CHAPTER FIVE:

STRIKES AND THE THATCHER LABOR LAW PROJECT-

THREE CASE STUDIES

Introduction

In this chapter I examine three union strikes occurring in Great Britain during the 1980s. My primary goal is to tease out and illuminate the effects, if any, that the Thatcher administration's industrial relations legislation had on the course and outcome of each of these industrial disputes. I described in Chapter Three both why I chose to focus on union strikes and why I selected the strikes that I did. Recall that the conflicts I selected for examination are: the 1984-85 National Union of Mineworkers (NUM) strike against the National Coal Board; the 1986-87 National Graphical Association (NGA) strike against News International; and the 1988 National Union of Seamen (NUS) strike against P&O European Ferries. For each case study, I first provide a descriptive overview of the dispute's genesis, course, and aftermath. I then analyze

the effects that the new labor legislation had on each of the three unions' abilities for effective industrial action.

The 1984-85 Miners' Strike: A Union Divided

Overview

The 1984-85 miners' strike has been widely acknowledged as the most significant industrial dispute in Great Britain since the General Strike of 1926 (e. g. Towers, 1985: 8; Winterton and Winterton, 1989: 1; Worcester, 1987: 223).[105] The root causes of the conflict can be traced at least as far back as the early 1980s, during which time government pressures on the National Coal Board (NCB) for higher profitability increased in intensity and subsequently led to an acceleration of pit closure programs (Aston et al., 1990: 174). Two particular events in 1983 served as more immediate precursors however. One was the

[105] For this descriptive overview, I draw primarily on summaries by Aston et al. (1990), Towers (1985), Winterton and Winterton (1989: 53-78) and Worcester (1987). Information is also drawn from the Chronicle section of the British Journal of Industrial Relations (cited hereafter as BJIR Chronicle). Analyzing the dispute has become an academic cottage industry of sorts, with a vast wealth of literature on every conceivable aspect of the strike having been produced. For useful bibliographic reviews, see Green (1985), Howell (1987) and Winterton (1987).

appointment of Ian MacGregor as chairman of the NCB, an American outsider with a well-known reputation for union-busting. For many, the Thatcher government's choice "signalled a clear change from previous appointments" (Willman et al. 1993: 122). MacGregor had an aggressive entrepreneurial plan for the British coal industry, a key element of which was bringing productive capacity more in line with market demand. The primary means for achieving this goal entailed forced industry contraction, ultimately leading to pit "closures and job losses on a grand scale" (Towers, 1985: 15). This marked shift in managerial strategy did not bode well for the already antagonistic relations between the industry's principal trade union, the National Union of Mineworkers (NUM), and the NCB.[106]

A second event that served to heighten tensions was the rejection of union wage claims by the NCB in September of 1983. The NCB's counter-offer of a substantially smaller package was in turn rejected by the NUM, which responded with a ban on overtime work that began on October 30, 1983. Initially over wages only, the overtime ban was eventually tied to the issue of pit closures as well. The ban dragged on into the early months of 1984, with each side conducting its own public

[106] See MacGregor's The Enemies Within: The Story of the Miners' Strike 1984-85 (1986) for details of the plan and his perspective on the dispute.

relations campaign concerning the action's detrimental impact on the other. Clearly, however, both labor and management were feeling a strain. The NCB experienced reduced productivity and saw critical maintenance work go undone. Union miners meanwhile felt the hardship of smaller paychecks and temporary layoffs (Winterton and Winterton, 1989: 61-62).

By late February of 1984, labor-management relations in the British coal industry had reached a boiling point. On March 1, 1984 the NCB bypassed normal review procedures and announced the closure of the Cortonwood colliery in Yorkshire. To protest the closure, the Yorkshire NUM instructed its members to stop working.[107] The stage was now set for the industry-wide strike that had long been anticipated by both sides. NUM president Arthur Scargill had been arguing for quite some time that a national stoppage was necessary to halt the government's reduction of the workforce and pit closure plans. Previous ballots for a national strike on this issue having failed, Scargill and others in the NUM leadership reasoned that a local strike might provide the basis for broader action (Worcester, 1987: 225). For their part, the government and the NCB had hoped that a direct confrontation would result in a

[107] The British coal industry is divided into fourteen geographical "Areas" by the NUM. Each Area is actually an NUM union in itself (e. g. Yorkshire NUM), with the national union being a federation (see Benedictus, 1985: 177).

decisive defeat for the union. Such an outcome, it was reasoned, would serve to reassert managerial control over the coal industry and allow for a smoother implementation of closure plans.[108]

On March 6, 1984 MacGregor fueled the conflict further when he announced that the coming year would see even more reductions in productive capacity and the elimination of approximately 20,000 jobs. This prompted the Scotland NUM to announce impending strike action in response to the proposed industry cutbacks in that region (Winterton and Winterton, 1989: 70). The National Executive Committee (NEC) of the NUM met on March 8, 1984, and under Rule 41 of the union's rule book, sanctioned the Yorkshire and Scottish Area stoppages.[109] More importantly, "[t]he NEC also endorsed in advance any action which any other Area might wish to take" in support of those already striking (Aston et al., 1990: 175). The Durham, Kent, and South Wales Areas joined the strike on March 12, 1984, and other Area unions soon followed.

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[108] This "decisive conflict" over the closure issue almost took place in 1981, but the young Thatcher government backed down. For differing views on whether the Cortonwood closure was part of a conspiracy to intentionally provoke a national strike, see Towers (1985: 15) and Winterton and Winterton (1989: 66).

[109] Rule 41 of the NUM requires all Areas to report any planned industrial action to the NEC for approval. See Aston et al. (1990: 175) and Winterton and Winterton (1989: 70).

Pickets from several striking NUM branch unions soon began travelling to nearby Areas in an attempt to spread and muster further support for the strike. These "flying pickets", a significant number of which were from the highly militant Yorkshire region, met with large contingents of police determined to maintain order and ensure the continuity of production in non-striking regions. Flying pickets also often met with animosity from fellow union miners, most notably from those in the Nottinghamshire and Lancashire Areas, who either did not support the strike or resented being kept from coal pits before they had the chance to conduct their own ballots (BJIR Chronicle, July 1984). Even after several Areas and local branches had voted against a walkout in mid-March, flying pickets continued to prevent many non-striking miners from working. Additionally, several union leaders ignored the anti-strike ballots of their members and ordered industrial action for purposes of national solidarity (Winterton and Winterton, 1989: 71).

By late March, it was estimated that of the industry's 180,000 working miners, 160,000 were out on strike (Worcester, 1987: 225). Pressure was now building from the rank and file that a ballot be held under Rule 43 of the union, which prescribed that for a national strike to be called, 55% of the membership had to vote their support. On April 12, 1984 the NUM's National Executive Committee voted against holding

such a ballot and called a Special Delegate Conference (SDC) for the following week to discuss both the strike situation and proposed changes to Rule 43. At the SDC, the majority needed under Rule 43 was officially reduced to 50%, although the call for a national strike ballot was again rejected. Nevertheless, on April 19, 1984 the strike was declared to be a national level industrial action under the provisions of Rule 41. The NUM leadership then ordered members still working to join the 80% or so of their co-workers who had already withdrawn their labor (BJIR Chronicle, July 1984 and November 1984; see also Fosh and Littler, 1985b: 8).

As summer faded into fall, the dynamics of the strike settled into a stable rhythm. In spite of the NUM leadership's exhortations for solidarity, most miners who had kept working at the start of the conflict continued to do so. This was especially the case in Nottinghamshire, where three-quarters of union miners voted against the strike in an Area ballot. In terms of those miners who had initially went out on strike, however, a relatively insignificant number had crossed picket lines and returned to work during these early months (Worcester, 1987: 226).

Bargaining between the NCB and the NUM was also at a stalemate throughout this period of the strike. MacGregor and the NCB made it clear that the original pay offer, the one that had initially prompted the

overtime ban, would not be changed. Nor would there be a retreat from the planned pit closures, though management expressed a willingness to delay some closures and extend the implementation period for others. For their part, Scargill and the NUM leadership would not consider serious negotiations with the NCB unless closure plans were completely withdrawn from the bargaining table. This was particularly true of closure plans pertaining to "uneconomic" pits.[110] Overall, then, by the late fall of 1984, neither management nor labor had altered significantly their original demands (BJIR Chronicle, November 1984).

Meanwhile, picketing throughout the summer often reached massive proportions, with 5000 or more strikers at times blocking the gates and roads to various collieries. Violence, between strikers and non-strikers, as well as between strikers and police, was frequent, but perhaps not nearly as rampant as reported by the media.[111] As for the police, much has been made of their role in instigating picket-line violence and in violating the civil rights of those arrested (e. g. Fine and Millar, 1985a; Spencer, 1985; Wallington, 1985). The legality of their intercept

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[110] With the acceleration of pit closures in the early 1980s, the NUM adopted a position that the only acceptable closures were for geological reasons or mineral exhaustion. Closure of nonprofitable, "uneconomic" pits was to be strongly fought by the union. See Winterton and Winterton (1989: 52-62).

[111] See Winterton and Winterton (1989: 166-171) for a discussion of media bias in covering the strike. See Percy-Smith and Hillyard (1985) for a statistical breakdown on picket line violence by both miners and police.

program, whereby roadblocks were used to restrict the movement of flying pickets and others, also came under scrutiny (East et al., 1985). Regardless of these factors, however, public opinion had clearly swayed against the NUM and the striking miners by the end of the summer. To ensure that it remained that way, Thatcher had drawn parallels between the miners' dispute and the United Kingdom's 1982 war for the Falkland Islands. Specifically, she publicly proclaimed Scargill and the NUM leadership to be the "enemy within" (BJIR Chronicle, November 1984).

As winter approached, the solidarity of striking miners began fragmenting and increasing numbers crossed picket lines out of frustration, necessity, or enticement. On November 2, 1984 the NCB offered a Christmas bonus to any striker who returned to work within the next two weeks. While the NCB claimed that as many as 10,000 workers (of the approximately 100,000 miners still out at the time) took advantage of the opportunity, there was a marked drop off in strike-breaking following the bonus period (BJIR Chronicle, March 1985). Not until the New Year did the back-to-work movement gain critical momentum, accelerating day-by-day through the early months of 1985. Many collieries outside of Nottinghamshire, the one Area that had been consistently producing coal throughout the strike, began restarting operations in mid-January as staffing reached the necessary levels

(Worcester, 1987: 226-227). Heartened by the numbers returning to work, the NCB hardened its bargaining stance with the NUM in early February. The subsequent breakdown in negotiations propelled even greater numbers of frustrated and disenchanted strikers across picket lines. In addition, union leaders may have unintentionally facilitated even further scabbing by refraining from chastising "hunger scabs": those miners who had staunchly supported the strike effort for many months but had been "starved back to work" (Winterton and Winterton, 1989: 198-201).

As February progressed it became increasingly evident that the strike was undergoing a rapid disintegration and would soon be over. All that remained in question was whether the NUM would choose to end the strike before the strike ended the NUM. The NEC called another Special Delegate Conference for March 3, 1985 to discuss an organized return to work. After much debate and compromise between the various Area unions and factions, the NEC decided that the miners would return to work without a signed agreement and that every effort would be made to get those workers dismissed during the strike reinstated (Winterton and Winterton, 1989: 203-208). On March 5, 1985, just over one year after the dispute began, the strike officially ended as Scargill and other union leaders led their members back to the collieries.

In retrospect, the NUM was clearly defeated in the 1984-85 dispute with the NCB. Despite its prolonged and bitter nature, the strike was not effective in swaying management's position to any substantial degree and did not help in the realization of important union objectives. The miners returned to the pits without a signed contract, or any guarantee that those workers dismissed during the strike would be reinstated. More importantly, the NCB's pit closure program was vigorously resumed, with over twenty-five closures announced and production cutbacks at many other collieries during the first two months after the strike (Winterton and Winterton, 1989: 244-245).

In line with management desires to further reduce productive capacity, pit closures continued throughout the rest of the decade and beyond virtually unabated. British Coal (BC) announced a massive round of closures in 1992, with 31 of the industry's 50 operating pits slated for shutdown (Financial Times, 14 October 1992).[112] Though protests and demonstrations by miners and other members of the affected coal communities had temporarily halted the plan, by late 1993 less than 30 pits remained in operation and the number of employed

[112] The NCB formally changed its name to British Coal in 1987.

miners hovered around 30,000.[113] The outcome of the 1984-85 strike can thus be viewed as marking a critical turning point for British miners and the coal industry as a whole. Importantly, as will be seen later in this chapter, it was also a confrontation that had implications for British industrial relations in general.

Numerous reasons have been given for the NUM's defeat in the 1984-85 strike against the NCB. Factors external to the union include such forces as the NCB's resolve and preparation for the dispute; government opposition in the form of propaganda and policing; and a lack of enthusiastic support from the public in general and large parts of the labor movement in particular. Factors that can be viewed as more internal to the NUM include such strategic miscalculations as beginning the strike in spring and the failure to have a national ballot. Strike-breaking by individual miners and even entire Areas proved detrimental to the success of the strike action as well.[114] Yet another factor that

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[113] At the start of the 1984-85 strike, there were over 180 collieries in operation and over 181,000 miners employed (see Winterton and Winterton, 1989: 259-260).

