



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 52 | Number 6

Article 10

10-1-1974

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William Andrew Parker

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Recommended Citation

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Labor Law—Bargaining Orders Without Election Interference

In recent years the courts¹ and the National Labor Relations Board² have struggled to establish standards for the issuance of bargaining orders³ in situations in which unions seek recognition on the basis of authorization card⁴ majorities. In *Truck Drivers Local 413 v. NLRB*⁵ the Court of Appeals for the District of Columbia reviewed this type of recognition demand and granted a bargaining order in response to the employer's refusal to bargain although there had been no interference with the representation-election scheme of the Act.⁶ As a result, a union's ability to achieve recognition has been significantly enhanced.

The facts of the two cases consolidated in this opinion are very similar. In *Wilder Mfg. Co.*⁷ the union demanded recognition based upon authorization cards from a majority of the employees.⁸ The employer, however, refused this demand, contending that the union did not possess a true majority of the authorization cards. The employees who had signed authorization cards then established a picket line and later filed a charge alleging a violation of section 8(a)(5)⁹ of the National Labor Relations Act.¹⁰ The trial examiner found that the em-

1. See, e.g., *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969); *NLRB v. General Stencils, Inc.*, 438 F.2d 894 (2d Cir. 1971); *NLRB v. Wylie Mfg. Co.*, 417 F.2d 192 (10th Cir. 1969), cert. denied, 397 U.S. 913 (1970).

2. See, e.g., *Schuckman Press, Inc.*, 181 N.L.R.B. 158 (1970); *Davis Wholesale Co.*, 181 N.L.R.B. 1 (1970); *J.P. Stevens & Co.*, 179 N.L.R.B. 254 (1969). See also, e.g., *Doppelt & Ladd, Gissel Packing Company—The NLRB Applies the Standards*, 49 CHI.-KENT L. REV. 161 (1972); *Gordon, Union Authorization Cards and the Duty to Bargain*, 19 LAB. L.J. 201 (1968); *Welles, The Obligation to Bargain on the Basis of a Card Majority*, 3 GA. L. REV. 349 (1969).

3. A bargaining order is a directive from the National Labor Relations Board ordering an employer to bargain with a union; see *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969). A union can also gain recognition by the employer granting voluntary recognition; see *Ladies' Garment Workers' Union v. NLRB*, 366 U.S. 731 (1961); or by a union victory in a Board election; see 29 U.S.C. § 159 (1970).

4. See Note, *Union Authorization Cards*, 75 YALE L.J. 805, 807-20 (1969) (explanation of the authorization card procedure).

5. 487 F.2d 1099 (D.C. Cir. 1973).

6. *Id.* at 1113.

7. 198 N.L.R.B. No. 123, 81 L.R.R.M. 1039 (1972).

8. Eleven of the eighteen employees in the unit had signed authorization cards. 487 F.2d at 1101.

9. 29 U.S.C. § 158(a)(5) (1970) provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title."

10. *Id.* §§ 151-68.

ployer's conduct violated section 8(a)(5),¹¹ but the Board, after two previous considerations of the case,¹² held that there could be no violation of section 8(a)(5) absent independent unfair labor practices¹³ unless an employer had voluntarily agreed to determine majority status of the union by a method other than Board election.¹⁴

In the companion case, *Linden Lumber Division*,¹⁵ the union demand based on authorization cards was refused by the employer on the theory that since the union had been organized by supervisors, recognition would result in a violation of section 8(a)(2).¹⁶ The union then withdrew a previously filed representation petition, began a recognition strike, and filed a section 8(a)(5) charge. The trial examiner again found that section 8(a)(5) had been violated,¹⁷ but the Board, rejecting the expanded version of the independent knowledge test,¹⁸ did not find a refusal to bargain on these facts. The Board thus held that section 8(a)(5) applied in this situation only if the employer has voluntarily agreed to determine majority status by a means other than an election.¹⁹

The unions in both cases appealed, contending that the independent knowledge test was applicable and that the employer has a duty to recognize the union when there is "convincing evidence" of majority status. They argued that the recognition strikes provided the neces-

11. See 487 F.2d at 1101. The trial examiner also dismissed a charge based on 29 U.S.C. § 158(a)(1) (1970), but this issue was not before the court on appeal. 487 F.2d at 1101 n.6.

