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International Longshoremen's Association v. Allied International, Inc.

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LABOR LAW—SECONDARY BOYCOTT—INTERNATIONAL LONGSHOREMEN ASSOCIATION'S BOYCOTT OF SOVIET CARGO DUE TO SOVIET INVASION OF AFGHANISTAN—*International Longshoremen's Association v. Allied International, Inc.* — In a recent case, *International Longshoremen's Association v. Allied International, Inc.*,[1] the Supreme Court resolved the dispute among the courts of appeals over whether the International Longshoremen's Association's (ILA) refusal to handle cargo to or from the Soviet Union, due to Russia's invasion of Afghanistan, constituted a secondary boycott under section 8(b)(4)(B) of the National Labor Relations Act (NLRA), as amended.[2] The Supreme Court held that the ILA boycott of Russian goods did constitute a secondary boycott under the NLRA.[3]

On January 9, 1980, the ILA President, Thomas Gleason, issued a directive[4] ordering ILA members to immediately suspend "handling all Russian ships and all Russian cargo in ports from Maine to Texas and Puerto Rico where ILA workers are employed."[5] This directive was is-

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1. 456 U.S. 212 (1982).
2. 29 U.S.C. § 158(b)(4)(i) & (ii)(B) (1982). The pertinent part reads:

> (b) [i]t shall be an unfair labor practice for a labor organization or its agents—
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> (4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an 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. . . .

Id.

3. *Id.*
4. 456 U.S. at 214 n.1. The directive provided in relevant part: "In response to overwhelming demands by the rank and file members of the Union, the leadership of 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." *Id.*
5. *Id.*

sued in response to the Russian invasion of Afghanistan. The ILA's action resulted in a number of lawsuits by importers, shipping companies and stevedoring companies.[6] The decisions in these cases have created a dispute among the district courts, the National Labor Relations Board (NLRB), and various courts of appeals as to whether such political activity is within the scope of the NLRA.[7]

Allied International (Allied), an American company, imports Russian wood products for resale in the United States. The ILA boycott caused Allied's shipments to be disrupted completely.[8] "Ultimately, Allied was forced to renegotiate its Russian contracts, substantially reducing its purchases and jeopardizing its ability to supply its own customers."[9] After the union's continued refusal to unload any Russian cargo, Allied, almost simultaneously, filed an action for damages[10] in federal court under section 303 of the Labor Management Relations Act (LMRA),[11] and an unfair labor practice charge with the NLRB, under section 10(b) of the NLRA.[12] In both actions Allied alleged that the boycott violated the prohibition against secondary boycotts in section 8(b)(4)(B) of the NLRA.[13]

The district court found that Allied had not alleged a violation of section 8(b)(4)(B) and dismissed the complaint.[14] The court held that the ILA boycott was a primary, political boycott of Russian goods, thus

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6. *See* Baldovin v. International Longshoremen's Assn., 626 F.2d 445 (5th Cir. 1980); New Orleans Steamship Assn. v. General Longshore Workers, ILA, 626 F.2d 455 (5th Cir. 1980), *cert. granted sub nom.*, Jacksonville Bulk Terminals, Inc. v. Longshoremen's, 450 U.S. 1029 (1981); Walsh v. International Longshoremen's Assn., 488 F. Supp. 524 (D. Mass.), *aff'd*, 630 F.2d 864 (1st Cir. 1980); International Longshoremen's Assn., AFL-CIO (Allied International, Inc.), 257 N.L.R.B. No. 151 (1981).

7. *See supra* note 6.

8. 456 U.S. at 215. Allied contracts with Waterman Steamship Lines (Waterman), an American shipping company using ships of United States registry, to ship the wood from Russia to the United States. Waterman employs a Boston stevedoring company, John T. Clark & Son (Clark), to unload ships docked in Boston. Clark, a member of the Boston Shipping Association, obtains its longshoring employees through the ILA hiring hall as a condition of the collective bargaining agreement between ILA Local 799 and the Boston Shipping Association. *Id.*

9. *Id.* at 215-16.

