

CHAPTER SIX:  
STRIKES AND THE REAGAN LABOR LAW PROJECT-  
THREE CASE STUDIES

Introduction

In this chapter I examine three union strikes that occurred in the United States during the latter part of the 1980s. I specifically assess the degree to which labor law policies and practices of the Reagan administration influenced the outcomes of these industrial conflicts. As I discussed in Chapter Three, the strikes selected for analysis are: the 1986-87 dispute between the United Steel Workers of America (USWA) and the USX Corporation (formerly United States Steel); the 1987 strike between the United Food and Commercial Workers (UFCW) and John Morrell & Co.; and the 1989-90 conflict between the United Mine Workers

of America (UMWA) and the Pittston Coal Group.<sup>185</sup> As with the previous chapter, I will present a chronological overview of each dispute, followed by a more detailed analysis of the role of collective labor law. The concluding discussion sections for each dispute serve to preview Chapter Seven, which places both the British and American cases in a broader comparative context.

### The 1986-87 Steel Strike/Lockout: A Battle Among the Ruins

#### Overview

As the United States steel industry slid down the slippery slope of industrial decline during the 1980s, the adversarialism that had long marked labor-management relations in this economic sector intensified. Each side held the other responsible for the industry's diminishing global stature and its domestic misfortunes, with the United Steel Workers of

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<sup>185</sup> While this latter strike technically took place during the early years of the Bush administration, I contend that the Reagan administration's labor law regime was effectively still in operation at the time of this dispute. Indeed, the nascent government of the former vice president had both little time, and little inclination, to implement any marked changes in collective labor law policy in its first year in power.

America (USWA) blaming the investment and technological strategies of capital, and steel companies blaming the restrictive work practices and high costs of organized labor (e. g. Prechel, 1990; Scherrer, 1995). By mid-decade, the long-standing pattern of centralized collective bargaining, anchored on one side by the USWA and by the largest integrated steel companies on the other, began to break apart.<sup>186</sup> In particular, many of the major employers sought to dissociate themselves from the United States Steel Corporation (USS). The oldest and largest of the major steel companies, USS had recently become exceptionally confrontational with the union. Overall, as the existing industry-wide agreement neared expiration in 1986, it appeared that USS's "tactics vis-à-vis the USWA presaged a strike that the other...steelmakers wanted no part of" (Bensman, 1990b: 552).<sup>187</sup>

Even though the biggest steel companies were now bargaining independently of one another, each still demanded concessions from the union, just as they had done in concert during the 1983 bargaining

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<sup>186</sup> The first Basic Steel Agreement was reached in 1959, with later industry-wide agreements being reached periodically until 1983 (e. g. Arthur and Smith, 1994: 144; Nyden, 1984: 48-50).

<sup>187</sup> This chronology of the 1986-87 national steel dispute draws primarily on accounts provided by Bensman (1990b), Hoerr (1988), Scherrer (1995), and the Daily Labor Report. Other sources include a variety of regional newspaper reports from strike locales across the country.

round. For its part, the union did not question the need for concessions. Rather, the USWA focused its attentions primarily on protecting jobs as it negotiated with one company at a time. Indeed, this one-on-one strategy may have proved somewhat advantageous to both sides involved.<sup>188</sup> Gaining access to financial records and assessing the specific needs of each individual company, union leaders offered what they considered to be fair wage concessions in exchange for profit-sharing arrangements and protections against sub-contracting (Bensman, 1990b: 552). Thus, nearly bankrupt steel firms such as Wheeling-Pittsburgh and LTV obtained fairly marked savings of well over three dollars an hour in labor costs, while better off companies such as Inland, National, and Bethlehem Steel received concessions ranging from forty cents to \$2.34 an hour (Scherrer, 1995: 152).

