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In 1962, the Supreme Court held in *Sinclair Refining Co. v. Atkinson*[1] that section 4 of the Norris-LaGuardia Act[2] barred federal courts from enjoining union violations of no-strike clauses in collective bargaining agreements. Since *Sinclair,* violations of this type have been the subject of considerable discussion, but have resulted in little litigation. The number of man days lost as a result of no-strike clause violations is minimal and the frequency of these violations is so small that it is difficult to imagine that they have any great influence on the course of industrial relations. Nevertheless, lovers of symmetry have argued that the judicial shaping of *Sinclair* produced a piece that did not quite fit into the jigsaw puzzle of labor law. The Supreme Court in *Boys Markets, Inc. v. Retail Clerks Local 770,*[3] hammered the piece into a new position, reasoning that it had to be made to fit even if its reshaping was by the Court rather than by Congress. The Court did not consider, as this article will attempt to demonstrate, that *Sinclair* was in its proper place, and that an additional adjustment to accommodate it with the National Labor Relations Act[4] might better resolve the statutory conflict and restore symmetry.

While it is not the primary purpose of this article to analyze all of the relevant prior litigation or reasoning that together constitute the background for the Court's decision in *Boys Markets,* it is necessary to review the past in order to understand what the Court sought to accomplish. Only then are the consequences of the recent decision predictable, and only then is it evident that the Court did not anticipate those consequences. And perhaps only then is it clear that the Court overlooked a more appropriate method for resolving the apparent statutory conflict between section 4 of Norris-LaGuardia[5] and section 301 of the Labor Management Relations Act (LMRA).[6]

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1. 370 U.S. 195 (1962).
2. 29 U.S.C. § 104 (1964).
3. 398 U.S. 235 (1970).
4. 39 U.S.C. §§ 151-68 (1964).
5. "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 singularly or in concert, any of the following acts: (a) Ceasing or refraining to perform any work or to remain in any relation of employment. . . ." 29 U.S.C. § 104 (1964).
6. "(a) Suits for violation of contracts between an employer and a labor organization

I. HISTORICAL DEVELOPMENT

The Norris-LaGuardia Act was passed by Congress in 1932 as a reaction to the widespread[7] misuse by the federal courts of injunctions against strikes. Section 4 of this act prohibits federal courts from enjoining individuals or groups involved in labor disputes[8] from engaging in certain activities, including refusals to work. In 1947, Congress rejected proposals calling for the repeal of this anti-injunction provision[9] and enacted section 301 of the Labor Management Relations Act. This section gives federal courts jurisdiction over suits arising from violations of labor contracts.[10] Initially, section 301 was considered to be only jurisdictional,[11] but this interpretation was rejected by the Supreme Court in *Textile Workers Union v. Lincoln Mills.*[12] The dispute in *Lincoln Mills* grew out of a collective bargaining agreement between the union and the employer that contained grievance and arbitration provisions and a no-strike clause. When the employer refused a Textile Workers Union request for arbitration, the union brought an action in federal district court to compel specific performance.[13] The ultimate decision by the Supreme Court was that federal courts could employ specific performance, an equitable remedy, to enforce arbitration provisions in collective bargaining agreements. On first reading, this

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. . . ." 29 U.S.C. § 185 (1964).

7. "[It] is because we have now on the bench some judges—and undoubtedly we will have others—who lack the judicial poise necessary in passing upon the disputes between labor and capital that such a law as is proposed in this bill is necessary." 75 CONG. REC. 4510 (1932) (remarks of Senator Norris). *See also* F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION 24-46, 63-81, 200-02 (1930).

8. 29 U.S.C. § 104 (1964); *see* note 5 *supra.*

9. The primary source for this conclusion was the comparison of the original house bills with the final act. The House of Representatives had originally made an action for breach of a collective bargaining agreement exempt from Norris-LaGuardia. H.R. 3020, 80th Cong., 1st Sess. (1947). The Senate simply made the breach of a collective bargaining agreement an unfair labor practice and allowed the NLRB, but not individuals, to obtain injunctive relief. S. 1126, 80th Cong., 1st Sess. (1947). *See generally* Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 485 (1957) (appendix to opinion of Frankfurter, J., dissenting). For an explanation of the legislative history see Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 205-07 (1962).

