonville*, 457 U.S. at 713 n.12: "A labor dispute might be present under the facts of this case even in the absence of the dispute over the no-strike clause. . . . We need not decide this question, however, because this case does involve a dispute over the interpretation of the parties' collective-bargaining agreement."

96. *See supra* notes 32-48 and accompanying text.

97. *See, e.g.*, Sherard v. Amalgamated Union of Engineering Workers, 1973 Indus. Ct. R. 421, 435 (statement by Lord Roskill); TRADE UNION IMMUNITIES, *supra* note 15, at 49.

98. *See* INDUSTRIAL CONFLICT: A COMPARATIVE LEGAL SURVEY 323 (B. Aaron & K. Wedderburn eds. 1972).

99. Wedderburn, *The Law and Industrial Conflict in Great Britain*, in LABOUR RELATIONS AND THE LAW: A COMPARATIVE STUDY 127 (O. Kahn-Freund ed. 1965).

100. *See id.* at 127-28.

101. M. MORAN, THE POLITICS OF INDUSTRIAL RELATIONS 6 (1977).

102. *See* British Broadcasting Corp. v. Hearn, [1977] 1 W.L.R. 1004, discussed *infra* at notes 118-21 and accompanying text.

to the Employment Acts of 1980 and 1982, they did protect trade disputes with political elements.[103] Recent legislation has, however, removed this protection from virtually all politically motivated disputes.

A. *English Political Strikes Prior to 1980*

During the nineteenth century, the common law greatly curtailed trade union organization and activities by subjecting unions and their members to criminal prosecution for the offenses of obstruction, molestation, intimidation, and conspiracy.[104] In response, Parliament granted trade unions immunity from liability for these criminal acts in the Trade Union Act 1871[105] and the Conspiracy and Protection of Property Act 1875.[106]

During the late nineteenth century, however, the courts began to restrict unions through the civil law, developing civil liability for conspiracy, and subjecting strike organizers to prosecution for the tort of inducing a breach of the strikers' employment contracts.[107] Due to trade union pressure, Parliament reduced judicial interference with industrial relations by passing the Trade Disputes Act 1906.[108] Section 1 of the Act protected a person acting "in contemplation of furtherance of a trade dispute"[109] from liability for civil conspiracy.[110] Section 3 provided immunity for inducing another person to break a contract of employment or interfering with the trade, business, or employment of another.[111] Under the 1906 Act, several courts nevertheless found political strikes unprotected because the strikes did not satisfy the definition of a trade dispute.[112]

In 1971, the Conservative government attempted to solve problems in industrial relations through extensive legal regulation by enacting the Industrial

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103. *See infra* notes 124-32 and accompanying text.

104. TRADE UNION IMMUNITIES, *supra* note 15, at 11-12.

105. Trade Union Act, 1871, 34 & 35 Vict., ch. 31.

106. Conspiracy and Protection of Property Act, 1875, 38 & 39 Vict., ch. 86. *See* TRADE UNION IMMUNITIES, *supra* note 15, at 12-14.

107. TRADE UNION IMMUNITIES, *supra* note 15, at 13.

108. Trade Disputes Act, 1906, 6 Edw. 7, ch. 47.

109. Courts and commentators have often called this phrase the "golden formula." It has been used to define the statutory immunity given to concerted union activity since the 1875 legislation. TRADE UNION IMMUNITIES, *supra* note 15, at 13.

110. *Id.* at 15.

111. Section 3 of the Trade Disputes Act, 1906, 6 Edw. 7, ch. 47 read:

> An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business or employment of some other person, or with the right of some other person to dispose of his capital or his labour as he wills.

Trade Disputes Act, 1906, 6 Edw. 7, ch. 47, § 3.

112. *See* Nat'l Sailors' & Firemen's Union of Great Britain & Ireland v. Reed, [1926] 1 Ch. 536; Associated Newspapers Group Ltd. v. Flynn, (1970) 10 Knight's Indus. R. 17.