[114] While tensions between NUM Area unions predate the 1984-85 strike, the dispute brought regional animosities to a head. The Nottinghamshire Area, which opposed the strike and continued working throughout, ultimately broke away from the NUM and formed the rival Union of Democratic Mineworkers (UDM) in October 1985 (Winterton and Winterton, 1989: 230). Even in the face of the widespread closures announced in the early 1990s, the rift between the two unions remained broad (Baxter, 1992).

contributed to the miners' defeat, one which can be viewed as impacting both externally and internally on the union, was the use of the law by the different parties to the dispute. While it is commonly acknowledged by industrial relations observers that these legal actions were integral to and had important effects on the strike, much less consensus exists about how decisive the early labor legislation of the Thatcher government itself was in determining the outcome of the dispute. To assess this impact, I now examine the role of law in the 1984-85 miners' strike in more detail.[115]

The Role of Law

Legal action was brought against the NUM during the course of the strike from three different directions. The first was the NCB itself, which

[115] It should be noted that the following analysis focuses primarily on legal actions taken against the NUM. Though the union did try to use the law to its own advantage during the dispute, this occurred very infrequently. Invariably, such actions were simply "mirror reactions" to legal proceedings taken against the union by others (DeFriend and Rubin, 1985: 325-327; also see McMullen, 1985).

very early in the dispute sought interlocutory injunctions[116] against the Yorkshire NUM for sending flying pickets to collieries in the Nottinghamshire and Lancashire Areas. These injunctions were granted by the High Court on March 14, 1984 on the grounds that such activity violated Section 16 of the 1980 Employment Act, and the union was ordered not to organize pickets at pits outside it own Area. Yorkshire unionists promptly ignored the injunctions[117] and a few days later the NCB initiated contempt proceedings. This action could have resulted in heavy fines and the possible sequestration of Yorkshire NUM assets, yet the NCB asked that the proceedings be postponed indefinitely on March 19, 1984. The NCB did not seek further legal action against NUM Areas or the national union throughout the rest of the dispute. Neither did the British Steel Corporation or the Central Electricity Generating Board, both large nationalized industries controlled by the government, whose operations were significantly disrupted by secondary actions that could

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[116] Following Rogers (1985: 109), an injunction is a court order that requires a specific party to engage in, or refrain from, a particular act or activity. Interlocutory injunctions are interim orders issued at the request of a plaintiff before a trial has been held, "and indeed proceedings are often started with an application for an interlocutory injunction." The aim is to temporarily ensure or halt specific behavior by a defendant until a court decision on the case has been issued.

[117] As noted by Benedictus (1985: 109), "[w]ithin hours of these orders, an estimated three to four hundred pickets descended on the Nottinghamshire coalfield."

have been deemed illegal under Section 17 of the 1980 Employment Act (Benedictus, 1985: 176-177; DeFriend and Rubin, 1985: 322; Fosh and Littler, 1985b: 8-10).

By failing to use the new labor legislation itself, the Thatcher administration became the target of sharp criticism from many of its own members in the Conservative Party. From the government's and the NCB's perspective, however, it was feared "that continued recourse to the courts would only serve to unite working and striking miners" (Benedictus, 1985: 177). More generally, the Thatcher administration hoped to avoid politicizing the dispute by transforming it into a broader confrontation between the labor movement and the government over the new labor legislation (East et al., 1985: 306-307). The government thus limited its legal efforts to policing the strike and pursuing criminal violations by pickets, casting itself as a protector of social order and not as an interfering party in industrial disputes. Simultaneously, in line with its neo-liberalist rhetoric, the Thatcher administration kept emphasizing "that the use of the legislation was up to individual employers" (Fosh and Littler, 1985b: 9; also see McIlroy, 1985: 80-90).

Individual employers, specifically small private companies, constituted a second group of plaintiffs. Even in this instance, the use of the new labor legislation was relatively minimal (e. g. Aiken, 1985: 24-25;

Benedictus, 1985: 177-179). The most significant actions were brought against the South Wales NUM by two road haulage companies, Richard Read (Transport) Ltd. and George M. Read Ltd.[118] The Read companies had contracts with the British Steel Corporation (BSC) to transport coke to various locations from its Port Talbot works, where South Wales miners had established daily pickets ranging in number from approximately 20 to 300. Read drivers were frequently delayed, harassed, and subjected to violence as they entered and left BSC grounds. In light of these conditions, many drivers soon refused to carry out their work. Arguing that such activity disrupted their business and was hence illegal under sections 16 and 17 of the 1980 Employment Act, the two Read companies applied for injunctions in early April. These were granted on April 17, 1984 with the South Wales NUM ordered to refrain from instructing its members to stop, approach, or interfere with the free passage of drivers from either company as they entered and exited the Port Talbot works (1985 I.R.L.R. 67; see also Benedictus 1985: 178).

South Wales NUM president Emlyn Williams responded with a letter to each of the Read companies stating that the union would

[118] Members of the same family, the Reads operated legally distinct companies. They each applied for injunctions on the same date, and the High Court decided on both cases simultaneously. See (1) Richard Read (Transport) Ltd. v. NUM South Wales Area; (2) George M. Read Ltd. v. NUM South Wales, reported in 1985 I.R.L.R. 67.

comply with the injunctions. With the letter, however, Williams also included a copy of strike guidelines put out by the National Coordinating Committee of the NUM. These guidelines condemned the Thatcher administration's labor legislation and essentially called for Area unions to ignore any court instructions and to continue trying to prevent the movement of coal or coal products.[119]

Not too surprisingly, then, mass picketing at the Port Talbot works continued throughout the summer and contempt charges were eventually filed by both companies. On July 30, 1984 the High Court found the South Wales NUM in violation of the injunctions and the Area union leadership as responsible for the violation under Section 15 of the 1982 Employment Act. While the Read companies wanted three Area union leaders imprisoned as well, the High Court relegated its action to fines of 25,000 pounds for each contempt complaint. Anticipating that the union would not pay the fines within the allotted forty-eight hours, writs of sequestration were ordered on behalf of each plaintiff for August 1, 1984. On that date, despite rank and file members placing barbed-wire around the Area union headquarters, all assets (707,000 pounds) of

[119] Excerpts of these strike guidelines are provided in 1985 I.R.L.R. 67 at page 69.

the South Wales NUM were sequestrated (McIlroy, 1985: 88-90; Winterton and Winterton, 1989: 153).

Quite clearly, the immediate goals of the employers in question were achieved as a result of the court's decision, for mass picketing at the Port Talbot works ceased soon after the sequestration of Area union funds. Yet this kind of use of Thatcher's new labor legislation has to be viewed as relatively insignificant in terms of the overall conduct of the strike. The only other reported case of a private employer using the Thatcher legislation involved a coal reclamation and open-cast mining business in Durham, H. J. Banks and Company Ltd. Faced with frequent mass picketing and property damages, the company sought injunctions against the Durham NUM and the national NUM for unlawful secondary action and criminal trespass. These were granted on November 13, 1984 and picketing immediately ended (Benedictus, 1985: 178-179).

A third group of plaintiffs, the legal actions of which ironicaly had the greatest effect on the conduct of the strike, were union miners themselves. Specifically, in what have been labeled the "rule book cases" (e. g. DeFriend and Rubin, 1985: 324; Ewing, 1985), miners who opposed the strike and tried to continue working used the law against their own union. Importantly, however, these legal actions derived primarily from pre-existing contract law, and not from the Thatcher administration's

employment legislation (Winterton and Winterton, 1989: 154). The new labor laws did nevertheless have an indirect bearing on the legal and social environment in which the rule book cases were heard, and in one key instance became directly incorporated into the process of judicial decision-making. For these reasons, and because of their overall impact on strike activity, these legal actions by working miners merit more detailed review.

One of the earliest legal challenges the NUM leadership faced from its own members came from working miners in Nottinghamshire. The action specifically concerned a proposed national disciplinary procedure, Rule 51. As Winterton and Winterton (1989: 74) point out, "Rule 51 was clearly designed to make the Notts Area [and other non-strikers] more accountable to the NEC" by giving national leaders more disciplinary power over Area members. Several Notts miners questioned the constitutionality and timing of the rule change and took the issue to the High Court. The High Court voided the proposed rule on May 23, 1984 (Winterton and Winterton, 1989: 74). At an Extraordinary Annual Conference in July, however, the NEC ignored the court order and approved Rule 51. Notts miners soon returned to the High Court, which again voided the rule and this time issued an injunction prohibiting the

national leadership from implementing and enforcing the new disciplinary procedures.[120]

The central issue that motivated most working miners to take legal action against the national NUM and virtually all of its Area unions was not, however, the proposed changes in union rules. Rather, the most inflammatory issue was the lack of a national ballot as required under Rule 43 (DeFriend and Rubin, 1985: 323; Ewing, 1985: 160).[121] The NEC's somewhat questionable use of Rule 41 to foster a de facto national strike did little to satisfy the demands of those miners who wanted a chance to voice their opinions on industrial action.[122] Even in the highly militant and largely pro-strike Yorkshire region, some working miners had taken the Area union and the national NUM to court for failure to hold ballots. On September 28, 1984 the High Court responded and declared the strike at the Yorkshire level, as well as at the national level, as in breach of

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[120] See Clarke & Others v. Chadburn & Others, reported in [1984] I.R.L.R. 350.

[121] Though the requirements of the 1984 Trade Union Act concerning ballots on industrial action did not come into force until September 26, 1984 (McMullen, 1985: 219), awareness of the impending legislation served to fuel rank-and-file calls that the ballot provisions of the union's own rule-book be followed (see Winterton and Winterton, 1989: 71).

[122] Recall from above that under the guise of Rule 41, the NEC officially approved industrial action by the Yorkshire NUM and the Scotland NUM, and sanctioned any future actions in support of the striking Areas.

union rules and hence unlawful.[123] Similar legal action was taken in every Area except Kent, and only the Area strikes by the South Wales NUM and the Scotland NUM were found to be lawful (Ewing, 1985: 162-163; Winterton and Winterton, 1989: 155).

The NUM's creative use of Rule 41 was even less palatable to miners in Areas where ballots had been held and the call for industrial action was rejected, yet instructions were still given by the leadership to walk out. Such was the case in Derbyshire, where on March 16, 1984 a narrow majority of union members voted against striking. Derbyshire NUM leaders nevertheless ordered a strike on April 6, 1984, which the national NUM then declared to be "official". Three Derbyshire miners took the matter to the High Court, where on September 28, 1984 the Area strike in Derbyshire and the national strike were both declared illegal.[124]

The Yorkshire and Derbyshire cases had three critical consequences for the future conduct of the strike. First, since the dispute was in breach of union rules, union funds could not be used to support pickets or their families; to pay the fines or the bail of those arrested; or to meet

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[123] See Taylor and Foulstone v. (1) NUM (Yorkshire Area, (2) National Union of Mineworkers, reported in [1984] I.R.L.R. 445.

[124] The Yorkshire decision was issued on the same day, and in fact both cases were presided over by Justice Nicholls of the High Court's Chancery Division. The Derbyshire case is reported in [1984] I.R.L.R. 440 as Taylor and others v. NUM (Derbyshire Area) and others.

any other strike-related expenses.[125] Second, union leaders were prohibited from publicly labeling the strike as an "official" action, and thus they could not overtly encourage members to support or honor picket lines. Third, union leaders could not discipline strike breakers, since from a legal standpoint at least, there was no strike to break (Aston et al., 1990: 175; Ewing, 1985: 163-168).

Violations of injunctions pertaining to the latter two restrictions in the Yorkshire Area soon put the union in contempt of court and led to the imposition of 1000 pound and 200,000 pound fines for Scargill and the NUM, respectively. While Scargill's fine was paid anonymously, the national union refused to pay its fine. In response, the High Court ordered the sequestration of all NUM assets on 25 October 1984 (BJIR Chronicle, March 1985; Ewing, 1985: 170-171). Court-appointed accountants found, however, that the national union had moved millions of pounds out of the country at the start of the strike. Though these funds were eventually recovered, the process served to incur further fines and legal costs. Meanwhile, working miners petitioned the court to make NUM leaders personally responsible for the 200,000 pound fine. This action ultimately led to the union being put under receivership on

[125] To ensure that this was in fact the case, the Derbyshire plaintiffs eventually returned to the courts and obtained access to the financial records of the Derbyshire NUM. See 1985 I.R.L.R. 65 and 1985 I.R.L.R. 99.

30 November 1984, with a court appointee taking charge of national union finances. It was not until June of 1986, well over a year after the strike had ended, that NUM leaders finally regained control over union assets (Aston et al, 1990; Winterton and Winterton, 1989: 155-156).