10. 29 U.S.C. § 185(a) (1964); *see* note 6 *supra.*

11. *See* Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437 (1955).

12. 353 U.S. 448 (1957).

13. The district court ordered the employer to comply with the grievance arbitration provisions. This decision was reversed by the Fifth Circuit. Textile Workers Union v. Lincoln Mills, 230 F.2d 81 (5th Cir. 1956).

decision seemed to fly in the face of the express provisions of the Norris-LaGuardia Act prohibiting mandatory injunctions in labor disputes.[14] The Court found, however, that the refusal to arbitrate was not within the intended purview of the anti-injunction provisions of Norris-LaGuardia and held that the policy behind section 301 of the Labor Management Relations Act required that arbitration provisions be enforced.[15]

A year later, the Supreme Court of California, in *McCarroll v. Los Angeles County District Council of Carpenters,*[16] anticipated that the Supreme Court would hold that state courts have concurrent jurisdiction with federal courts under section 301, provided they apply federal substantive law. The court held, however, that the Norris-LaGuardia Act was specifically directed to federal court jurisdiction and does not restrict state courts. Thus, the state courts could enjoin a strike in breach of a no-strike clause.

The decisions by the Supreme Court in the 1960 *Steelworkers Trilogy*[17] were the next significant development. The relevance of these decisions to this discussion is twofold: (1) their declaration that the union's consideration in a labor agreement is the no-strike clause, which is given in exchange for the arbitration provision; and (2) their holding that the federal courts will compel arbitration or enforce an arbitrator's award in order to promote the peaceful settlement of labor disputes. There can be no doubt, since the *Trilogy,* that the Supreme Court regards arbitration as the preferred device by which industrial peace should be maintained during the life of a collective bargaining agreement. From 1931 to the present, most state courts have consistently ruled that a court of equity could enjoin a strike in violation of a no-strike clause.[18] Even in those states with "Little Norris-LaGuardia Acts," the courts have consistently found that there is no "labor dispute" and, therefore, that the strike is enjoinable.[19] In 1962, this line of cases received Supreme Court approval in *Charles Dowd Box Co. v. Courtney.*[20] The Court held that section 301(a) did not deprive the state

14. *See* note 5 *supra.*

15. 353 U.S. at 457-59; *see* note 6 *supra.*

16. 49 Cal. 2d 45, 315 P.2d 322 (1957), *cert. denied,* 355 U.S. 932 (1958).

17. United Steelworkers of America v. American Mfg. 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 Wheel & Car Corp., 363 U.S. 593 (1960).

18. *See, e.g.,* Preble v. Iron Workers Local 63, 260 Ill. App. 435 (1931).

19. Twenty-four states have Little Norris-LaGuardia Acts, but 10 of them exempt strikes in violation of collective bargaining agreements. Keene, *The Supreme Court and No-Strike Clauses: From Lincoln Mills to Avco and Beyond,* 15 VILL. L. REV. 32 (1969).

20. 368 U.S. 502 (1962).

courts of jurisdiction over no-strike violations but rather that their jurisdiction was concurrent with the federal courts. In 1962, the Court also extended its *quid pro quo* concept—arbitration is the consideration for a no-strike clause—to a case in which the contract did not contain a no-strike clause. In *Teamsters Local 174 v. Lucas Flour Co.*,[21] the Court held that the state court must apply federal substantive law in considering violations of a no-strike clause and, more importantly, that a no-strike clause would be implied where the contract provides for the exclusive resolution of grievances by arbitration.

A conflict similar to the one between section 4 of Norris-LaGuardia and section 301 of the Labor Management Relations Act exists between section 4 and the Railway Labor Act provision requiring compulsory arbitration of certain minor contract disputes.[22] In *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad Co.*,[23] the Court interpreted the Railway Labor Act holding that a federal injunction *could* issue to restrain a no-strike violation, despite the provisions of the Norris-LaGuardia Act. The Court "accommodated" the conflicting provisions of the Railway Labor Act and the Norris-LaGuardia Act by determining that the latter was not applicable to "minor disputes."[24] The rationale of the Court was that minor disputes fell within the jurisdiction of the Railway Adjustment Board and that injunctive relief was necessary to protect the Board's jurisdiction. The enforcement of the no-strike clause by injunction, according to this reasoning, was tantamount to enforcement of the "grievance" arbitration provisions of the Railway Labor Act.