Relations Act 1971.[113] The new legislation repealed the 1906 Act and established a new system of industrial law[114] but maintained the main trade union immunities.[115] In response to trade union opposition to the 1971 Act's increased regulation of industrial relations, the Labour Party came into power in 1974 committed to the Act's repeal.[116] In the Trade Union and Labour Relations Act (TULRA) of 1974, Parliament repealed the 1971 Act and returned, in Section 13, to the system of immunities provided under the 1906 Act.[117] In Section 29, the Act also defined a trade dispute as "a dispute between employers and workers or between workers and workers, which is connected with one or more [listed subjects]," such as terms and conditions of employment, termination, allocation of work, and discipline.[118]

In 1978 the Court of Appeal considered whether the TULRA protected the trade union activity involved in *British Broadcasting Corp. v. Hearn*.[119] The alleged

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113. Industrial Relations Act, 1971, ch. 72. The Act's drafters believed that the problems in Britain's industrial relations were primarily caused by the unions and the tradition of non-governmental interference in industrial relations. *See* H. CLEGG, THE CHANGING SYSTEM OF INDUSTRIAL RELATIONS IN GREAT BRITAIN 320 (1979).

114. TRADE UNION IMMUNITIES, *supra* note 15, at 19. The new system created the National Industrial Relations Court to adjudicate the provisions of the Act and established the Commission for Industrial Relations to act as an advisory and conciliatory agency. *Id.*

115. The immunities were set out in § 132 which stated in part:

> (I) An act done by a person in contemplation or furtherance of an industrial dispute shall not be actionable in tort on the ground only —
>
> (a) that it induces another person to break a contract to which that other person is a party or prevents another person from performing such a contract, or
>
> (b) that it consists in his threatening that a contract (whether one to which he is a party or not) will be broken or will be prevented from being performed, or that he will induce another person to break a contract to which that other person is a party or will prevent another person from performing such a contract.

Industrial Relations Act, 1971, ch. 72 § 132.

In 1973, the Court of Appeal considered whether the 1971 Act protected a political strike in Sherard v. Amalgamated Union of Engineering Workers, [1973] Indus. Ct. R. 421. The court held that it could not issue an injunction because it was arguable that the protest was an industrial dispute under the 1971 Act. *Id.* at 433.

116. M. Moran, *supra* note 100, at 1.

117. Trade Union and Labour Relations Act, 1974, ch. 52, § 13. Although in 1974 the Labour government intended to extend the § 13 immunities to cover inducement to break all contracts, it was not able to muster enough support for this action until 1976 when the extension was made in § 3 of the Trade Union and Labour Relations (Amendment) Act, 1976, ch. 7. Trade Union Immunities, *supra* note 15, at 22; *see supra* note 14 for text of amended version of § 13; and *supra* note 111 for text of § 3 of the 1906 Act.

118. Section 29 of the T.U.L.R.A. stated:

> (I) In this Act "trade dispute" means a dispute between employers and workers or between workers and workers, which is connected with one or more of the following, that is to say —
>
> (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
>
> (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
>
> (c) allocation of work or the duties of employment as between workers or groups of workers
>
> . . . .

Trade Union and Labour Relations Act, 1974, ch. 52, § 29.

119. [1977] 1 W.L.R. 1004.

political dispute began when the Association of Broadcasting Staff planned to prevent the BBC's satellite transmission of the Football Association Cup Final to South Africa. The union planned to intervene in opposition to South Africa's apartheid policy and in accordance with the union's policy of fighting against discrimination in broadcasting.[120] Intervention would have interrupted service to all countries which used satellites to obtain the broadcast, not just South Africa, and the BBC sought an injunction to restrain obstruction of the broadcast. After the trial judge denied their request, the BBC appealed to the Court of Appeal, which granted the injunction. The court held that the union's action was not a trade dispute because it was not connected with terms and conditions of employment as required by Section 29(a) of the TULRA.[121] Since the union's action was not a trade dispute, it was coercive interference with BBC's business and not protected by the Section 13 immunities.[122]

As *BBC* illustrates, English courts interpreted the TULRA 1974 as excluding a purely political dispute from the definition of a trade dispute.[123] Because of three House of Lords decisions,[124] however, trade unions were still able to engage in activities which involved political motives. These three decisions gave trade unions wide immunity by interpreting the "golden formula"[125] of Section 13 broadly.

In *NWL Ltd. v. Woods*,[126] the House of Lords held that as long as a dispute is a trade dispute within the meaning of Section 29,[127] "it is immaterial whether the dispute also relates to other matters or has an extraneous, e.g. political or personal motive."[128] The House of Lords expanded on its broad interpretation of the "golden formula" in *Express Newspapers Ltd. v. MacShane.*[129] In *MacShane,*

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120. *Id.* at 1008.

