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WORKERS' RIGHTS AGAINST A BANKRUPT EMPLOYER

A conflict exists between the anti-injunction provisions of the Norris-LaGuardia Act¹ and section 362(a) of the Bankruptcy Reform Act of 1978 (the Bankruptcy Code).² The Norris-LaGuardia Act prohibits federal courts from enjoining strikes and other labor activities arising out of labor disputes,³ except under specified circumstances.⁴ Section 362(a) of the Bankruptcy Code stays creditors from most collection activities against a debtor who has filed a petition for bankruptcy under the Code.⁵ The conflict between the

1. 29 U.S.C. §§ 101-115 (1982).

2. 11 U.S.C. §§ 101-1330 (1982).

3. Section 113(c) of the Act defines "labor dispute." It states:

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, charging, 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.

29 U.S.C. § 113(c) (1982).

4. Section 107 of the Act permits the federal courts to enjoin labor activities for specified reasons, including the threat of unlawful action or the likelihood that irreparable damage to the employer's property will follow. 29 U.S.C. § 107(a)-(e) (1982).

5. Section 362(a) states:

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(a)(3)), operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate;

(4) any act to create, perfect or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before commencement of the case under this title;

two statutes arises when a labor union pickets or strikes a bankrupt employer because the employer failed to make benefit payments to the union fund as required under the parties' collective bargaining agreement.

This is not the first conflict to arise between the new Bankruptcy Code and the labor laws. Section 365(a) of the Code permits a debtor to reject burdensome executory contracts with the bankruptcy court's approval, and courts consistently have treated collective bargaining agreements as executory contracts within the meaning of the statute.⁶ Consequently, section 365(a) conflicted with sections 8(a)(5) and 8(d) of the National Labor Relations Act, which impose a duty on the employer to bargain collectively and to establish procedures for modifying or terminating a labor contract.⁷ The United States Supreme Court resolved this conflict in *NLRB v. Bildisco & Bildisco*,⁸ holding that bankruptcy law prevailed over labor law in this situation.⁹ Congress substantially overruled this decision in the 1984 amendments to the Bankruptcy Code.¹⁰

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

11 U.S.C. § 362(a) (1982).

Section 362(b) exempts certain collection activities from the stay, such as criminal proceedings, alimony proceedings, and certain governmental actions. 11 U.S.C. § 362(b)(1)-(8) (1982).

6. See *In re Bildisco*, 682 F.2d 72 (3d Cir. 1982), *aff'd*, 104 S. Ct. 1188 (1984); *Brotherhood of Ry., Airline & S.S. Clerks v. REA Express*, 523 F.2d 164 (2d Cir. 1975); *Shipmen's Local 455 v. Kevin Steel Prods.*, 519 F.2d 698 (2d Cir. 1975).

7. 29 U.S.C. §§ 158(a)(5), 158(d) (1982).

8. 104 S. Ct. 1188 (1984).

9. *Id.* at 1194-1201. In *Bildisco*, the Court held that the bankruptcy court should permit the employer to reject a collective bargaining agreement under section 365(a) of the Code if the employer can show that the contract is burdensome and if the court concludes that, on balance, the equities favor rejection of the agreement. *Id.* at 1196. More importantly, the Court held that a bankrupt employer may unilaterally reject or modify a labor contract before formal rejection by the bankruptcy court without committing an unfair labor practice because the contract becomes unenforceable when the employer files the bankruptcy petition. *Id.* at 1199-1201.

10. Bankruptcy Amendments & Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 541, 1984 U.S. CODE CONG. & AD. NEWS (98 Stat.) 333, 390 (to be codified at 11 U.S.C. § 1113).

In two circuit court cases involving the conflict between the Norris-LaGuardia Act and section 362(a) of the Bankruptcy Code, *In re Petrusch*¹¹ and *In re Crowe & Associates*,¹² the respective bankruptcy courts reached conclusions opposite from those reached by the district courts that reviewed their decisions. In *Petrusch*, the employer had signed several collective bargaining agreements with the union in 1974 and 1976. The agreements obligated the employer to make fringe-benefit contributions to the union's health and pension funds. By July 1980 when the employer filed a chapter 13 petition for bankruptcy, the payments to the union's funds had become delinquent. When the employer failed to comply with the union's demand for contributions, the union picketed.¹³

Like the employer in *Petrusch*, the employer in *Crowe* had a collective bargaining agreement with its employees' union that required the company to make periodic payments to the union's pension fund. On the date the employer filed a voluntary chapter 11 petition, the company was delinquent in its payments to the pension fund. After the employer filed the petition, the union demanded that the employer satisfy the debt. When the employer failed to do so, the union struck.¹⁴

In both *Petrusch* and *Crowe*, the employers sought injunctions in bankruptcy court against the labor activities, arguing that the unions were engaged in collection activities in violation of the automatic stay that went into effect when the employers filed for bankruptcy,¹⁵ and in both cases the bankruptcy courts granted the injunctions.¹⁶ Both district courts, however, reversed on appeal.¹⁷ The United States Courts of Appeals for the Second and Sixth Cir-

The 1984 amendments largely reverse the *Bildisco* decision. Under the new section 1113, a bankruptcy court may still approve an application to reject a collective bargaining agreement if certain conditions are met. However, subsection (f) expressly provides that a collective bargaining agreement may not be terminated unilaterally until the debtor has complied with all of the provisions under this section. 11 U.S.C.A. § 1113 (West Supp. 1984).

11. 667 F.2d 297 (2d Cir. 1981) (per curiam), cert. denied, 456 U.S. 974 (1982).

12. 713 F.2d 211 (6th Cir. 1983) (per curiam).

13. *Petrusch*, 14 Bankr. 825, 826-27 (N.D.N.Y.), aff'd, 667 F.2d 297 (2d Cir. 1981), cert. denied, 456 U.S. 974 (1982).

14. *Crowe*, 713 F.2d at 212-13.

15. *Petrusch*, 667 F.2d at 298-99; *Crowe*, 713 F.2d at 211.

