

Washington University Law Review

Volume 1958 | Issue 2

January 1958

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Recommended Citation

Hot Cargo Clause and Its Effect Under the Labor-Management Relations Act of 1947, 1958 WASH. U. L. Q. 227 (1958).

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THE HOT CARGO CLAUSE AND ITS EFFECT UNDER THE LABOR-MANAGEMENT RELATIONS ACT OF 1947

Labor union A, the collective bargaining representative of the employees of company Y, is engaged in a dispute with that company, and is on strike. Labor union B is the representative of employees of company Z, which normally handles, transports, or utilizes the product of company Y in its business operations. Upon receiving notice of the strike being waged by union A, union B instructs its members not to handle company Y's product. Thereafter, until the termination of the dispute between Y and A, the members of B do not work with Y's product.

Under the above facts, union B would clearly be guilty of an unfair labor practice¹ under section 8(b) (4) (A) of the National Labor Relations Act of 1947 (Taft-Hartley Act),² which, according to its chief proponent, outlawed the "secondary boycott."³ However, the character of union B's conduct under the Taft-Hartley Act becomes less clear when the collective bargaining contract between union B and company Z contains a clause such as the following:

Members of the Union reserve the right to refuse to handle goods from any firm which is engaged in any controversy with this or any other Union.

Commonly called a hot cargo clause,⁴ the effect and validity of collective bargaining contracts containing such clauses,⁵ in regard to the

1. See *Local 74, United Brotherhood of Carpenters, AFL v. NLRB*, 341 U.S. 707 (1951); *International Brotherhood of Elec. Workers, AFL v. NLRB*, 341 U.S. 694 (1951); *NLRB v. Denver Bldg. & Constr. Trades Council*, 341 U.S. 675 (1951).

2. 61 Stat. 141 (1947), 29 U.S.C. § 158(b) (4) (A) (1952).

3. Senator Taft, during debate, declared: "So we have so broadened the provision dealing with secondary boycotts as to make them an unfair labor practice." 93 Cong. Rec. 4198 (1947).

4. E.g., *NLRB v. Local 1976, United Brotherhood of Carpenters, AFL*, 241 F.2d 147, 153 (9th Cir.) cert. granted, 355 U.S. 808 (1957); *Rabouin v. NLRB*, 195 F.2d 906, 912 (2d Cir. 1952).

5. The quotation in the text is based upon the contract provision in the *Conway's Express* case, *International Brotherhood of Teamsters, AFL*, 87 N.L.R.B. 972, 981 (1949), enforcement granted sub nom. *Rabouin v. NLRB*, 195 F.2d 906 (2d Cir. 1952). Other hot cargo provisions read as follows:

"It shall not be a violation of this contract and it shall not be cause for discharge if any employee or employees refuse to go through the picket line of a union or refuse to handle unfair goods. Nor shall the exercise of any rights permitted by law be a violation of this contract.

"The terms 'unfair goods' as used in this Article includes, but is not limited to, any goods or equipment transported, interchanged, handled, or used by any carrier, whether party to this agreement or not, at whose terminal or terminals

legality of union conduct otherwise proscribed by section 8(b) (4) (A), have been a subject of controversy in the courts and the NLRB for several years. This controversy has led to conflicting decisions among the courts and members of the Board. As a result of this conflict, four hot cargo cases are now before the Supreme Court on certiorari.⁶ It is the purpose of this note to present and analyze the various positions taken on the validity of these clauses, to point out the difficulties inherent in the adoption of any of these positions by the Supreme Court, and to submit a preferred course of decision.