12. In *Wilder Mfg. Co.*, 173 N.L.R.B. 214 (1968), the Board dismissed the section 8(a)(5) charge since the employer had neither rejected the collective bargaining principle nor interfered with the election process. The court of appeals remanded this decision for reconsideration in light of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969); see *Textile Workers Union v. NLRB*, 420 F.2d 635 (D.C. Cir. 1969) (per curiam). The Board in *Wilder Mfg. Co.*, 185 N.L.R.B. 175 (1970), found a violation of section 8(a)(5) due to the employer's independent knowledge of the majority status of the union and his unwillingness to resolve any doubts by a Board election. Following the Board's decision in *Linden Lumber Div.*, 190 N.L.R.B. 718 (1971), the Board's petition to reconsider the first *Wilder* decision was granted; see 487 F.2d at 1103. The Board then issued the decision which was appealed to the court of appeals in *Truck Drivers*.

13. Independent unfair labor practices refer to those other than violations of section 8(a)(5) which are found in 29 U.S.C. §§ 158(a)(1)-(4) (1970).

14. 198 N.L.R.B. at —, 81 L.R.R.M. at 1041.

15. 190 N.L.R.B. 718 (1971).

16. 29 U.S.C. § 158(a)(2) (1970).

17. The trial examiner also found a violation of 29 U.S.C. § 158(a)(3) (1970), but the Board determined the violation was not serious enough to require a bargaining order; 190 N.L.R.B. at 719. This finding was not challenged on appeal. 487 F.2d at 1105.

18. See text accompanying notes 34-38 *infra*.

19. 190 N.L.R.B. at 721.

sary evidence to satisfy the independent knowledge standard.²⁰

To resolve these conflicting views, the court of appeals first looked to section 9(a)²¹ which provides that the collective bargaining representative be "designated or selected." Although this provision has been interpreted to permit majority status to be determined by a means other than an election,²² the court pointed out that elections are preferred by the Supreme Court and the Board.²³ The court then stated that section 9(c)(1)(B)²⁴ enables management to resolve any doubts about a union's majority status by petitioning for an election, but it does not provide an absolute right to an election.²⁵ After tracing the development of prior tests²⁶ for issuing bargaining orders, the court formulated a new standard which requires the employer either to recognize the union or to petition for an election under section 9(c)(1)(B).²⁷ Since the employers in *Truck Drivers* had not used the section 9(c)(1)(B) procedure, the court remanded with directions that a bargaining order be issued.²⁸

To analyze this decision properly, it is first necessary to consider the prior standards used by the courts and the Board. The good faith-

20. 487 F.2d at 1106-07.

21. 29 U.S.C. § 159(a) (1970) provides: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment"

22. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 596 (1969).

23. 487 F.2d at 1107.

24. 29 U.S.C. § 159(c)(1)(B) (1970) provides:

Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

. . . .

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in subsection (a) of this section;

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice.

25. 487 F.2d at 1110.

26. See text accompanying notes 29-39 *infra*.

27. 487 F.2d at 1113.

28. The court of appeals also rejected the union contention; see text accompanying note 20 *supra*. The court of appeals quoted from *Gissel*, stating that the employer does have a duty to recognize a union if "convincing evidence" of its majority support is shown. 487 F.2d at 1106. The court examined the evidence which the union contended was "convincing evidence" of majority support such as the recognition strike by a majority of the employees and the statement by the management that ten or eleven employees supported the union. It held that this evidence need not be treated as "convincing evidence" by the Board. *Id.* at 1109.

doubt test, adopted in *Joy Silk Mills, Inc.*,²⁹ provided that an employer could refuse to recognize a union if he had a good faith doubt about the union's majority status. The Board could issue a bargaining order only if the employer could not prove he had a good faith doubt or if the employer's unfair labor practices could be used as evidence of his bad faith.³⁰ This rule was modified in *Aaron Brothers Co.*³¹ so that the burden was placed upon the General Counsel of the Board to show the employer's bad faith. However, in *NLRB v. Gissel Packing Co.*³² the Supreme Court stated that the Board had abandoned the good faith-doubt test.³³