10. *Id.* at 216.

11. 29 U.S.C. § 185(a) (1982) [commonly known as the Taft-Hartley Act].

12. 456 U.S. at 217. 29 U.S.C. § 160(b) (1982). The relevant part of the statute reads:

> (b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges . . . .

Id.

13. 456 U.S. at 217.

14. 492 F. Supp. 334 (D. Mass. 1980).

outside the scope of section 8(b)(4)(B).[15] The Court of Appeals for the First Circuit reversed the dismissal of Allied's complaint.[16] That court found the effects of the ILA's boycott were "in commerce" within the meaning of the NLRA as interpreted by the Supreme Court.[17] Additionally, the court held that the boycott was within section 8(b)(4)(B)'s prohibition of secondary boycotts despite its political purpose and that such behavior was not protected activity under the first amendment.[18]

The NLRB, agreeing with the court of appeals, held that the ILA's actions, in refusing to unload Allied's shipments, were "in commerce" and amounted to a secondary boycott in violation of section 8(b)(4)(B).[19]

In *International Longshoremen's Association v. Allied International, Inc.* the United States Supreme Court affirmed the court of appeal's decision.[20] The Court held that the "ILA's activity was 'in commerce'[21] and within the scope of the NLRA."[22] Although the purpose of the boycott was to protest the invasion of Afghanistan, it constituted a violation of the secondary boycott provisions of the NLRA.[23]

The Court said this type of activity was precisely what these provisions were designed to prevent.[24] The Court rejected the arguments that the activity was outside the prohibition of secondary boycotts because (1) the object of the boycott was "to free ILA members from the morally repugnant duty of handling Russian goods"[25] and (2) it was "not a labor dispute with a primary employer but a political dispute with a foreign nation."[26] The Court also held that the application of

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15. *Id.*

16. 640 F.2d 1368 (1st Cir. 1981).

17. *Id.* at 1374.

18. *Id.* at 1379.

19. 257 N.L.R.B. No. 151, 108 L.R.R.M. 1033 (1981). The NLRB's decision is on the unfair labor charge filed by Allied. This decision is currently on appeal to the court of appeals. 456 U.S. at 218 n.11.

20. 456 U.S. at 212.

21. *Id.* at 221.

22. *Id.*

23. *Id.* at 222.

24. *Id.* The prohibition of secondary boycotts serves a dual purpose: (1) to preserve the right of labor organizations to bring pressure to bear on offending employers in primary labor disputes; (2) to protect unoffending employers and others from pressures in controversies not their own. Although the ILA admittedly has no dispute with Allied, Waterman or Clark, the effect of its boycott was to disrupt the business of all three. *Id.* at 223 n.20.

25. *Id.* at 224.

26. *Id.* at 225.

section 8(b)(4) to the ILA's activity did not violate the first amendment rights of the ILA members.[27]

In 1932, Congress passed the Norris-LaGuardia Act,[28] prohibiting federal courts from issuing injunctions in labor disputes,[29] in an effort to equalize the bargaining position of employees with that of their employers.[30] Then on July 5, 1935, pursuant to its power to regulate interstate and foreign commerce under the commerce clause,[31] Congress passed the Wagner Act,[32] also known as the National Labor Relations Act, in an attempt to promote the free flow of commerce "by removing certain recognized sources of industrial strife and unrest."[33] The NLRA established the National Labor Relations Board and defined unfair labor practices of employers.[34] Later, in response to the strong showing of union power following World War I,[35] Congress modified the NLRA by passing the Taft-Hartley Act of 1947,[36] also known as the Labor Management Relations Act. The LMRA defined unfair labor practices of labor organizations,[37] exempted NLRB action from the Norris-LaGuardia Act restrictions,[38] imposed on unions and employees the duty to bargain in good faith,[39] and provided employers with a private right of action in federal court to enforce collective bargaining agreements.[40]

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27. *Id.* at 226

28. Act of March 23, 1962, Pub. L. No. 65, 47 Stat. 70 (codified as enacted at 29 U.S.C. §§ 101-15 (1982)).

29. *Id. See infra* note 34.