Negotiations between USS and the USWA did not go so smoothly however. Formal bargaining began on June 16, 1986, six weeks before the existing contract was set to expire. USS refused to follow the pattern set earlier by the other large steel companies, and to many observers it appeared the company was hoping to "humble" the USWA (Moody, 1988: 103). In particular, USS management would not provide union

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<sup>188</sup> For an argument that the union hurt, more than helped, itself with the one-on-one bargaining strategy, see Moody (1988: 177-178).

leaders with complete access to financial records or agree to curtail subcontracting practices. Furthermore, though one of the healthiest firms in the industry, exemplified in part by the company's recent six billion dollar acquisition of Marathon Oil, USS demanded large wage concessions similar to those received by the nearly bankrupt LTV. And finally, related to its increased diversification of assets, in both a practical and a symbolic move USS changed its name on July 8 to the more "sinister-sounding" USX Corporation (Moody, 1988: 103; also see Hoerr, 1988: 517-521 and Scherrer, 1995: 152-154).<sup>189</sup>

In mid-July, USWA leaders balloted union members employed by USX on the possibility of a strike against the company. The rank and file was overwhelmingly in favor of a walkout, with over 99% supporting industrial action (Daily Labor Report, 25 July 1986). Negotiations between the two sides broke off on July 29, 1986, just two days before the existing contract was to expire. The industry began to brace itself for its largest industrial action since the national steel strike of 1959 (Daily Labor Report, 1 August 1986).

As the July 31 expiration date approached, the USWA offered to continue working under the terms of the 1983-86 Basic Steel Agreement

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<sup>189</sup> USS will thus hereafter be referred to as "USX".

until a new contract could be reached. USX refused the offer, with company negotiator J. Bruce Johnston (quoted in the Daily Labor Report, 1 August 1986) noting that costly plant shutdowns had nearly been completed and that the union was simply trying "to convert the coming strike...into a legal fiction of lockout." With no further negotiations taking place, a work stoppage began shortly after midnight on 1 August 1986 that involved twenty-five USX steel plants in seven different states and approximately 22,000 USWA members. The company proclaimed the stoppage a strike. The union declared it a lockout (Daily Labor Report, 4 August 1986).

For the next month, no negotiations between the two parties were to take place. During this period the union focused its efforts along two other fronts. One was in the various state-level courts where USWA members had filed for unemployment compensation. This is one point that the precise legal definition of the dispute becomes most relevant, for in most states such compensation is not available to striking workers, but it is available to those who are locked out by an employer. The USWA had hoped the unemployment benefits would supplement payments from a relatively weak strike fund, as well as enable union members to hold out longer if the dispute dragged on (Slaughter, 1986:

15). Overall, this strategy was quite successful, with six of the seven states affected by the dispute eventually awarding unemployment compensation to USWA members employed by USX (Hoerr, 1988: 532-535).<sup>190</sup>

A second union strategy was aimed both at preventing the production of steel by nonunion labor and at halting the movement of existing USX inventory. To this end, the USWA leadership was quite willing and able to utilize mass picketing by striking workers and others sympathetic to the union's cause. As USWA president Lynn Williams (quoted in the Daily Labor Report, 26 August 1986) asserted to reporters three weeks into the strike, he did not feel USX would try to operate using replacement workers because the company understands:

...the strength of our members, the determination of our members...[it knows] the spirit of these steel communities...[USX] would not be so foolish as to try to operate....we will resist any such attempts [to open] in any way available to us.<sup>191</sup>

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<sup>190</sup> This union strategy and the various legal proceedings surrounding it will be discussed more fully in the following section.

<sup>191</sup> Williams' claims regarding the solidarity of steel communities during the strike was by no means empty rhetoric. As Hoerr (1988: 536) points out for example: "The city of Gary [Indiana] even passed an ordinance forbidding scabbing. While it is of doubtful constitutionality, it demonstrated that some of the mill towns still lived by the trade union ethic."

Overall, Williams' remarks about the company's reluctance to test the strikers' resolve appeared to hold true, at least through the first seven weeks of the dispute. This would soon change however.

By late September, formal negotiations had not been renewed between USX and the USWA. At first glance, the dispute had settled into a public relations (and legal) battle over whether the conflict was a 'union strike' or an 'employer lockout'. Nevertheless, the company was simultaneously intensifying its "efforts to defeat the strike by continuing to supply the demand for steel" (Hoerr, 1988: 536). This was not to be accomplished through the hiring of replacement workers to produce more steel, but primarily through the shipping of sizable steel inventories accumulated prior to the dispute. While relatively small quantities of inventoried steel had been moved without incident from USX plants in Gary, Indiana and Baytown, Texas throughout the strike (Plain Dealer [Cleveland, Ohio], 24 September 1986), the company accelerated and expanded this practice in the fall of 1986.