The Board has also applied an independent knowledge test to determine when a bargaining order is appropriate. According to this doctrine, a bargaining order could be issued if the employer had knowledge, independent of the authorization cards, that a majority of the employees supported the union. This test originated in *Snow & Sons*³⁴ where a bargaining order was entered because an employer dishonored an agreement to recognize a union after the authorization cards had been authenticated by a third party pursuant to an agreement.³⁵ This standard was expanded in *Pacific Abrasive Supply Co.*³⁶ where a bargaining order was issued although there had been no authentication agreement. In that case independent knowledge was inferred because the employer had verified the cards, had talked with employees who favored the union and had observed a recognition strike by a majority of the employees.³⁷ In *Truck Drivers* the Board reinstated the more restricted version of the independent knowledge standard as expressed in *Snow & Sons*.³⁸

The Supreme Court in *Gissel* laid down a third standard for the

29. 85 N.L.R.B. 1263 (1949), *enforced*, 185 F.2d 732 (D.C. Cir. 1950), *cert. denied*, 341 U.S. 914 (1951).

30. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 592-93 (1969). See also Pegrebin, *NLRB Bargaining Orders Since Gissel: Wandering From a Landmark*, 46 ST. JOHN'S L. REV. 193, 194-97 (1971).

31. 158 N.L.R.B. 1077 (1966).

32. 395 U.S. 575 (1969).

33. *Id.* at 594. During oral argument in *Gissel*, the Board announced it had abandoned the good faith-doubt test. *Id.*

34. 134 N.L.R.B. 709 (1961), *enforced*, 308 F.2d 687 (9th Cir. 1962).

35. See 487 F.2d at 1107-08; Comment, *Employer Recognition of Unions on the Basis of Authorization Cards: The "Independent Knowledge" Standard*, 39 U. CHI. L. REV. 314, 319-20 (1972); 1971 U. ILL. L.F. 731, 737.

36. 182 N.L.R.B. 329 (1970).

37. See 487 F.2d at 1108; Comment, 39 U. CHI. L. REV., *supra* note 35, at 320-21; 1971 U. ILL. L.F., *supra* note 35, at 741.

38. 487 F.2d at 1108. See text accompanying notes 14 & 19 *supra*.

issuance of bargaining orders. The Court held that a bargaining order could be entered if the employer had destroyed the possibility of a fair election by his unfair labor practices.³⁹ The Court, however, did not specify what action should be taken absent election interference by management,⁴⁰ and accordingly *Gissel* did not control the court of appeals' decision in the present case.

The court of appeals could have decided the case on existing precedents. Since there was no conclusive support for the contention that a recognition strike constitutes sufficient evidence to support a bargaining order,⁴¹ the court was not compelled to adopt the union position. The independent knowledge test,⁴² on the other hand, was clearly a viable option since it had been applied in similar situations in the past and had been reaffirmed by the Board in *Wilder* and *Linden Lumber*. Nevertheless, the court chose to ignore the Board standard and instead created its own test.

The decision by the court of appeals is not without merit. It provides certainty and ease of application since the only inquiry is whether the employer did or did not petition for an election. As a result employers will be encouraged to use the 9(c)(1)(B) procedure to resolve doubts about the majority status of a union demanding recognition on the basis of authorization cards. Furthermore, the court's standard, which is very similar to the union proposal in *Gissel*,⁴³ will eliminate tactics which were in the past used by employers to delay recognition. In union petitioned elections the employer has often challenged the election on the basis of the inappropriateness of the suggested unit. This tactic resulted in a hearing conducted by the regional director of the NLRB at which the employer could delay the election.⁴⁴ However, if the employer petitioned for the election, he could not request a hear-

39. 395 U.S. at 579. See Carson, *The Gissel Doctrine: When a Bargaining Order Will Issue*, 41 *FORDHAM L. REV.* 85 (1972).

40. 395 U.S. at 595, 614; Christensen & Christensen, *Gissel Packing and "Good Faith Doubt": The Gestalt of Required Recognition of Unions Under the NLRA*, 37 *U. CHI. L. REV.* 411, 423 (1970); *1972-73 Survey of Labor Relations Law*, 14 *B.C. IND. & COM. L. REV.* 1173, 1192 (1973); 1971 *U. ILL. L.F.*, *supra* note 35, at 741.

41. See note 28 *supra*; text accompanying note 20 *supra*.

42. See text accompanying notes 34-38 *supra*.

43. The union in *Gissel* contended that when an employer is faced with a recognition demand based upon cards, he must recognize the union or petition for an election. 395 U.S. at 594-95.

