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**BOYS MARKETS IN THE SEVENTH CIRCUIT: JUDICIAL SYMPATHY FOR SYMPATHY STRIKES**

CHARLES E. MURPHY*

In three decisions this year the Seventh Circuit Court of Appeals attempted to come to grips with an increasingly widespread labor problem—employee work stoppages in response to labor disputes involving unrelated or separate groups of employees. The term sympathy strike is used to describe employees ceasing their own work out of respect or sympathy for someone else's labor dispute. The question of whether or not such work stoppages are permissible notwithstanding no-strike commitments made between labor organizations and employers, and more particularly whether such strikes may be enjoined by federal courts pending binding arbitration, has produced conflicting decisions in the Seventh Circuit and a deep split among the federal courts in this country.

In 1974, the Seventh Circuit Court of Appeals in *Inland Steel Co. v. Local 1545, UMW*

1. 505 F.2d 293 (7th Cir. 1974).

upheld the issuance of an injunction prohibiting employee sympathy strikes in violation of a no-strike commitment in an applicable collective bargaining agreement. In two 1975 decisions, *Gary Hobart Water Corp. v. NLRB* 2 and *Hyster Co. v. Independent Towing and Lifting Machine Association*,

3. 519 F.2d 89 (7th Cir. 1975) [89 LRRM 2885]. [Where appropriate, the BNA LABOR RELATIONS REPORTER MANUAL citations are provided for the convenience of the practitioner].

the court, contrary to its conclusion in *Inland*, ruled that federal courts could not enjoin sympathy strikes. In a third case this year, *Western Publishing Co., Inc. v. Local 254, Graphic Arts Union* 4 the court concluded that an injunction could be issued against an employee strike over work alleged to be "struck work" in the circumstances present in that case. The rationales employed by the court in reaching these contradictory results in very similar factual situations has generated confusion and concern among labor, management and employees in this critical area.

**THE BACKGROUND: Boys Markets AND Inland Steel**

The Supreme Court in its historic decision, *Boys Markets, Inc. v. Retail Clerk's Union, Local 770*,


ruled that federal courts did have jurisdiction to

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1. 505 F.2d 293 (7th Cir. 1974).

2. 511 F.2d 284 (7th Cir. 1975).

3. 519 F.2d 89 (7th Cir. 1975) [89 LRRM 2885]. [Where appropriate, the BNA LABOR RELATIONS REPORTER MANUAL citations are provided for the convenience of the practitioner].

4. 522 F.2d 530 (7th Cir. 1975).

issue injunctions against work stoppages over disputes which the parties to a collective bargaining agreement had contractually agreed to arbitrate. Prior to *Boys Markets*, federal courts relying on the anti-injunction provisions of the Norris-LaGuardia Act\(^6\) had declined to enjoin employee strikes no matter what the underlying collective bargaining agreement provided. The Supreme Court in *Boys Markets* emphasized that its holding was "a narrow one" and that not every strike was enjoinable. Nonetheless, in the subsequently decided *Gateway Coal Co. v. UMW*,\(^7\) the Court expanded the literal holding of *Boys Markets* and ruled that federal courts did have jurisdiction to enjoin employee strikes over safety issues pending arbitration of whether any express or implied "exception" to the no-strike clause permitted the employees to strike over safety disputes.

With these two Supreme Court decisions as background, the Seventh Circuit Court of Appeals in *Inland Steel Co. v. Local 1545, UMW*\(^8\) confronted for the first time the question of whether employees could be enjoined from refusing to cross a stranger picket line (and thereby engaging in their own strike) pending arbitration. The employees at one of Inland's coal mines had refused to continue to work when the entrance of the mine was picketed by employees from a different Local of the United Mine Workers who worked for a different company at a mine in a different city.

The court, Judge Fairchild dissenting, ruled that the *Boys Markets* and *Gateway* decisions of the Supreme Court authorized the issuance of an injunction prohibiting concerted employee refusals to cross a stranger picket line, pending arbitration to determine if the employees had that right under the collective bargaining agreement then in effect. The underlying collective bargaining agreement in *Inland*, the National Bituminous Coal Wage Agreement, had been construed by the Supreme Court in *Gateway* as containing an "implied" no-strike obligation. The arbitration clause was described by the Seventh Circuit as being "exceptionally broad", since in addition to covering differences as to the meaning and application of the provisions of the agreement, it covered "differences about matters not specifically mentioned in this agreement" and "any local trouble of any kind (arising) at the mine".