16. *Crowe*, 16 Bankr. 271, 273-74 (Bankr. E.D. Mich. 1981); *Petrusch*, 14 Bankr. 825, 827.

17. *Crowe*, 20 Bankr. 225 (E.D. Mich. 1982); *Petrusch*, 14 Bankr. 825.

cuits affirmed the district courts' rulings, holding that the Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue the injunctions.¹⁸

This Note examines the backgrounds of both the Norris-LaGuardia Act and the Bankruptcy Reform Act and discusses their underlying policies. The Note also reviews federal case law involving the Norris-LaGuardia Act and analyzes the courts' treatment of the conflict between these two statutes. The Note concludes that federal courts should not issue injunctions in these cases because they lack of subject matter jurisdiction to do so.

THE BANKRUPTCY REFORM ACT OF 1978 AND THE NORRIS-LA GUARDIA ACT: BACKGROUND AND POLICIES

The Bankruptcy Reform Act of 1978 and the Automatic Stay Provision

In 1970, Congress established the Commission on the Bankruptcy Laws of the United States. Congress directed the Commission to study the current bankruptcy laws and recommend changes to the bankruptcy system.¹⁹ The bankruptcy system was first established in 1898 and had its only major revision in 1938.²⁰ In light of the significant changes in debtor-creditor law since 1938, brought about by the widespread adoption of the Uniform Commercial Code and the increased use of consumer credit, the Commission determined that the bankruptcy system was wholly unsuited to handle complex modern problems.²¹ The Commission's report revealed two major weaknesses in the bankruptcy laws: the structure and procedures of the bankruptcy court system and the inadequacy of relief provided for consumer debtors.²²

Congress' remedy for the weaknesses in the bankruptcy court system was to discard the former referee system and to establish a

18. *Crowe*, 713 F.2d 211 (6th Cir. 1983); *Petrusch*, 667 F.2d 297 (2d Cir. 1981).

19. H.R. REP. NO. 595, 95th Cong., 1st Sess. 2, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 5963.

20. *Id.* at 3, reprinted in 1978 U.S. CODE CONG. & AD. NEWS at 5965.

21. S. REP. NO. 989, 95th Cong., 2d Sess. 2, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 5787, 5788.

22. H.R. REP. NO. 595, *supra* note 19, at 4, reprinted in AD. NEWS, *supra* note 19, at 5965-66.

bankruptcy court in each federal judicial district to serve as an adjunct to the district court.²³ Congress significantly broadened the bankruptcy courts' jurisdiction to include all civil proceedings arising under or related to cases under title 11.²⁴

The United States Supreme Court held that this system was unconstitutional, however, in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*²⁵ The Court ruled that because the bankruptcy judges were not granted the protections afforded to judges under article III of the United States Constitution, they could not legally exercise all of the powers granted to them under the Code.²⁶ The Court directed Congress either to establish a bankruptcy court system that would comply with constitutional mandates or to adopt another method for adjudicating bankruptcy cases.²⁷

After considerable delay, Congress responded to the *Northern Pipeline* decision by enacting the Federal Judgeship Act of 1984.²⁸ Under the new Act, the bankruptcy courts have article I status and are designated as units of the district courts.²⁹ Bankruptcy judges may hear and determine all cases arising under title 11 that are referred by the district courts, but the bankruptcy courts are more restricted in their authority to adjudicate other matters related to title 11 cases.³⁰

The Bankruptcy Code is divided into seven chapters: 1, 3, 5, 7, 9, 11, and 13.³¹ Chapters 1, 3, and 5 generally apply to all cases filed under chapters 7, 9, 11, and 13,³² while cases may be filed only under one of the latter four chapters.³³ Chapter 7 governs the basic liquidation or "straight bankruptcy" proceedings.³⁴ Chapter 9 pro-

23. 28 U.S.C. § 151(a) (1982).

24. 28 U.S.C. § 1471(c) (1982).

25. 458 U.S. 50 (1982).

26. *Id.*

27. *Id.* at 88.

28. Pub. L. No. 98-353, § 104(a), 1984 U.S. CODE CONG. & AD. NEWS (98 Stat.) 336-41 (to be codified at 28 U.S.C. §§ 151-58).

29. 28 U.S.C.A. § 151 (West Supp. 1985).

30. 28 U.S.C.A. § 157 (West Supp. 1985).

31. 11 U.S.C. §§ 101-1330 (1982).

32. H.R. REP. NO. 595, *supra* note 19, at 6, reprinted in AD. NEWS, *supra* note 19, at 5967.

33. *Id.* The Code also permits cases to be converted from one chapter to another. *Id.*

34. Ginsberg, *Introduction to the Symposium: The Bankruptcy Reform Act of 1978—A Primer*, 28 DEPAUL L. REV. 923, 926 (1979).

vides for the adjustment of a municipality's debts.³⁵ Chapters 11 and 13, the chapters primarily affecting the conflict discussed in this Note, govern private business and individual reorganization.³⁶

Chapter 11, the business reorganization chapter, provides for the rehabilitation of a financially distressed business through adjustment of both its debts and its equity interests.³⁷ The House Report explains this chapter's purpose:

The purpose of a business reorganization case, unlike a liquidation case, is to restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders. The premise of a business reorganization is that assets that are used for production in the industry for which they were designed are more valuable than those same assets sold for scrap If the business can extend or reduce its debts, it often can be returned to a viable state. It is more economically efficient to reorganize than to liquidate, because it preserves jobs and assets.³⁸

Chapter 13 permits almost any individual or small business with regular income to propose a plan for repayment of debts under court supervision and protection.³⁹ The plan may require full or partial repayment to creditors.⁴⁰

One of the most important features of the new Bankruptcy Code is section 362(a), the automatic stay provision.⁴¹ A petition filed under any chapter of the Code immediately triggers the stay, which prevents creditors from engaging in most collection activities.⁴² Although the Rules of Bankruptcy Procedure provided an automatic stay under previous law, the new Code broadens the scope of the stay and also imposes limitations not found in the

35. 11 U.S.C. §§ 901-46 (1982).