The facts presented in each of the cases to be discussed are, unless otherwise noted, substantially identical to the facts hypothesized in the first paragraph. For the purposes of this note, the term "primary employer" will be used to indicate an employer in the position of company Y in that hypothetical situation; the term "primary employees" will be used to indicate the employees of company Y; the term "secondary employer" will be used to indicate company Z; and "secondary employees" will be used to indicate the employees of company Z. "Secondary boycott" will be used to designate the conduct of the employees of company Z in refusing to work with the products of company Y.⁷ "Unfair goods" will be used to describe the products of company Y.⁸

or place or places of business there is a controversy between such carrier or its employees on the one hand, and a labor union on the other hand; and such goods or equipment should continue to be 'unfair' while being transported, handled or used by interchanging or succeeding carriers, whether parties to this Agreement or not, until such controversy is settled." *United Brotherhood of Teamsters, AFL*, 110 N.L.R.B. 1769, 1775 (1954).

"Workmen shall not be required to handle nonunion material." *Local 1976, United Brotherhood of Carpenters, AFL*, 113 N.L.R.B. 1210, 1214 (1955), enforcement granted sub nom. *NLRB v. Local 1976, United Brotherhood of Carpenters, AFL*, 241 F.2d 147 (9th Cir.), cert. granted, 355 U.S. 808 (1957).

6. The Supreme Court granted certiorari in three of the cases on October 14, 1957: *Local 1976, United Brotherhood of Carpenters, AFL v. NLRB*, 355 U.S. 808 (1957); *NLRB v. General Drivers, AFL-CIO*, 355 U.S. 808 (1957); *Local 850, International Ass'n of Machinists, AFL-CIO v. NLRB*, 355 U.S. 808 (1957). Petition for certiorari was filed August 29, 1957, in *NLRB v. Milk Drivers, AFL-CIO*, 26 U.S.L. Week 3077 (No. 412).

7. "Secondary boycott" is a phrase most difficult to pin down. Judge Learned Hand has defined it as follows: "The gravamen of a secondary boycott is that its sanctions bear, not upon the employer who alone is a party to the dispute, but upon some third party who has no concern in it. Its aim is to compel him to stop business with the employer in the hope that this will induce the employer to give in to his employees' demands." *International Brotherhood of Elec. Workers, AFL v. NLRB*, 181 F.2d 34, 37 (2nd Cir. 1950).

For a discussion of NLRB policy in enforcing § 8(b) (4) (A), see Koretz, *Evaluating Board Policy and Precedent—Some Areas of Policy Change Under the "New" NLRB*, New York University Seventh Annual Conference on Labor 143, 152-57 (1954).

The Taft-Hartley Act declares that it is an unfair labor practice for a labor union or its agents

to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any . . . employer or other 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 person⁹

The first interpretation of this section of the Taft-Hartley Act in a hot cargo case was given by the NLRB in *Conway's Express* case.¹⁰ The Board majority held that a hot cargo clause constituted advance consent by the secondary employer not to deal with or use the products of any unfair employer. The secondary employees, therefore, were not engaged in a "strike" or "refusal to work" when they would not handle unfair goods.¹¹ The Board also reasoned that because the secondary employer had given his advance contractual consent, the union conduct could not be said to be "forcing or requiring" him to cease doing business with the primary employer.¹² Holding that the hot cargo clause was not void as being repugnant to the policy of the act, the Board stated that the act did not restrict the freedom of an employer to do business with any firm or person he might choose, and that a contract governing future business relationships was therefore valid.¹³ Thus the Board found there had been no violation of the Taft-Hartley Act.¹⁴ This decision was affirmed by the Court of Appeals for the Second Circuit, which in substance followed the reasoning of the Board.¹⁵

In *McAllister's Transfer* case,¹⁶ two other views were expressed by the Board. While the two dissenting members adhered to the rationale

8. The question what constitutes "unfair" goods, or an "unfair" company seems never to have arisen. For the purposes of this note, unfair goods are considered goods which have been manufactured, transported, or processed by a company which is engaged in a labor dispute with either its employees or a union seeking recognition. The company so engaged is an unfair company.

9. 61 Stat. 141 (1947), 29 U.S.C. § 158(b) (4) (1952).