In determining that the parties had a legally enforceable duty to arbitrate, the Seventh Circuit found that an employee work stoppage over a stranger picket line was "certainly local trouble at the mine", as that term was used in the contract. Since the parties had agreed to resolve local trouble disputes by the arbitration process, the court ordered the employees back to work pending arbitration. The court also cited the "strong public policy in favor of arbitration" articulated in the *Steelworkers Trilogy*\(^9\) cases.

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8. 505 F.2d 293 (7th Cir. 1975).
The court noted that "while the arbitrability of the issues involved here may not be free from doubt, the Trilogy has instructed that all such doubts be resolved in favor of arbitration." The Seventh Circuit declined to interpret the contract terms or to decide the right of the parties in favor of "resolution of these disputes by a skilled labor arbitrator with his unique knowledge of the common law of the shop."

A fair reading of Inland would lead the observer to conclude that a federal district court has jurisdiction to enjoin sympathy strikes by employees in deference to stranger pickets, where the language of the arbitration and no-strike provisions of the applicable collective bargaining agreement are sufficiently broad to encompass the dispute. The Inland decision itself contains no language limiting the court's holding to the facts of the particular case, nor any other indication that its holding should not be applied to other sympathy strike situations.

**Gary Hobart Water Corp. v. NLRB**

The court's decision in Inland did not foretell its later decisions in Gary Hobart and Hyster Co. v. Independent Towing and Lifting Machine Association. The issue in Gary Hobart did not concern the propriety of a Boys Markets injunction, but rather the enforcement of an NLRB order reinstating some thirty-three female clerical employees who had been discharged for refusing to cross a picket line established by a separate group of production and maintenance employees at the company's facility. The court agreed with the NLRB that the employees, in respecting the picket line, had been engaged in "protected concerted activity" and thus could not be discharged for that activity without violating the terms of the National Labor Relations Act unless the contract clearly prohibited such conduct by the employees. The question of the arbitrability of the dispute was not before the


10. 511 F.2d 284 (7th Cir. 1975).
11. 519 F.2d 89 (7th Cir. 1975) [89 LRRM 2885].
13. The no-strike clause in Gary Hobart reads:

> [The parties agree that] there shall be no lockouts by the Company and there shall be no strike, stoppages of work or any other form of interference with any of the production or other operations of the Company by the Union or its members, and any and all disputes and controversies arising under or in connection with the terms or provisions hereof shall be subject to the grievance procedure . . . [followed by a three-step grievance procedure resulting in binding arbitration under the third step].

* * * *

The Union agrees that there shall be no strikes, slowdowns or other interruption of work by any of its members during the term of this agreement, and the Company agrees that there shall be no lockout during the term of this agreement, and both parties agree that any disputes or differences shall be
court in *Gary Hobart*. Indeed, the employer in *Gary Hobart* had refused to submit to arbitration the propriety of the employees’ action under the terms of the applicable collective bargaining agreement. Further, there was no *Boys Markets* injunction issue involved in *Gary Hobart*. Nonetheless, the court, speaking through Judge Sprecher, took the occasion to comment on the *Inland* decision, which established a federal district court’s jurisdiction to enjoin a sympathy strike by employees pending arbitration. The court stated that *Inland* was distinguishable for two reasons. First, the language of the arbitration provision in the *Gary Hobart* collective bargaining agreement was limited to “disputes and controversies arising under or in connection with the terms and provisions hereof” and did not refer, as in *Inland*, to “differences about matters not specifically mentioned” and “any local trouble of any kind.” Second, the court held that since the no-strike clause in *Gary Hobart* did not specifically waive the employees’ right to engage in sympathy strikes, a sympathy strike was “unaffected” by the no-strike commitment. The court ruled that in the absence of a specific waiver of the sympathy strike right in the no-strike clause, the arbitration provision of the agreement was not broad enough to permit or require arbitration of whether the employees could respect a stranger picket line, and thus, no *Boys Markets* injunction could be issued.

*Hyster Co. v. Independent Towing and Lifting Machine Association*¹⁴

In *Hyster*, the court was faced with a factual and legal situation much closer to the *Inland* case. In *Hyster*, the “strangers” doing the picketing at the company’s Peoria plant were Hyster employees from a plant in a different city, represented by a different union. When the company’s Peoria employees refused to cross the “stranger” picket line, Hyster sought and was granted a *Boys Markets* injunction which required the employees to return to work pending arbitration of whether their activity violated the no-strike commitment in the agreement.