36. 11 U.S.C. §§ 1101-74, 1301-30 (1982).

37. S. REP. NO. 989, *supra* note 21, at 9, *reprinted in* AD. NEWS, *supra* note 21, at 5795.

38. H.R. REP. NO. 595, *supra* note 19, at 220, *reprinted in* AD. NEWS, *supra* note 19, at 6179.

39. *Id.* at 119, 1978 U.S. CODE CONG. & AD. NEWS at 6079-80. To be eligible for chapter 13 protection, the individual or small business must have sufficiently stable income to be able to make payments under the plan.

40. *Id.* at 118, 1978 U.S. CODE CONG. & AD. NEWS at 6079.

41. 11 U.S.C. § 362(a) (1982); *see supra* notes 2 & 5.

42. *See supra* note 5; *see also* Kennedy, *Automatic Stays Under the New Bankruptcy Law*, 12 U. MICH. J.L. REF. 3, 10 (1978).

previous law.⁴³ Section 362(b) states eight exceptions to the automatic stay provision, including commencement or continuation of criminal proceedings against the debtor and collection of alimony.⁴⁴ Labor activities are not exempted from the stay specifically.

The scope of the automatic stay is extremely broad and, aside from the exceptions listed in subsection (b), the provision applies to almost any type of formal or informal action against the debtor or his property.⁴⁵ The stay applies only to prepetition claims against the debtor or his estate, however, and does not extend to claims that arise after the bankruptcy procedures begin. The Code excludes postpetition claims because a stay in those situations would discourage others from dealing with the debtor.⁴⁶

Subsection (d) of the automatic stay provision directs the court to grant relief from the stay at the request of a party in interest for "cause," including the lack of adequate protection of a property interest.⁴⁷ The court also must grant relief from the stay for an act against property if two conditions are present: (1) the debtor does not have an equity in the property; and (2) such property is not necessary to an effective reorganization.⁴⁸ The legislative history indicates that relief may be granted for causes not specified in the statute, including cases in which the stay would cause the creditor irreparable injury.⁴⁹

The automatic stay is one of the debtor's most fundamental protections under the Bankruptcy Code.⁵⁰ The stay protects individu-

43. See Kennedy, *supra* note 42, at 10.

44. 11 U.S.C. § 362(b)(1), (2) (1982).

45. 2 COLLIER ON BANKRUPTCY (MB) ¶ 362.04, at ¶ 362-27 (15th ed. 1979).

46. *Id.* at ¶ 362-28.

47. 11 U.S.C. § 362(d)(1) (1982).

48. 11 U.S.C. § 362(d)(2) (1982).

49. H.R. REP. NO. 595, *supra* note 19, at 122, reprinted in AD. NEWS, *supra* note 19, at 6083. The report lists cases in which a codebtor is deteriorating financially or is about to leave the jurisdiction as examples of cases in which the stay could cause irreparable injury to the creditor.

50. The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

H.R. REP. NO. 595, *supra* note 19, at 340, reprinted in AD. NEWS, *supra* note 19, at 6296-97.

als from harassment by bill collectors and gives failing businesses opportunities to work out viable repayment schedules.⁵¹ The stay also protects creditors by providing an orderly liquidation or repayment procedure that prevents creditors who act first from obtaining payment of their claims in preference to other creditors.⁵² Thus, the automatic stay provision advances two major policies of the bankruptcy laws: fresh starts for debtors, and equal treatment of creditors.⁵³

The Norris-LaGuardia Act

Congress' enactment of the Norris-LaGuardia Act was a direct response to the federal courts' practice of issuing injunctions against the activities of organized labor.⁵⁴ After passage of the Sherman Act,⁵⁵ federal courts enjoined labor strikes on the theory that they were illegal conspiracies in restraint of trade.⁵⁶ In response,⁵⁷ Congress enacted the Clayton Act in 1914.⁵⁸ Section 6 of the Clayton Act stated that the antitrust laws were not to be interpreted as forbidding the existence of labor organizations, nor were such organizations to be considered illegal conspiracies in restraint of trade.⁵⁹ More importantly, section 20 explicitly forbade the federal courts to order injunctions in any cases between employers and employees arising out of disputes concerning the terms or con-

51. *Id.* at 174, 1978 U.S. CODE CONG. & AD. NEWS at 6135.

52. *Id.* at 340, 1978 U.S. CODE CONG. & AD. NEWS at 6297.

53. Kennedy, *supra* note 42, at 61; *see also* 2 COLLIER, *supra* note 45, at ¶ 362-17.

54. This bill comes as a popular protest and as an additional protection to American citizens against the abuse of the equity powers of the Federal courts. Labor is criticized and denounced in connection with the discussion of this bill. Labor is not responsible for this bill. The responsibility is upon those who invoked an abusive exercise of judicial power and upon those Federal judges who abusively exercised their powers.

75 CONG. REC. 5500 (1932) (statement of Rep. Sumners); *see also* Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970); United States v. Hutcheson, 312 U.S. 219 (1940).

55. 26 Stat. 209 (1890) (codified as amended at 15 U.S.C. §§ 1-7 (1982)).

56. *See* Loewe v. Lawlor, 208 U.S. 274 (1908); Montague & Co. v. Lowry, 193 U.S. 38 (1904).

57. F. FRANKFURTER & N. GREENE, THE LABOR INJUNCTION 9-10 (1930).

58. Ch. 323, 38 Stat. 730 (1914) (codified as amended at 15 U.S.C. §§ 12-27 (1982)).

59. *Id.* at 731, § 6 (codified as amended at 15 U.S.C. § 17 (1982)).

ditions of employment.⁶⁰

Despite these provisions, later federal court decisions determined that the Clayton Act did not completely prevent injunctions in labor disputes. The United States Supreme Court in *Duplex Printing Press Co. v. Deering*,⁶¹ condemned a secondary boycott on antitrust grounds, holding that section 6 of the Clayton Act was inapplicable when unions "depart from . . . normal and legitimate objects."⁶² The Court also held that section 20 was inapplicable because that proviso protected only workers who stood in proximate relation as employees to the primary employer.⁶³ It then concluded that the Clayton Act did not deprive federal courts of the jurisdiction to issue injunctions under these circumstances.⁶⁴

The legislative history clearly indicates that the passage of the Norris-LaGuardia Act in 1932 was an expression of Congress' disapproval of the narrow construction given to the Clayton Act in cases such as *Duplex Printing Press*.⁶⁵ In an effort to aid judicial construction of the Norris-LaGuardia Act,⁶⁶ Congress included a declaration of policy on the rights of labor.⁶⁷ Congress intended the Norris-LaGuardia Act to serve two primary purposes: (1) to protect the right of workers to exercise organized economic power, a necessary tool for effective collective bargaining; and (2) to prevent federal court injunctions from interfering with the "natural inter-

60. *Id.* at 738, § 20 (codified as amended at 29 U.S.C. § 52 (1982)).