10. International Brotherhood of Teamsters, AFL, 87 N.L.R.B. 972 (1949), enforcement granted sub nom. *Rabouin v. NLRB*, 195 F.2d 906 (2d Cir. 1952).

11. 87 N.L.R.B. at 982.

12. *Ibid.*

13. *Ibid.*

14. *Id.* at 983.

15. *Rabouin v. NLRB*, 195 F.2d 906, 912 (2d Cir. 1952).

16. International Brotherhood of Teamsters, AFL, 110 N.L.R.B. 1769 (1954).

of *Conway's Express* case,¹⁷ two of the three members comprising the majority declared that the hot cargo clause was void.¹⁸ Citing congressional debate, they said that section 8(b) (4) (A) prohibited all secondary boycotts in order to protect the interest of the public as well as for the benefit of secondary and primary employers, and that this statutory protection of the public could not be waived in a private contract.¹⁹ A third view was expressed by Board Chairman Farmer. While concurring in the majority finding that the secondary employees' union had committed an unfair labor practice, Farmer nonetheless agreed with the dissenters that a hot cargo clause itself was valid.²⁰ In reaching his decision, Farmer distinguished the facts before him from the facts of the *Conway's Express* case. In the latter case, the secondary employer had acquiesced in the boycott,²¹ but in *McAllister's Transfer* case the secondary employers had posted notices to the secondary employees directing them to accept and handle the goods of the primary employer.²² Chairman Farmer thereby found that the secondary employees had "refused" to work, and so held the union guilty of an unfair labor practice in inducing the secondary employees to boycott in the face of the secondary employer's directions to the contrary.²³

In the *Sand Door and Plywood Co.* case,²⁴ a majority of the Board stated that it was following Chairman Farmer's reasoning²⁵ and held that a union committed an unfair labor practice when it approached secondary employees and induced or encouraged them to boycott unfair goods.²⁶ The element of non-acquiescence by the secondary employer, essential in Chairman Farmer's opinion in *McAllister's Transfer* case, was not mentioned however. The majority relied solely on the fact that the union had approached secondary employees instead of the secondary employer.²⁷

None of these three views of the hot cargo-secondary boycott problem has received consistent support from either the NLRB or the courts. One year prior to the *McAllister's Transfer* decision, the

17. *Id.* at 1790.

18. *Id.* at 1786.

19. *Id.* at 1777-86.

20. *Id.* at 1788-90.

21. 87 N.L.R.B. at 982.

22. 110 N.L.R.B. at 1773-74.

23. *Id.* at 1790.

24. Local 1976, United Brotherhood of Carpenters, AFL, 113 N.L.R.B. 1210 (1955), enforcement granted, 241 F.2d 147 (9th Cir.), cert. granted, 355 U.S. 808 (1957).

25. 113 N.L.R.B. at 1216 n.20.

26. *Id.* at 1217.

27. See *id.* at 1223 (dissenting opinion).

Board adhered to its *Conway's Express* decision,²⁸ and had added another reason for its ruling: Because of the hot cargo clause in their contract, the handling of unfair goods was, the Board said, excluded from the course of employment of the secondary employees.²⁹ In 1957, however, three years after the Board decision in the *McAllister's Transfer* case, this was the view taken by the Court of Appeals for the Second Circuit in reversing an NLRB finding that two unions had been guilty of unfair labor practices.³⁰ Meanwhile the Court of Appeals for the Ninth Circuit ordered enforcement of the *Sand Door and Plywood Co.* decision, approving both the reasoning and the result, i.e., that a union may not, despite a valid hot cargo clause, induce or encourage the secondary employees to boycott.³¹ In 1956,³² the Board followed its decision in the *Sand Door and Plywood Co.* case. But in the recent *Genuine Parts Co.* case,³³ the Board moved back toward the majority opinion in *McAllister's Transfer* case, holding that a hot cargo clause is void. One member held the clause to be void no matter what the business activity of the employer,³⁴ while the two other members of the majority limited their decision to cases in which the secondary employer was a common carrier.³⁵ The latter two reasoned that a carrier by a hot cargo clause could not bargain away its duty under the Interstate Commerce Act to serve all persons without preference or discrimination.³⁶ The view that the clause is void in itself has not received appellate court approval, but two district courts have recognized it.³⁷