44. Even under the court's standard, the employer could wait a long time before filing his petition or could continuously propose frivolous units, but the Board could issue a bargaining order due to such abuse of the election process or set definite time limits for the petition to be properly submitted. See generally *Excelsior Underwear, Inc.*, 156 *N.L.R.B.* 1236 (1966).

ing since he must propose the appropriate unit.⁴⁵ Faced with the employer petition, the union would perhaps waive any objections it might have in order to avoid the delay which a hearing would necessitate since enthusiasm, and perhaps the election, could be lost due to the ensuing postponement.⁴⁶ Accordingly, the result is an expedited election process⁴⁷ which will separate those employers with real doubts from those merely attempting to deny recognition to the union.⁴⁸

Nevertheless, the court of appeals' interpretation of section 9(c) (1)(B) does not seem to comport with the literal wording of that provision.⁴⁹ The language allows the employer to petition for an election, but it does not require that he do so. Furthermore, the Supreme Court in *Gissel* pointed out that section 9(c) (1) (B) was intended "to allow them [the management], after being asked to bargain, to test out their doubts as to a union's majority"⁵⁰ The use of the word "allow" is indicative of a permissive rather than a mandatory interpretation of the section's purpose, and therefore the court of appeals' position appears unwarranted.

Since there is no direct precedent in support of the court's decision, certain matters of policy must be considered in order to understand the reasoning of the court and the Board. First of all, protection of the employee's free choice in deciding upon a bargaining representation is one of the primary purposes of the NRLA.⁵¹ Uncoerced and unrestrained choice is especially important since a recognized union acts as the exclusive representative of all employees in the unit.⁵² To achieve this purpose the Board seeks to maintain the "laboratory conditions"⁵³ of the election process by utilizing the comprehensive set of

45. See Comment, 39 U. CHI. L. REV., *supra* note 35, at 325-27. Of course if the employer's unit proposal was outrageous, the regional director could suggest a change without the necessity of a hearing, or the union could simply disclaim any interest in that unit. The union could of course contest the unit and ask for a hearing which would be a short proceeding since the union would limit the number of its objections. *Id.* at 327.

46. *Id.* at 326-27.

47. There is a significant difference in the time required for a consent election and one in which the election is contested. In a contested election an average of forty-three days is required from the time the petition is filed until the regional director's decision is made. In a consent election, the hearing is waived so that only three to five days elapse between the petition filing and the agreement for the election. Thus forty days are saved. *Id.* at 325 n.48.

48. *Id.* at 328.

49. See note 24 *supra*.

50. 395 U.S. at 599 (emphasis added).

51. See 29 U.S.C. §§ 151, 157 (1970).

52. See *id.* § 159(a).

53. The Board seeks to provide conditions similar to those in a laboratory in order

laws contained in the NLRA.⁵⁴ Free choice by employees in deciding whether they wish union representation should be an informed choice after having heard the views of both the union and the employer. Ordinarily, however, an employee signs an authorization card without being exposed to the employer's position, and yet he is fully aware of the union viewpoint as a result of organizational meetings, hand bill distributions, and other organizational activities.⁵⁵ Thus the employee's choice is made on the basis of information from the union side only. In addition to this one-sided exposure is the possibility of coercion, forgery, and misrepresentation by the union.⁵⁶ Therefore to enable the employee to decide freely whether the union is desired, an election should be held rather than the issuance of a bargaining order on the basis of an authorization card majority.⁵⁷

The preference for a Board election, rather than a card-based bargaining order, when there has been no election interference was pointed out by the Supreme Court in *Gissel*.⁵⁸ The Supreme Court also stated that elections help bring about industrial stability⁵⁹ because a valid election, regardless of the outcome, prevents for a twelve month period election petitions by rival unions or decertification by vote of the employees.⁶⁰ Congress has also demonstrated that the election process is favored by amending the National Labor Relations Act in 1959 to make it an unfair labor practice if an uncertified union engages in recognition picketing unless an election petition is filed within a reasonable period.⁶¹ Furthermore, the election process, even if initiated by a union petition and contested by the employer, is a fairly quick process and would certainly be more rapid than the legal proceedings necessary to obtain a bargaining order.⁶²

to determine the true desires of the employees. *General Shoe Corp.*, 77 N.L.R.B. 124, 127 (1948); see Note, 75 YALE L.J., *supra* note 4, at 823.

54. See 29 U.S.C. §§157-59 (1970).

55. See L. JACKSON & R. LEWIS, WINNING NLRB ELECTIONS 37 (1972); Lewis, *Gissel Packing: Was the Supreme Court Right?*, 56 A.B.A.J. 877 (1970).