USX's attempts to ship steel in late September and early October met with strong resistance from strikers at several locations throughout the country. Plants at Lorain, Ohio and Birmingham, Alabama were two of the first to witness mass picketing by USWA members and their



supporters (Journal [Lorain, Ohio], 23 September 1986; Birmingham News, 23 September 1986). Aiming to prevent steel shipments from being loaded by management and transported by train to other USX locations or company customers, several hundred rank-and-file steelworkers blocked the roads and railroad tracks leading to and from each plant. Similar scenes were soon to occur during the following weeks at two plants in Pennsylvania and one in Utah.

For the most part, the picket-line militancy of the steel union initially proved to be quite effective. At each of the plants where the strikers had made a concerted effort to stop the movement of steel, no product had been moved and USX managerial staff complained about being prevented from entering and exiting their work sites. However, soon after each of these collective actions began, the company turned to the relevant local and state courts at each location and received court injunctions that limited the number of USWA pickets at USX sites and prohibited the blocking of plant entrances. In most cases, the end result was that the company eventually shipped the steel it desired. Nevertheless, not all of the legal interventions at this juncture were

necessarily unqualified successes for the company, and one decision in particular could also be seen as being a partial victory for the union.<sup>192</sup>

While the confrontation between the company and the union had begun to heat up on its own, the entrance of a third party to the group dynamic in early October served to add even more fuel to the fire. Corporate raider Carl C. Icahn made public on October 6, 1986 his intentions to takeover USX (Hoerr, 1988: 540). Icahn had been secretly accumulating shares in the company since early summer, and had by fall reached a position where he could lay his cards on the table. He gave USX managers approximately two weeks to turn the situation into what could be considered a “friendly” takeover, but Icahn made it clear that he would resort to more “hostile” means if need be (Hoerr, 1988: 540-541).

Part of Icahn’s strategy entailed attempting to “enlist the aid of the [s]teelworkers in his fight with [USX Chairman David] Roderick” (Hoerr, 1988: 542). Union president Williams and others met with Icahn on October 16, 1986, at which time the latter indicated “that he would be willing to give profit-sharing and stock ownership in return for wage

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<sup>192</sup> Specifically, a court decision issued with respect to the mass picketing at the USX plant in Lorain, Ohio, while limiting the number of pickets, also placed restrictions on the steel that could be shipped from that site. This will be addressed in greater detail in the next section.

concessions” (Hoerr, 1988: 543). Union leaders questioned Icahn about his future plans for USX, and they floated the possibility of a USWA buyout of the company’s steel operation. Though USWA officials had come to the conclusion that Icahn had little understanding of the steel industry and was interested in USX merely as a source for short-term cash flow, they agreed to meet again with him the following week (Hoerr, 1988: 543).

Icahn’s machinations served to further intensify the pressure on company chairman Roderick to resolve the dispute with the USWA. While some inventoried steel was being moved from company sites, it was not nearly enough to offset the large loss in profits that had resulted from the production stoppage nearly three months earlier. Furthermore, other major U. S. steel companies, having already negotiated long-term labor contracts with the union earlier in the year, were in excellent positions to start taking advantage of the market void left by the nation’s largest, yet idled, steel producer. Though a resolution to the conflict would by no means guarantee that USX management could withstand a hostile takeover bid by Icahn, a settlement nonetheless appeared to be a necessary precondition for such a scenario (Bensman, 1990b: 553).

Before Williams could meet with Icahn again, Roderick called the union president and asked if they could set up their own meeting. As noted by Hoerr (1988: 543), the “timing left little doubt that Roderick had found out about [Williams’] talk with Icahn and had decided to intervene before the USW made a deal.” Williams agreed, and the two met informally face-to-face in mid-October. Shortly thereafter, on October 21, 1986, formal bargaining resumed between the USWA and USX. It was the first negotiation between the two sides since the dispute began at midnight on July 31 (Daily Labor Report, 22 October 1986).

As November progressed, the hostile takeover threat against the company began to dissipate. An insider trading scandal on Wall Street had “blunted Icahn’s campaign against USX management” (Bensman, 1990b: 553), and it became apparent the USWA was not interested in forming an alliance with Icahn against Roderick and USX. While publicly the union took the neutral position of neither endorsing nor opposing the takeover bid (Daily Labor Report, 22 October 1986), USWA officials privately had come to the decision that in the long run “a compromise settlement with USX [was] preferable” to a short-term bargain with a corporate raider who had no loyalty to the steel industry (Bensman, 1990b: 553). Importantly as well, an alliance with Icahn would only

serve to transform what until now had been a “cold war” between the union and the company to a “hot” one, meaning that USX would turn likely to replacement workers and try to break the union. In effect, the dispute would become a zero-sum conflict, with no side “stopping short of total victory or total defeat” (Hoerr, 1988: 544).