121. *Id.* at 1016.

122. *Id.* at 1011-12. According to Lord Denning, the dispute might have become a trade dispute had the union demanded that a clause be put into the members' employment contracts stating that they would not be required to take part in transmissions to South Africa. This demand might have connected the activity to terms and conditions of employment. *Id.* at 1011. In addition, Lord Roskill stated that although the case did not present a trade dispute, this did not mean "that there cannot be circumstances in which a dispute on a matter of conscience can properly be said to be a trade dispute." *Id.* at 1014.

123. *See* Express Newspapers v. Keys, 1980 Indus. Relations L. R. 247, in which the High Court, Queen's Bench Division, held that a union's call for a strike to protest government policies did not constitute a trade dispute.

124. N.W.L. Ltd. v. Woods, [1979] 1 W.L.R. 1294; Express Newspapapers Ltd. v. MacShane, 1980 A.C. 672; Duport Steels Ltd. v. Sirs, [1980] 1 W.L.R. 142.

125. *See supra* note 109.

126. [1979] 1 W.L.R. 1294. In this case the International Transport Workers' Federation (I.T.W.F.) attempted to persuade workers in English and foreign ports to refuse to berth, unload, or load a vessel which employed poorly-paid foreign crews. The I.T.W.F. hoped to persuade the ship's owners to change its foreign registry and to negotiate terms and wages with I.T.W.F. crews.

127. *See supra* note 118 for text of § 29. To be a trade dispute, a union activity had to be "connected with one or more" of the employment related subjects. *Id.*

128. *N.W.L.*, [1979] 1 W.L.R. 1313.

129. 1980 A.C. 672.

the court held that once a trade dispute existed under Section 29, the test of whether the act was done in furtherance of it was a subjective one.[130] The House of Lords reaffirmed the *MacShane* test in *Duport Steels Ltd. v. Sirs*,[131] stating that the TULRA does not limit the character of a protected action as long as it is done in contemplation or furtherance of a trade dispute.[132] Thus, under the TULRA, courts held that a purely political dispute was not protected by the immunities of Section 13 because it was not a trade dispute. However, a dispute which contained political elements was protected so long as some aspect of the dispute was connected to one or more elements listed in Section 29 of the TULRA.

B. *Recent Legislation Concerning Trade Union Immunities*

Recent employment legislation in England has been described as part of "the Thatcher Government's 'multi'-pronged strategy to unshackle economic enterprise from what it considers unjustifiably restrictive trade unionism."[133] The Conservative government believes that "the union's unique immunities and consequent abuse of monopoly power have greatly damaged [the] country[,] . . . that striking and disruption must be made much more expensive for those who do it [and] that it must be made much harder for political extremists to gain control of unions."[134]

As a first step, the government pushed for the enactment of the Employment Act 1980.[135] Section 17 of the Act embodied Parliament's negative reaction to the *NWL*, *MacShane*, and *Duport* decisions.[136] The purpose of Section 17 was to limit the scope of tort immunity for secondary action by providing that the Section 13 immunities do not apply where a person induces a breach of contract, other than a contract of employment, through secondary action unless certain requirements

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130. *Id.* at 686-87. As Diplock proposed the test:

> If the party who does the act honestly thinks at the time he does it that it may help one of the parties to the trade dispute to achieve their objectives and does it for that reason, he is protected by the section.
>
> . . . .
>
> . . . The belief of the doer of the act that it will help the side he favours in the dispute must be honest; it need not be wise, nor need it take account of the damage it will cause to innocent and disinterested third parties.

Id.

131. [1980] 1 W.L.R. 142.

132. *Id.* at 170. The *B.B.C.* case played an important role in the House of Lords' analysis of the scope of the "golden formula." In both *N.W.L.* and *MacShane*, the House of Lords used *B.B.C.* as an example of a dispute which was not connected to terms and conditions of employment because it was a purely political dispute. The *B.B.C.* standard was used by the House of Lords to determine whether a dispute involving political motives came within the definition of a trade dispute. *See N.W.L.*, [1979] 1 W.L.R. at 1304, 1314; *MacShane*, 1980 1 A.C. at 682, 694.