61. 254 U.S. 443 (1921).

62. *Id.* at 469.

63. *Id.* at 471-74.

64. *Id.* at 478.

65. "If the courts had been satisfied to construe the law as enacted by Congress, there would not be any need of legislation of this kind . . . If the courts had not emasculated and purposely misconstrued the Clayton Act, we would not today be discussing an anti-injunction bill." 75 CONG. REC. 5478 (1932) (statement of Rep. LaGuardia).

66. See 75 CONG. REC. 4503 (1932).

67. Section 102 of the Norris-LaGuardia Act states, in part,

[Because] the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor . . . it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . .

29 U.S.C. § 102 (1982).

play of the competing economic forces of labor and capital."⁶⁸

Aware of the policies underlying the Norris-LaGuardia Act and the automatic stay provision of the Bankruptcy Code, the courts in *Petrusch* and *Crowe* looked to the case law decided under the Norris-LaGuardia Act.

THE NORRIS-LA GUARDIA ACT: AN HISTORIC OVERVIEW

The federal courts consistently have given the Norris-LaGuardia Act a broad interpretation. In *Milk Wagon Drivers' Union, Local No. 753 v. Lake Valley Farm Products Inc.*,⁶⁹ decided shortly after the Act's passage, the Supreme Court recognized that the Act was "intended drastically to curtail the equity jurisdiction of federal courts in the field of labor disputes."⁷⁰ Accordingly, injunctions against labor union activity were clearly inconsistent with congressional intent.⁷¹ Forty years later, in *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association*,⁷² the Court reiterated this interpretation, noting that Congress had intended to prevent judicial scrutiny into the "legitimacy" of the union's objectives.⁷³ With only a few narrow exceptions, courts have extended this broad interpretation of the Norris-LaGuardia Act's anti-injunction provisions to situations in which the union's concerted activities were illegal under other, nonlabor statutes, as well as the prior bankruptcy laws.

Conflicts With Nonlabor Statutes

In *Milk Wagon Drivers*, the milk deliverers' union picketed cut-rate milk stores employing a new sales system that depressed labor standards and caused union members to lose their jobs.⁷⁴ The plaintiff dairies sought an injunction, alleging that the union and

68. *Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R.*, 353 U.S. 30, 40 (1957). Another important purpose of the Norris-LaGuardia Act was to outlaw the "yellow dog" contract. Under these contracts, employees were required to agree, as a condition of employment, not to join a union. See 75 CONG. REC. 4504 (1932).

69. 311 U.S. 91 (1940).

70. *Id.* at 101.

71. *Id.* at 103.

72. 457 U.S. 702 (1982).

73. *Id.* at 715.

74. 311 U.S. 91, 94-96 (1940).

its officers had conspired to restrain interstate commerce in violation of the Sherman Act.⁷⁵ Reversing the United States Court of Appeals for the Seventh Circuit, the Supreme Court ruled that an injunction could not issue.⁷⁶ Although the complaint alleged violations of the Sherman Act, the Norris-LaGuardia Act deprived the federal courts of jurisdiction to issue injunctions in cases arising out of labor disputes.⁷⁷

In *Order of Railroad Telegraphers v. Chicago & Northwestern Railway*,⁷⁸ the railroad union threatened to strike because the company refused to include in the collective bargaining agreements an amendment which would have forbidden the company to abolish any employment position without union approval.⁷⁹ The proposed amendment stemmed from the company's plan to centralize certain stations throughout four states and to abolish others. The railroad argued that decreases in its business made maintenance of many of these stations wasteful and therefore contrary to the Interstate Commerce Act's policy of efficiency.⁸⁰ The Supreme Court rejected the railroad's argument. The Court refused to limit the scope of the Norris-LaGuardia Act absent an explicit mandate in the Interstate Commerce Act.⁸¹

Conflicts with Prior Bankruptcy Laws

Although *Petrusch* and *Crowe* are the first cases in which the federal courts have faced the conflict between the Norris-LaGuardia Act and the automatic stay provision of the new Bankruptcy Code, conflicts between the Act and the bankruptcy laws are not new. In *In re Third Avenue Transit Corp.*,⁸² for example, the union struck after the employer refused to comply with its demand

75. *Id.* at 96.

76. *Id.* at 103.

77. *Id.*

78. 362 U.S. 330 (1960).

79. *Id.* at 331-32.

80. *Id.* at 332-33.

81. *Id.* at 342; see also *Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365 (1960). The Court stated that even if the union's picketing was unlawful under another statute, "it would not follow that the federal court would have jurisdiction to enjoin the particular conduct which § 4 of the Norris-LaGuardia Act declared shall not be enjoined." *Id.* at 371.