56. See Comment, 39 U. CHI. L. REV., *supra* note 35, at 318.

57. Of course, an election can also be tainted by coercion. Lesnick, *Establishment of Bargaining Rights Without an NLRB Election*, 65 MICH. L. REV. 851, 866-67 (1967).

58. 395 U.S. at 601 n.18.

59. *Id.* at 599 n.14.

60. 29 U.S.C. § 159(c)(3) (1970).

61. *Id.* § 158(b)(7)(C). This provision has been held to be applicable to a majority union. *International Hod Carriers Local 480*, 135 N.L.R.B. 1153 (1962).

62. The *Wilder* case illustrates the inordinate length of time which may be required when a bargaining order is sought. In *Wilder* the underlying facts and the complaint charging the employer with a section 8(a)(5) violation took place in 1965-1966; 487 F.2d 1100-01. The dispute is not yet finally resolved. An election could have been held in a much shorter period; see note 47 *supra*.

Although the court purported to place emphasis on the preferred election process, the result in *Truck Drivers* was a bargaining order based on the unregulated solicitation of authorization cards.⁶³ The Board approach, on the other hand, actually favors the election process because a bargaining order would not be as easily granted as under the court standard. In fact, in situations similar to that of *Truck Drivers*, the union would be free to petition for an election even if the employer's actions rise to the level of a refusal to bargain. If the union wins the election, it will be certified as the exclusive bargaining representative.⁶⁴ If the union loses the election and the employer committed unfair labor practices which interfere with that election, the union will be entitled to a bargaining order.⁶⁵ If the union loses the election without unlawful interference by the employer, the union has been given a fair chance to demonstrate its majority support by the more reliable election process.

If it does become necessary to issue a bargaining order, the test for its issuance should be designed to insure that the union actually represents a majority of the employees. Under the Board approach there would be such evidence since according to the agreement between the employer and the union, a third party would verify the card majority.⁶⁶ Therefore, the Board could be confident that the union, which would receive the benefit of the bargaining order upon breach of the agreement by the employer, did enjoy the majority support of the employees. Even if the standard used to grant a bargaining order was a showing of "convincing evidence"⁶⁷ such as a recognition strike by a majority of the employees, there would be some evidence of the union's majority status. However, under the court's approach a bargaining order could be issued merely upon a union demand for recognition based upon authorization cards if the employer did not recognize the union or petition for an election. Thus there would be no assurance, other than the union's alleged possession of authorization cards, that the majority of the employees really wanted the union as their representative. Even if majority status were required to be shown, it must be further decided when to measure the purported union majority—at the time of the union demand or at the time of the section 8(a)(5) proceeding—since the

63. See Note, 75 YALE L.J., *supra* note 4, at 823-28.

64. 29 U.S.C. § 159(a) (1970).

65. See 395 U.S. at 579, 599-600.

66. 487 F.2d at 1107-08.

67. See note 28 *supra*; text accompanying note 20 *supra*.

degree of employee support may well vary.⁶⁸

The previous discussion has emphasized the protection of employee interests, but one must also consider the employer's interests since the purpose of the NLRA is to protect management as well as labor.⁶⁹ It is at least arguable that the right of the employer to present his views to his employees is protected by the first amendment⁷⁰ and by section 8(c)⁷¹ of the NLRA. However, the standard of the court of appeals, which expands the instances in which a bargaining order is permissible, inhibits the exercise of the employer's rights. Whenever the employer is faced with authorization cards, he has difficulty in presenting his own views to the employees because he often finds out about the card campaign after it is well underway.⁷² Furthermore, a card campaign is more difficult to counter than an election since the effort must be directed at individuals rather than groups of employees, the union proposals are not clearly made known to the employer and the campaign has no fixed time limit.⁷³

The court's test could also lead to increased harassment of employers by unions seeking recognition and a corresponding increase in defensive employer petitions for elections in order to protect themselves from bargaining orders. Conversely, the employer will be under pressure to recognize a union on the basis of a card demand because the alternatives are not particularly attractive. The employer could petition for an election, but he would not have the usual advantages of a union petitioned election. Specifically, he could not obtain a pre-election hearing at which to contest the proposed election, and the election would take place more quickly.⁷⁴ Alternatively, the employer could refuse to bargain with the union, but that would bring about a section 8(a)(5) proceeding and possibly an eventual bargaining or-

68. Employees may sign cards before they understand the employer's point of view, and then change their minds after the employer's campaign is begun. Of course it is possible for employees who have earlier refused to sign cards to decide later to support the union.