Neither the USWA nor USX was willing to escalate things beyond the ‘cold war’ level. Still, the second round of negotiations reached an impasse and was recessed on November 21, 1986. The two sides remained far apart on the same issues that proved to be key stumbling blocks during the first round of negotiations. Specifically, the company wanted deeper wage concessions than the union was willing to give. It also wanted to eliminate approximately 1500 jobs. For its part, the union wanted more stringent limitations on subcontracting practices, something which USX strongly opposed (Daily Labor Report, 24 November 1986).

Shortly after the second round of bargaining ceased, USX announced that it would once again begin shipping steel from a variety of struck locations.<sup>193</sup> This action prompted mass picketing by USWA

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<sup>193</sup> As a show of good faith, USX had halted all shipments of inventoried steel from its plants during the month-long negotiations (Plain Dealer [Cleveland, Ohio], 26 November 1986).

members at company sites from Pennsylvania to Utah throughout late November and early December. One confrontation, in Lorain, Ohio, turned violent as close to four hundred picketing steelworkers clashed with over one hundred fifty police officers on the railroad tracks outside of a USX plant. Fourteen union members were arrested and several were treated at local hospitals for injuries (Journal [Lorain, Ohio], 27 November 1986). In the days following this incident, union leaders leveled charges of police brutality and called on local politicians to formally investigate (Journal [Lorain, Ohio], 28 November 1986). Police officials responded that they simply were enforcing an earlier court order that limited the number of pickets and prohibited the blocking of plant entrances (Journal [Lorain, Ohio], 27 November 1986). To prevent further violence, a local judge declared a “cooling off” period that prevented USX from shipping steel from its Lorain plant until 31 December 1986 (Plain Dealer [Cleveland, Ohio], 12 December 1986).<sup>194</sup>

In mid-December, a third round of negotiations began between the union and the company, this time with the involvement of an independent mediator. USWA president Williams had suggested the appointment of a mediator back in November when the second round of

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<sup>194</sup> I will discuss the events at the Lorain, Ohio USX plant in greater detail in the following section.

negotiations had reached a standstill (Daily Labor Report, 19 December 1986). USX rejected the offer at that time but now was willing to give it a try. Chairmen Roderick recommended the use of Sylvester Garrett as mediator, who had “served as the chief umpire in arbitration cases between U. S. Steel and the USW[A] from 1951 to 1979” (Hoerr, 1988: 552). Union leaders agreed to Garrett, and talks began again on December 19, 1986.

Throughout the next several weeks, Garrett conducted marathon bargaining sessions in an effort to resolve the dispute. His task was all the easier because USX and the USWA were by then each highly motivated to reach some sort of settlement. The conflict already had surpassed the 116-day strike of 1959, previously the longest work stoppage in steel industry history. With its steel plants closed for almost five months, USX profits and market share had suffered significantly. And the frustrations of the rank and file were clearly growing, as evidenced by the mass picketing and violent confrontations in Lorain, Ohio and elsewhere.

Perhaps more importantly, as the New Year dawned the dispute was about to become even more costly for both sides involved. For the company, its second financial quarter was rapidly approaching, which

was typically the period during which major auto producers placed the bulk of their annual orders. Indeed, the second quarter was “traditionally the steel industry’s busiest three months” (New York Times, 17 January 1987). For the union, the twenty-six week limit for unemployment compensation benefits would be reached at the end of January 1987. The loss of these benefits would be particularly difficult for the union rank and file, “forcing the workers to get along [solely] on the \$60 a week USW [strike] stipend” (Hoerr, 1988: 554).

The coupling of these financial incentives with the soothing effects of third-party mediation facilitated reaching a tentative agreement in mid-January of 1987. The USWA national leadership unanimously approved the pact, with union local presidents voting acceptance by a large margin soon thereafter. Ballots were then mailed to over 27,000 USWA rank and file members who were eligible to vote on the contract.<sup>195</sup> Completed ballots were counted on January 31, 1987, with the new agreement being ratified by a four-to-one margin. The USX-USWA dispute thus ended exactly six months after it started (Daily Labor Report, 21 January 1987 and 3 February 1987).