30. Comment, *Political Activity Against Foreign Nations Outside Scope of NLRA*, 5 SUFFOLK TRANSNAT'L L.J. 311, 314 (1981) (hereinafter cited as Comment, *Political Activity*).

31. U.S. CONST. art. 1, § 8. The pertinent part reads: "The Congress shall have the Power to . . . regulate Commerce with foreign Nations and among the several States . . . ." *Id.*

32. Pub. L. No. 198, 49 Stat. 449 (codified as enacted at 29 U.S.C. §§ 151-68 (1982)).

33. 29 U.S.C. § 151.

34. *Id.* §§ 151-68.

35. R. SMITH, L. MERRIFIELD & T. ST. ANTOINE, LABOR RELATIONS LAW 39 (6th ed. 1979). After the passage of the Norris-LaGuardia Act, the federal courts could no longer issue injunctions against unions involved in labor disputes. 29 U.S.C. § 101-15. Additionally, the Wagner Act did not provide for any actions against the unions. *Id.* §§ 151-68. The result was excessive union abuses against employers with no means to curtail them under federal labor law. S. REP. No. 105, 80th Cong., 1st Sess. 2 (1947).

36. Pub. L. No. 101, 61 Stat. 136 (codified as amended at 29 U.S.C. §§ 141-67, 171-97 (1982)).

37. 29 U.S.C. § 158(b).

38. *Id.* § 160(a). The NLRB may now go into federal court to get an injunction in a labor dispute. *Id.*

39. *Id.* § 158(d).

40. *Id.* § 185(a).

Section 10(a) of the NLRA limits the NLRB's jurisdiction in unfair labor practice cases to "any person . . . engaging in any unfair labor practice . . . affecting commerce."[41] The Board thus has jurisdiction over any person[42] engaging in a secondary boycott "affecting commerce." The ILA boycott in *Allied* appears to fall within this jurisdiction.[43] A problem arises, however, because the primary dispute[44] in *Allied* was between a labor organization and a foreign entity, a type of dispute over which the NLRB generally does not have jurisdiction.[45]

The Supreme Court has construed the NLRB's jurisdiction over labor disputes involving foreign entities in a line of cases beginning with *Benz v. Compania Naviera Hidalgo, S.A.*[46] The Court in *Benz* held that the NLRB lacked jurisdiction over a primary dispute between a foreign crew and a foreign-flag ship, owned by a Panamanian corporation, temporarily in an American port.[47] The *Benz* case arose when the foreign crew of the S.S. Rivera began a strike before docking in Portland, Oregon.[48] Once in Portland they continued the strike, designated the Sailor's Union of the Pacific as their collective bargaining representative and picketed the ship along with several American unions.[49] The shipowner then sought to enjoin the picketing and claimed damages under the LMRA.[50] The Court stated that, although Congress could have made the Act applicable to "wage disputes arising on foreign vessels between nationals of other countries when the vessel comes within our territorial waters,"[51] there is nothing in the NLRA or its

41. *Id.* § 169(a).

42. *Id.* § 152(1). The relevant part of the statute states: "Sec. 2. When used in this Act—(1) The term 'person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers." *Id.*

43. 456 U.S. at 212. As a labor organization, the ILA falls under the NLRA's definition of a person, see *supra* note 41, and they had been charged with the unfair labor practice of engaging in a secondary boycott. 456 U.S. at 217.

44. A primary dispute refers to the major dispute which has caused the work stoppage, boycott, etc., and the other secondary or incidental disputes. Generally a primary dispute is between the employees and their employer over the terms and conditions of their employment. However, in some cases the primary dispute may be over a separate company policy or political matter. *See* L. MODJESKA, NLRB PRACTICE 350-57 (1983).

45. Benz v. Compania Naviera Hidalgo, S.A., 353 U.S. 138 (1957). The term "affecting commerce" has generally been interpreted to exclude primary disputes between a labor organization and a foreign entity that affects the maritime operations of foreign-flag ships. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 139.