It was not until *Sinclair* that the Court had to face squarely a strike in violation of a no-strike clause in industries not covered by the Railway Labor Act. The petitioner in *Sinclair* sought preliminary and permanent injunctions against a union strike over the application of contract provisions that were subject to the contract's arbitration provision. The district court, after first denying a motion to dismiss based on Norris-LaGuardia, dismissed the complaint,[25] and the dismissal was affirmed by the Court of Appeals for the Seventh Circuit.[26] The Supreme Court affirmed,[27] holding that the facts of the case brought it within the anti-

21. 369 U.S. 95 (1962).

22. Arbitration of minor disputes is compulsory upon submission by either party to the National Railway Adjustment Board, 45 U.S.C. §§ 153(i), (m) (1964), *as amended*, 45 U.S.C. § 153(m) (Supp. IV, 1969).

23. 353 U.S. 30 (1957).

24. *See* Elgin, J. & E. Ry. v. Burley, 325 U.S. 711, 724 (1945).

25. Sinclair Ref. Co. v. Atkinson, 187 F. Supp. 225 (N.D. Ind. 1960).

26. Sinclair Ref. Co. v. Atkinson, 290 F.2d 312 (7th Cir. 1961).

27. Sinclair Ref. Co. v. Atkinson, 370 U.S. 195, 203 (1962).

injunction provisions of the Norris-LaGuardia Act.[28] The majority found that Congress in enacting section 301 of the LMRA did not intend to limit the anti-injunction provision of Norris-LaGuardia and that any such change in the law was a matter for Congress and not the Court. The Court distinguished *Sinclair* from *Chicago River* on two grounds: (1) the legislative histories of the LMRA and the Railway Labor Act were markedly different, and (2) the striking union in *Chicago River* had violated both its contract and its duty under the Railway Labor Act[29] to submit the dispute to the Railway Adjustment Board. Mr. Justice Brennan, dissenting, argued for the accommodation of the Norris-LaGuardia Act and section 301 in the same fashion that the Court had accommodated Norris-LaGuardia and the Railway Labor Act in *Chicago River*.[30]

The issue came before the Court again in *International Longshoremen's Association v. Philadelphia Marine Trade Association*,[31] in which the district court had held the union in contempt of the court's order enjoining a strike in breach of contract. The Court of Appeals for the Third Circuit affirmed,[32] but the Supreme Court reversed, holding that the injunction issued by the district court was so vague and ambiguous that it was unenforceable, without regard to the anti-injunction provisions of the Norris-LaGuardia Act.[33] The Court avoided any discussion of the *Sinclair* problem.

Parallel and simultaneous with the development of the *Sinclair* rule was the increased use of the federal removal statute[34] by union-defendants in actions for injunctions against strikes in breach of contract. Because of the reasoning in *McCarroll* and the Supreme Court's endorsement of "concurrent" jurisdiction in *Dowd*, employers faced with a breach of contract strike would elect to bring their injunction actions in state courts. Because the state courts exercised the unrestrained equity power to issue injunctions in such cases, it became the strategy of union-defendants to seek removal to the federal courts on the ground that the basic issue involved a federal question. In 1968, the Supreme Court approved this procedure in *Avco Corp. v. Aero Lodge*

28. 29 U.S.C. §§ 101-15 (1964).
29. 45 U.S.C. §§ 151-88 (1964).
30. 370 U.S. at 215.
31. 389 U.S. 64 (1967).
32. Philadelphia Marine Trade Ass'n v. International Longshoremen's Ass'n, 368 F.2d 932 (3d Cir. 1966). The original enforcement decree is reported in 365 F.2d 295 (3d Cir. 1966).
33. 29 U.S.C. §§ 101-15 (1964).
34. 28 U.S.C. § 1441 (1964).