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<sup>195</sup> Along with the 22,000 or so union steelworkers who had been working when the shutdown began on 1 August 1986, thousands of other USWA members who had been laid off from USX for two years or less were also eligible to vote (Daily Labor Report, 21 January 1987).



Not surprisingly, both the USWA and USX claimed the contract as a “victory” for their respective sides (New York Times, 18 January 1987; also see Hoerr, 1988: 556). To some extent, each could legitimately make such an assertion, for any concessions either had made were largely done in exchange for gains in other areas. Arthur and Smith (1994: 162) summarized the quid pro quo nature of the final agreement as follows:

The company received some of the wage relief it was demanding and an agreement to eliminate more than 1,300 union jobs. The union got some of the contracting-out restrictions it was looking for as well as improved early retirement benefits.

Overall, then, the agreement signed at the end of January 1987 was quite arguably a “compromise settlement” (Arthur and Smith, 1994: 162).

Of course, not everyone, particularly from the side of labor, was happy with the new contract. Local union presidents who had voted against ratification felt that the loss of 1300 jobs and the fairly steep wage concessions were by no means a reasonable trade for the subcontracting restrictions and enhanced retirement benefits gained in return. Indeed, labor costs for USX would now be below that of Bethlehem Steel, even though the former was “the healthiest [steel] producer in the nation” (Daily Labor Report, 3 February 1987). For

many, then, the dispute's outcome was far from a 'victory' for rank-and-file steelworkers.

Any debate about whom ultimately "won" or "lost" the six month conflict was put to rest by the company on February 4, 1987, just days after the ratification of the new agreement. At a company-called press conference, chairman Roderick announced that four USX plants, two located in Pennsylvania and one each in Texas and Utah, had been placed on what was technically labeled as "indefinite idled status" (Hoerr, 1988: 561; also see Bensman, 1990b: 553). In effect, USX had considered the plants officially closed as of December 31, 1986 and had no intentions of reopening them, or of rehiring the approximately 3,700 USWA members that they employed. Even more significantly, the closing decision was formally approved in late January 1987, during the same period that the union was voting on the terms of the new contract. As Hoerr (1988: 560; emphasis in original) summarizes:

On February 4, 1987, thirty-seven hundred USX employees learned a painful truth...their jobs had ceased to exist at midnight, December 31, 1986, when they were picketing to save those jobs. Not only that. Their jobs had not existed...in the very week that they voted to save their jobs by ratifying the new contract. Only after the ratification ballots had been counted and the lockout/strike declared over did these workers learn that USX had decided to close their plants.

Of course, had the rank and file, particularly those affected directly, known the company plans prior to the ballot, they would have likely voted quite differently (Miles and Bernstein, 1987: 36). Ultimately, the company withheld its plans so that it could strike “the final blow in the steel labor war of 1986-87” (Hoerr, 1988: 560).

### The Role of Law

Both sides in the 1986-87 steel dispute tried to make the use of law an integral component of their overall industrial conflict strategies. Interestingly, only the union could be deemed to have been successful in achieving its desired legal outcomes. Legal efforts by the company proved much more ambiguous in terms of their effects, sometimes aiding the USX cause and sometimes unintentionally hampering it. On balance, however, the role of law in the overall outcome of the dispute would have to be characterized as negligible.

Perhaps the most pivotal legal maneuvering of the 1986-87 conflict occurred before the dispute officially got underway. While the rank and file had overwhelmingly authorized a strike in mid-July 1986, union

leaders had USWA lawyers draft a letter that stated its members employed by USX would "unconditionally...continue working after July 31, 1986, under the terms and conditions of the 1983-86 agreement" (quoted in Hoerr, 1988: 527). The letter also indicated that should the USWA eventually decide to halt production, "it would give the company forty-eight hours' notice and use that period to help arrange an orderly and safe shutdown" (Hoerr, 1988: 527). USX received the offer the morning of July 31, 1986, the same day the existing contract was set to expire and with management already in the middle of the lengthy process of shutting down its various steel plants.

The company had no choice but to reject the USWA's proposal. Though accepting the offer would allow USX to keep producing steel while negotiations continued, the union would be at an advantage in that it could walk out at any time with two days notice. Maintaining operations under the old contract was also undesirable because the company's primary competitors had already signed concessionary agreements and would thus be producing steel at lower costs. The most logical course of action was for USX to continue shutting down its plants as planned in anticipation of a work stoppage at midnight on July 31, 1986.