133. Benedictus & Newell, *Employment Act 1982* — Part 1, 132 NEW L.J. 1161, 1161 (1982).

134. Hoskyns, *The Corrupting Power of Immunity*, The Times (London), Sept. 2, 1982, p. 8, col. 3. Until recently, Hoskyns was head of Prime Minister Thatcher's Downing Street Policy Unit. *Id.*

135. Employment Act, 1980, ch. 42.

136. *See* 50 Halsbury's Statutes of England 2637 (3d ed. 1980).

are met. The section requires that the workers who take the action be employed by customers or suppliers of the employer in dispute. The principal purpose of the action must be to prevent or disrupt the supply of goods and services between those customers and suppliers and the employer in dispute. The section also requires that the action be reasonably likely to achieve this purpose.[137] Section 17 of the Employment Act 1980 received a negative reaction from trade unions because of the limitations it placed upon protected secondary activity.[138]

In January 1981, the Secretary of State for Employment issued a Green Paper of Trade Union Immunities.[139] Its purpose was to provide the basis for a public debate concerning changes in the law which would improve industrial relations and thus aid in the country's economic recovery.[140] The Paper expressed the concern of government, industry, and the general public over the excessive power of trade unions and the consequences of unregulated industrial actions.[141] Some of the proposed areas for change included the tort immunity granted to unions as entities in Section 14 of the 1974 Act, the remaining immunities provided for secondary action, and the definition of a trade dispute. The Paper also discussed the possibility of converting the legal framework of industrial relations to a system of positive rights.[142]

Regarding purely political disputes or disputes with political elements, the Paper argued that the current law allowed far too much scope for a union strike designed to make a political statement or to exert pressure on the government.[143] Two proposals to limit this scope were offered: (1) to change the Section 29 requirement so that a trade dispute would have to be "wholly or mainly" related (not merely "connected") to the listed subjects; and (2) to remove the immunity entirely for disputes containing any political elements.[144] The Paper recognized, however, the difficulty in defining the term "political" and that either proposal would restrict some industrial actions which were directed at terms and conditions of employment.[145]

Based in part upon the Green Paper's discussion, the government introduced the Employment Bill 1982.[146] The Bill, designed to "curb the number of continuing abuses of trade union power,"[147] included provisions to provide compensa-

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137. *See* Employment Act, 1980, ch. 42, § 17; TRADE UNION IMMUNITIES, *supra* note 15, at 24.

138. Benedictus, *Recent Developments in Collective Labour Law* — Industrial Action, 133 NEW L.J. 579, 580 (1983).

139. TRADE UNION IMMUNITIES, *supra* note 15.

140. *Id.* at 92.

141. *Id.* at 2.

142. *Id.* at 27-82.

143. *Id.* at 50.

144. *Id.* at 50-51.

145. *Id.*

146. Benedictus & Newell, *Proposals for Industrial Relations Legislation*, 132 New L.J. 6 (1982).

147. *Id.*

tion for employees dismissed because they did not join closed shops, to subject unions to liability for up to £250,000, and to restrict the definition of a trade dispute.[148] Despite the opposition of the Trades Union Congress,[149] Parliament enacted the Employment Act 1982[150] in October 1982. Section 15 repealed Section 14 of TULRA 1974, thus subjecting union funds to liability.[151] In addition, several provisions affected the status of politically motivated activities. Most important, the definition of a trade dispute in Section 29 of TULRA 1974 was limited in the following ways in order to exclude political strikes. The section was amended so that trade disputes are defined as disputes "between workers and their employer," thus limiting cases of secondary action which were formerly protected. In addition, disputes "between workers and workers" are ommited from the definition.[152] The amended definition also requires that trade disputes relate "wholly or mainly" to (instead of just "connected with") the items listed in Section 29.[153] The definition of a "worker" in Section 29 of TULRA 1974 was changed so that it applies only to a worker employed by the particular employer involved in the dispute.[154] These restrictive changes in the definition of a trade dispute affect the legality of political action by excluding disputes with political elements, which had been protected under *MacShane*. Thus, the *MacShane* decision is no longer good law.

IV. A COMPARATIVE ANALYSIS OF THE AMERICAN AND ENGLISH TREATMENT

The recent *Allied* and *Jacksonville* decisions in the United States and the Employment Acts of 1980 and 1982 in England have in both countries virtually eliminated a labor union's ability to express political sentiments through con-

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148. The Times (London), July 22, 1982, at 4, col. 1.