735, International Association of Machinists,[35] permitting the removal of a case in which management sought to enjoin a strike called by the union in violation of a no-strike clause.

During the same period, lower courts were anticipating the erosion, and ultimate reversal, of *Sinclair.* The Fifth Circuit, for example, was presented with a problem similar to *Sinclair* in *Gulf & South American Steamship Co. v. National Maritime Union.*[36] The court held that in light of *Sinclair*, it could not judicially enforce an arbitration award resolving a no-strike question where there was an absence of specific authority or power in the arbitrator to find a violation of the no-strike clause and to order a return to work. In a second case, *New Orleans Steamship Association v. General Longshore Workers Local 1418,*[37] the court was faced with an arbitration award based on a clause in the collective bargaining agreement providing not only for final and binding arbitration, but also empowering the arbitrator to enjoin a work stoppage. The company, alleging that the work stoppage was continuing despite the award, brought an action in the district court to enforce the arbitrator's decision. The Fifth Circuit reversed the district court's dismissal of the company's complaint and held that by affirmative order the court *could* grant enforcement of the arbitrator's award since the arbitrator was specifically granted injunctive power by the parties in their collective bargaining agreement. The court refused to invoke the Norris-LaGuardia Act and held prior cases inapplicable, reasoning that the dispute had been arbitrated and therefore no longer existed. There was precedent for the court's finding, since the New York Court of Appeals in *Ruppert v. Engelhofer*[38] had made a similar determination. In a comparable case, however, the District Court for the Southern District of New York denied enforcement of an arbitration award despite the prior holding in *Ruppert.*[39] The court did not believe that the Norris-LaGuardia Act required a distinction between a strike before an arbitration decision and one following an arbitrator's award directing the cessation of a work stoppage.

35. 390 U.S. 557 (1968).

36. 360 F.2d 63 (5th Cir. 1966).

37. 389 F.2d 369 (5th Cir.), *cert. denied,* 393 U.S. 828 (1968).

38. 3 N.Y.2d 576, 148 N.E.2d 129, 170 N.Y.S.2d 785 (1958). An interesting historical note is that the same district court, as between the same parties, earlier granted confirmation for an earlier award, although it refused it in the instant case. Steamship Ass'n v. Longshore Workers, 49 L.R.R.M. 2941 (E.D. La. 1962). Obviously, the district court's view changed because of *Sinclair.*

39. Marine Transp. Lines, Inc. v. Curran, 65 L.R.R.M. 2095 (S.D.N.Y. 1967).

II. THE *Boys Markets* DECISION

With this background, the case of *Boys Markets, Inc. v. Retail Clerks Union Local 770*[40] reached the Supreme Court. It arose in February 1969, when the litigants were parties to a collective bargaining agreement containing both arbitration and no-strike provisions. A dispute which developed over the performance of work by non-bargaining unit personnel was followed by a strike and the invocation of the arbitration provision. Upon the application of the employer, the California Superior Court[41] issued a temporary restraining order against the strike. The union removed the case to the federal district court and moved to vacate the injunction. The district court, despite *Sinclair,* directed the parties to proceed to arbitration and enjoined the strike.[42] When the case reached the Supreme Court, the majority found that its decision in *Avco* coupled with its holding in *Sinclair* frustrated the realization of a primary goal of national labor policy. The Court rejected the conclusion that congressional inaction indicated an acceptance of the *Sinclair* decision and proceeded to evaluate the relevant policies and goals of the two statutes in conflict. The Court found that the literal terms of Norris-LaGuardia must be accommodated with section 301 of the LMRA in order that important goals of national labor policy—the maintenance of industrial peace and the expeditious settlement of labor disputes—could be fulfilled. The Court then reasoned that the whole structure developed for the enforcement and encouragement of arbitration would collapse if strikes in breach of collective bargaining agreements could not be restrained. Relying on the dissent in *Sinclair,*[43] therefore, the Court held that a federal court may enjoin a strike in violation of a collective bargaining agreement that provides for grievance procedures culminating in binding

40. 398 U.S. 235 (1970).