When steel production finally did cease at twenty-five USX plants in seven states, a fierce public relations war began between the company and the union. USX officials, citing the mid-July strike vote, portrayed it as a union walkout, while union leaders, pointing to their offer to continue working under the old contract, painted it as an employer lockout. Both sides clearly had convincing arguments for their contrary claims, and observers were divided, if not somewhat confused at times, as to what to label the stoppage. Indeed, at the level of public opinion, it might be best to characterize "the USX shutdown as a lockout/strike", since it was "a mutual rejection" by both union and company (Hoerr, 1988: 535).

Of course, of key concern for the USWA was how the courts would legally define the dispute. Aside from the public relations advantage of having the stoppage labeled a 'lockout' rather than a 'strike', the rank and file had more material interests at stake. Part of the union strategy was to have idled USX workers apply for unemployment compensation (UC). Union leaders and lawyers were hopeful that at least some of the 22,000 affected USX workers could get UC benefits, and those who did not could rely on support from the union strike fund in case the dispute dragged on (Hoerr, 1988: 526-527).

UC eligibility would have to be determined in the courts on a state-by-state basis, since no federal UC system exists. As Ephron (1986: 102) notes:

Each state has the power to regulate its own unemployment benefit system. Congress has neither forbidden nor dictated that states provide unemployment benefits for strikers or any other workers.

While strikers are typically ineligible for UC in most locations, in many states "workers who are locked out as a result of an industrial dispute are entitled to receive benefits" (Ephron, 1986: 102).

USWA leaders and lawyers anticipated that the union's offer to work under the terms of the old contract would likely transform the USX stoppage into an employer lockout in Pennsylvania, Ohio and Utah, "because of court interpretations of law in those states" (Hoerr, 1988: 526). The situation in Alabama, Illinois, Indiana, and Texas was much more questionable however. The decision in Indiana in particular was critical since that is "where USX employed the largest number of steelworkers" (Hoerr, 1988: 526). In any event, the union reasoned that even receiving UC benefits in a few of the seven states would only help maintain rank-and-file resolve in the dispute with USX.

The first UC ruling came on August 21, 1986 from the Pennsylvania Department of Labor and Industry, which found that the USX stoppage

was indeed an employer lockout. The ruling was based on a 1960 Pennsylvania Supreme Court decision which held, as union leaders and lawyers were aware, that "employees are only eligible for unemployment benefits if they have offered to continue working under the terms of the old agreement but the employer rejects the offer" (Daily Labor Report, 25 August 1986). The decision not only meant an increase in UC insurance rates for USX, but more importantly, approximately 6200 USWA members in Pennsylvania could now receive UC benefits of up to \$220 a week for as long as twenty-six weeks. The company appealed the decision, but the case would not be heard until mid-October. In the meantime, USX tried to get an injunction from a federal district court that would halt the payment of benefits in Pennsylvania until the appeal was heard. The injunction was not granted, with U. S. Middle District Court Judge William Caldwell noting that "greater harm would be done to the workers if they lost their benefits than to the company and other employers in the state if the benefits ultimately are proven to have been granted improperly" (Pittsburgh Post Gazette, 2 October 1986). Eventually, the original decision that the stoppage was a lockout rather than a strike was upheld.

The same scenario was soon repeated in Alabama, Indiana, Ohio and Texas, with the stoppage being legally defined in those states as an employer lockout, thus making idled steelworkers eligible for UC benefits. In Utah, the dispute was initially deemed to be a strike, but upon appeal that decision was reversed (Hoerr, 1988: 533). Only in Illinois were USWA members denied UC benefits. In that state, workers involved in any industrial dispute, whether a strike or a lockout, are not eligible for UC. Rank-and-file steelworkers in Illinois thus "had to last out the six-month dispute on the union's \$60 a week strike benefit" (Hoerr, 1988: 534).

Overall, then, the union's legal maneuvering with respect to getting the dispute defined as a 'lockout' rather than a 'strike' worked quite well. As Hoerr (1988: 532) summarizes the union's strategy:

An argument can be made that strikes are no longer won on the picket line but in the courts and government agencies that oversee labor relations. The USW's strike-to-lockout gambit proved highly successful, even more so than the union had expected. Indeed, the political and tactical moves involved in this episode added up to one of the more fascinating aspects of the entire work stoppage.