49. *Id.* at 140.

50. *Id.* at 140-41.

51. *Id.* at 142. "It is beyond question that a ship voluntarily entered the territorial limits of another country subjects itself to the laws and jurisdiction of the country." *Id.*

legislative history indicating that Congress intended it to cover such disputes.[52] The seamen contracted to work on the foreign ship under British articles and, in the absence of an express provision, the Court refused to read into the LMRA an intention to change those contractual provisions.[53] The Court said that "[f]or us to run interference in such a delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed."[54]

In 1963, two cases, *McCulloch v. Sociedad Nacional de Marineras de Honduras*[55] and *Incres Steamship Co., Ltd. v. International Maritime Workers Union*,[56] reaffirmed the principle of *Benz* that labor disputes between foreign ships and their seamen cannot be governed by the NLRA.[57] Both cases arose out of multi-union efforts to organize foreign seamen on foreign ships.[58]

In *McCulloch*, the National Maritime Union petitioned the NLRB for a representation election and the NLRB exercised jurisdiction and ordered an election.[59] The shipowners and the Honduran union already representing the seamen sought to have the election enjoined in federal court.[60] The Supreme Court held that, as the NLRB's exercise of jurisdiction "had aroused vigorous protests from foreign governments and created international problems for our government,"[61] the district court had jurisdiction to enjoin the NLRB's order under the limited exception fashioned in *Leedom v. Kyne*.[62]

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52. *Id.*

53. *Id.* at 146-47.

54. *Id.* at 147.

55. 372 U.S. 10 (1963).

56. 372 U.S. 24 (1963).

57. Windward Shipping (London) Ltd. v. American Radio Association, 415 U.S. 104, 117 (1974). Comment, *Foreign Ships in American Ports: The Question of NLRB Jurisdiction*, 9 CORNELL L. REV. 50, 58-59 (1975) (hereinafter cited as Comment, *Foreign Ships*).

58. Comment, *Foreign Ships*, *supra* note 57, at 53 n.18. In 1959, two unions, the National Maritime Union and the Seafarers International Union, longtime rivals on the maritime labor scene, joined together to form a solid front to combat the problem of flag-of-convenience vessels decreasing employment opportunities for United States maritime workers. The organization they formed was the International Maritime Workers Union. *Id.* It was the efforts of this organization that created the disputes in *Windward*, 415 U.S. 104, and American Radio Association v. Mobile Steamship Association, Inc., 419 U.S. 215 (1974). For a discussion of these cases, see text accompanying notes 77-95.

59. 372 U.S. at 12.

60. *Id.* at 15.

61. *Id.* at 17.

62. 358 U.S. 184 (1958). In the decision in *Leedom v. Kyne* the Supreme Court created a narrow exception to the rule that NLRB representation decisions may not be appealed to the courts. The Court held that if the issue in contention is entirely an issue of law and the NLRB has clearly exceeded its authority under the NLRA, then its representation decision may be appealed to the federal courts. *Id.*

In *Incres*, a companion case to *McCulloch*, the Court affirmed the established doctrine of *Benz* and applied the general rule that, when disputes are outside NLRB jurisdiction, the state courts have jurisdiction under the doctrine of federal preemption.[63] This case arose when the International Maritime Workers Union began picketing two Liberian-registered cruise ships for the purpose of organizing the crew.[64] The shipowners sued in state court for both injunctive relief and damages.[65] The Court said that state court jurisdiction is only preempted when "a dispute is arguably within the jurisdiction of the Board."[66] The dispute in *Incres* arguably was not within the jurisdiction of the Board, as jurisdiction is based on circumstances "affecting commerce" and the Court has already held that "maritime operations of foreign-flag ships employing alien seamen are not in 'commerce'."[67]