Discussion

While the use of law played an integral role in the 1984-85 miners' strike, a pivotal question remains: to what degree did the new labor legislation of the Thatcher administration contribute to the dispute's outcome? The most salient use of the law was evidenced in the rule-book cases, which not only had the most tangible material effects but also had the ironic consequence of NUM assets being sequestrated because of legal actions by its own members. Remember, however, the rule-book cases were based on pre-Thatcher contract law. As to their overall impact, Winterton and Winterton (1989: 156-157) are correct in arguing that implementation of Rule 51 and continued control over union resources would have made little difference in the course and outcome of the dispute. In addition, the important Derbyshire and Yorkshire cases occurred relatively late in the strike. For the most part,

divisions within the union had already reached critical mass, and the rule-book cases could in effect be seen as legal expressions of this breakdown of solidarity.

As for the industrial relations legislation introduced by the Thatcher administration, when it was used it had great effect. Such instances were extremely rare, however, with only a few small employers taking advantage of the new legal framework. Thus, the strike provisions of the 1980 and 1982 Employment Acts did little to alter the overall course of the strike. However, very late in the strike one development related to the new legislation was highly significant, at least in terms of future industrial disputes in Great Britain.

In early January of 1985, working miners in South Wales, claiming they were being harassed and prevented from entering work, sought injunctions against the South Wales NUM for its mass picketing at various colliery gates. On February 11, 1985 the High Court issued a decision on the case and ordered an injunction against the South Wales NUM for the picketing activity. In this same decision the High Court also created the new tort of "unreasonable harassment", which could be sought against unions or other organizations. Taking the recommendations of the 1980 Employment Act's Code of Practice on

Picketing into consideration, the High Court additionally ruled that six pickets at any given place of work was a reasonable legal limit.[126]

With the Thomas case, elements of the new labor legislation had now been incorporated into common law doctrine. Though Winterton and Winterton (1989: 157) argue that this ruling, because of the limits it placed on mass picketing, was "decisive in bringing strike organization to an end", I feel such a view overstates the case's effects. Had the ruling come earlier in the dispute, the situation might have been different. But by the time the High Court had handed down its decision in mid-February, the back-to-work movement had already gained momentum and union leaders were contemplating an organized return to work. Overall, then, a reasonable argument would be that the Thomas case had little significant impact on the miners' dispute because the strike was already in its death throes by the time the decision was issued.[127]

In sum, the Thatcher administration's labor legislation could not be said to have played a decisive role in contributing to the NUM's defeat in the strike of 1984-85. This lack of effect was not because the legislation was inherently ineffective, since the Read cases proved the

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[126] See Thomas and others v. NUM (South Wales Area) and others, reported in [1985] I.R.L.R. 136.

[127] As will become evident later, however, the legal implications of the Thomas case would play a very significant role in both the Wapping dispute and the NUS strike against P & O European Ferries.

contrary. Rather, the legislation's insignificance in this case stems from its lack of use, particularly by the primary employers to the dispute, namely the NCB and the Thatcher administration itself. Though the new labor laws were resorted to early in the strike, a deliberate and narrower strategy that focused on the "criminalization" and the policing of the strike was eventually adopted by the NCB and the Thatcher government (e. g. McIlroy, 1985: 83-86).

Given that "[t]he Employment Acts seemed to have been tailor-made for the miners' strike" (Winterton and Winterton, 1989: 153), why then did their creators refrain from using them? Why was the government reluctant to bring union members before a "Tory Court" (Beynon and McMylor, 1985: 34)? More to the point, why did the Thatcher government wish to avoid a direct political and legal confrontation with striking miners? I will return to this question in Chapter Seven.

The Wapping Dispute: Unions Divided

Overview

Whereas the closure of places of employment proved to be the key precipitating factor in the 1984-85 miners' strike, it was the opening of a new place of work that propelled the National Graphical Association and other unions to take industrial action against Rupert Murdoch's News International (NI) in 1986.[128] The site in question was NI's Wapping facility, construction of which began in 1977 and ended in 1984. Yet no newspapers were produced at Wapping until 1986. Furthermore, picketing and violence outside the plant's gates would not subside until 1987. In retrospect, the fact that NI built Wapping in London's newly expanding docklands district and away from the newspaper industry's historic hub on Fleet Street, should have forewarned all that there would be a move away from traditional industrial relations practices as well.

Murdoch's original strategy involved the transfer of two of NI's national titles, The Sun and the News of the World, to Wapping, while its

[128] This chronology of strike events draws primarily on accounts provided in Littleton (1992: 57-125), Melvern (1986),Wintour (1989), Financial Times news reports, and the Chronicle section of the British Journal of Industrial Relations.

two other national newspapers, The Times and The Sunday Times, remained on Fleet Street (Littleton, 1992: 57). Informal negotiations with labor on this preliminary plan began in 1981. Five unions had interests at stake if NI's production was shifted to Wapping. These were the Amalgamated Union of Engineering Workers (AUEW); the Electrical, Electronic, Telecommunication and Plumbing Union (EETPU), the National Union of Journalists (NUJ); the Society of Graphical and Allied Trades (SOGAT); and the National Graphical Association (NGA).[129] While a united front was initially maintained, solidarity between the unions disintegrated as negotiations with management progressed (Melvern, 1986: 1-22).

Formal bargaining between NI and union chapels[130] began in 1983, with proposed staffing levels at Wapping being the primary point of contention. The unions had hoped that all workers presently at News of the World and The Sun would be transferred to the new plant. NI officials, however, expressed a "desire to reduce the workforce by up to

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[129] EETPU and AUEW members did maintenance work at NI printing houses (Littleton, 1992: 67). SOGAT members engaged in numerous tasks, from newspaper distribution to machine operation. The NGA was the quintessential print union, with its highly-skilled workers responsible for the actual production of print (Melvern, 1986: 4-5).

[130] British print unions remain true to their 17th century clerical roots. Union organizations at the workplace level are called "Chapels", with "Fathers of the Chapel" being analogous to shop stewards in other industries (Littleton, 1992: 7).

two-thirds" (Littleton, 1992: 57). This demand for a marked decrease in the workforce was the product of several factors, not the least of which was the fact that Fleet Street unions were notorious for feather-bedding and other abusive personnel practices (e. g. Grant, 1992: 140-142; Littleton, 1992: 14-16). Murdoch and NI management stressed that they would prevent the reproduction of such traditions at Wapping (Wintour, 1989: 219-220).

In late 1984, negotiations between NI and the unions broke down completely (Littleton, 1992: 59). It was at this point that management developed an alternative strategy for putting the Wapping plant into operation. In early 1985 it was proposed to Murdoch that Wapping could become unencumbered of all collective bargaining obligations if an entirely new title was produced at the plant. The unions would thus have to bargain with NI for recognition rights at Wapping, rights that by no means had to be granted. Murdoch agreed to the plan, and in March 1985 the launching of a new NI paper, the London Post, was announced (Wintour, 1989: 217-220; Littleton, 1992: 59-62).

With the transfer of work to Wapping ostensibly a moot issue, negotiations shifted to the composition of the London Post workforce. On September 30, 1985 Murdoch met with the General Secretaries of the five unions regarding recognition at Wapping. It became immediately

evident that he was going to use NI's strengthened bargaining position to full advantage. Murdoch expressed his sentiments about the print unions most clearly in his opening remarks:

> All national newspaper production departments are overmanned by from fifty to 300 per cent, with working practices that are a continuing disgrace to us all...(quoted in Wintour, 1989: 219-220).

The next day, Murdoch used the front page of The Times to reiterate his views and set a Christmas deadline for an agreement to be reached (Littleton, 1992: 67).

In mid-October NI presented four requirements for union recognition to be granted at Wapping: there would be no closed shop; management would regain the right to manage; a no-strike clause would be agreed to; and the contract would be legally binding (Melvern, 1986: 11). Union leaders labeled the proposal a "serf's charter", arguing that such terms would make Wapping a unionized plant in name only (Littleton, 1992: 68). The five unions continued to negotiate and several made remarkable concessions. The NGA, for example, went so far as to accept the possibility of direct input technology being used to produce the London Post (Littleton, 1992: 68).[131] Other unions considered the

[131] For the NGA, direct entry was "a threat to its very existence" (Melvern, 1986: 11). NGA workers actually produced print, from setting the type to putting the type to paper. With direct entry, low-skilled workers entered text into computers, which then set the type electronically (see Melvern, 1986: 5).

possibility of breaking ranks and accepting a single-union deal with NI.[132]

In early January 1986, shortly after his Christmas deadline, Murdoch declared negotiations regarding the London Post to be over. NI would now only bargain over the already-existing union agreements, which were to expire in June 1986. These agreements primarily covered production workers, the majority NGA and SOGAT members, at NI's four national newspapers. Murdoch stated that in six months NI would unilaterally impose the terms of the 'serf's charter' at the four titles and reduce the production workforce from 5,500 to 1,500. He also maintained that while there were no plans to move any of the four existing papers to Wapping, he would do so if industrial action took place over any of the titles.[133] The NGA and SOGAT responded with demands for employment security, specifically "jobs for life", at existing plants or at new locations if any titles were transferred. The demands concerning the London Post were dropped, with the unions adopting the

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[132] The Trade Union Congress (TUC) encouraged the unions to get a multi-union deal with NI. During negotiations, however, both SOGAT and the EETPU considered negotiating for a single-union deal at Wapping (Littleton, 1992: 67-69).

[133] In fact, NI had been preparing for this contingency for some time. Just prior to the strike, "Wapping's presses printed dummy runs of up to two million. Some runs were reportedly so huge that they depressed the price of waste newsprint on the world market by [five pounds] a ton" (Littleton, 1992: 70).

"formal position that they would take no industrial action relating to News International's refusal to offer traditional organizing rights at Wapping" (Littleton, 1992: 70).

The conflict rapidly came to a head. In a "calculated taunt", Murdoch announced that on January 18, 1986 a special supplement would be produced at the Wapping plant and distributed with several of NI's Fleet Street titles (Littleton, 1992: 77). Soon after this announcement, the executive council of the EETPU met to consider the possibility of establishing a single-union deal with NI (BJIR Chronicle, July 1986). The EETPU had signed no-strike deals and legally binding agreements before, and it was only TUC pressures for inter-union solidarity that had been keeping it out of Wapping. Ultimately, the supplement was produced on the scheduled date with the clandestine help of the EETPU. The next day, January 19, 1986, Murdoch stated "that he would be willing to reach an agreement with the EETPU" (BJIR Chronicle, July 1986).

The successful production of the supplement enraged printworkers. Indeed, "union leaders had to beg the News International chapels not to walk out immediately, but to wait for results of the strike ballot..." (Littleton, 1992: 79). The NGA and SOGAT had begun balloting their respective members nearly a week earlier about industrial action

over NI's rejection of demands for employment security. The results were announced on January 21, and rank-and-file support for industrial action proved overwhelming (Financial Times, 22 January 1986).[134] Union leaders from the NGA, SOGAT, AUEW and the NUJ met with NI management on January 23 in one last attempt to strike some kind of deal. The meeting was over in less than two hours. The unions offered to "go back to where it had all begun" and negotiate over recognition rights at Wapping (Melvern, 1986: 20). Murdoch reiterated his position that recognition at the new plant was a dead issue and that in six months over 4000 printworkers would lose their jobs. After the meeting, NGA and SOGAT leaders instructed their members to strike NI's four titles the next evening (Littleton, 1992: 80).

On January 24, 1986 over 1000 NGA members and nearly 4500 SOGAT workers walked out of NI's two Fleet Street facilities.[135] They were joined by almost 200 AUEW members, who had also voted in favor of industrial action. Murdoch immediately issued dismissal notices to the nearly 6000 striking workers for breach of contract. He also transferred production of NI's four titles to Wapping, which had been equipped in

[134] The NGA vote was 843 to 117, a ratio of seven to one, in favor of industrial action. The SOGAT vote was 3,534 to 752, a ratio of five to one (Melvern, 1986: 247).

[135] NI produced two titles at its Bouverie Street plant and two at its Gray's Inn Road plant (Melvern, 1986: 2-3).

advance and where over 600 workers awaited commands to roll the presses.[136] NI journalists were given an ultimatum: move to Wapping or be fired. Murdoch sweetened the offer with a 2000 pound raise and private health insurance for all journalists who went. NUJ members at The Sun voted to make the move several hours after the strike began. Eventually, Murdoch was to persuade “all but fourteen of his seven hundred journalists to follow the company" (Littleton, 1992: 80).

It became evident in the first weeks of the strike that the unions could do little to disrupt production. Only one daily edition of The Times and one of The Sun were lost during the transition to the new plant. Importantly, despite problems that resulted from Wapping's limited and inexperienced staff, production levels for the four titles were generally near normal. The strikers thus shifted their focus to preventing the distribution of NI papers. Union members throughout Britain blacked NI titles, refusing to load and transport the papers or do any printing of supplements that would find their way into one of Murdoch's publications. By mid-February, the NGA was also using slow moving motorcades to impede delivery trucks (Financial Times, 15 February 1986).

[136] Most were non-union employees or EETPU members with individual, not collective, contracts at Wapping (Littleton, 1992: 80).