41. Boys Markets, Inc. v. Retail Clerks Local 770, Civil No. 948323 (Cal. Super. Ct. L.A. County, 1970).

42. 70 L.R.R.M. 3071 (C.D. Cal.), *rev'd,* 416 F.2d 368 (9th Cir. 1969).

43. 370 U.S. at 228. "A District Court entertaining an action under § 301 may not grant injunctive relief against concerted activity unless and until it decides that the case is one in which an injunction would be appropriate despite the Norris-LaGuardia Act. When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. Beyond this, the District Court must, of course, consider whether issuance of an injunction would be warranted under ordinary principles of equity—whether breaches are occurring and will continue, or have been threatened and will be committed; whether they have caused or will cause irreparable injury to the employer; and whether the employer will suffer more from the denial of an injunction than will the union from its issuance." *Id.*

arbitration when the employer is ready to arbitrate and when the issuance of an injunction is clearly appropriate. The dissent reiterated the majority opinion in *Sinclair,* concluding that any change in the law should be made by Congress.[44]

III. A NEGLECTED APPROACH

In *Boys Markets,* the Supreme Court selected the courts as the forum for the resolution of violations of no-strike clauses. The Court had available, however, a much more sensible forum. It would have been far more consistent with national labor policy to find that violations of no-strike clauses constitute prima facie violations of the National Labor Relations Act, even if this finding required overturning the long-time policy of the Board to treat such a strike merely as *evidence* of bad faith bargaining.[45] Following this procedure, the federal courts would obtain jurisdiction in injunction actions only on the application of the NLRB, pursuant to section 10 of the National Labor Relations Act,[46] which would create no conflict with the Norris-LaGuardia Act. This approach would have the added virtue of leading to the resolution of the dispute that caused the violation of the no-strike clause in the first instance, since the Board could determine the bona fides of the parties by the application of their own agreement. Certainly, this approach would serve to centralize the adjudication of industrial disputes in the hands of the agency in which both the Court and Congress have repeatedly placed this responsibility. Under this procedure, for example, if a court found that a case presented problems already pre-empted by the National Labor Relations Act and that the Board had primary jurisdiction, a perfect accommodation of the three primary statutes governing labor relations would be achieved. The result, within that statutory framework, would have more clearly defined the jurisdiction, power, and authority of the courts, the arbitrators, and the Labor Board. Moreover, this result would have been more consistent with *Chicago River,* in which the thrust of the "minor dispute" holding was the vindication of a statutory obligation to go to the Railway Adjustment Board.[47] In non-Railway Labor Act cases, it would be logical to assume that the appropriate

44. For a current example of a recurrent bill, never approved by Committee, let alone Congress, see S. 1482, 91st Cong., 1st Sess. (1969), introduced by Senator Fannin.

45. *See, e.g.,* Perry Norvell Co., 80 N.L.R.B. 225 (1948). Breaches of contract are not per se violative of the Act, but constitute merely evidence bearing on the question of good faith.

46. 29 U.S.C. § 160 (1964).

47. *See* notes 23-24 *supra* and accompanying text.

statutory basis is section 8 of the National Labor Relations Act.[48] The section 10[49] enforcement of this provision already provides for injunctive relief under Norris-LaGuardia. If consistency, predictability, and reason are objectives of the Court, certainly the foregoing approach is far more rational than its holding in *Boys Markets*.

The Court has long held that parallelling the arbitration system is the legislative and judicial structure of the Board. While it is beyond the scope of this article to discuss either the Board's jurisdiction or its reaction to arbitration as an alternative remedy,[50] the fact is that in many areas the Board, and not the courts or the arbitrators, is the primary source of jurisdiction.

The Board has held that under certain circumstances a refusal to submit an issue to arbitration is tantamount to a refusal to bargain and thus a violation of the National Labor Relations Act.[51] One consequence of the extension of federal court jurisdiction to include strikes in violation of an arbitration clause is that the Board's determinations in this area will be superfluous,[52] despite the fact that the Board is a more appropriate agency to poliee the commission of statutory violations. It would have been far more logical for the Court to have considered that the appropriate forum for the resolution of strikes in violation of collective bargaining agreements is the Board. The courts should be employed only if the Board has reason to believe that the illegal activity violates the statute and that the violation will continue.