In 1969, the Court applied the reasoning of *Benz* and *McCulloch* to reach the opposite result in *International Longshoremen's Association, Local 1416 v. Ariadne Shipping Co., Ltd.*[68] The ILA in *Ariadne* picketed two foreign cruise ships charging that the longshore work, done partly by the foreign crewmen and partly by outside labor, was being compensated at substandard wages.[69] The shipowners sought to enjoin the picketing in state court under the doctrine of *Incres*.[70] The Supreme Court held that "this dispute centered on the wages to be paid American residents, who were employed by each foreign ship not to serve as members of its crew, but rather, to do casual longshore work."[71] The Court, therefore, found the longshore activities of these Americans did not concern the "maritime operations of foreign-flag ships"[72] which are beyond the scope of the NLRA.[73]

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63. *Incres*, 372 U.S. at 24. The labor law doctrine of federal preemption states that within the NLRB's mandatory jurisdictional guidelines,

> the Board possesses exclusive jurisdiction over disputes involving activities which are 'arguably' either protected or prohibited by the National Labor Relations Act, as amended. A principle corollary to this doctrine is that in cases in which the NLRB does not have jurisdiction, state courts may proceed to decide labor law disputes.

Comment, *Foreign Ships*, *supra* note 57, at 59 n.57.

64. 372 U.S. at 26.

65. Incres Steamship Company, Ltd. v. International Maritime Workers Union, 10 N.Y.2d 218, 176 N.E.2d 719, 219 N.Y.S.2d 21 (1963).

66. 372 U.S. at 27.

67. *Id.*

68. 397 U.S. 195 (1970).

69. *Id.* at 196-97.

70. *Id.*

71. *Id.* at 199.

72. 372 U.S. at 27.

The cases from *Benz* through *Ariadne* established the general rule that United States labor law, as set forth in the NLRA, does not govern internal labor disputes of foreign-flag ships or the activities of American unions attempting to influence those disputes.[74] The general test used to discover whether the union's activities concerned the "maritime operations of foreign-flag ships"[75] was the possible conflict between federal labor law and foreign labor agreements, foreign law or international law.[76]

In 1974, the Court in two major cases again addressed the issue of the NLRB's jurisdiction over disputes involving foreign entities and set forth a "major new test"[77] in this field of law. Both of these cases involved the 1971 multi-union picketing campaign of Gulf and West Coast ports protesting the substandard wages paid foreign crewmen on flag-of-convenience fleet vessels.[78]

In the first case, *Windward Shipping (London) Ltd. v. American Radio Association, AFL-CIO*,[79] the foreign-flag shipowners and agents brought suit in Texas state court to bar the American Radio Association from picketing their vessels. The Supreme Court held that the union's picketing was not activity "affecting commerce" as defined in section 2(6) and (7) of the NLRA.[80] The Court stated that the object of the picketing was to force the foreign shippers "to raise their operating costs to levels comparable to those of American shippers . . . . such a large scale increase in operating costs would have more than a negligible impact on the 'maritime operations' of these foreign ships. . . ."[81] In discussing the "predictable responses of a foreign shipowner," the Court held that none of them would be limited to the type of wage decision, affecting only American workers, that the NLRA was designed to cover.[82] The Court, therefore, found that *Windward* fell "under *Benz* rather than under *Ariadne*."[83]

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73. 397 U.S. at 200.

74. Comment, *Foreign Ships*, *supra* note 57, at 77.

75. 372 U.S. at 27.

76. Comment, *Foreign Ships*, *supra* note 57, at 77.

77. *Id.* at 67-68.

78. *Id.* As a result of the picketing effort foreign shipowners in Houston, Texas and Mobile, Alabama attempted to enjoin the picketing. *See Windward*, 415 U.S. 104; *Mobile*, 419 U.S. 215.

79. 415 U.S. 104.

80. *Id.* at 114. *See* 29 U.S.C. § 152(6)-(7) (1982).

81. 415 U.S. at 114.

82. *Id.* at 115.