Face-to-face negotiations reopened in mid-March. The primary demand of the unions was reinstatement for the over 5000 printworkers dismissed. If the strikers were not to be rehired, union officials called for redundancy pay and compensation. Only the NGA continued the demand for recognition at Wapping, much to the discomfort of other unions. The recognition issue could easily kill chances for reinstatement, or sabotage negotiations for compensation. From the NGA's perspective, however, recognition was critical. The successful production of newspapers without its highly-skilled craftworkers was a clear threat to the union's survival (Financial Times, 10 April 1986).

NI's strategy in the new round of talks was to buy off those dismissed. In early April Murdoch offered the unions the Grays Inn Road printing plant. Valued at almost 60 million pounds, the plant had been sitting relatively idle since production of NI's titles had been moved. With Wapping now openly acknowledged as a permanent production site, Murdoch indicated that he had "no use" for the facility. He added that if the strikers took him up on the offer, "[t]he unions and their members will have the opportunity to start their own newspaper, employ themselves, and use whatever practices, manning levels and contracts they choose" (quoted in Littleton, 1992: 97). The print unions,

however, viewed the plant as markedly insufficient compensation for those who had been dismissed and formally rejected the offer on April 8.

Murdoch enhanced his compensation offers over the next several weeks, and on May 26 he put forth his "final" package. It included the Gray's Inn plant and relatively generous redundancy pay for all those dismissed. In addition, no striker would be excluded from future employment at NI and the recognition issue would be reviewed in one year (Financial Times, 27 May 1986). The NGA, SOGAT and the AUEW balloted their respective members on whether or not to accept the offer. Much to the surprise of NI, union leaders, and the British public at large, the rank-and-file resoundingly rejected Murdoch's offer. NGA General Secretary Dubbins summed up the outcome best, stating that the pivotal issue was jobs, and that "[t]he people involved in this dispute are not prepared to be just bought off by financial offers of this kind." He added that having now held two ballots, the unions had strengthened their "moral authority" and the strike would gain new momentum (Financial Times, 7 June 1986).

And indeed it did, as pickets outside of Wapping increased in number and became bolder in their tactics. The daily throng of 50 to 200 demonstrators that was a fixture since the start of the strike swelled to an average of 300 to 400 as the summer progressed, with weekends

and special marches producing crowds in the thousands. In mid-June, the unions also began using flying pickets, sometimes numbering 500, to prevent the distribution of NI papers (Financial Times, 21 June 1986). In July 1986, NI sought and obtained injunctions to restrict the number of pickets and demonstrations on the highway in front of Wapping, though crowds were still allowed to gather at a public park a short distance away (Financial Times, 1 August 1986).

In early August, NI indicated that it was willing to negotiate yet again in order to bring the dispute to an end. For the most part, this round of bargaining took the same form as those previous. Murdoch put forth another "final offer" in September that included slightly higher compensation and a promise that strikers would not be excluded from consideration for future jobs at Wapping. In addition, a "Works Council" was proposed in lieu of formal union recognition to serve as the collective representative of the plant's workforce (Littleton, 1992: 115).[137] Murdoch also put one precondition on the package: union leaders had to formally recommend acceptance of the offer to their members. If they

[137] The Council would be elected by the existing Wapping workforce, largely dominated by EETPU members (Financial Times, 15 September 1986).

did not, the offer would be withdrawn (Financial Times, 15 September 1986).[138]

Rank-and-file members of all three unions again voted to reject NI's offer. As one striking printworker summed up: "We want jobs. We don't want money. We want jobs" (Financial Times, 9 October 1986). Soon after the ballot results had been announced, union members realized that the September package was indeed NI's final offer. Murdoch then initiated a new strategy to bring the eight-month old dispute to an end. Strikers were invited to apply for individual compensation, a tactic used with marked success by the NCB in the 1984-5 miners' strike. By mid-November, approximately 30% of the 5500 or so who had been dismissed had accepted the deal or had made inquiries regarding the offer (Littleton, 1992: 115).

Throughout December 1986 and early January 1987, no negotiations occurred between the principal parties, and daily picketing and demonstrations fell into a ceremonial rhythm. This lull proved to be the calm before the final storm. In mid-January, NI announced further legal action against the unions for losses incurred from picketing

[138] NGA leaders recommended rejection of NI's June offer. SOGAT and the AUEW made no formal recommendations for acceptance or rejection. To meet the precondition of the September offer, union leaders simply pointed out its existence when making their recommendations for acceptance.

outside of Wapping. If the courts found in NI's favor, the damages awarded could be financially crippling (Financial Times, 21 January 1987). This impending threat did nothing but inflame striking printworkers, whose emotions were already peaking as the dispute approached the one-year mark.

The January 24, 1987 anniversary march on Wapping set in motion a series of events that quickly brought the lengthy conflict to a decisive conclusion. Starting with a "near-carnival atmosphere", the march quickly sank into one of the worst episodes of collective violence in British industrial history (Financial Times, 26 January 1987). While speakers such as the NUM's Arthur Scargill derided "Britain's neo-fascist state", skirmishes took place on the outskirts of the 12,000 strong crowd as riot police charged missile throwing demonstrators, peaceful observers, and the press. Many police hid their badge numbers to prevent later identification.[139] At the same time, numerous masked youths and militant strikers used a variety of violent tactics against the police, including the use of "spears, hammers, ball-bearings, sharpened stakes, [and] gasoline bombs" (Littleton, 1992: 119). By the time the crowd was dispersed, nearly seventy demonstrators had been arrested and twice

[139] The unions had been filing complaints about excessive police behavior since March 1986 (Financial Times, 24 March 1986).

that number of demonstrators and police were injured (Financial Times, 26 January 1987).

Shortly after the anniversary march, NI announced it would initiate contempt of court proceedings against the NGA and SOGAT. NI argued that the events of January 24 were the most recent example of how the print unions had repeatedly violated the High Court's injunction against mass picketing outside of Wapping. On February 5 NI's lawyers gave SOGAT leaders twenty-four hours to end the dispute or contempt papers would be filed. SOGAT leaders had no time to ballot their members and unconditionally ended the dispute that same day (Littleton, 1992: 120). Within hours, NGA leaders were given the same ultimatum. Citing how impractical it would be to carry on the strike without SOGAT and how NI's legal actions left little room for maneuver, union president Dubbins reluctantly asked the NGA's National Council to end the strike (Littleton, 1992: 121). The Council quickly voted to suspend the strike action.[140]

In mid-February 1987, union leaders encouraged their members to apply for NI's individual compensation packages, an offer that the company had temporarily re-opened. This clearly signaled "that the

[140] Though not faced with the same legal threats, the AUEW quickly called off the strike as well (Littleton, 1992: 121).

dispute [was] now officially over" (Financial Times, 11 February 1986). More importantly, the call to apply for compensation also signaled the unions' realization that they had been defeated by Murdoch. Despite the year-long conflict, which was prefaced by an even longer period of contentious bargaining, the unions never succeeded in gaining recognition at Wapping. Significantly, with the strike over, not only were the unions still without a contract at the new plant, but over 5500 of their members had lost their jobs in a futile effort. Overall, the "battle over Wapping" had produced "one clear victor: Rupert Murdoch" (Grant, 1992: 152).

The Role of Law

The tactical use of labor law by the unions and by management was a recurring feature of the strike between the print unions and News International. Even before the year-long strike was half over, two observers of British industrial relations were compelled to note that "the Wapping dispute provides rich material for all interested in how the law can be used as part of the strategy of industrial conflict" (Ewing and Napier, 1986: 285). At this point, the July 1986 injunctions against mass

picketing had not yet been issued, nor had the pivotal legal maneuvers taken by NI in January 1987. Overall, when these later events are taken into account as well, it is hard to ignore the centrality and importance of labor law to the conduct and outcome of the Wapping dispute.

Perhaps as critical to the outcome of the dispute as the legal actions taken during the strike were the legal machinations by Murdoch and NI management prior to the print unions' walkout. Having anticipated that the unions would never accept the terms of the 'serf's charter', let alone by the Christmas 1985 deadline, Murdoch conferred with company lawyers on alternative courses of action. A letter of advice was written by NI's chief legal counsel, Geoffry Richards, and sent to Murdoch just before the mid-December deadline. Titled "Strike Dismissals", it "explained the financial advantages to the company which would result from the dismissal of workers when they were taking part in industrial action, and explained in some detail the legal technicalities associated with such a course of action" (Ewing and Napier, 1986: 287). Four specific advantages, issuing from British contract law, were pointed to:

> (a) [the striker] will...be in repudiatory breach of contract, and can thus be dismissed instantly;
> (b) [the striker] is not entitled to a redundancy payment, unless under statutory notice of redundancy before the strike began;

> (c) [the striker] will have no claim in unfair dismissal, provided all strikers have been dismissed and none selectively re-engaged; and
> (d) ...the employer does not have to prove a reason for dismissal.[141]

The key was getting the print unions to go out on strike.

Of course, Murdoch had little difficulty in enticing the unions to industrial action. Recall that shortly after the Christmas deadline passed Murdoch announced that the Wapping negotiations would cease and that the terms of the 'serf's charter', along with drastic workforce reductions, would be unilaterally imposed at all NI papers in six months. The unions responded with their demands of "jobs for life" and began balloting their members for possible industrial action over the employment security issue. Murdoch's 'calculated taunt', the educational supplement produced at Wapping with non-union and EETPU labor in mid-January (Littleton, 1992: 77), and his hard-line stance at the final meeting with the unions on January 23, 1986 propelled the print unions to action. The strike began approximately one month after Murdoch had received the legal advice from Richards.

[141] Quoted from the letter itself, reprinted in Ewing and Napier (1986: 301-304; emphasis in original).

Within hours after the walkout, NI had issued dismissal notices to over 5,500 workers.[142]

The strike dismissal letter became public knowledge approximately two weeks into the strike when it was leaked to a rival newspaper. Union leaders accused Murdoch of a deliberate "sacking plot" designed to free NI of its existing workforce without having to pay at least four million pounds in redundancy compensation (Financial Times, 5 February 1985). While the accusations appeared to be on the mark, the unions had no legal recourse against NI.[143] Murdoch's strategy was bold, aggressive, and from the viewpoint of many, quite reprehensible. Nevertheless, it was perfectly legitimate within the parameters of existing contract law.[144] A legal snare had been set for the unions, and they walked right into it.

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[142] In lieu of this advice, NI printed the dismissal notices before hand. Additionally, the dismissals began at the weekend's start in order "to catch as many employees in the net as possible" (see Ewing and Napier, 1986: 304). The rationale was to dismiss both the weekday and weekend shifts as close together as feasible, since the unions would have many legal loopholes if the strike ended before all shifts had been dismissed.

[143] In May 1986 sacked printers filed over 5,000 unfair dismissal claims against NI, even though union leaders acknowledged that there was little chance the industrial tribunals would find in favor of the workers (Financial Times, 1 May 1986).

[144] A Financial Times article on 17 February 1986 assessed the dismissals as follows: "Though Mr Murdoch is entirely within his British rights, to do so seems to many somehow un-British, unfair."

NI's dismissal strategy was developed using complex loopholes found within individual employment law, specifically with respect to Provision 62 of the Employment Protection (Consolidation) Act of 1978 (Ewing and Napier, 1986: 291-292). Murdoch's legal advisors were, however, versed in the nuances of the new collective labor law as well and legal preparations along a second front had also begun nearly a year before the strike started. In early 1985 Murdoch established a series of subsidiaries between News International and its primary suppliers and customers. These subsidiaries were for the most part "buffer" or "shadow" companies, each having a separate legal identity but essentially having "the same directors, shareholders, addresses, telephone numbers, etc." as their parent company, NI (Financial Times, 20 February 1986). NI had established at least seven such companies by the time the strike began (Financial Times, 20 February 1986).[145]

These shadow companies were established with Section 17 of the 1980 Employment Act specifically in mind. Recall that Section 17 permits secondary action, whether picketing, blacking, or sympathy activity, only if "taken within a cordon of first suppliers and customers

[145] One NI manager openly admitted that at least one of these companies served simply as a "legal defence". Several companies had no record of any "assets, employees or even any substantial share capital" (Financial Times, 20 February 1986).

of an employer in dispute" (Mackie, 1981: 10). The consequences of Murdoch's legal shell game were hence highly significant:

> By restructuring News International's critical operations into decentralized smaller companies, Murdoch protected the business from union action under the 1980 Employment Act. Any future union action against these new smaller companies, (which in combination carried out precisely what the single parent company did) would now, under the group's new legal configuration, be considered illegal secondary action (Littleton, 1992: 62).

A second legal snare had thus been set to trap the print unions.

In the early days of the strike, the unions did in fact order a variety of secondary actions against NI. NGA members at a Northampton printing house, for example, blacked (i. e. refused to print) an educational supplement for The Times, while SOGAT members throughout Britain refused to distribute any of NI's national titles. These blacking activities immediately met with a legal response: NI sought injunctions against the two unions for illegal secondary action, which were granted by the High Court on the January 27 and 28, 1986. These injunctions were issued, however, not on the basis of Section 17 of the 1980 Employment Act, but rather under the provisions of another piece of Thatcher legislation. Since the NGA and SOGAT leaderships had failed to ballot their respective national memberships prior to ordering the secondary actions, the blacking activity was also illegal under Section 10

of the Trade Union Act of 1984, which requires a ballot before any form of industrial action is to be taken.