149. *See generally* The Times (London), April 6, 1982, at 7, col. 1; The Times (London), April 29, 1982, at 2, col. 2; The Times (London), May 18, 1982, at 2, col. 7, which discuss the opposition of the Trades Union Congress to the Employment Act 1982 during the months before its enactment. The Trades Union Congress (T.U.C.) is a national organization of trade unions which was established in 1868. W. FRASER, TRADE UNIONS AND SOCIETY 51 (1974).

150. The Employment Act, 1982, ch. 46.

151. *Id.* § 15.

152. *Id.* § 18. *See supra* note 13 for the former text of § 29.

153. The Employment Act, 1982, ch. 46, § 18.

154. Section 18 of The Employment Act, 1982, ch. 46 amended the definition of a worker in § 29(6) of the T.U.L.R.A. to read:

> 6. Worker, in relation to a dispute with an employer, means —
> (a) a worker employed by that employer; or
> (b) a person who has ceased to be employed by that employer where —
> (i) his employment was terminated in connection with the dispute; or
> (ii) the termination of his employment was one of the circumstances giving rise to the dispute.

Trade Union and Labour Relations Act, 1974, ch. 52, § 29(6), *amended by* Employment Act, 1982, ch. 46, § 18.

certed action.[155] In the United States and England, the courts and legislatures reached this result in order to resolve the difficult issues raised by union political protest activity.

English and U.S. law have responded to the fears and complaints of employers that such activity restricts trade and causes them to suffer extensive monetary losses, thus harming the national economies.[156] In addition, U.S. courts and the British legislature have suppressed employees' political protests in order to curb what many consider the excessive power of trade unions.[157] In the United States, the courts and the NLRB were concerned that the 1980 ILA boycott interfered with the executive branch's control of foreign policy.[158] The recent U.S. Supreme Court decisions and English legislation were the result of similar judicial and legislative desires to prevent unions from interfering in foreign policy and trade to the detriment of the national economy.

Although under both U.S. and English law a union cannot legally engage in a politically motivated strike or boycott, the U.S. Supreme Court reached this conclusion in a way which still protected important employee rights. Under *Allied*, neutral employers are protected from damages due to political strikes if the action fit the definition of a secondary boycott.[159] Under *Jacksonville*, federal courts cannot intervene to enjoin a political strike during the limited period in which the parties arbitrate the question of whether the work-stoppage violates the particular no-strike clause of the collective bargaining agreement.[160]

As evidenced by these decisions, the Court determined that politically motivated actions are subject to both the protections and liabilities of federal labor legislation. The ILA's political motive did not mean that the boycott was illegal *per se*;[161] the Court analyzed the action's form and determined whether that form

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155. Labor unions' recognition of their inability to strike over political issues was recently demonstrated in both countries. In the U.S., the ILA reacted to the *Allied* decision by calling off its four-month-old boycott of Polish goods. *Dock Workers' Boycott*, 110 LAB. REL. REP. (BNA) 37 (May 10, 1982). Although the union had ended its Russian boycott in April 1981, it had begun boycotting Polish goods following the imposition of martial law in Poland in December 1981. *Id.* After the Supreme Court decided *Allied* on April 20, 1982, the ILA ended the Polish boycott, adding that it would "continue to oppose the forces of tyranny in every lawful manner at [its] disposal." *Id.* Similarly, British trade unions have recently been hesitant to engage in political protest strikes. Instead of calling a strike to voice its opposition to the Employment Bill 1982, the T.U.C. distributed millions of leaflets expressing its negative views. The Times (London), April 29, 1982, at 2, col. 2.

156. *See* Respondent's Brief at 4, 31, International Longshoremen's Ass'n v. Allied International, Inc., 456 U.S. 212 (1982); Comment, *supra* note 5, at 278; TRADE UNION IMMUNITIES, *supra* note 15, at 1.

157. *See generally* Comment, *supra* note 15, at 281-85; Hoskyns, *supra* note 133, at 8, col. 2.

158. *Allied*, 456 U.S. at 221 n.17; Allied International, Inc., 257 N.L.R.B. 1075, 1077, 108 L.R.R.M. (BNA) 1033, 1035 (Aug. 28, 1981) ("[T]his case presents the novel situation of a labor union establishing a national boycott contravening Federal policy."). *See generally* Comment, *supra* note 5, at 281-85.