83. *Id.*

American Radio Association v. Mobile Steamship Association, Inc.,[84] differed factually from *Windward* in that it was the stevedoring companies and a shipper who sought injunctive relief in state court, rather than the foreign shipowners.[85] The Court held the change in parties did not "convert into 'commerce' activities which plainly were not such in *Windward*."[86] The line of cases from *Benz* through *Windward* did not "permit such a bifurcated view of the effects of a single group of pickets at a single site."[87] In *Windward* the effects on the maritime operations of foreign ships were not produced solely by the picketing, but also by American workmen, employed by domestic stevedoring companies, honoring another union's picket line.[88] The Court stated that "the response of the employees of American stevedores was a crucial part of the mechanism by which the maritime operations of the foreign ships were to be affected."[89] *Mobile* sets forth the rule that the NLRB may not assert jurisdiction in a case concerning the secondary effects of a dispute with a foreign entity if the NLRB has no jurisdiction over the primary dispute.[90]

Windward and *Mobile* have changed the test the Court was using in *Benz* through *Ariadne*.[91] The Court previously determined the effect of the union activities on the maritime operations of foreign-flag ships by inquiring whether the union was protesting economic injury to American workers or attempting to influence shipboard labor relations.[92] The Court made this distinction by determining if the application of the NLRA would conflict with any foreign or international code or would interfere with the "internal affairs" of the ship.[93] In contrast, *Windward* and *Mobile* focused mainly on the economic impact of the union's activities on "foreign ships' operations here and throughout the world" to determine whether the NLRB or the state courts should have jurisdiction.[94] In making this determination, the Court looked at the objectives of the union activity, its effects in terms of the employers' "predictable response[s]," and whether those effects and responses

84. *Mobile*, 419 U.S. 215.
85. *Id.* at 219.
86. *Id.* at 225.
87. *Id.* at 222.
88. *Id.* at 224.
89. *Id.*
90. Comment, *Political Activity*, *supra* note 30, at 318.
91. Comment, *Foreign Ships*, *supra* note 57, at 68.
92. *Id.* at 62.
93. *Id.* at 63.
94. *Windward*, 415 U.S. at 114. *See also* Comment, *Foreign Ships*, *supra* note 57, at 66.

involved the type of wage decisions "which the LMRA was designed to regulate."[95]

In *Allied* the Court addressed these considerations and unanimously held "that the ILA's activity was 'in commerce' and within the scope of the NLRA."[96] The Court then turned to the second issue of whether the ILA's activity fell under section 8(b)(4)(B) prohibiting secondary boycotts.[97]

Section 8(b)(4)(B) of the NLRA makes it an unfair labor practice for a labor organization "to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce" to refuse to handle goods, where an object of such action is to force "any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, manufacturer, or to cease doing business with any other person."[98] The Court in *United Brotherhood of Carpenters and Joiners, Local 1976 v. NLRB*,[99] interpreted this section and described the elements of a section 8(b)(4)(B) violation as threefold: "[e]mployees 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."[100]

In *Allied* it was clear that the first two elements were present: the ILA did induce its membership not to handle any cargo coming from or going to Russia.[101] The ILA, however, contended that the object of the boycott was "not to halt business between Allied, Clark, and Waterman with respect to Russian goods, but simply to free ILA members from the morally repugnant duty of handling Russian goods.[102] The Court based its rejection of this contention on the interpretation of section 8(b)(4)(B) in two prior decisions, *NLRB v. Retail Store Employees Union, Local 1001*[103] and *NLRB v. Denver Building Construction Trades Council*.[104]

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95. 415 U.S. at 114.

96. 456 U.S. at 221.

97. *Id.* at 222. *See* 29 U.S.C. § 158(b)(4)(B) (1982).

98. 29 U.S.C. § 158(b)(4)(B) (1982).

99. 357 U.S. 93 (1953) (under § 8(b)(4)(A) a "hot cargo" provision may not be enforced by union inducement of employees to handle such goods).

100. 357 U.S. at 98.

101. *See generally* 456 U.S. 212.

102. *Id.* at 224.

103. 447 U.S. 607 (1980) (picketing to promote a secondary boycott of employer's goods during a strike is an unfair labor practice under section 8(b)(4)(B)(ii)).