69. The NLRA states that the employers, employees and unions should recognize "one another's legitimate rights." 29 U.S.C. § 151 (1970).

70. U.S. CONST. amend. I. See 2 J. JENKINS, LABOR LAW § 5.3, at 12 (1969).

71. 29 U.S.C. § 158(c) (1970). See, e.g., NLRB v. Herman Wilson Lumber Co., 355 F.2d 426 (8th Cir. 1966); Union Carbide Corp. v. NLRB, 310 F.2d 844 (6th Cir. 1962); Note, 75 YALE L.J., *supra* note 4, at 831. However the employer's right to free speech is not without limit. See, e.g., NLRB v. Central Power & Light Co., 425 F.2d 1318 (5th Cir. 1970); Martin Sprocket & Gear Co. v. NLRB, 329 F.2d 417 (5th Cir. 1964); General Shoe Corp., 77 N.L.R.B. 124 (1948).

72. See Note, 75 YALE L.J., *supra* note 4, at 831.

73. *Id.* at 832-34.

74. See note 46 *supra*; text accompanying note 45 *supra*.

der. Faced with these options, the employer may well choose to recognize the union voluntarily, but even so he must take reasonable precautions to insure that the union has majority support to avoid violation of sections 8(a)(1) and 8(a)(2).⁷⁵

Nevertheless, one could argue that the court's test actually increases the employer's rights because it gives him an opportunity to petition for an election even if he has independent knowledge of the union's majority support.⁷⁶ Although the court of appeals declined to rule on this issue,⁷⁷ undoubtedly it will have to be decided in the future if the court's standard prevails. If the courts determine that the employer can use section 9(c)(1)(B) even if he has independent knowledge of the majority status, the union will not be entitled to a bargaining order even if the employer breaches an agreement to recognize the union on the basis of authenticated authorization cards. If it is held otherwise, the Board and courts will once again be required to make an inquiry into the employer's state of mind, a task which has proven to be extremely difficult in the past.⁷⁸ Of course, this issue would never have to be faced if the Board test were applied.

The Board test establishes three possible avenues leading to union recognition: (1) a union petitioned election; (2) recognition pursuant to an agreement between the parties providing for outside verification of authorization cards; and (3) a bargaining order as a remedy for breach of the agreement or for election interference. This plan seems clearly preferable to the court's approach which, in spite of its positive features,⁷⁹ has many inherent defects. Apparently, none of the parties⁸⁰ were pleased with the court's plan since all parties petitioned for certiorari.⁸¹ Since the Supreme Court has granted certiorari,⁸² it

75. See *International Ladies' Garment Workers' Union v. NLRB*, 366 U.S. 731 (1961). See also *Shea Chemical Corp.*, 121 N.L.R.B. 1027 (1958).

76. See Comment, 39 U. CHI. L. REV., *supra* note 35, at 328.

77. 487 F.2d at 1111.

78. See Pogrebin, *supra* note 30, at 194.

79. See text accompanying notes 43-48 *supra*. The court assumes it aids the employees by protecting them, but this is no longer the case. In the early years of union organization and growth in the United States, the unions did need the court's help in preserving the rights of employees when dealing with the more powerful employers. However, today the union movement is strong and the courts also should be concerned about protecting the employees from the unions. See Rains, *Authorization Cards as an Indefensible Basis for Board Directed Union Representation Status: Fact and Fancy*, 18 LAB. L.J. 226, 235 (1967).

80. It may seem strange that the union is not satisfied with this decision. However, it should be remembered that in its decision, the court did not adopt the union view. See note 28 *supra*; text accompanying note 20 *supra*.

81. 42 U.S.L.W. 3471 (U.S. Feb. 19, 1974).

82. *Id.* at 3594 (U.S. April 23, 1974).

should reverse the holding of the court of appeals and order a determination consistent with the present Board view which more effectively carries out the intent of the statute and more fairly protects the rights of employees and employers.⁸³

WILLIAM ANDREW PARKER

83. The court of appeals decision is very important since section 10(f) of the NLRA, 29 U.S.C. § 160(f) (1970), grants this court jurisdiction over a dispute in which any party is aggrieved by a final order of the Board. Therefore any union involved in such a dispute could appeal the case to this court and receive a bargaining order on similar facts.