The Seventh Circuit reversed the district court, and directed that the injunction be vacated and the complaint dismissed. The court stated that it would not follow *Inland* on the grounds that the arbitration clause in the *Hyster* agreement was not as broad as in the *Inland* agreement. The clause itself mandated arbitration of “all differences, disputes or controversies which arise between the Union, the Company, or any employee covered by this Agreement and the Company.” The court acknowledged that this language was somewhat broader than the comparable provision in *Gary Hobart*, but pointed out that no reference was made to “differences about

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¹⁴. 519 F.2d 89 (7th Cir. 1975) [89 LRRM 2885].
matters not specifically mentioned in this agreement” or “any local trouble of any kind”, as in the Inland agreement. Further, the sympathy strike dispute was not arbitrable in the absence of “clear and unmistakeable” language in the no-strike clause prohibiting sympathy strikes.\footnote{The no-strike provision in Hyster reads:} \footnote{The Union will not authorize, sanction, condone, promote or instigate any strike, work stoppage, sitdown, slow down, picketing or curtailment of work or interference with the efficient operation of the Company's plant or premises during the term of this Agreement.}

The court conceded that in Inland the contract did not contain an express no-strike clause, much less a specific waiver of the employees’ right to respect stranger picketing. The court concluded, however, that a work stoppage by the employees over stranger picketing was not “over a grievance” which the parties had contractually agreed to arbitrate, but rather “itself precipitated the dispute.” The court held that a Boys Markets injunction could not properly be issued under these circumstances.

The effect of Gary Hobart and Hyster is to confine Inland to sympathy strikes arising under the unique arbitration language of the National Bituminous Coal Wage Agreement. Although the court has expressly declined to overrule Inland, it is evident that in the absence of an arbitration clause which very closely tracks the language of the grievance-arbitration procedure in the United Mine Workers Agreement, and quite possibly a specific contractual waiver of the right to engage in a sympathy strike, a Boys Markets injunction is not appropriate.

\textit{Western Publishing Co., Inc. v. Local 254, Graphic Arts Union}\footnote{522 F.2d 530 (7th Cir. 1975).}

The most recent Seventh Circuit opinion on the subject of enjoining employee strikes in violation of contractual no-strike obligations is the Western Publishing decision issued September 4, 1975. The issue in Western Publishing was whether a Boys Markets injunction could be issued where employees had concertedly refused to work on a job assignment, which the union asserted constituted struck work. The underlying collective bargaining agreement contained a broad commitment not to engage in any “strikes, stoppages, slowdowns or general concerted action to interfere with the quality and quantity of production required by the Company and its customers during the term of this contract, except as otherwise provided under this contract”. Another provision of the contract provided that the company would not require its employees to handle any struck work, that is, work that but for a strike at some other plant, would not ordinarily have been done by the company. When Western employees refused to perform a particular job, asserting that it constituted struck work from another plant, the company sought to require the employees to do the work, pending
arbitration of whether or not the work was, in fact, struck work within the meaning of the agreement.

The Seventh Circuit agreed with the employer and authorized the district court to issue an injunction compelling the employees to perform the work pending arbitration. The precise issue to be arbitrated was whether the contractual exception to the no-strike clause, relating to struck work, had been triggered by the particular work assignment in question. The court summarily distinguished its Gary Hobart and Hyster decisions with a reference to Inland and the statement that an arbitrator should decide whether the exception to the no-strike clause permitted the sympathy strike.\(^{17}\)

The court in Western Publishing did not refer to the fact that the refusal to work was not "over" a separate grievance which the parties had contractually bound themselves to arbitrate, but itself precipitated the dispute. Nonetheless, the court determined that the district court did have jurisdiction to order the employees to cease refusing to perform the work, pending the arbitrator's ruling on whether the struck work exception to the no-strike clause applied.

The union in Western argued vehemently that a judicial order compelling employees to perform the work while the parties arbitrated whether or not it was struck work would effectively eliminate its contract right to refuse to perform struck work, since the work would very likely be completed well before any arbitrable decision could be rendered. The union asserted that if it was wrong and the work was determined not to be "struck work" the company could sue for damages. The Seventh Circuit was not persuaded. The court ruled that the union had breached the broad no-strike commitment in the agreement and that an injunction could issue requiring the employees to perform the work pending an arbitrable determination of whether the struck work exception applied.