104. 341 U.S. 675 (1951) (striking to force a contractor to terminate the contract of an electrical subcontractor is an unfair labor practice under 8(b)(4)(A) even though this purpose was not the sole object of the strike).

Denver stands for the proposition that the disruption of neutral parties' business must be one objective, but need not be the sole objective of the boycott for a violation of section 8(b)(4)(B) to occur.[105] Any other result would render the statutory prohibition meaningless.[106] The Court in *Retail Store Employees* held that when a purely secondary boycott "reasonably can be expected to threaten neutral parties with ruin or substantial loss" then pressuring those parties must be considered one object of the boycott.[107] The Court additionally stated that a union must be held responsible for the "foreseeable consequences" of its conduct.[108]

The language of section 8(b)(4)(B) and the cases interpreting it have established the general rule that there are three elements which must be present to find a violation of section 8(b)(4)(B).[109] The third element[110] under this rule may be found solely by a showing that the boycott could be expected to threaten neutral parties with ruin or substantial loss.[111]

The unanimous decision in *International Longshoremen's Association v. Allied International, Inc.*,[112] written by Justice Powell, applied the principles discussed above in determining first, whether the Court had jurisdiction under the NLRA and second, whether section 8(b)(4)(B) prohibiting secondary boycotts applied to the union's activity in this case.[113]

Justice Powell, applying the principles developed in the line of cases from *Benz* through *Mobile*, held that "the ILA's activity was 'in commerce' and within the scope of the NLRA."[114] The Court distinguished *Allied* from the previous cases by stating that the ILA's action, in refusing to unload Allied's cargo, "in no way affected the maritime operations of foreign ships."[115] The boycott was not trying to alter wage scales of foreign crew or impose the United States labor laws on

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105. *Id.* at 689.

106. *Id. See also* 456 U.S. at 226-27.

107. 447 U.S. at 614.

108. *Id.* at n.9, *relying on* NLRB v. Local 1825, International Union of Operating Engineers, 400 U.S. 297, 304-05 (1971).

109. 29 U.S.C. § 158(b)(4)(B) (1982); *Denver*, 341 U.S. at 675. For a discussion of these elements, see *supra* notes 98-100 and accompanying text.

110. *See supra* note 100 and accompanying text. The third element requires that one object of the boycott must be to force any person to cease doing business with another person. *Denver*, 341 U.S. at 689.

111. *Denver*, 341 U.S. 675; *Retail Store Employees*, 447 U.S. 607.

112. 456 U.S. 212.

113. *Id.*

114. *Id.* at 221.

115. *Id.*

foreign shipowners and their crews.[116] Additionally, the holding in *Allied* would not impose the laws of this country on ships of foreign countries, because the case involved "an all-American cast."[117] Justice Powell concluded that this case squarely fell under the clear language of the statute.[118]

The Court went on to hold that "[b]y its terms the statutory prohibition applies to the undisputed facts of this case."[119] The Court found that the ILA's sole dispute was "with the foreign and military policy of the Soviet Union," not with Allied, Clark or Waterman.[120] The Court stated that "[a]s understandable and even commendable as the ILA's ultimate objectives may be, the certain effect of its action is to impose a heavy burden on neutral employers."[121] It was just this type of activity Congress intended the secondary boycott provisions to regulate and prevent.[122] One purpose of these provisions is to shield "unoffending employers and others from pressures in controversies not their own."[123] Thus the Court concluded that this purpose of the NLRA would be served by applying section 8(b)(4)(B) to the ILA's boycott, since the ILA's dispute was not with Allied, Clark or Waterman, but, rather, was with the Soviet Union.[124]

In holding section 8(b)(4)(B) applicable to the ILA's boycott of cargo coming from or going to Russia, the Court rejected the ILA's contention that their activity was outside the prohibition on secondary boycotts, because its object was not to force Allied, Clark or Waterman to cease doing business with each other.[125] The ILA claimed that the object of the boycott was "to free ILA members from the morally repugnant duty of handling Russian goods."[126] The Court, however, applying the principles of *Denver* and *Retail Store Employees*, found that the ILA was aware of the losses it was inflicting on Allied, since Allied officials had tried to convince the ILA to allow Allied to fill its Russian contracts.[127] Not only could the ILA be reasonably expected to know its actions threatened neutral parties with substantial loss, but