The present imbroglio regarding the hot cargo clause leaves its status indeterminable, but the authority supporting the various posi-

28. *Chauffeurs Union*, 105 N.L.R.B. 740 (1953) (*Pittsburgh Plate Glass Co.*)

29. *Id.* at 744.

30. *Milk Drivers Union, AFL-CIO v. NLRB*, 245 F.2d 817 (2d Cir. 1957), petition for cert. filed, 26 U.S.L. Week 3077 (U.S. Aug. 29, 1957) (No. 412).

31. *NLRB v. Local 1976, United Brotherhood of Carpenters, AFL-CIO* 241 F.2d 147 (9th Cir.), cert. granted 355 U.S. 808 (1957).

32. *General Drivers Union*, 115 N.L.R.B. 800 (1956) (*American Iron and Machine Works Co.*), enforcement granted in part, denied in part, 247 F.2d. 71 (D.C. Cir.), cert. granted, 355 U.S. 808 (1957).

33. *Truck Drivers Union, AFL-CIO*, 41 Lab. Rel. Rep. 1087 (119 N.L.R.B. No. 53) (Nov. 8, 1957).

34. 41 Lab. Rel. Rep. 1087, 1094-97.

35. *Id.* at 1087-94.

36. *Id.* at 1091-92. These members of the NLRB cited the report of a trial examiner for the Interstate Commerce Commission in *Galveston Truck Line Corp. v. Ada Motor Lines, Inc.* (MC-C-1922). The ICC then cited the NLRB *Genuine Parts Co.* decision in its decision in the *Galveston Truck Line* case on December 16, 1957.

37. *Alpert v. United Brotherhood of Carpenters, AFL-CIO*, 143 F. Supp. 371 (D. Mass. 1956); *Humphrey v. Local 294, International Brotherhood of Teamsters, AFL*, 25 L.R.R.M. 2318 (N.D.N.Y. 1950) (*dictum*).

tions may be summarized as follows: (1) The Court of Appeals for the Second Circuit views the clause: (a) as advance consent to a boycott by the secondary employer—this rationale removing the element of insubordination from the secondary employees' conduct, and precluding a finding that the union is attempting to force or coerce a boycott; and (b) as taking the unfair goods out of the secondary employees' course of employment. Thus union encouragement to boycott unfair goods under a hot cargo clause does not constitute an unfair labor practice in violation of the Taft-Hartley Act.³⁸ The Court of Appeals for the District of Columbia follows this reasoning in regard to the conduct of the secondary employees' union, but holds that the hot cargo clause cannot be raised as a defense by a primary employees' union charged with inducing a secondary boycott.³⁹ (2) A majority of the NLRB now views the hot cargo clause as void, at least where the secondary employer is a common carrier subject to the Interstate Commerce Act.⁴⁰ (3) The Courts of Appeals for the

38. *Milk Drivers Union, AFL-CIO v. NLRB*, 245 F.2d 817 (2d. Cir.), petition for cert. filed, 26 U.S.L. Week 3077 (U.S. Aug. 29, 1957) (No. 412); *Rabouin v. NLRB*, 195 F.2d 906 (2d. Cir. 1952).

39. *General Drivers Union, AFL-CIO v. NLRB*, 247 F.2d 71 (D.C. Cir.) (American Iron and Machine Works Co.), cert. granted, 355 U.S. 808 (1957).