**THE CONSTRUCTION OF CONTRACT TERMS BY THE COURT**

A major difficulty in reconciling the Seventh Circuit's opinion in Inland with the Gary Hobart and Hyster decisions is understanding how the court determined, as a matter of law, that the no-strike clauses and grievance-arbitration procedures in Gary Hobart and Hyster did not contain a commitment to arbitrate sympathy strike disputes. In Hyster and Gary Hobart, the court itself interpreted the no-strike clauses of the contracts and ruled that they did not affect the employees' right to engage in a sympathy strike, and that, therefore, there was nothing to arbitrate. Such contract interpretation is, of course, the classic role of the arbitrator. In Inland, the court appeared to recognize this, and observed that questions of arbitrability are better left to the arbitrator, particularly in view of the Steelworkers Trilogy presum-

\(^{17}\) 522 F.2d 530, 532 n.6 (7th Cir. 1975).
tion language. It left to the arbitrator the determination of whether the contract's no-strike clause permitted the conduct complained of and whether the dispute was encompassed by the grievance-arbitration machinery.

To the contrary, in *Hyster* and *Gary Hobart* the court concluded as a matter of law that the "breadth" of the arbitration language could not cover sympathy strikes by employees. The court did not indicate its reasons for concluding that the arbitrator should not decide whether the arbitration clause permitted the sympathy strike issue to be resolved in that forum or whether the no-strike clause was intended to prohibit sympathy strikes.

The language of the arbitration and no-strike clauses involved in *Hyster* and *Gary Hobart* is typical of collective bargaining agreements, and is capable of being construed to apply to sympathy strikes given collective bargaining history and consideration of the intent of the parties. In the writer's opinion, there are no substantive reasons why an arbitrator could not determine whether the parties, in negotiating the particular contract language involved, intended to prohibit sympathy strikes and intended to have such disputes resolved by the grievance procedure.

THE "OVER A GRIEVANCE" ISSUE

A basic reason for the court's refusal to follow *Inland* in the *Hyster* case was its interpretation of the *Boys Markets* decision as requiring that the work stoppage itself be "over a grievance" unrelated to the actual sympathy strike in order to be enjoinable. This judicial search for a clearly arbitrable grievance, separate and apart from the work stoppage itself, is fundamental to the court's decision in *Hyster* that no injunction was permissible. In *Inland*, the court held that even though no separate arbitrable grievance exists, any work stoppage during the life of an agreement in which the union had given a broad commitment not to strike presents, at the very least, "local trouble" and an arbitrable issue as to whether the conduct breached the no-strike term of the agreement.

Assuming that the grievance procedure itself permits the employer to file and pursue its claim that the employees had breached the no-strike term of the agreement by refusing to work, then the conclusion would seem to logically follow that a "grievance" or "dispute" then existed which an arbitrator, rather than the court, could, and presumably should, decide. Under normal presumptions, an arbitrator, rather than a federal district court, is the preferable party to decide, based on the history of negotiations and the "common law of the shop," whether a particular sympathy strike is prohibited by contractual commitments between an employer and a union.

The Seventh Circuit in *Western Publishing* ignored this issue altogether and ruled that an arbitrable issue was present based solely on the struck work exception to the no-strike clause. The failure of the court in *Western*
Publishing to discuss the implications of the fact that the strike was not over a separate arbitrable grievance, but itself generated the dispute, is difficult to understand since *Hyster* itself is firmly grounded on that consideration.

The scope of the federal district court's authority to issue *Boys Markets* injunctions continues to produce fundamental disagreements within the circuits at the district court and appellate levels. Circuit courts which strictly construe *Boys Markets* to apply only in those cases in which a clearly identifiable separate arbitrable grievance exists include the Second, Fifth, Sixth and perhaps the Seventh.

In *Buffalo Forge Co. v. United Steelworkers*, the Second Circuit refused to enjoin a sympathy strike by employees caused by stranger picketing, notwithstanding a broad no-strike clause and a mandatory arbitration procedure, because there was no "other" dispute causing the strike which could be arbitrated. Similarly, the Fifth Circuit in *Amstar Corp. v. Amalgamated Meat Cutters* was concerned with expansion of the *Boys Markets* holding where no clearly arbitrable dispute caused the strike. The court refused to approve a *Boys Markets* injunction over a spontaneous sympathy strike because, as the court observed, if it did so in that case, it would be "difficult to conceive of any strike which could not be so enjoined".