116. *Id.* at 223.
117. *Allied International*, 640 F.2d at 1374.
118. 456 U.S. at 222.
119. *Id.*
120. *Id.* at 223.
121. *Id.*
122. *Id.*
123. *Id.* at 223 n.20, *relying on Denver*, 341 U.S. 675, 692.
124. 456 U.S. at 223-24.
125. *Id.* at 224.
126. *Id.*
127. *Id.*

they knew that their actions were causing Allied substantial loss.[128] The Court held that the court of appeals was correct in concluding that Allied International had established a violation of section 8(b)(4)(B).[129]

Justice Powell also rejected, as a defense to the application of this section, the ILA's argument that their boycott "was not a labor dispute with a primary employer but a political dispute with a foreign nation."[130] The Court simply stated that it was not the intention of Congress to exclude political disputes from the scope of section 8(b)(4)(B).[131] First, the Court looked to the statute, which contains no specific provision limiting section 8(b)(4)(B) by excluding political disputes from its coverage.[132] Second, the Court stated that legislative history did not indicate that political disputes should be excluded from section 8(b)(4)(B), because Congress had refused to narrow the provision's scope.[133] Finally, the Court held that "[i]n the absence of any limiting language in the statute or legislative history, we find no reason to conclude that Congress intended such a potentially expansive exception to a statutory provision purposefully drafted in broadest terms."[134] The Court refused to create an exception for "political" secondary boycotts from section 8(b)(4)(B).[135]

Justice Powell additionally held that the first amendment rights of the ILA's members are not infringed upon by the application of section 8(b)(4)(B) to the union's activity.[136] The Court stated that as this conduct was designed to coerce rather than communicate, it "merits still less consideration under the First Amendment. . . . 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."[137]

The Court in *Allied* resolved the first major issue in summary fashion without setting forth a clear method of analysis used in reaching the decision. In holding that the ILA's activity was "in commerce" because it did not affect the maritime operations of a foreign ship, the

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128. *Id.* at 215-16.
129. *Id.* at 224.
130. *Id.*
131. *Id.* at 225.
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.* at 226.
136. *Id.* The Court has consistently rejected the claim that secondary picketing by labor unions in violation of § 8(b)(4)(B) is protected activity under the first amendment. *Id.* at 1664. *See Retail Store Employees*, 447 U.S. at 616; *Mobile*, 419 U.S. at 229-31.
137. 456 U.S. at 226-27.

Court seemingly disregards the factors discussed in *Windward* and *Mobile* and returns to the more objective test of *Benz*. The Court, however, discusses all three cases without specifically applying the tests of any one case. Additionally, the Court ignores the lower court opinions holding that the ILA's activity is not "in commerce" because the *Benz* line of cases stands for "the general proposition that the NLRA doesn't cover labor controversies in which the 'primary' dispute relates to the internal affairs of a foreign entity."[138] This lack of analysis is unfortunate because it was obvious from the differing courts of appeals opinions[139] that the lower courts are in need of some guidance in interpreting *Windward* and *Mobile*.

The decision in Allied has resolved the dispute in the lower courts over whether the NLRA is applicable to this ILA boycott of all Russian cargo, as a result of the Russian invasion of Afghanistan. *Allied*, however, has left many unanswered questions concerning the interpretation of *Windward* and *Mobile* and it has confused the issue of which standard should be used to determine whether a dispute is "in commerce" within the scope of the NLRA's jurisdiction.

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138. *See Allied International*, 495 F. Supp. 334; 640 F.2d 1368 (Judge Aldrich dissenting). *See generally Baldovin*, 626 F.2d 445. *See also* Comment, *Political Activity*, *supra* note 30, at 319 n.60.

139. *See supra* note 6.