UC benefits clearly made weathering the dispute easier for the majority of the 22,000 USX workers, and there never was a measurable back-to-work movement of union members as the dispute dragged on. Of course, while the provision of UC benefits may have helped maintain worker



solidarity during the first six months of the dispute, the impending suspension of benefits after twenty-six weeks may have helped bring the conflict to an end by motivating the union to reach some type of agreement.

In contrast to the USWA's relatively more proactive UC activities, the company's legal tactics were primarily reactive in character. In fact, USX's defensive legal posture was to no small degree the anticipated product of union pressure. Specifically, once management began to move steel inventories in mid-September of 1986, the "union strategy was to hold up shipments, force USX to go to court for restraining orders, and do everything necessary to cause problems for the company" (Hoerr, 1988: 536). As one USWA official summarized, "[w]e fought them every step of the way...It was very costly and time-consuming for the company to go through the court procedures" (quoted in Hoerr, 1988: 536).

To block the shipment of steel, union members engaged in mass picketing, with numbers ranging from several dozen to five hundred at various USX locations around the country. In most situations, the company, the courts and strikers followed a similar script. First, USX would make public its intention to ship inventoried steel from a particular site to other company sites or customers. USWA members

would respond with mass pickets to block roads or rail lines. USX would then turn to local courts to obtain injunctions that limited the number of pickets outside its property. The courts would issue injunctions within a few days, with which the union would comply almost immediately. The steel shipments would then be shipped without further interference. Overall, this ritual was repeated at several USX plants in Alabama, Pennsylvania and Utah from September through December 1986 (e. g. Birmingham News, 23 September 1986; Bucks County Courier Times [Levittown, Pennsylvania], 3 October 1986; Daily Herald [Provo, Utah], 2 December 1986; Pittsburgh Post Gazette, 17 October 1986; and Pittsburgh Press, 23 December 1986).<sup>196</sup>

However, the situation in Lorain, Ohio diverged significantly from other locations involved in the 1986-87 steel dispute. Local 1104 in Lorain exhibited a high degree of militancy, and the rank and file took special umbrage at USX's efforts to start moving inventoried steel. As one USWA member elaborated:

It's stupid to jeopardize our lives for them to make a few bucks and prove a point. That's all they are doing--proving a point. The steel's been sitting here for two years and all of a sudden the customers want it...They started it and we are

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<sup>196</sup> USX was able to ship steel from plants in Indiana and Texas throughout the dispute without union interference (Plain Dealer [Cleveland, Ohio, 24 September 1986).

going to have to finish it (quoted in the Journal [Lorain, Ohio], 23 September 1986).

Beginning on September 21, 1986 the strikers demonstrated their resolve as large numbers of them "blockaded the [USX] plant's main entrance after management crews started loading railroad cars with steel pipe" (Plain Dealer [Cleveland, Ohio], 24 September 1986). Approximately fifty steelworkers were arrested during the next three days, with management neither able to leave nor enter the plant (Plain Dealer [Cleveland, Ohio], 24 September 1986).

USX had immediately applied for an injunction and "requested court action to limit the pickets, allow free access to the plant and allow shipments of steel" (Journal [Lorain, Ohio], 25 September 1986). On September 24, Lorain County Common Pleas Court Judge Adrian Betleski issued a decision that met two of the company's three demands. Specifically, he limited the number of pickets at each gate to five and ordered that management personnel be allowed right of entry to the plant. Importantly, however, he also ruled that the company could not ship any steel from the plant, though those customers who had purchased USX steel prior to August 1, 1986 could come to Lorain and pick it up with their own employees. Union leaders and members

understandably were very satisfied with the decision (Journal [Lorain, Ohio], 25 September 1986).

This first injunction was only temporary, and Judge Betleski was to decide on a permanent order in mid-October. Interestingly, however, prior to the initial Betleski ruling, union attorneys had filed a motion of prejudice against the judge because his son worked for a railroad company that operated within the Lorain plant. Betleski's son had been laid off since the dispute began. The Ohio Supreme Court removed Judge Betleski from the case while it was deciding the matter. Consequently, the hearing on the permanent injunction would thus be presided over by a different judge (Chronicle-Telegram [Elyria, Ohio], 16 October 1986; Journal [Lorain, Ohio], 25 September 1986).