82. 192 F.2d 971 (2d Cir. 1951).

for a change in the parties' collective bargaining agreement.⁸³ The employer was reorganizing under chapter 10 of the Bankruptcy Act and, at the employer's request, the reorganization court issued a temporary injunction against the strike.⁸⁴ The district court denied the union's motion to vacate the temporary injunction and the union appealed.⁸⁵ The United States Court of Appeals for the Second Circuit reversed, holding that the lower courts lacked jurisdiction to issue the injunction under the Norris-LaGuardia Act.⁸⁶ The court concluded that "the well established power of the reorganization court to issue orders necessary to conserve the property in its custody must be exercised within the scope of a jurisdiction which is limited by the broad and explicit language of the Norris LaGuardia [sic] Act."⁸⁷

Similarly, in *Truck Drivers Local Union No. 807 v. The Bohack Corp.*,⁸⁸ the United States Court of Appeals for the Second Circuit invalidated a temporary restraining order issued by the lower court that enjoined a labor strike against a chapter 11 debtor.⁸⁹ The union had struck to protest the employer's discharge of most of its union-member employees.⁹⁰ Although the court acknowledged that allowing the picketing to continue might put the debtor out of business, it noted that "the policy of our labor laws is simply to provide rules for the handling of labor disputes, not to prohibit the use of economic power in the resolution of such disputes. By filing under Chapter XI an employer does not become clothed in immunity from union action."⁹¹ The court added that the injunction was not necessary, because the debtor in a bankruptcy proceeding could seek release from "unlivable conditions" in a collective bar-

83. *Id.* at 972-73.

84. *Id.* at 973.

85. *Id.*

86. *Id.*

87. *Id.*

88. 541 F.2d 312 (2d Cir. 1976).

89. *Id.* at 318. Also at issue in the case was whether the bankruptcy court should grant the debtor's request to reject its collective bargaining agreement with the union. Although the contract had expired by the time of the Second Circuit's decision, the court remanded the case for resolution of this issue because that determination would still affect the union's rights against the debtor. *Id.* at 321.

90. *Id.* at 314-15.

91. *Id.* at 318.

gaining agreement by petitioning the court for permission to reject the contract.⁹²

Judicial Exceptions to the Norris-LaGuardia Act

Although the federal courts generally have interpreted broadly the anti-injunction provisions of the Norris-LaGuardia Act and have adhered strictly to its ban on injunctions in labor disputes, the Supreme Court has carved out narrow exceptions to the Act. In *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad*,⁹³ the Court affirmed the Seventh Circuit's decision permitting a permanent injunction against the railroad union's strike.⁹⁴ When negotiations between the parties failed, the union called a strike. A mediator from the National Mediation Board was unsuccessful in resolving the controversy, and the railroad then submitted the dispute to the Adjustment Board. The union ordered a strike four days later.⁹⁵ Under section 3 of the Railway Labor Act,⁹⁶ minor disputes could be submitted by either party to an Adjustment Board created under the Act.⁹⁷ The awards of this Board are "final and binding" upon both parties.⁹⁸ The importance of the public services performed by railroads made this dispute settling provision necessary.⁹⁹

In light of these considerations, the Court held that the Norris-LaGuardia Act did not forbid the federal courts to issue an injunc-

92. *Id.*

93. 353 U.S. 30 (1957).

94. *Id.*

95. *Id.*

96. 45 U.S.C. §§ 151-88 (1982).

97. Section 153, subsection (i) of the Railway Labor Act provides:

The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

45 U.S.C. § 153(i) (1982).

98. *Id.* § 153(m) (1982).

99. *Railroad Trainmen*, 353 U.S. at 38.

tion against the proposed strike.¹⁰⁰ In reaching this conclusion, the Court observed that the purposes of the Norris-LaGuardia and Railway Labor Acts were reconcilable because both were enacted as part of a "pattern of labor legislation."¹⁰¹ Thus, unlike earlier cases in which the Court refused to lift the Norris-LaGuardia Act's ban on federal injunctions because the conduct was unlawful under another statute,¹⁰² the Court reasoned that its decision here would accommodate both statutes and further Congress' overall labor policies.¹⁰³

The Supreme Court created another exception to the Norris-LaGuardia Act in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*.¹⁰⁴ In *Boys Markets* the collective bargaining agreement contained a no-strike clause and provided that all controversies involving the contract's interpretation or application would be resolved by specified arbitration procedures.¹⁰⁵ The dispute between the employer and the union arose when a supervisor and some members of his crew who were not members of the bargaining unit began to rearrange merchandise in the employer's supermarket. A union representative demanded that the merchandise be removed and the food cases be restocked by union personnel. When the employer refused, the union called a strike and began picketing.¹⁰⁶

The district court issued an injunction against the strike that the United States Court of Appeals for the Ninth Circuit vacated.¹⁰⁷ The Supreme Court then reversed the appellate court's decision, however, concluding that the injunction was permissible despite the anti-injunction provisions of the Norris-LaGuardia Act.¹⁰⁸ In reaching its conclusion, the Court noted that labor organizations are much stronger today than at the time Congress enacted the

100. *Id.* at 42.

101. *Id.* at 40-42.

102. *Id.* at 42 n.25.

103. *Id.* at 42.

104. 398 U.S. 235 (1970).

105. *Id.* at 238-39.

106. *Id.* at 239.

107. *Id.* at 238. Collective bargaining agreements are enforceable under section 301(a) of the Labor Management Relations Act, which provides federal courts with jurisdiction to hear cases involving violations of labor contracts between employers and unions. 29 U.S.C. § 185(a) (1982).

108. 398 U.S. at 238, 253.

Norris-LaGuardia Act. Consequently, congressional concern has shifted from protection of the fledgling labor movement to encouragement of collective bargaining and adherence to administrative procedures for resolving labor disputes.¹⁰⁹ Because Congress enacted new labor laws without extensive revision of the older statutes, the Court recognized that courts must accommodate and reconcile the older and the newer statutes.¹¹⁰

In holding that the Norris-LaGuardia Act did not bar injunctions under the circumstances present in *Boys Markets*, the Court reasoned that the Act's central purpose—"to foster the growth and viability of labor organizations"—would be advanced rather than retarded by permitting federal courts to enforce obligations that unions freely assumed.¹¹¹ Despite these rather sweeping statements, however, the Court cautioned against a broad interpretation of *Boys Markets*, explaining that the holding was a narrow one that was not intended to undermine the Norris-LaGuardia Act.¹¹²

LABOR'S RIGHTS VERSUS PROTECTION OF THE DEBTOR: THE COURTS' RESPONSE

In re Petrusch

In *Petrusch*, the bankruptcy judge enjoined the union from picketing the debtor's business because the union's actions rendered the debtor unable to comply with its chapter 13 repayment schedule.¹¹³ The union then asked the district court to stay the injunction on the grounds that the Norris-LaGuardia Act denied bankruptcy court jurisdiction to issue the injunction.¹¹⁴

109. *Id.* at 250-51.