The failure to hold ballots before ordering secondary actions did not reflect legal naivete on the part of the print unions' leaders. They had after all taken great pains to define the dispute with NI as a conflict over "employment security", as opposed to being over recognition rights at Wapping.[146] And union leaders kept the Fleet Street chapels from striking before a ballot was held, a difficult task after the special supplement at Wapping was produced with non-union labor. Rather, the failure to hold secondary action ballots is more reflective of how the requirements of Thatcher's labor legislation may push unions to ignore the law if they wish to engage in more effective industrial action. A national postal ballot of all union members before the dispute (and before the dismissal of over 5500 printworkers) would likely not have favored secondary action. A ballot afterwards would likely find widespread support in favor of blacking NI's titles, but would have taken several days, if not weeks, to conduct. Overall, union leaders' strategy of blacking at the start of the strike without a ballot was clearly the one that would economically hurt NI the most and give the strike

[146] A strike aimed at enforcing union recognition would be illegal under Section 18 of the 1982 Employment Act's narrowed definition of a "trade dispute". See Chapter Four.

momentum. Given the company's quick resort to the High Court, the tactic can be presumed to have had the expected effect.

Even if the NGA and SOGAT had held ballots on secondary action, the aforementioned blacking activities would have remained illegal because of the legal buffer provided by NI's shadow companies. The High Court could have issued its injunctions on the basis of Section 17 of the 1980 Employment Act just as easily as it did on the basis of Section 10 of the 1984 Trade Union Act (e. g. Littleton, 1992: 91-92). In any event, the separate injunctions granted against the two unions in late January were both promptly ignored. NGA members in Northampton continued their blacking of the educational supplement and SOGAT members refused to handle any NI titles. On February 10, 1986 the High Court found SOGAT to be in contempt of court for defying the injunction against it. The union was fined 25,000 pounds and its assets of nearly 17 million pounds were sequestrated (Financial Times, 11 February 1986).[147] The NGA faced its contempt hearing on February 14, 1986 and, in the wake of

[147] While the fine was no surprise in light of Section 15 of the 1982 Employment Act, the immediate sequestration of union assets was. In two previous cases, involving the NGA in 1983 (see footnote 148) and the NUM in 1984, sequestration had occurred only after numerous fines had been imposed in an effort to secure compliance with an injunction (Ewing and Napier, 1986: 294-295).

the SOGAT decision and its own experience with sequestration,[148] the NGA officially withdrew its blacking instructions just hours before the hearing. The High Court nevertheless imposed a fine of 25,000 pounds for the union's repeated violation of the injunction in the previous weeks (Financial Times, 15 February 1986).

These early injunctions and fines had a minimal effect on the overall course and conduct of the strike. Despite the sequestration of its assets, SOGAT leaders did not feel compelled to purge the contempt charges against the union until early May. The blacking instructions against NI titles remained in effect for over three months while the national union made do with financial support from other unions and its own branches.[149] And ninety minutes after its own contempt hearing, the NGA began balloting its national membership on the possible blacking of all NI supplements. Nevertheless, most members outside of London voted against taking any secondary action (Littleton,

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[148] In a strike against the Messenger Newspaper Group in 1983, the NGA became one of the first unions to openly confront the Thatcher administration's new labor legislation. The end result was that for "the first time in the history of British industrial relations...a trade union had its total assets sequestrated" (Fosh and Littler, 1985b: 15). For more on this dispute, also see Dunn (1985) and Grennard (1984).

[149] In fact, SOGAT gained a partial legal victory in April 1986 when an appeals court ruled that the assets of union branches are legally separate from those of the national union. Union branches were thus able to avoid sequestration motions (Financial Times, 25 April 1986).

1992: 91-92). Importantly, however, the unions' tactics were apparently having the desired effect, since NI continually returned to the negotiating table and enhanced its compensation offers as the spring months progressed.

The mass picketing and demonstrations outside of Wapping became the primary focus of NI's second round of legal maneuvers against the print unions. Though such activity had been regularly occurring since the beginning of the dispute, several factors were now pressuring NI to action on this front. Not only had the numbers of picketers and demonstrators increased, but so had the animosity and abusive behavior towards those crossing the picket line. This was especially the case after members of the NGA, SOGAT and the AUEW resoundingly rejected Murdoch's first compensation offer in early June, a rejection that angered management as well as rejuvenated the rank and file. Indeed, the climate outside of Wapping was so hostile that journalists for The Sun announced that they were planning to strike until the dispute was over rather than endure daily confrontations on the picket line (Financial Times, 14 June 1986; see also Littleton, 1992: 105).

In mid-June legal counsel for NI submitted writs to the High Court claiming that the NGA and SOGAT were engaged in unlawful picketing

outside of Wapping and other company facilities.[150] NI lawyers contended that the picketing was illegal on several counts. Because the large crowds obstructed the road leading to Wapping, threatened strikebreakers with violence, and generally subjected all to abusive and harassing behavior, the two print unions had committed the tortuous offenses of nuisance, intimidation, and harassment, respectively. More importantly, the lawyers argued that because the mass picketing had prevented others from fulfilling their contractual obligations, the unions were also guilty of unlawful interference. The striking printworkers had never been employed at Wapping, and therefore their picketing fell outside the legal limits established in Section 16 of the 1980 Employment Act.[151] To remedy the situation, NI asked that the High Court issue injunctions against the NGA and SOGAT that would prevent them from organizing demonstrations and limit the number of their pickets at each company site to six.[152]

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[150] While Wapping had been the site of most mass picketing, the unions also targeted twenty or so of NI's distribution depots (Littleton, 1992: 105). In fact, the unions began to use "flying pickets" in June to prevent the distribution of NI titles from some of these depots (e. g. Financial Times, 21 June 1986).

[151] This provision restricts lawful picketing to one's own place of employment. See Chapter Four.

[152] In making this request, the plaintiffs pointed to the decision of Thomas and others v. NUM (South Wales Area) and others ([1985] I.R.L.R. 136). Recall that this case took the recommendations of the 1980 Code of Practice on Picketing and established six pickets at any given workplace as a reasonable legal standard.

In their own defense, union leaders told the High Court that they could not be held responsible for the behavior of the demonstrators, the vast majority of whom were not sacked printworkers but rather families, friends and sympathetic supporters. Furthermore, the defendants argued that NI had not come to the court with "clean hands" (Financial Times, 18 July 1986). Union lawyers went on to recount Murdoch's machinations that had led to the strike: the establishment of the shadow companies, the London Post "sham",[153] and the premeditated firing of over 5500 employees. The point was that because of its "callous and calculated plan to dispose of [its] existing workforce", NI was primarily responsible for the mass picketing and demonstrations outside of Wapping, not the unions.[154]

The Justice deciding the case for the High Court indicated that he tended to believe the version of events presented by the unions, namely that the London Post was a calculated sham to help NI rid itself of a unionized workforce, and stated that "[e]veryone should have sympathy for the dismissed workers, many of whom have long service with the plaintiffs" (quoted In Littleton, 1992: 110). The Justice added, however,

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[153] By this time the unions were convinced that Murdoch never intended to publish the London Post and that it was merely a negotiating ruse. NI management continued to maintain otherwise (Financial Times, 22 July 1986).

[154] See paragraph 181 in News Group Newspapers Ltd and others v. SOGAT and others, reported in [1986] I.R.L.R. 337.

that while the actions of Murdoch and others at NI might be "reprehensible", they were not unlawful and did "not justify tortious, still less criminal, behaviour" by the unions and their members.[155] This being the case, he issued injunctions on July 31, 1986 against both the NGA and SOGAT, ordering union leaders to limit the number of pickets outside of each NI facility to six and to ensure that such picketing was peaceful. Any further instances of mass or violent picketing would open the unions up to contempt charges, resulting in fines or the sequestration of assets. In issuing these injunctions, the High Court Justice explicitly cited the Thomas case as providing the basis for his legal reasoning.[156]

The High Court decision was not a complete victory for NI however. While union leaders were banned from conducting mass pickets in front of Wapping, they were not prohibited from organizing marches and demonstrations in the public park just across the street from the plant. In effect, the injunctions constituted a "pyrrhic victory" for NI, for though the number of "official" pickets were reduced directly

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[155] See paragraph 183 in [1986] I.R.L.R 337.

[156] See paragraphs 186 and 189 in [1986] I.R.L.R. 337. The Justice did not accept the Thomas case in toto however. The offense of "harassment" created in the earlier case was rejected as essentially redundant and unnecessary in light of the pre-existing torts of nuisance and intimidation (see paragraphs 111 and 112).

outside of Wapping, the typically more volatile and disruptive mass "demonstrations" were now legally sanctioned. From the unions' standpoint, the decision "made little difference to the running of the dispute" (Financial Times, 1 August 1986). Indeed, in mid-August NI had written letters to both NGA and SOGAT leaders stating that the situation outside of Wapping had changed very little and "that pickets were still abusive of the workforce" (Littleton, 1992: 112).

As I delineated earlier, in the fall of 1986 NI returned to the bargaining table and again attempted to negotiate an end to the dispute. When these efforts failed, NI went back to the courts in January 1987. On January 20 NI filed "crippling damage claims" against the NGA and SOGAT for losses incurred from the mass picketing outside of Wapping (Financial Times, 21 January 1987). NI lawyers claimed that the unions were guilty of two torts. One was unlawful interference with commercial contracts, an "economic tort" created by Sections 12 and 13 of the 1982 Employment Act (see Mackie, 1983a: 89-90). This same piece of Thatcher's labor legislation also removed the trade unions' long-standing immunity from civil actions.[157] The second tort which NI

[157] As discussed in Chapter Four, Section 15 of the 1982 Employment Act made union organizations liable for official actions. Prior to this provision, union members could be sued individually but trade unions as organizations could not.

claimed the unions were guilty of was the common law tort of nuisance, an offense which set no limit on the amount of damages that could be awarded (Financial Times, 21 January 1987).

While these actions could have devastated NGA and SOGAT financially and brought the dispute to a close, months would have passed before the cases found their way through the legal system (Littleton, 1992: 118-119). In the end, NI was able to initiate a different legal strategy that proved just as devastating and had much more immediate effects. The violence of the anniversary march on Wapping on January 24, 1987 gave NI the legal opening it needed. While the spectacle outside of Wapping was heatedly debated on the floor of Parliament, with Conservatives decrying the unions' behavior and Labour Party members denouncing the tactics of the police (Financial Times, 27 January 1987), NI lawyers prepared to file contempt charges against the NGA and SOGAT for violating the July 1986 injunctions issued by the High Court.

Murdoch and NI management knew they had the print unions in a difficult position. No one could deny that the 12,000 strong crowd participating in the anniversary march, with its rampant violence and obstruction of the highway in front of Wapping, had breached the terms of the July injunctions. The consequences for both the NGA and SOGAT

were massive fines and the likely sequestration of assets. On February 5, SOGAT was presented with an ultimatum: end the dispute and the company would not file the contempt charges,[158] and it would drop the other damage claims as well. As I already noted, SOGAT leaders were forced to accept the offer without the chance to ballot their members. The following day, the same scenario was replayed with union leaders from the NGA (Financial Times, 7 February 1987; also see Littleton, 1992: 120-121). Thus, the year-long Wapping dispute, which had an even lengthier prologue marred by contentious bargaining, was brought to a hasty and decisive end.[159]

Discussion

Management's pivotal and final salvo against the print unions was ultimately made possible by the Thatcher administration's new labor

[158] Once the writs for contempt were filed with the High Court, NI would not have been able to stop the legal proceedings even if it wanted to (Financial Times, 6 February 1987).

[159] A thousand or so printworkers continued demonstrating outside of Wapping after the strike had officially ended. Ironically, whereas many miners refused to strike in 1984-85 because no ballot had been held, many striking printworkers refused to end the Wapping dispute because a ballot had not been held (Financial Times, 9 February 1987; Littleton, 1992: 121).

legislation. The High Court injunctions issued in July 1986, granted on the basis of provisions in the 1980 Employment Act and the Code of Practice on Picketing that accompanied it, culminated in the threatened contempt charges that brought the strike to a close in January 1987. The new collective labor laws had significant effects elsewhere as well, notably early on in the conflict with regard to secondary actions by the NGA and SOGAT. Though these injunctions were issued on the basis of the 1984 Trade Union Act, they could have just as easily been granted on the basis of Section 17 of the 1980 Employment Act. And lest the 1982 Employment Act be forgotten, it was Section 15 of that legislation which had removed the unions' immunity from tort, opening them up to the threats of fines, damage claims and sequestration that figured prominently into the printers' plans of action. Overall, however, despite the salience of the use of the new labor legislation throughout the strike (e. g. Ewing and Napier, 1986; Littleton, 1992: 131), it is not necessarily the case that the Conservative government's legal changes alone accounted for the outcome of the Wapping dispute.