The Sixth Circuit and the Fourth Circuit have similarly limited views of the *Boys Markets* decision. Several district courts have also concluded that *Boys Markets* injunctions should not issue in the absence of the strike being "over" a clearly arbitrable dispute. Contrariwise, there is substantial judicial support in decisions of the Third, Fourth and Eighth Circuits for the more flexible view that *Boys Markets* injunctions pending arbitration are appropriate in sympathy strike situations whenever an issue exists.

18. 517 F.2d 1207 (2d Cir. 1975).
19. After this article was prepared, the Supreme Court, on October 20, 1975, granted certiorari in *Buffalo Forge*, 96 S. Ct. 214 (No. 75-339). In that decision, the Second Circuit affirmed the denial of a *Boys Markets* injunction for essentially the same reasons as expressed by the Seventh Circuit in its *Gary Hobart* and *Hyster* decisions. A petition for certiorari in the *Gary Hobart* case was denied by the Supreme Court on November 3, 1975, 96 S. Ct. 269. A petition for certiorari in the *Hyster* case (sub nom. *Hyster Co. v. Employees Association of Kewanee*) was filed on October 6, 1975, 44 U.S.L.W. 3230 (No. 75-524).
20. 468 F.2d 1372 (5th Cir. 1972).
21. Id. at 1373.
23. See, e.g., *Armco Steel Corp. v. UMW*, 505 F.2d 1129 (4th Cir. 1974).
requiring interpretation of the language of, or an exception to, the no-strike clause.

In *Monongahela Power Co. v. Local 2332, IBEW*,25 the Fourth Circuit concluded that a refusal by employees to cross a stranger picket line was in violation of the broad no-strike provision (the contract contained no exception or waiver dealing with respecting picket lines) and was *itself* an arbitrable dispute making a *Boys Markets* injunction appropriate. The Fourth Circuit followed the *Monongahela* rationale in *Wilmington Shipping v. Longshoremen*,26 which involved a sympathy strike and a contract exception to the no-strike clause in which the employer recognized "the right of employees not to cross a bona fide picket line".27

The Third Circuit in *NAPA Pittsburgh, Inc. v. Automotive Chauffeurs, Local 926*28 ruled that a *Boys Markets* injunction was appropriate where the only dispute to be arbitrated was whether the striking employees, pursuant to an exception to the no-strike clause, were respecting a "primary" picket line established by another union. The Third Circuit followed the Seventh Circuit's *Inland* decision in another case involving stranger picketing within the coal industry, *Island Creek Coal Co. v. UMW*,29 and approved the issuance of a *Boys Markets* injunction even though the only issue to be arbitrated was whether the employees had breached the implied no-strike commitment in the contract. Interestingly, the court noted that if the employer had discharged all of the sympathy strikers a clear contractual grievance would have arisen which would have required arbitration. Other district courts have approved *Boys Markets* injunctions where the issue is the propriety of the sympathy strike in view of the no-strike provision in a collective bargaining agreement.30

**The Inconsistencies Resulting From the Seventh Circuit Opinions**

If the rationale of the Seventh Circuit's decision in *Western Publishing* is extended to sympathy strike situations an interesting anomaly results. If the underlying contract's no-strike clause contains an exception expressly permitting employees to respect a lawful or primary stranger picket line and to engage in sympathy strikes, then an arbitrable issue would exist as to

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25. 484 F.2d 1209 (4th Cir. 1973).
29. 507 F.2d 650 (3d Cir. 1975).
whether the exception of the no-strike clause had been triggered. Under *Western Publishing*, a district court would have a proper basis for a *Boys Markets* injunction pending arbitration of whether the stranger picket was lawful or primary and thus whether the employees had the right to engage in the sympathy strike. Just this result was reached in two recent Eighth Circuit Court of Appeals cases, *Valmac Industries, Inc. v. Food Handlers, Local 425* and *Associated General Contractors v. Construction and General Laborers*.