110. *Id.* at 251-52 (citing *Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R.*, 353 U.S. 30 (1957) as the leading example of this "accommodation process").

111. 398 U.S. at 252-53.

112. *Id.* at 253. The Court later demonstrated the limited nature of the *Boys Markets* exception to the Norris-LaGuardia Act in a factually similar case, *Buffalo Forge Co. v. United Steelworkers of America*, 428 U.S. 397 (1976). The Court refused to apply the *Boys Markets* exception despite the presence of a similar no-strike collective bargaining agreement between the employer and the union on the ground that the strike was not over any dispute that was subject to the labor contract's arbitration provision. *Id.* at 407-08.

113. *In re Petrusch*, 14 Bankr. 825, 827 (N.D.N.Y.), *aff'd*, 667 F.2d 297 (2d Cir. 1981), *cert. denied*, 456 U.S. 974 (1982).

114. *Id.*

The district court first concluded that the Norris-LaGuardia Act applied because the case involved a "labor dispute" within the meaning of the Act.¹¹⁵ It then held that the jurisdictional mandates of the Norris-LaGuardia Act took precedence over the bankruptcy court's power to stay creditors under the new Code. The bankruptcy court therefore lacked subject matter jurisdiction to enjoin the picketing.¹¹⁶ The court also ruled that this case did not fit within the narrow exception to the Norris-LaGuardia Act created in *Boys Markets*.¹¹⁷

In affirming the district court's decision, the United States Court of Appeals for the Second Circuit agreed that the case involved a "labor dispute" under the Norris-LaGuardia Act.¹¹⁸ Accordingly, the court reasoned that the Act deprived federal courts of jurisdiction to enjoin union activities unless the automatic stay provision of the Bankruptcy Code represented an exception to the Norris-LaGuardia Act.¹¹⁹ After observing that the legislative history of the Bankruptcy Reform Act of 1978 makes no reference to the Norris-LaGuardia Act, the court concluded that this silence was "self-evident proof" that Congress did not intend the automatic stay provision of the Bankruptcy Code to supersede the Act. Therefore, the bankruptcy court lacked jurisdiction to issue the injunction.¹²⁰

In re Crowe & Associates

In *Crowe*, the bankruptcy court granted the employer injunctive relief on the theory that the Norris-LaGuardia Act was inapplicable because the case did not involve a "labor dispute" within the meaning of the Act.¹²¹ The bankruptcy court also concluded that even if the parties were involved in a dispute concerning the amount or existence of the prepetition debt, the Norris-LaGuardia Act would not prohibit the court from granting the injunction because the strike was "unlawful," and if continued would probably

115. *Id.* at 828.

116. *Id.* at 829.

117. *Id.* at 830.

118. *In re Petrusch*, 667 F.2d 297, 299 (2d Cir. 1981).

119. *Id.* at 298.

120. *Id.* at 299-300.

121. *In re Crowe & Assoc.*, 16 Bankr. 271, 273 (Bankr. E.D. Mich. 1981), *rev'd*, 20 Bankr. 225 (E.D. Mich. 1982), *aff'd*, 713 F.2d 211 (6th Cir. 1983).

put the debtor out of business.¹²²

In reversing the bankruptcy court, the district court concluded that the conflict was a "labor dispute."¹²³ Because it concerned payments to the employees' benefit funds, the conflict obviously involved "terms and conditions of employment."¹²⁴ A true "controversy" existed even though the employer believed he was legally justified in refusing to make the payments.¹²⁵ Furthermore, the Norris-LaGuardia Act remained applicable even if the union's actions were illegal under the bankruptcy laws.¹²⁶ The court declined the employer's request to accommodate the conflicting interests by creating an exception to the Norris-LaGuardia Act.¹²⁷ The court did acknowledge that the union may have been acting against its own best interests because the strike could compel the debtor to liquidate. The court reasoned, however, that it was not the courts' role to prevent a union strike that could ultimately hurt the union as well, and noted that the modern labor laws have long recognized that permitting unions to strike may drive employers out of business.¹²⁸

The United States Court of Appeals for the Sixth Circuit affirmed, adopting much of the district court's reasoning.¹²⁹ Citing the Supreme Court's decisions in *Order of Railroad Telegraphers v. Chicago & North Western Railway*,¹³⁰ and *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Railroad*,¹³¹ the court held that the Norris-LaGuardia Act's prohibition on federal in-

122. *Id.* at 274. As the bankruptcy court stated, "Norris-LaGuardia was enacted to prevent courts from interfering with union conduct directed to the pursuit of the union's legitimate and lawful goals. Norris-LaGuardia did not intend that unions be permitted to compel employers to comply with unlawful and unwarranted demands." *Id.*

123. 20 Bankr. 225, 227 (E.D. Mich. 1982).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 228-29. The court also emphasized its belief that Congress never anticipated a conflict arising between the automatic stay provision of the Code and the Norris-LaGuardia Act. *Id.* at 228. This conclusion seems more tenable than the Second Circuit's statement in *Petrusch* that Congress's failure to address this issue was "self-evident proof" that the automatic stay was not intended to supersede the Norris-LaGuardia Act. See *Petrusch*, 667 F.2d 297, 300 (2d Cir. 1981).

128. 20 Bankr. at 229.

129. *In re Crowe & Assoc.*, 713 F.2d 211 (6th Cir. 1983) (per curiam).

130. 362 U.S. 330 (1960).