159. *See supra* notes 32-48 and accompanying text.

160. *See supra* notes 73-90 and accompanying text.

161. In litigation, the ILA argued that the boyott's political motive did not make it illegal *per se*; *see, e.g.*, Respondent's Brief at 29, Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n,

of activity was protected or prohibited under federal labor legislation.[162] Its decisions did not restrict the basic employee rights guaranteed in Section 7 of the LMRA.[163] Instead, the Court found the boycott subject to the limitations Congress had imposed on these rights, such as the secondary boycott provisions of Section 8(b)(4)[164] and the ability of a party to sue under Section 301 to compel another party's adherence to the terms of a collective bargaining agreement.[165] Thus, one might argue that the Court found the ILA's politically motivated actions illegal under this approach while still adhering to the policies of national labor laws.

Following the enactment of the Employment Acts of 1980 and 1982, politically motivated trade disputes are no longer protected under English law. These disputes were formerly granted immunity under the *MacShane* decision if they fitted the definition of a trade dispute.[166] One might argue that the statutory changes brought about by the recent legislation did more than remove immunity for politically motivated strikes. By merely altering a few words in the statute,[167] Parliament greatly reduced a trade union's ability to protect the interests of its members. According to the former immunities, union leaders were able to organize strikes and boycotts[168] which were effective because they frequently affected employers other than the one engaged in the dispute.[169] Although individual employees did not possess rights similar to those guaranteed to American workers in Section 7 of the LMRA, their interests were protected by the effectiveness of the strikes their leaders were able to organize. By limiting the definition of a trade dispute, however, Parliament confined the statutory protection solely to union actions taken to protest terms and conditions of employment between a single employer and his or her workers,[170] thus limiting the effective-

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457 U.S. 702 (1982). The Supreme Court decisions did not contradict this argument. *See supra* notes 46-48 & 90 and accompanying text.

162. *See supra* notes 46-48 & 90 and accompanying text.

163. Section 7 of the LMRA states:

> Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Pub. L. No. 101, § 7, 61 Stat. 136, 140 (1947) (codified at 29 U.S.C. § 157 (1976)).

164. *See supra* notes 9-10.

165. *See supra* notes 23 & 49-54 and accompanying text.

166. *See supra* notes 129-32 and accompanying text.

167. *See supra* notes 136-38 & 150-54 and accompanying text.

168. Both the present and former immunities protect organizers of strikes for inducing a breach of contract but do not protect an individual striker who breaks his or her contract of employment by striking. Employers rarely sue individual workers, however, because of the cost and inconvenience involved. In addition, courts seldom award substantial damages against individual employees. TRADE UNION IMMUNITIES, *supra* note 15, at 25.

169. *See supra* notes 124-32 and accompanying text.

170. Employment Act 1982, ch. 46, § 18(2)(a).

ness of many strikes and boycotts. Therefore, as in the United States, an English trade union cannot legally voice a political protest through concerted action. Parliament, however, made this determination as part of a legislative program which substantially curtailed employees' rights to engage in other concerted actions by limiting the statutory trade union immunities.[171]

In responding to similar economic and foreign policy concerns over the effects of political strikes, the U.S. Supreme Court and British Parliament used different methods to reach the same result. The British statutory changes have the effect of limiting employees' rights to engage in non-political actions because British labor legislation does not positively define the rights of employees to protect their interests through concerted action. The U.S. Supreme Court, on the other hand, found politically motivated activity subject to congressional limitations while still protecting the basic rights of employees, guaranteed in Section 7 of the LMRA, to engage in concerted activities.

V. CONCLUSION

Political labor activity involves difficult issues under both American and English industrial relations laws. Although the two legal systems have found recent political strikes illegal, they have addressed the issue in ways which reflect their different labor policies.

In England, recent employment legislation eliminated the ability of trade unions to engage in political strikes or boycotts. The legislative changes, however, went beyond this goal and substantially limited other trade union rights. The "negative" protection provided to unions by statutory immunities was reduced through modification of statutory definitions.

In the United States, on the other hand, the Supreme Court examined the form in which the union expressed its political protest. By so doing, the Court illustrated that politically motivated labor activity is subject to the protections and prohibitions of federal labor law. In this way, the Court limited unions' abilities to voice political protests while still protecting their essential right to engage in other concerted activities.

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171. Benedictus & Newell, *supra* note 133, at 1161.