Several other factors were also integral to the defeat of the print unions. NI's ingenious use of individual labor laws regarding dismissal proved to be of critical significance in depriving the strikers of redundancy compensation and in facilitating the move to Wapping.

This calculated use of the legal tools available within industrial relations is indicative of a more general element contributing to the strike's outcome: Murdoch's singular determination to rid NI of a unionized workforce. The construction of Wapping began two years before Thatcher took office, and Murdoch's disdain for the print unions began long before that (Ewing and Napier, 1986: 286). While the labor legislation of the Thatcher administration had significantly enhanced the tactical arsenals of anti-union managers, such weapons were useless if employers were too timid to utilize them.[160] Murdoch had a reputation for being anything but timid, and it is clear in retrospect that he "was out for a showdown" with the unions (Grant, 1992: 143; also see Wintour, 1989: 217).

Murdoch's anti-union sentiments were not solely the product of his structural positioning as an owner vis-a-vis labor. The abusive work practices of the Fleet Street print unions, from excessive over-manning to the exorbitant over-pricing of labor, were historically infamous and viewed by many as "bordering on the criminal" (Grant, 1992: 140-141). While the ability of "The Street's" union chapels to extract high remuneration from newspaper publishers and to exercise nearly total control over the labor process was envied by many other British

[160] Witness, for example, the sparse use of the new labor laws by affected employers in the 1984-85 Miners' strike.

printworkers, it was also subject to scorn. As noted by Wintour (1989: 222), one reason for the strike's failure was that "the London print branches had made themselves so unpopular with their excessive rates of pay and airs of superiority that they found little support for their action among their fellow members in the provinces."[161]

Overall, however, it was inter-union, not intra-union, rivalry that proved more detrimental to the print unions' cause. Even before the strike was officially underway, the solidarity between the five unions represented at NI had been fractured. The EETPU had agreed to discuss a single union, no-strike deal with NI and union members had been permitted to work at Wapping on an individual contract basis.[162] And at the strike's start, both economic coercion and financial incentives enticed most NUJ journalists to make the move to Wapping.[163] Taken together, the EETPU and the NUJ had provided NI with the necessary labor power it needed for the production of newspapers at Wapping throughout the dispute.

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[161] Recall, for example, that the NGA's ballot on secondary action was rejected in most districts outside of London.

[162] The EETPU was never granted recognition at Wapping, and by the late 1980s and early 1990s, its members were increasingly complaining to the union leadership about the plant's "oppressive atmosphere" (Littleton, 1992: 151-152).

[163] The NUJ was the only union ever formally recognized at Wapping, though in 1990 it was de-recognized at the plant (Littleton, 1992: 151).

Only the NGA, SOGAT, and the AUEW had weathered the strike together from start to finish, though prior to its beginning there was much friction. This was particularly true with regard to the NGA and SOGAT, two print unions who had a long history of territorial rivalry. The former union consisted primarily of highly skilled typesetters. The latter had a large contingent of less skilled print machine operators, many of whom worked under the supervision of NGA members. During the lengthy negotiations with NI over Wapping, this rivalry came to a head over the issue of direct input technology. Such technology eliminated the need for typesetting skills, and SOGAT saw the introduction of direct input at Wapping as a way to displace the NGA and expand its own influence (Littleton, 1992: 20). These competing interests are but one factor that prevented more fruitful negotiations and a possible peaceful resolution to the dispute.[164]

In sum, then, the outcome of the Wapping dispute can be best viewed as over-determined by a confluence of many factors. While the effects of the Thatcher administration's labor legislation were clearly more critical in this industrial conflict than in the 1984/85 miners'

[164] As illustrated, however, the NGA and SOGAT put their differences aside in the fight against Murdoch. In fact, the dispute marked a turning point in the relationship between the two unions. They merged to form the Graphical, Paper, and Media Union (GPMU) in 1991 (Littleton, 1992: 208-209).

strike, the use of these new laws alone probably would not have been sufficient. Indeed, the print unions had ignored injunctions against mass picketing and against secondary action for many months. And even though the threatened contempt charges of January 1987 brought the dispute to a sudden close, the absence of this threat most likely would not have resulted in eventual union recognition at Wapping or the rehiring of those dismissed. Rather, the concrete articulation of a combination of factors, including vehement managerial opposition, the breakdown of collective solidarity, and a restrictive legal environment, ultimately kept the print unions out of Wapping.

Seaman's Wapping: The NUS Conflict with P & O Ferries

Overview

Less than one year into the Thatcher administration's third term of office another bitter and divisive labor dispute captured Britain's national attention.[165] Indeed, the dispute in question "impressed

[165] The present summary of the NUS strike against P&O draws primarily on reports from the Financial Times and the accounts provided by Marsh and Ryan (1989: 228-244) and Watson (1989).

sectors of public opinion which even the miners' strike and Wapping disputes had not reached" (Auerbach, 1993: 44). The adversaries in this instance were members of the National Union of Seamen (NUS), specifically the Dover-based seafarers staffing the numerous ferries that traveled the English Channel each day, and the Peninsular and Oriental Steam Navigation Company ("P&O"), the largest shipper of freight and passengers in the United Kingdom. Although the particular industrial actors had changed, the general plot of the conflict remained the same:

> Like the miners' strike of 1984-85 and the clash between News International and the print unions at Wapping, the struggle between P&O and the NUS...changed the industrial landscape. Like British Coal and Rupert Murdoch, P&O...emerged the victor (Watson, 1989: 64).

Sensing the similarities with pivotal industrial disputes occurring earlier in the decade, NUS members "coined the phrase the 'Seamen's Wapping' to describe the goings on in Dover" (Financial Times, 30 March 1988).

As I hope to demonstrate in this section, parallels between the seafarers' strike and the Wapping dispute are indeed many. For example, as with Murdoch and the print unions, the seafarers' conflict was precipitated by a hostile employer's stringent demands and unrelenting bargaining stance. Through acquisitions in early 1987, P&O became Britain's largest employer of NUS members and a leader in the highly competitive English Channel ferry market. Yet P&O chairman Sir

Jeffrey Sterling was uncomfortable with what the future might hold for the company's ferry operations, particularly at the port of Dover. It was there that the Channel Tunnel was scheduled to open in 1993, providing tourists and commercial shippers alike with an alternative means of transport between Great Britain and the European continent. The opening of the "Chunnel" would certainly impact negatively on ferry sector markets (Marsh and Ryan, 1989: 229).

Members of the NUS Dover Port Committee, a local branch of the national union, had their first meeting with the new management in October 1987. The existing collective bargaining agreement, reached with P&O's predecessors, expired in early 1988 and the union wanted to know the company's future industrial relations plans. Sterling was very reassuring at the time, stressing that organized labor would play a key role in the process of making the ferries more economically competitive with the future Tunnel. Ultimately, NUS members left the meeting with the understanding that "all unions concerned would be consulted before changes were made" and "that [such] changes would be subject to agreement" (Marsh and Ryan, 1989: 233).

To the surprise of the union, on December 4, 1987 P&O issued a statement "telling Dover seafarers that in three months time their contracts would be canceled and replaced by new ones" (Watson, 1989:

67). The move affected over 2000 union seamen, nearly 30% of NUS members employed on all British ferries at the time.[166] The union was again assured that it would have input on certain areas of the new contract, though numerous changes would also be implemented unilaterally by P&O. In particular, the company's plan called for approximately 400 layoffs as well as:

> ...a reduction in numbers of crews per ship from 3.6 to 2.5, a loss of between [35 and 45 pounds] per week on extra trippage bonuses...an increase in on-board working hours from 12 to 16, the abolition of the day-on/day-off shift pattern and its replacement by weekly shifts of 168 hours and the loss of 10 days paid leave a year (Marsh and Ryan, 1989: 233).

Union leaders conceded that redundancies and changes in working practices would be needed to keep P&O competitive with the Channel Tunnel as well as with other ferry operators. Nevertheless, NUS officials deemed the severity of what the company had proposed to be draconian. Furthermore, the manner in which the new contract was announced and its planned imposition did little to mitigate the anger of union members. Not surprisingly, talk of industrial action spread quickly throughout the Dover port. Union leaders were divided, however, over whether or not to ballot the rank and file on a strike or to

[166] The NUS had roughly 21,000 members overall in 1988 (down from over 40,000 in 1980).

see if negotiations were possible. The latter course of action was eventually chosen in late January 1988, soon after P&O had withdrawn its March deadline for unilaterally implementing changes and agreed to bargain with the NUS (Financial Times, 28 January 1988).

As negotiations with P&O got underway, however, both the Dover branch and the national union shifted their attentions to a more pressing industrial conflict. NUS General Secretary Sam McCluskie had called for a twenty-four hour national ferry strike to begin on January 31, 1988. Officially, the action was in protest of troubling industry trends, specifically "the growing tendency of British shipowners to change existing agreements and operate under foreign flags" (Financial Times, 1 February 1988).[167] Unofficially, the strike was more clearly directed at the Isle of Man Steam Packet Company (IOM), another competitor in the British ferry industry. In December 1987, IOM demanded its NUS members accept a new employment contract that entailed 70 redundancies and a large reduction in the number of leave days. Rejecting the offer, IOM's 161 union seafarers were immediately

[167] The practice of "flagging out" involved British-owned companies using Third World nations as their country of origin for international shipping and staffing purposes to decrease costs (Lloyd, 1988: 9). Between 1975 and 1987, "[t]he number of British ships flying the red ensign...declined from 1,614...to 635..."(Financial Times, 2 February 1988).

dismissed. The NUS subsequently called a strike against the company on December 29, 1987 (Marsh and Ryan, 1989: 231).

Well over 7000 union seamen participated in the national protest strike of January 31, 1988, which lasted longer than the planned twenty-four hours. In response to the action, P&O and leading industry rival Sealink went to the High Court on February 1 and "obtained injunctions on the grounds that ballots had not been held as the Trade Union Act 1984 required" (Marsh and Ryan, 1989: 231). The High Court also ruled that the national strike represented a form of illegal secondary action under Section 17 of the Employment Act 1980. The NUS leadership defied the court order, arguing that the union was engaged in a primary dispute directed at the industry-wide issues of flagging out and the numerous unilateral work changes imposed by ferry operators. As for the ballot issue, NUS officials stated that at recent "mass meetings in all the main UK ports...a majority of union members had expressed support 'in a show of hands'" (Financial Times, 2 February 1988).

On February 2, P&O and Sealink returned to the High Court to file contempt charges for the NUS's violation of the injunctions, an action that could lead to sequestration and/or heavy fines (Financial Times, 3 February 1988). Before the High Court issued a decision on the contempt charges, however, the union leadership balked and on February 4 asked

NUS members to return to work. McCluskie justified the retreat by stating that:

> We are only a small union and the whole might of the law was against us. We have only [5 million pounds in] assets and I am not prepared to be busted by the law (quoted in the Financial Times, 5 February 1988).

Despite the official call to end the dispute, NUS rank and file were slow to return to work. Of the over 7000 who initially went on strike, 3000 union seamen were still picketing several days later (Financial Times, 8 February 1988).

Approximately 2300 of those remaining on strike were NUS seafarers employed by P&O at Dover. As I mentioned, the Dover Port Committee had been negotiating with P&O management over the local contract just before the national protest strike began. These meetings halted when P&O and Sealink applied for the February 1 injunction against the national union for the national walkout. This action was "hardly conducive to cooling down the situation", and the Port Committee immediately balloted its members on the possibility of industrial action against P&O (Marsh and Ryan, 1989: 233-234). The majority of the Dover membership voted to end contract negotiations and go out on strike against the company on February 3, 1988.

With the national protest strike over, negotiations between P&O and the Dover NUS were able to resume. The existing collective agreement was set to expire on March 4, 1988 and the company was again indicating that it would unilaterally impose the terms and conditions it had announced in December of the previous year. The union took a conciliatory position, offering to accept the redundancies and changes in work practices proposed by P&O, but with the provision that they be implemented in phases over the next several years. As one union spokesman put it:

> In an ideal world we wouldn't want any job cuts. But with the advent of the Channel Tunnel we have to be pragmatic (quoted in Financial Times, 1 March 1988).

The company refused the union's delayed implementation plan, but did agree to extend negotiations until March 15, 1988 (Financial Times, 4 March 1988).

No progress in negotiations was made over the next several days, and on March 15 Dover-NUS seamen voted to continue the strike action against P&O. Shortly after that announcement, P&O began issuing dismissal notices to approximately 2300 striking workers (Financial Times, 16 March 1988). However, those dismissed were given until March 23 to accept individual employment contracts, under the terms

stipulated by the company in December 1987, and return to work.[168] After that date, P&O indicated that it would likely resort to non-union foreign labor to maintain staffing for its Channel ferry operations (Financial Times, 17 March 1988).

The P&O dismissals prompted demands by NUS shop stewards throughout Britain for a national strike in support of the Dover seamen. In immediate response, the General Council of British Shipping, the industry's employer association, issued the following statement: "[a]ny action in support of the dispute taken by those not employed by P&O is illegal" (Financial Times, 18 March 1988). However, the NUS phrased the ballot on the proposed industrial action as addressing job cuts, "flagging out", and work changes throughout the shipping industry, issues of primary concern to all union seamen. Union lawyers reasoned that a national strike on these terms could not be construed as illegal secondary action in support of the dismissed Dover seamen (Financial Times, 22 March 1988).