131. 353 U.S. 30 (1957).

junctions is not inapplicable merely because the union's conduct is unlawful under another, nonlabor statute.¹³²

The court also agreed with the district court that the lack of any reference to the Norris-LaGuardia Act in the Bankruptcy Reform Act's legislative history indicated that Congress had never considered a conflict between the two statutes. Thus, Congress' adoption of the automatic stay provision in the Bankruptcy Code did not provide sufficient evidence that Congress intended it to supersede the Norris-LaGuardia Act's anti-injunction provisions.¹³³ The court further ruled that this situation did not fit within the *Boys Markets* exception to the Norris-LaGuardia Act.¹³⁴

The Sixth Circuit noted that its decision placed Crowe and Associates in a serious dilemma because, even if the employer wanted to comply with the union's demands, the bankruptcy court might not permit it to do so. The court observed, however, that Crowe and Associates had no control over many of the forces affecting its reorganization effort, and strikes were simply other economic forces recognized as legitimate weapons under the labor laws.¹³⁵

RESOLVING THE DILEMMA

Courts and commentators have proposed that federal courts resolve the conflict between the Norris-LaGuardia Act and the automatic stay provision of the Bankruptcy Code in cases like *Petrusch* and *Crowe* by balancing the policies of the statutes and determining which law should prevail in a particular case.¹³⁶ In order to de-

132. 713 F.2d at 214.

133. *Id.* at 215.

134. *Id.* at 215-16.

135. *Id.* at 216.

136. See Note, *The Automatic Stay of the 1978 Bankruptcy Code Versus the Norris-LaGuardia Act: A Bankruptcy Court's Dilemma*, 61 TEX. L. REV. 321, 335 (1982) (suggesting that in cases such as *Petrusch* the policies underlying the automatic stay provision should prevail); see also *In re Tom Powell & Son, Inc.*, 22 Bankr. 657 (Bankr. W.D. Mo. 1982). The court in *Powell* noted:

Where the activity is intended to collect a debt arising out of contract as opposed to an effort to vindicate statutory rights, outright abdication of jurisdiction seems inappropriate. There should be a balancing of the policy considerations underlying the prohibitions against self-help and preferences contained in the Code against the anti-injunction provisions of the Norris-LaGuardia Act.

Id. at 660.

termine whether this approach offers a viable solution to the conflict, the policy arguments on both sides of the issue must be explored.

Strong policies favor permitting the automatic stay provision to prevail in cases such as *Petrusch* and *Crowe*. Picketing and striking to force an employer to satisfy a prepetition debt are clearly collection activities prohibited by section 362(a) of the Code. Further, these activities seriously undermine the two main policies underlying the automatic stay provision. First, the union's activities could deprive the debtor of its "fresh start." If the employer is unable to satisfy the union's demands, prolonged picketing or striking ultimately could force it out of business. In addition, the bankruptcy court might not allow the company to comply with the union's demands, even if it wanted to, and the debtor may be forced to liquidate.¹³⁷ Second, if the union succeeded in forcing the employer to satisfy this debt, the union could receive an unfair advantage over other creditors.¹³⁸ This advantage would undermine the Code's policy of equal treatment for creditors.

In addition, as the district courts in both *Petrusch* and *Crowe* observed, a union picketing or striking an employer in the midst of the company's reorganization effort may be acting against its own best interests.¹³⁹ Because this activity could interfere with reorganization and increase the debtor's financial distress, it could also increase the chances that union members will lose their jobs. Enjoining the action might therefore benefit the union as well as the debtor.

Despite these arguments favoring application of the automatic stay provision over the Norris-LaGuardia Act, persuasive reasons also exist for courts to refrain from enjoining labor activities in these situations. As the district court in *Crowe* observed, eliminating a worker's right to withhold his labor is a drastic step, and nothing indicates that Congress intended debtors seeking protection under the bankruptcy laws to have special privileges in the area of labor relations.¹⁴⁰ Legislative policies and federal case law

137. *In re Crowe & Assoc.*, 713 F.2d 211, 216 (6th Cir. 1983).

138. See Note, *supra* note 136, at 335.

139. *In re Crowe & Assoc.*, 20 Bankr. 225, 229 (E.D. Mich. 1982); *In re Petrusch*, 14 Bankr. 825, 830 (N.D.N.Y. 1981).

140. *Crowe*, 20 Bankr. at 229.

recognize collective labor activities as legitimate economic weapons that ultimately could drive an employer out of business.¹⁴¹ Mere involvement in a bankruptcy reorganization plan is insufficient to immunize the employer from the weapons of organized labor. A financially solvent employer driven out of business by labor activities is in no better position than a bankrupt employer similarly forced to liquidate, yet the law contemplates no immunity outside of the bankruptcy system.

Furthermore, strikes, pickets, and boycotts are labor's only real weapons against economic domination by employers.¹⁴² Although these activities are especially crippling to bankrupt employers, much of the rationale behind freeing these employers from labor pressures applies equally to solvent companies. The judicial exception to the Norris-LaGuardia Act proposed by the employers in *Petrusch* and *Crowe* could lead to gradual erosion of the Act. Although the National Labor Relations Act¹⁴³ and other laws protect labor, injunctions could render much of this protection meaningless.

Other policies favor application of the Norris-LaGuardia Act in these cases. As noted above, the Bankruptcy Code permits debtors to reject executory contracts. Although the 1984 amendments to the Code significantly reduce employers' ability to reject or modify existing collective bargaining agreements, employers may still petition the bankruptcy court for permission to reject contracts under certain conditions.¹⁴⁴ Thus, instead of seeking injunctions against labor activities arising out of noncompliance with collective bargaining agreements, debtors can seek permission to reject the labor contracts altogether.

The strong policies supporting both sides of this conflict make a balancing test inappropriate to determine which statute should prevail in particular cases. Congress, not the federal courts, should resolve the conflict. The policies favoring injunctions in cases such as *Petrusch* and *Crowe*, may prompt Congress to amend the Nor-

141. *Crowe*, 713 F.2d 211, 216 (6th Cir. 1983).

142. See F. FRANKFURTER & N. GREENE, *supra* note 57, at 30 (noting "[t]he means by which organized labor exerts economic pressure reduce themselves, in the main, to the strike, the picket and the boycott, in their various manifestations").

143. 29 U.S.C. §§ 151-69 (1982).