A second consequence of the *Boys Markets* decision is one that the Court apparently considered because it is implicit in its decision. In effect, the decision now "legalizes" strikes, even in breach of a no-strike clause, where the employer refused to arbitrate or when the issue is not arbitrable. One can legitimately conclude that even if an employer has a "good faith" doubt about the arbitrability of an issue, he would be left without a forum to resolve the "good faith" issue if the employees chose to strike. No such void would be created by vesting primary jurisdiction in the Board.

At least two decisions subsequent to the Supreme Court's decision in *Boys Markets* buttress the position that strikes are "legalized" where

48. 29 U.S.C. §§ 158(b) (3), (d) (1964).

49. 29 U.S.C. § 160(j) (1964).

50. *See, e.g.*, International Harvester Co., 138 N.L.R.B. 923 (1962), *aff'd sub nom.* Ramsey v. NLRB, 327 F.2d 784 (7th Cir.), *cert. denied*, 377 U.S. 1003 (1964); Hercules Motor Corp., 136 N.L.R.B. 1648 (1962); Speilberg Mfg. Co., 112 N.L.R.B. 1080 (1955).

51. *See, e.g.*, George E. Carrol, 56 N.L.R.B. 935 (1944).

52. Very recently the Board has again taken the view that violation of an agreement to arbitrate is an unfair labor practice. Taft Broadcasting Co., CCH LAB. L. REP. (185 CCH NLRB Dec.), ¶ 22,287 (NLRB, Aug. 27, 1970).

the employer refuses to submit a dispute to arbitration. In *United States Steel Corp. v. United Mine Workers Union*,[53] the employer sought a preliminary injunction against work stoppages by coal miners. An injunctive order was granted by the federal district court,[54] even though these "strikes" emanated from grievances over safety conditions, which might not have been arbitrable under the collective bargaining agreement. The decision of the district court was unanimously reversed by the Third Circuit[55] for failure to decide the following issues: (1) whether the work stoppage was a labor dispute or mass protest against the government's failure to enforce the Federal Coal Mine Health and Safety Act;[56] (2) whether the issue was properly within the local contract machinery for dispute settlement, or whether it could be settled only by collective bargaining on new agreements on a national level; (3) whether there was a union authorized work stoppage over bona fide grievances; and (4) whether the conditions in the mines were dangerous. The circuit court assumed that the employer was not prepared to arbitrate the dispute. In the second decision, *Stroehmann Brothers Co. v. Local 427 Confectionary Workers*,[57] the district court held that the employer was not entitled to a temporary injunction against strikes that allegedly violated the collective bargaining agreement's no-strike clause, since the parties were not contractually bound to arbitrate the dispute.

The explicit language of the dissent in *Sinclair* and the majority in *Boys Markets* lends support to these recent determinations.[58] It seems evident that the courts will not enjoin strikes unless the strike is in violation of a no-strike clause, the contract contains a mandatory arbitration clause covering the strike issue, and the employer is willing to arbitrate. The *Boys Markets* decision, therefore, further reduces the jurisdiction of the National Labor Relations Board and encourages strikes to determine issues of arbitrability which the *Trilogy* held were either for the arbitrator or the courts.[59]

On balance, *Boys Markets* is an example of a case in which the Court could have been far more creative and far more helpful to practitioners who are concerned with the preservation of collective bargaining and the orderly resolution of disputes within the framework of existing law.

53. 74 L.R.R.M. 2611 (3d Cir. June 30, 1970).

54. 74 L.R.R.M. 2607 (W.D. Pa. June 25, 1970).

55. United States Steel Corp. v. United Mine Workers Union, 74 L.R.R.M. 2611, 2612-13 (3d Cir. June 30, 1970).

56. Coal Mine Health and Safety Act of 1969, 83 Stat. 742 (March 30, 1970).

57. 74 L.R.R.M. 2957 (M.D. Pa. July 25, 1970).

58. *See* note 43 *supra*.

59. *See* John Wiley & Son, Inc. v. Livingston, 376 U.S. 543 (1964).