Briefly, the facts of this case are as follows: The union representing the primary employees, who were striking against the primary employer, and the union representing the secondary employees, both appealed to the secondary employees to refuse to handle the primary employer's product, under the secondary employees' hot cargo contract. In ruling upon each case (the NLRB found each union guilty of an unfair labor practice), the three judges divided three ways: one judge adopted the Board decision and reasoning, which followed the Board decision in the *Sand Door* and *Plywood Co.* case, ruling that both unions had committed an unfair labor practice; one judge accepted the reasoning of the Court of Appeals for the Second Circuit (see text at note 38 *supra*), and voted to reverse the Board decision with respect to each union; the third judge adopted the reasoning of the second judge in regard to the secondary employees' union, but held that the primary employees' union had committed an unfair labor practice on the ground that, as it was neither a party to nor a third party beneficiary of the hot cargo contract, the primary employees' union could not raise the contract as a defense.

The decision of the third judge would seem to be logically untenable. If, because he has advance consent to boycott by signing a hot cargo contract, the secondary employer cannot *legally* be "forced" or "required" to boycott the primary employer, one of the elements necessary for a violation of the act is missing, no matter which union is attempting to induce a boycott. The hot cargo clause is apparently viewed as a "defense" to a charge of an unfair labor practice. For a criticism of this point of view, see *Milk Drivers Union, AFL-CIO v. NLRB*, 245 F.2d 817, 822 (2d Cir.), petition for cert. filed, 26 U.S.L. Week 3077 (U.S. Aug. 29, 1957) (No. 412).

40. See text at notes 33-36 *supra*.

41. *NLRB v. Local 1976, United Brotherhood of Carpenters, AFL-CIO*, 241 F.2d 147 (9th Cir.), cert. granted, 355 U.S. 808 (1957); *NLRB v. Local 11*,

Sixth and Ninth Circuits regard the hot cargo clause as valid in itself, but hold that a union may not, under the clause, appeal directly to secondary employees in order to achieve a boycott.⁴¹

Each of these three views can be persuasively supported. The first is, of course, most favorable to organized labor. Its proponents argue that, having signed a collective bargaining contract containing a hot cargo clause, the secondary employer is no longer an innocent party—he has voluntarily involved himself in the labor disputes of other employers with whom he might do business.⁴² Section 8(b) (4) (A) was enacted, it is said, not for the public interest, but for the protection of innocent third parties such as the secondary employer.⁴³ Any public interest there may be in preventing boycotts lies in the lack of warning normally attendant to boycotts; in hot cargo cases, the contract itself has given the public warning of possible work stoppages.⁴⁴ In addition, proponents of this view may point to two unsuccessful attempts to outlaw the hot cargo clause by amendment of the Taft-Hartley Act.⁴⁵ Adoption of this view by the Supreme Court would remove from a union's conduct the elements necessary to an unfair labor practice under the act, thus permitting any union, capable of achieving a contract containing a hot cargo clause, to boycott unfair goods.

It is submitted that the reasoning supporting the first view is logically sound, with the exception of the constructions placed on the clauses and the statutory phrase "in the course of their employment."⁴⁶ To construe a hot cargo clause as excluding unfair work from the secondary employees' course of employment is to give a most liberal construction to the contract terminology and a most restrictive interpretation to the words of the act. A perusal of typical hot cargo clauses⁴⁷ indicates that they do not prohibit the handling of unfair goods but merely reserve a right under which an employee may refuse to handle such goods. A more realistic interpretation of the statutory phrase has been adopted by the Board, viz., that the

United Brotherhood of Carpenters, AFL-CIO, 242 F.2d 932 (6th Cir. 1957) (dictum).

42. See *Milk Drivers Union, AFL-CIO v. NLRB*, 245 F.2d 817 (2d Cir.), petition for cert. filed, 26 U.S.L. Week 3077 (U.S. Aug. 29, 1957) (No. 412).

43. See *International Brotherhood of Teamsters, AFL*, 110 N.L.R.B. 1769, 1792-93 (1954) (dissenting opinion) (*McAllister's Transfer case*).