144. 11 U.S.C.A. § 1113 (West Supp. 1985).

ris-LaGuardia Act to permit injunctions against labor activities directed at debtors undergoing reorganization. Conversely, because collective labor activities are so vital to workers, Congress could conclude that these activities merit exemption from the Bankruptcy Code's automatic stay provision. In either event, as the district court in *Crowe* observed, Congress would be unlikely to alter its long-standing anti-injunction policy without notice and extensive hearings.¹⁴⁵

Courts should not attempt to reconcile this conflict by assuming jurisdiction specifically denied by Congress. The long history of Norris-LaGuardia case law compels this conclusion. As noted earlier, the federal courts consistently have interpreted the Norris-LaGuardia Act broadly. With few exceptions, the courts have adhered strictly to the provisions denying the federal courts jurisdiction to issue injunctions in cases arising out of labor disputes. As the *Milk Wagon Drivers*¹⁴⁶ and the *Railroad Telegraphers*¹⁴⁷ cases demonstrate, the Supreme Court has held that federal courts must conform to the Act's mandates even in the face of conflicts with non-labor statutes.

The anti-injunction provisions of the Norris-LaGuardia Act also have been held applicable in cases presenting conflicts between the Act and the earlier bankruptcy laws, as illustrated in *In re Third Avenue Transit*¹⁴⁸ and *Bohack*.¹⁴⁹ These cases were decided before the enactment of the current Bankruptcy Code, but they remain good law. Although the policies of the new Code place greater emphasis on protecting the debtor than did the former bankruptcy laws, the Second Circuit probably would decide these cases the same way today. The court in *Bohack* was expressly aware of the debtors' needs and the hardships employers would face because of the labor activities,¹⁵⁰ yet the court recognized the applicability of the Norris-LaGuardia Act. For the Second Circuit, the issue was a question of law, not of policy. The Norris-LaGuardia Act specifically denied federal courts jurisdiction to issue injunctions at the

145. *Crowe*, 20 Bankr. at 228.

146. 311 U.S. 91 (1940); see *supra* text accompanying notes 74-77.

147. 362 U.S. 330 (1960); see *supra* text accompanying notes 78-81.

148. 192 F.2d 971 (2d Cir. 1951); see *supra* text accompanying notes 82-87.

149. 541 F.2d 312 (2d Cir. 1976); see *supra* text accompanying notes 88-92.

150. 541 F.2d at 318.

time of *Third Avenue* and *Bohack*, and it continues to do so today.

Although the Supreme Court's decisions in *Brotherhood of Railroad Trainmen*¹⁵¹ and *Boys Markets*¹⁵² created exceptions to the Norris-LaGuardia Act, these exceptions do not support the bankruptcy courts' decisions in *Petrusch* and *Crowe*. *Brotherhood of Railroad Trainmen* presented a conflict between the Norris-LaGuardia Act and the Railway Labor Act. In permitting the injunction against the railroad union, the Court did not conclude that the Railway Labor Act superseded the Norris-LaGuardia Act. Rather, the Court reconciled both statutes as parts of Congress' overall scheme of labor legislation.

Conversely, in *Petrusch* and *Crowe*, the Norris-LaGuardia Act conflicted with a provision in the bankruptcy laws rather than another labor law. An exception to the Norris-LaGuardia Act in this situation would not have furthered congressional labor policy because the two laws are not reconcilable. Thus, the Supreme Court's rationale in the *Brotherhood of Railroad Trainmen* is inapposite in cases such as *Petrusch* and *Crowe*.

Similarly, *Boys Markets* introduced a narrow, carefully considered exception to the Norris-LaGuardia Act, designed to further congressional labor policy. The decision to permit the injunction rested largely on the Court's recognition of the shift in congressional labor policy favoring administrative resolution of labor disputes. Furthermore, the union previously had agreed to resolve disputes through arbitration rather than strikes. By requiring the union to live up to its contractual obligations, the Court enforced congressional policy favoring the use of collective bargaining agreements to define both parties' rights and obligations.

In *Petrusch* and *Crowe*, however, judicial recognition of the automatic stay provision as an exception to the Norris-LaGuardia Act would not have furthered the congressional policy of employing administrative techniques to resolve labor disputes. The purpose of the stay is to advance the goals of the bankruptcy laws, not those of the labor laws. Although *Boys Markets* promoted enforcement of voluntary agreements between labor and management, the employers in *Petrusch* and *Crowe* sought to modify their labor ob-

151. 353 U.S. 30 (1957); see *supra* text accompanying notes 93-103.

152. 395 U.S. 235 (1970); see *supra* text accompanying notes 104-112.

ligations, while forcing the union into the position of a creditor.

Thus, the case law does not support the bankruptcy courts' decisions in *Petrusch* and *Crowe*. The bankruptcy court in *Crowe* dismissed the Norris-LaGuardia Act as inapplicable because the union's strike was "unlawful." Yet scrutiny into the legitimacy of labor activities is the very kind of judicial activity that the Norris-LaGuardia Act sought to prevent.¹⁵³ Although the district and appellate court decisions in *Petrusch* and *Crowe* concededly place significant hardships on the debtor, the federal courts must operate within the limits of their jurisdiction. To do otherwise would abuse judicial power.

CONCLUSION

The conflict between the Norris-LaGuardia Act and the automatic stay provision of the Bankruptcy Code cannot be resolved by the federal courts. Absent a mandate to favor one law over the other, courts should not attempt to invoke powers specifically removed by the Norris-LaGuardia Act. Courts should therefore refuse to enjoin activities arising in labor disputes, regardless of the employers' involvement in bankruptcy proceedings.

The case law supports this analysis. The federal courts have repeatedly denied requests to limit the Norris-LaGuardia Act in order to accommodate nonlabor statutes and policies. The Supreme Court has created narrow exceptions to the Norris-LaGuardia Act only to further Congress' overall labor policy. Unless Congress acts to amend this long-standing anti-injunction policy, the federal courts remain without jurisdiction to issue injunctions in labor disputes.

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153. See *supra* note 54 and accompanying text.