The strike ballot was en route to 21,000 NUS members when P&O asked the High Court to issue an injunction preventing a vote.[169] The

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[168] The March 23 deadline was eventually extended to April 26, when slightly over 700 seamen still on strike were finally officially dismissed.

[169] Postal balloting had begun on March 22 and was expected to be completed by March 30 (Financial Times, 22 March 1988).

company argued that regardless of the ballot's precise phrasing, the ultimate purpose of the proposed action was to provide support for the 2300 or so union seamen on strike at Dover. Consequently, P&O contended that any industrial action based on the ballot would be illegal secondary action. On March 25, 1988 Justice Davies of the High Court ordered that the union could not call a national strike, regardless of the ballot results. Ultimately, faced with the sequestration of NUS assets if wider industrial action did take place, General Secretary McCluskie stated on March 28 that the returned ballots would not be counted (Financial Times, 29 March 1988).[170]

While P&O felt that the High Court decision renewed the possibility for a negotiated settlement to the conflict, local NUS leaders warned of growing rank-and-file militancy. Both sides proved to be partially correct. Informal negotiations resumed in early April. At the same time, however, the Dover branch reaffirmed its commitment to the strike via another local ballot and received tactical support from the National Union of Marine, Aviation, and Shipping Transport Officers (NUMAST), the industry's officers union. On April 8 six hundred NUMAST members stationed in Dover voted to work only with NUS crews on all cross-

[170] The unprecedented nature of Justice Davies' decision and the interpretive possibilities stemming from it are discussed further in the next section.

channel ferries, a move that would hamper P&O's plan to go to non-unionized crews if a settlement could not be reached with the NUS (Financial Times, 9/10 April 1988).

On April 15, P&O tried a new tactic, one that had proven relatively successful in the 1984-85 Miners' dispute and in the 1986-87 Wapping conflict. Letters were sent directly to the approximately 2300 Dover strikers, bypassing union leaders with the hope that many would break ranks. The offer included slightly more in wages, but the number of redundancies and changes in work practices remained essentially unchanged from the company's initial offer (Financial Times, 16 April 1988). In a show of hands on April 17, a majority of the NUS rank and file present rejected the company's proposal. Nevertheless, P&O's strategy did open a fissure in the union. NUS leaders, for example, began to openly express division on whether or not to continue the dispute. More importantly, in the ensuing days close to 1000 of the 2300 strikers reportedly accepted the company's proposal and agreed to return to work (Financial Times, 22 April 1988).

At this juncture P&O moved to bring the dispute to a decisive end. On April 25 the company announced it would no longer recognize the NUS and that it was withdrawing from the Merchant Navy Establishment (MNE), the industry's forty-year old labor supply mechanism jointly

regulated by employers and unions. P&O also indicated it would soon begin operating three of its Channel ferries, to be staffed by non-union seafarers and NUS members who had accepted individual contracts. Remaining strikers at Dover would be dismissed if they did not agree to the new terms (Financial Times, 26 April 1988).

Allowing P&O to de-recognize the union and withdraw from the MNE would prove devastating to the NUS's future, for other ferry companies would eventually follow suit (Financial Times, 26 April 1988). The union thus responded with a two-pronged strategy. One tack involved union lawyers applying to the High Court for an injunction forcing P&O to recognize the NUS. This move eventually failed. A second tack involved mass picketing at Dover to prevent the operation of P&O ferries. This move initially succeeded, but ultimately proved fatal to the union's effort.

Though expecting two thousand strikers to begin the mass picketing at Dover on April 26, only about three hundred turned out. The relatively low numbers were indicative of the faltering support for the dispute, evidenced by the large portion of the Dover strikers who had

returned to work by late April.[171] Nevertheless, three hundred pickets were enough to insure success. Indeed, perhaps more than enough, for the pickets were successful in stopping two Sealink ferries from leaving port as well, industrial action that was clearly secondary and thus in violation of an earlier injunction.[172] Sealink immediately filed contempt charges with the High Court, a move likely to lead to the sequestration of union assets. Days later the company asked for a temporary adjournment of the hearing to see if it could negotiate an agreement with the NUS (Financial Times, April 29 1988). When negotiations broke down and the contempt hearings resumed, union leaders made one last ditch effort to rejuvenate support for the Dover and called for industrial action throughout the entire ferry sector (Financial Times, 30 April/1 May 1988).

Justice Davies of the High Court ordered the sequestration of union assets on May 3 for the violation of an injunction prohibiting illegal secondary action obtained by Sealink in late March (Financial Times, 4

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[171] In addition to the one thousand or so who initially accepted P&O's April 15th offer, several hundred more broke ranks after the company's de-recognition announcement. Indeed, P&O indicated that it had issued only approximately seven hundred and twenty dismissal notices to Dover seamen who were still on strike by April 26 (Financial Times, 27 April 1988).

[172] It is difficult to say whether the Sealink ferries were actually "prevented" from sailing. Most of the ships' crews had already crossed the picket line but "[t]he sailings were canceled after pickets persuaded a handful of Sealink crew not to go on board" (Financial Times, 27 April 1988).

May 1988). He also imposed a fine of 150,000 pounds. The NUS complied with the sequestration order and the fine, but stated defiantly that it would continue the primary industrial action against P&O at Dover and secondary industrial action throughout the rest of the ferry sector. However, a second 150,00 pound fine, coupled with the return to work of several hundred union seamen at Sealink, eventually compelled NUS leaders to call an end to the industry-wide secondary action in support of the Dover strikers (Financial Times, 13 May 1988).

Even though the illegal secondary action had ended, the union's funds remained sequestrated.[173] Mass pickets at Dover, numbering between 100 and 500 on any given day, continued throughout the summer of 1988. It was apparent to the national union, however, that continued action was futile. On July 6, the High Court warned the NUS that it would face an additional six-figure fine if it failed to end the mass picketing (Financial Times, 7 July 1988). In order to avoid the fine and to regain control of union assets, NUS leaders tried to reach a compromise in mid-July that would satisfy both the High Court and the Dover rank and file. Specifically, the arrangement involved "senior officials of the NUS taking over the official six-man picket in Dover while withdrawing from the mass picketing, which [would continue] to be

[173] I will discuss the reasons for this in greater detail in the next section.

organised by local NUS members" (Financial Times, 15 July 1988). The High Court agreed to lift the sequestration order, but only after a "probationary period". It also imposed a fine of 25,000 pounds for the national union's earlier support of mass picketing (Financial Times, 26 July 1988).

In August the NUS "regained control of its assets, marking probably the final act in the Dover seamen's dispute" (Financial Times, 16 August 1988). P&O was a clear and decisive victor in the conflict. The company had returned to normal operations by the end of the summer, its ferries staffed by a mixture of union and non-union crews essentially working under the conditions proposed by P&O back in December 1987. Back in control of its assets, the national NUS began to focus its attention primarily on alleviating financial and membership problems. To this end, it eventually negotiated a merger with the National Union of Railwaymen.[174] As for the dismissed Dover seafarers, many remained on the picket line for nearly a year after P&O and the national union had considered the dispute over. Finally, in early June 1989, the 227 remaining union seamen still on strike voted to end the conflict after sixteen months (Financial Times, 10 June 1988).

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[174] The National Union of Rail, Maritime and Transport Workers was formally established in September 1990.

The Role of Law

Analyzing the role played by law in the dispute between the NUS and P&O is not extremely difficult given the frequency and significance of legal intervention throughout the conflict. Indeed, the strike overview presented in the previous section, with its constant referral to injunctions, fines, and High Court decisions, reads to some extent like a specifically legal description, rather than a general account, of an industrial dispute. Nevertheless, while the present section recounts many events I already discussed above, the analysis here is more narrowly focused on the intricacies and implications of those particular legal actions pivotal to the strike's outcome.

Three main legal actions, occurring at the start, mid-point, and effective conclusion of the seafarers' dispute, serve to outline the general tone and conduct of the strike. Each of these actions was initiated by ferry companies, either by P&O itself or in conjunction with its competitor Sealink, and each ultimately worked to the disadvantage of the NUS. The union also initiated various legal strategies on its own

behalf. However, NUS legal maneuvers invariably failed or proved ineffective, and thus had negligible impact on the course of events.[175]

The legal proceedings surrounding the national protest strike in early February 1988 represent the first intervention by the courts into the dispute between P&O and the NUS. Although initially only of peripheral importance to the Dover conflict, the relevance of the legal actions taken during the national conflict increased as the local strike progressed. Of pivotal significance were the High Court injunctions issued on February 1 as a result of a joint request by P&O and Sealink. Recall, the two companies charged that the national protest strike was actually an attempt to generate support for dismissed seafarers in the industrial dispute between the NUS and another ferry company, IOM. Conversely, NUS leaders contended that the walkout was primary action directed against industry-wide practices such as flagging-out.

The High Court accepted the companies' argument, and issued an injunction on February 1, 1988 ordering the NUS to end the strike. The action was deemed illegal on two grounds. First, the court held that the national action was indeed primarily aimed at helping the IOM strikers. Hence, the protest strike was ruled to be illegal secondary action under Section 17 of the Employment Act 1980. Second, the strike was also

[175] I will further address this issue in the next section.

deemed illegal because no formal ballot on the action had been conducted, a violation of the Trade Union Act 1984.

With the NUS blatantly ignoring the injunction and continuing the protest strike, P&O and Sealink swiftly filed contempt charges with the High Court on February 2. Significantly, such a move had the potential to “start the most serious legal action against a British union since the National Union of Mineworkers had its funds sequestrated during the 1984-85 miners' dispute” (Financial Times, 3 February 1988). Realizing this possibility, and fully cognizant of the union's tenuous financial position, national NUS leaders ordered rank-and-file seamen back to work on February 4. While many members initially resisted the union order, nearly all those who had walked out were back to work by the time of the High Court contempt hearing began on February 8.

This eventual compliance with the February 1 injunction worked to a certain degree in the NUS's favor. Instead of ordering a sequestration of union funds, High Court Justice Michael Davies imposed a somewhat nominal fine of 7500 pounds. He did, however, impose the more substantial penalty of court costs incurred, estimated at approximately 100,000 pounds. Davies justified the lack of a sequestration order by noting the short-lived nature of the official sanctioning of the national protest and the fact that "the union's

leadership had [publicly] apologised for the initial disobedience" (Financial Times, 12 February 1988).

The second significant legal intervention into the seafarers' dispute began unfolding in mid-March 1988 when P&O announced it was soon going to dismiss approximately 2300 strikers at Dover. Recall that this action prompted demands from the rank and file for wider supportive action, to which the NUS leadership responded with a national ballot. In what the High Court Justice later termed an "ingenious and ingenuous attempt to get round the law" (Financial Times, 26 March 1988), the union portrayed the proposed action as being over issues of primary concern to all seafarers in the shipping and ferry industry, namely problems of flagging out and the increased occurrence of unilaterally-imposed work changes by employers. P&O countered that regardless of the precise phrasing of the ballot, the ultimate purpose of any national industrial action at that juncture would be to show support for the Dover strikers, and would hence be illegal secondary action. The company thus asked the High Court for an injunction to prevent the national ballot from being conducted.

P&O's injunction request was unprecedented in the sense that never before had a British employer attempted to use the courts "to pre-empt the outcome of a ballot by arguing that implementing the action

threatened in it would fall foul of the Government's legislation" (Financial Times, 26 March 1988).[176] The High Court, which found in favor of P&O and issued an injunction prohibiting the ballot and any subsequent industrial action based on it, also broke new legal ground, but only to a certain extent. As Auerbach (1988: 229) elaborates on Justice Davies' March 25 order:

> In one sense, this decision involves no new principle: it is perfectly clear that the courts can grant a quia timet injunction before any unlawful act has actually occurred, if the plaintiff can present adequate evidence of good grounds for the fear that unlawful action will be very likely to take place, if the injunction is not granted. What is more controversial is the fact that the injunction restrained not merely any unlawful industrial action, but the very conduct of the ballot itself.

Thus, not only had the High Court accepted P&O's contention that any action resulting from the ballot would ultimately be illegal under Section 17 of the 1980 Employment Act, but it had gone one step further and prohibited the conduct of the NUS's national ballot, which was a "perfectly legal act" (Auerbach, 1988: 229).[177]

Remember too, that the NUS had already mailed postal ballots to approximately 21,000 members prior to the High Court decision. Union

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[176] Of course, prior to the labor legislation initiatives of the 1980s, employers could not even conceive of such an option.

[177] As put by Auerbach (1988: 229), "there is nothing intrinsically unlawful about holding a ballot: it is what the union does in response to the result which may or may not be unlawful."

leaders initially stated that given this fact, they would count the ballots once they had all been returned on March 30, 1988. They publicly emphasized, however, that they would not "actively encourage" any national industrial action based on the ballot's results (Financial Times, 28 March 1988). P&O representatives responded that they would file contempt charges if the ballots were counted and made public, a move quite likely to result in the sequestration of NUS assets. The NUS eventually relented, and on March 28 General Secretary McCluskie announced that the ballots would remain sealed in fear of the legal consequences (Financial Times, 29 1988).