44. See *Milk Drivers Union, AFL-CIO v. NLRB*, 245 F.2d 817, 820 (2d Cir.), petition for cert. filed, 26 U.S.L. Week 3077 (U.S. Aug. 29, 1957) (No. 412).

45. S. 2989, 83d Cong. 2d Sess. (1954) (see 100 Cong. Rec. 6125 (1954)); S. 3842, 84th Cong., 2d Sess. (1956) (see 102 Cong. Rec. 8021 (1956)). Apparently both of these bills died in committee.

46. See text at note 29 *supra*.

47. See note 5 *supra*.

phrase was inserted in the act to distinguish between an individual's status as an employee and as a consumer.⁴⁸ The basic weakness of the overall reasoning is its assumption that the public interest in preventing boycotts is slight enough to be subordinated to the private contract.⁴⁹ If this view should be adopted by the Supreme Court, however, three additional problems could arise. First, if, because of its contract, the union is not forcing or coercing an employer to boycott by refusing to work, it can well be argued that a strike to achieve a contract containing a hot cargo clause would violate the Taft-Hartley Act because the employer would not have agreed in advance to boycott, and his employees, at the urging of their union, are striking to force him to give advance consent.⁵⁰ Second, this view raises the problem met in the *American Iron and Machine Works Co.*⁵¹ case: may a primary employees' union picket the business of a secondary employer to encourage secondary employees to boycott the primary employer's goods, where the hot cargo clause is in the secondary employees' contract?⁵² The third problem is the dilemma presented when the secondary employer is a common carrier. Under the hot cargo clause in his labor contract, the secondary employer has consented in advance to boycott unfair goods; however, should his employees institute a boycott, he might be subject to penalties under the Interstate Commerce Act.⁵³

This last problem is largely responsible for the present view held by some members of the NLRB—that the hot cargo clause is void, at least where the secondary employer is a common carrier.⁵⁴ Assuming that a common carrier would violate the Interstate Commerce Act should his employees institute a boycott under a hot cargo clause, voiding the clause appears to be the only practical solution. The public interest, as expressed in both the Taft-Hartley Act and the Interstate Commerce Act, would not then be subordinated to the collective bargaining contract. A majority of the NLRB, however, has never taken the position that hot cargo clauses are void regardless

48. Local 1976, United Brotherhood of Carpenters, AFL, 113 N.L.R.B. 1210, 1217 (1955) (Sand Door and Plywood Co. case), enforcement granted, 241 F.2d 147 (9th Cir.), cert. granted, 355 U.S. 808 (1957).

49. See text at notes 43-44 supra.

50. In the Pittsburgh Plate Glass Co. case, the Board majority specifically reserved a ruling on this point. 105 N.L.R.B. 740, 744 n.6 (1953). See also Note, 64 Yale L.J. 1201, 1205 (1955).

51. General Drivers Union, 115 N.L.R.B. 800 (1956), enforcement granted in part, denied in part, 247 F.2d 71 (D.C. Cir.), cert. granted, 355 U.S. 808 (1957).

52. See note 39 supra.

53. See text at notes 35-36 supra.

54. *Ibid.*

of the business activity of the secondary employer.⁵⁵ To so hold would be to stretch the language of the Taft-Hartley Act to encompass statements by members of Congress made during debate on the act. It is clear that the proponents and opponents of the act both understood that the purpose of section 8(b) (4) (A) was to proscribe *all* secondary boycotts,⁵⁶ but it is equally clear that the primary source from which to determine congressional intent is the language of the act itself.