In both decisions, the Eighth Circuit approved the issuance of *Boys Markets* injunctions against employee sympathy strikes, even though the applicable collective bargaining agreement contained a provision affirmatively setting forth the right of the employees to respect a lawful picket line. In the Eighth Circuit’s view, the question of whether work stoppages were justified by the contractual provisions authorizing employees to respect a lawful picket line presented issues of contract interpretation that were for an arbitrator to decide. As for the argument that the court should not enjoin a work stoppage in the absence of a clear waiver of that right (raised by the union in *Western Publishing*), the court observed: “Injunctive relief, conditioned upon prompt arbitration of the dispute does not nullify a union’s right to establish or honor a picket line, it ‘only suspends the exercise of the right until its existence is established by an arbitrator’s decision.’”

The Seventh Circuit’s opinions in *Hyster, Gary Hobart* and *Western Publishing* present perplexing problems for labor-management negotiators in negotiating no-strike clauses and arbitration procedures. Even though the underlying collective bargaining agreement contains a specific provision setting forth or restating the employees’ right to engage in sympathy strikes and to respect stranger picketing, or to refuse to perform struck work, apparently a *Boys Markets* injunction would be permissible, since an arbitrable question would always exist as to whether the contract provision was intended to cover the particular conduct in question. On the other hand, in those collective bargaining agreements where the union has attempted to obtain a specific contractual restatement of the employees’ right to respect picket lines, but has not been successful in its attempt, and the contract instead contains only a straightforward no-strike clause with no “exceptions” for sympathy strikes, a federal court lacks jurisdiction to issue a *Boys Markets* injunction because such a dispute is not “over” a separate griev-

33. 519 F.2d 269 (8th Cir. 1974).
ance, and may not be enjoined because there is nothing for the arbitrator to decide.

The distinctions relied upon by the Seventh Circuit in the cases discussed have justified or denied Boys Markets injunctions on shifting considerations and on technical interpretations of the “scope” of the contract no-strike-arbitration clauses. The issuance or denial of an injunction based on the considerations employed by the Seventh Circuit may or may not reflect the intent of the parties in agreeing to particular contract provisions in the no-strike area. The particular language of no-strike clauses and grievance arbitration procedures is often agreed to by negotiating parties with little or no thought or discussion given to the increasing variety of potential causes for work stoppages by employees (e.g., sympathy strikes, political strikes, safety disputes, struck work assignments, consumer picketing, not to mention the historical causes such as working conditions, employee discipline, complaints about supervisors). Further, contract language once agreed to is often retained in subsequent agreements based on nothing more than inertia, long after the parties have forgotten why it was negotiated in the first place. For the issuance of a Boys Markets injunction to turn on whether or not the contract contains an express affirmance or waiver of the right to engage in sympathy strikes may be nothing more than a reward of historical accident or a lack of foresight by negotiating parties.

The apparent result of the Seventh Circuit’s decisions is that employees will be permitted to engage in sympathy strikes, notwithstanding a standard no-strike commitment, so long as no exception to the no-strike clause is involved. This result provides an incentive for the employer-negotiator, if the union is unwilling to agree to an unequivocal waiver of the right to engage in sympathy strikes, to propose or suggest that the no-strike clause in the agreement specifically spell out the right of employees to engage in sympathy strikes, political strikes and safety walkouts or to refuse to perform struck work. If the union negotiator agrees to such an “exception” to the no-strike clause, the employer may seek a Boys Markets injunction, pending an arbitrator’s construction of whether the exception to the no-strike clause permits the work stoppage. The union negotiator who unwittingly agrees to such specific provisions in the no-strike area will have a lot of explaining to do to the membership as to why a federal court injunction can prohibit employee work stoppages, notwithstanding the contract language.

**CONCLUSION**

The Supreme Court’s direction in Gateway that “an order to arbitrate the particular grievance should not be denied unless it may be said with
positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage . . . .” is paid only lip service in the Seventh Circuit’s Hyster and Gary Hobart decisions. In addition, the crucial question of whether a separate arbitrable grievance must exist in order for a Boys Markets injunction to lie has not been squarely faced up to by the court in the decisions discussed.

The Seventh Circuit has chosen to rule on the propriety of Boys Markets injunctions on a case by case basis based on finely drawn judicial interpretations of the language of no strike and arbitration clauses, notwithstanding that the particular words involved were usually agreed to years previously, typically with little or no consideration given to the occurrence of sympathy strikes. The contradictory results reached in the cases considered, and the shifting explanations advanced by the court, make the task for management and labor negotiators in the sympathy strike area nearly impossible. Until the Supreme Court resolves the split in authority over the proper interpretation to be given its Boys Markets decision, the status of injunctions over sympathy strikes in the Seventh Circuit will remain, at best, problematical.