The third, and most complex, instance of significant legal intervention into the seafarers' dispute began to unfold in late April when P&O announced it was going to withdraw recognition from the NUS. The union responded with mass picketing at Dover on April 26, action which resulted not only in the prevention of P&O ships from setting sail, but also immobilized two Sealink ferries. During the fray surrounding the national ballot, Sealink had applied for and received a High Court injunction on March 28 prohibiting the NUS from interfering with that company's operations as it pursued its dispute with P&O (Financial Times, 29 March 1988). While Sealink immediately filed contempt charges for the illegal secondary action, it soon asked for a

temporary adjournment of the contempt hearings. The company's hesitancy in pursuing these charges stemmed from two related factors. First, the company did not want to directly cause the sequestration of NUS assets, which would have further "fuelled resentment against Sealink and made secondary action against it all the more likely" (Financial Times, 29 April 1988). Second, and probably of greater importance, Sealink was hoping to negotiate "a 'commercial alliance' between itself and the NUS against the common enemy of P&O", the company's primary competitor (Auerbach, 1988: 233).

The potential 'alliance' between the union and Sealink never developed; indeed, negotiations between the two broke down in less than two days. The contempt proceedings resumed, and with sequestration an imminent and probable occurrence, the NUS engaged in what High Court Justice Davies later described as "attempted suicide" (Financial Times, 4 May 1988). Specifically, union leaders ordered an industry-wide ferry strike on April 29 as a show of support for the Dover seafarers' striking against P&O. On May 3, the High Court ordered the sequestration of union assets, estimated at a relatively meager 2.8 million pounds, and imposed a hefty fine of 150,000 pounds for continued illegal secondary action (Financial Times, 4 May 1988).

Despite the extreme financial bind it was now in, the NUS initially remained defiant and refused to end the illegal ferry sector strike. McCluskie made the following statement to the press shortly after the High Court announced its sanctions: “[t]he law requires me to order men and women of this union to stop doing what they know in their hearts and minds to be right. I cannot do that” (quoted in Financial Times, 4 May 1988). The NUS leadership held this stance for approximately one week, and even weathered another 150,000 pound fine.[178] On May 12, however, hundreds of NUS members employed by Sealink broke ranks and returned to work. Faced with a divided union, McCluskie ordered an end to the illegal secondary action (Financial Times, 13 May 1988).

Having ended the ferry sector strike, the NUS was now in a position to regain control of its finances. McCluskie made a request for the sequestration order to be lifted at a High Court hearing on May 17. Sealink did not oppose the request; in fact, it gave the union "tacit backing", and publicly indicated that all illegal secondary action against the company had ended (Financial Times, 18 May 1988). P&O, however, opposed the union request and asked the High Court to maintain control over NUS assets. While P&O also admitted that illegal secondary

[178] This fine was imposed by the High Court for the union's violation of the injunction granted to P&O during the national protest strike of February 1988 (Financial Times, 12 May 1988).

action had ended against it and other ferry companies, it wanted the sequestration to continue "on the grounds that the union was sponsoring intimidatory picketing of its Dover-based employees" (Financial Times, 18 May 1988).[179]

Justice Davies of the High Court, by now well versed in the nature of the dispute, issued his unprecedented and somewhat remarkable decision in response to the contradictory requests of the NUS, Sealink, and P&O on May 24, 1988:

> It seems to me that the only possible sensible remedy is to take this course, and that is formally to end the sequestration at the suit of Sealink, but at the same time...at the same instant in time, on the motion of P&O to issue a fresh writ, taking effect at the moment, as I say, of the end of the Sealink writ, with the same sequestrator.[180]

What Davies did in effect was maintain the sequestration order as a matter of convenience. Rather than return its financial assets temporarily back to the NUS, because it was no longer in contempt of the Sealink injunction, and then issue a new order based on P&O's complaint about mass picketing at Dover, he let the sequestrators maintain continuous control of union funds (Marsh and Ryan, 1989: 243).

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[179] Mass picketing, involving anywhere from 100 to 500 pickets at a time, had continued at P&O's Dover operations since the company had announced it would withdraw recognition from the union in late April (Financial Times, 25 May 1988).

[180] From P&O European Ferries (Dover) Ltd. v. National Union of Seamen and Others, Queens Bench Division transcript (24 May 1988).

While this "transfer" of the sequestration order appears reasonable and "may even have saved the union some amount of costs which would have been entailed by a change of actual sequestrators", at least one crucial problem is evident with Davies' action (Auerbach, 1988: 234). The sequestration was maintained on the premise that the mass picketing at Dover was in contempt of a High Court injunction issued at the behest of P&O. It is here that troubling legal reasoning arises:

> The injunction relied upon by P&O in May had been granted at the start of February. At that time the court considered that the NUS's primary dispute was with the Isle of Man Steam Packet Company, so that section 17 of E. A. 1980 exposed it to an injunction restraining it from calling on P&O workers at Dover to break from their contracts and engage in sympathetic action...[however at] the time of the [sequestration transfer] it was generally accepted that the NUS was engaged in a primary dispute with P&O (Dover) (Auerbach, 1988: 235; emphasis in original).

Given this sequence of events, the mass picketing of May was not in fact a violation of the February injunction. In one sense, the injunction had lapsed when the NUS's dispute with IOM, and the related national protest strike, had ended. More significantly, in another sense the mass pickets could in no way be construed as encouraging unlawful sympathetic action by P&O workers since the union was clearly engaged in a legal primary dispute with the company at Dover (Auerbach, 1988: 234-235).

Technically, then, Davies' sequestration transfer had no legal basis at the time it was executed. Nevertheless, in due course the mass picketing that was occurring at Dover would have likely led to a new High Court injunction, the violation of which would have also provided grounds for sequestration. Indeed, Davies explicitly stressed in his May 24 decision that the mass picketing was unlawful, based on his interpretation of the precedent set by Thomas v. National Union of Miners, South Wales Area during the 1984-85 miners dispute.[181] Recall that this case transformed the 1980 Code of Practice on Picketing's "recommendation", that six pickets were legally reasonable, into common law doctrine, with any more pickets being deemed intimidating and excessive.

Of course, such an injunction had never been issued. Importantly, however, an end to mass picketing became the legal requirement that had to be met if the NUS was to regain control of its assets. Formally, the NUS leadership maintained that only six official union pickets were at the port, with the remaining hundreds simply being interested "demonstrators" and supporters. Informally, union leaders realized that the mass picketing at Dover had become "one of [the] main planks in its

[181] From P&O European Ferries (Dover) Ltd. v. National Union of Seamen and Others, Queens Bench Division Transcript (24 May 1988).

strategy against the company", for keeping P&O ferries from crossing the English Channel was all that was keeping the possibility for negotiations and settlement alive (Financial Times, 25 May 1988).

Given the tactical significance of the mass picketing for union goals, it continued throughout the rest of May and through June while NUS funds remained in the hands of the sequestrators. By mid-July, however, the High Court raised its level of pressure. Justice Davies threatened another fine that would "run into six figures" because the union "had not done enough publicly to make it clear that it wanted to end mass picketing", at which point the accountants overseeing the sequestration indicated that they would have to sell NUS land and buildings to meet such an expense (Financial Times, 7 July 1988). Soon after this threat the national union withdrew its official support of the mass picketing, a move that enraged rank-and-file seafarers at Dover and elsewhere. The High Court indicated on July 25 that the sequestration would end, but only after a three week "probationary period" to see if the NUS would indeed keep its word (Financial Times, 26 July 1988). On August 15, the national NUS regained control of its assets and, except for over two hundred dismissed NUS-Dover members who remained on the picket lines for another ten months, the strike was effectively over.

Discussion

In many respects, the conduct and outcome of the 1988 seafarers' dispute represents an example par excellence of what the Thatcher administration had hoped to achieve within the sphere of industrial relations with its collective labor law project. In fact, some argued that the conflict was orchestrated by the "militant wing of the Conservative Party" as an object lesson for British employers and unions alike (Watson, 1989: 66). In retrospect, such assertions are indeed highly supported by P&O's strong links with the Thatcher administration. For example, P&O had contributed generously to the Conservative Party, and the company's chairman had once been a Thatcher advisor (Marsh and Ryan, 1989: 244-45). Further, not only did the company appear to intentionally start the strike at Dover by applying for an injunction against the NUS during the national protest strike (Marsh and Ryan, 1989: 234), but it also worked closely with government legal advisors throughout the dispute (Financial Times, 12 May 1988). Overall, then, as Marsh and Ryan (1989: 247) note:

> It is small wonder that speculation arose that P&O had become the willing instrument of a governmental determination to reduce the authority of any union which dared challenge its authority and that the whole affair had

> been contrived to encourage other employers to do the same.

The actions of High Court Justice Michael Davies also beg the question of whether or not a government conspiracy was behind the seafarers' dispute. The tenuous legal nature of Davies' 'sequestration transfer' and his unprecedented prohibition of a national ballot that might have resulted in illegal industrial action are curious acts. And these were not the only instances in which Davies engaged in creative pre-emptive legal actions. In late April, for example, the Midland Bank reported that it had received "'unusual orders' from the NUS regarding the disposition of its funds at the very time when Sealink was pursuing a writ of sequestration" (Auerbach, 1988: 231). Primarily concerned with protecting itself legally, Midland Bank sought a High Court injunction prohibiting the movement of union assets outside of Britain, which Justice Davies granted on April 28, 1988.[182] Importantly, however, as stated by Auerbach (1988: 231-232; emphasis in original):

> the issue of this injunction before the sequestration order had been granted once again involves the imputation of unlawfulness to an act which is not itself unlawful (moving assets abroad), on the basis of its possibly being followed by an event which has not yet occurred (sequestration).

[182] The bank's legal concerns were not without merit, for in Taylor v. NUM and Others (1985) issued during the 1984-85 miners' strike, a High Court Justice ruled that financial institutions might be liable for assisting in conduct that might contribute to a defendant's contempt of court. See Auerbach (1988: 230-232) for a more detailed discussion.

The inherent danger of such pre-emptive legal action becomes clear if one "[wonders]...if the sequestration order had not in fact been granted?" (Auerbach, 1988: 232). In such a scenario, the High Court, for no legal reason, would have prohibited the NUS from using its own capital as it saw fit.

Despite all of the above, however, the instrumental and conspiratorial nature of legal intervention into the seafarers' dispute should not be overemphasized. After all, actions and conditions occurred that could not have been entirely anticipated and accounted for by the government or P&O. Of the most immediate relevance were some strategically questionable actions by the NUS itself. While taking some pains to work within or around the law, notably with respect to attempts at portraying sympathetic action as primary industrial action, the NUS more often than not tried to directly challenge the law. Two key instances of such blatant confrontation were the illegal ferry sector strike of late April and early May and the continued mass picketing at P&O (Dover) throughout the summer of 1988. Though initially proving moderately successfully, these actions appeared to do more harm than good in the long run.

In an earlier context, however, the militant tactics of the NUS likely would have, and many times had, succeeded. But by the late 1980s the legal environment gradually constructed by successive Thatcher governments had drastically curtailed the options open to unions against employers willing to resort to the courts (Marsh and Ryan, 1989: 240). Particularly devastating to organized labor's conduct of industrial action was "the potency of the combination of the restriction of secondary action by section 17 of the 1980 Act, with the exposure of unions to suit by section 15 of the Employment Act 1982" (Auerbach, 1988: 228). This legal restraint on secondary action is what exposed the NUS to High Court fines and the initial sequestration of union assets. Yet, such secondary action was frequently resorted to for two reasons. First, P&O on paper had created numerous legally distinct subsidiaries, much like News International had done in the Wapping dispute, which made it exceedingly difficulty to keep any union actions within the technical definition of a "primary dispute" (Auerbach, 1988: 228). Second, the NUS had tried repeatedly to legally expand the dispute to other companies (e. g. Sealink) or to an industry wide level (e. g. the national ballot), but was always incapable of doing so.

Overall, the conduct and outcome of the NUS-P&O strike closely followed the broad script that the Thatcher administration had in mind

when it began formulating its collective labor law project nearly a decade earlier. Such an assertion, however, is not meant to imply that the new collective labor law framework was completely envisioned by state actors at the time. Indeed, unintended effects of the new legislation, specifically with regard to the tactical significance of ballots for unions, were starting to manifest themselves by the latter part of the 1980s.[183] Nor do I mean to imply that the new labor laws would have played similar roles in other industrial conflicts with different, or for that matter the same, employers, unions and circumstances.[184] Nevertheless, I argue that the seafarers' dispute can in many respects be viewed as an exemplar case of what the Thatcher administration had hoped to accomplish with its legislative restructuring of British industrial relations.

[183] These will be addressed in more detail in Chapter Eight.

[184] My accounts provided in the two previous case studies hopefully demonstrate this point.