Considering the problem as strictly one of statutory interpretation, the rationale of the third view—that the clause itself is valid, but does not authorize a direct appeal by either union to the secondary employees to effectuate a boycott—appears to be most responsive to the words of the act.⁵⁷ If a union enforces the hot cargo clause in its collective bargaining contract by direct appeal to the secondary employees, it may fairly be presumed that the secondary employer is unwilling to participate voluntarily in the desired boycott. Thus, it cannot be said that the secondary employees are not “striking” or “refusing to work,” or that the secondary employer is not being “forced” or “required” to cease doing business with another person. The union would therefore be guilty of an unfair labor practice. Adoption of this position by the Supreme Court would raise a serious problem, however. The clause itself, valid under this view, is in effect a promise by the secondary employer to participate in future boycotts. No restriction is placed upon a union’s appeals to the secondary employer to perform his promise to boycott unfair goods by the Taft-Hartley Act. Should the secondary employer refuse such a request, he has breached his collective bargaining contract. But appealing to the employer is the only means of enforcing hot cargo clauses permitted by the Taft-Hartley Act. What remedy, then, is available to the union for this breach of contract? It is questionable whether an action for damages would be permitted.⁵⁸ Since the union may not, under this view, approach the secondary employees directly, and a secondary employer may with impunity refuse union appeals to him, the only way in which a hot cargo clause might accomplish a boycott would be for each secondary employee to refuse, individually and without any union encouragement or inducement, to handle unfair

55. Since the Pittsburgh Plate Glass Co. case, the Board has had difficulty obtaining a majority for any one rationale regarding hot cargo cases. See, generally, analysis of Board positions at 41 Lab. Rel. Rep. 9 (1957).

56. See debate between Senators Pepper and Taft, 93 Cong. Rec. 4323 (1947).

57. See Note, 64 Yale L.J. 1201 (1955).

58. See Note, 64 Yale L.J. 1201, 1204-05 (1955). But see 70 Harv. L. Rev. 735, 736 (1957).

goods—a situation which would be wholly unreal.⁵⁹ The effect of this interpretation of the act, therefore, is to nullify the hot cargo clause. The Taft-Hartley Act does not proscribe union appeals to secondary employers to engage in a boycott, whether or not the employer's labor contract contains a hot cargo clause; and the secondary employer may acquiesce in or resist the union's request with impunity, whether or not his labor contract contains a hot cargo clause.

In summary, authority and persuasive argument is available in support of or denial of each of the three positions which have been taken regarding the hot cargo-secondary boycott problem. The task of the Supreme Court is, in a legal sense, a difficult one of interpretation. Economically, the effect of its decision will be to grant or deny to organized labor an important and powerful weapon.⁶⁰ It is submitted that the Court should not adopt the rationale that the clause is valid but may not be invoked by direct appeal to secondary employees. The effect of such a decision would be to nullify the hot cargo clause, but this effect would be cloaked by the meaningless declaration that the clause is nonetheless "valid." Either to uphold the view expressed in the *Conway's Express* case, permitting secondary boycotts to be effected under a hot cargo clause, or to strike down the clause⁶¹ as repugnant to the public policy expressed in the Taft-Hartley Act, would serve to clarify the positions of labor and management, replacing confusion with certainty in present labor relations. In either event, a decision which is clear in defining the result obtained would offer Congress the opportunity to express national policy clearly.

59. In *Truck Drivers Union, AFL-CIO*, 41 Lab. Rel. Rep. 1087 (119 N.L.R.B. No. 53) (Nov. 8, 1957) (*Genuine Parts Co.* case), the secondary employees, when asked the reason for their refusal to handle the boycotted goods, uniformly stated: "I personally refuse to handle." The Board looked beyond these pat replies, and found that the union had committed an unfair labor practice in inducing the employees to boycott.

60. It should be noted that, with one exception, all of the hot cargo cases involve either the Teamsters Union or the Carpenters and Woodworkers Unions. Of these, the great majority involve Teamsters Union contracts. The exception is the *American Iron and Machine Works Co.* case, which also involves the Machinists Union, the union representing the primary employees. See note 39 *supra*. Thus a decision which would, in effect, permit unions to institute boycotts under the protection of a hot cargo clause would primarily benefit the Teamsters Union.

61. See 26 *Fordham L. Rev.* 522, 527 (1957).