Judge Frank J. Gorman of Cuyahoga County Common Pleas Court issued his ruling on October 15, 1986. He extended indefinitely the provisions of Betleski's earlier order that pertained to the number of pickets and managerial access to the Lorain plant. With respect to the shipment of steel, however, Judge Gorman departed from his predecessor. Specifically, he "ruled that USX...can ship steel that sits in its idled Lorain Works on the condition it first offers to use union steelworkers--under their old contract--to prepare and load the products"

(Chronicle-Telegram [Elyria, Ohio], 16 October 1986). He gave the union until October 24 to respond to the offer. If the union declined, the company would then be free to ship steel using non-union employees (Plain Dealer [Cleveland, Ohio], 17 October 1986).

On the night of October 23, 1986 members of Local 1104 voted not "to cross their own picket lines and load steel" (Akron Beacon Journal, 28 October 1986). The company was thus legally free to ship steel by any means possible, though Local President Al Pena indicated the union would likely "do what we have to do" to stop any shipments (quoted in Journal [Lorain, Ohio], 24 October 1986). Nevertheless, formal negotiations between USX and the USWA had recently begun in Pittsburgh, the first since the dispute began, and pressure from the national level led to a temporary agreement between Local 1104 and USX management in Lorain. The union would limit pickets to five at each gate and allow management and non-union personnel complete right of entry, while the company would refrain from shipping steel from the Lorain plant. Local union leaders praised the understanding, warning "that there could have been confrontation or violence without the agreement" (Akron Beacon Journal, 28 October 1986).

Once formal negotiations broke off at the national-level on November 21, 1986, however, USX pulled out of the local agreement. A management spokesman in Pittsburgh announced on November 25, 1986 that USX would soon begin shipping steel from the Lorain plant. The spokesman specifically referred to Judge Gorman's October 15 injunction, noting that it was "very clear that we have the right to load and ship" steel that was produced and purchased prior to August 1, 1986 (quoted in Plain Dealer [Cleveland, Ohio], 26 November 1986). As soon as news of USX's plans reached Ohio, over 300 strikers erected a barricade out of an overturned automobile on the railroad tracks leaving the Lorain Works (Chronicle-Telegram [Elyria, Ohio], 26 November 1986).

On November 26, the ensuing "Lorain steel battle [got] ugly" (Journal [Lorain, Ohio], 27 November 1986). Approximately 170 police and over 200 strikers violently clashed as law enforcement officials tried to forcibly remove union members from the railroad tracks outside the plant. Several injuries were sustained on both sides, and fourteen strikers were arrested. Two hours after the melee, police ensured that the tracks were clear as a trainload of USX steel left the Lorain Works (Journal [Lorain, Ohio], 27 November 1986).

Overall, while of symbolic significance to the company, the shipment of inventoried steel out of the Lorain plant could be said to have had little, if any, impact on the course and outcome of the 1986-87 steel dispute. In that regard, the local injunctions are of interest only because they demonstrate how USX adopted a primarily reactive role with respect to legal strategy, and perhaps because of this judicial outcomes were more unpredictable and more ambiguous for company interests. Of course, the USWA's more proactive and generally more successful legal strategy had little overall impact as well.

### Discussion

Based on my understanding of the events, I would have to conclude that the collective labor law project of the Reagan administration, as it was defined in Chapter Four, had no measurable impact on the course and outcome of the 1986-87 conflict. The NLRB issued no pivotal decisions during the dispute influencing the company's or the union's conduct, and the Dotson Board's strike-related case reversals were not relevant to either the UC benefit decisions or local

injunctions prohibiting mass picketing. Not even the government's handling of the PATCO strike, an episode that provided an exemplar for many companies during the 1980s, seemed to have any bearing on the 1986-87 lockout/strike, since USX never seriously threatened or attempted to use replacement workers.

Indeed, the Reagan administration could be said to have effectively ignored the steel conflict of 1986-87, an attitude that may have stemmed from the government's broader neo-liberal state project. Specifically, though the American steel industry had been an integral concern of national economic policy since World War Two, the Reagan administration was content to relinquish this once pivotal sector to the vagaries of free markets (e. g. Stein, 1998: 273-307). The end result of this laissez-faire policy was a declining and fragmenting industry that continually failed to modernize and which eventually lost its stature in the global economy. As for USX and the USWA, they were two aging warriors left alone to wage a battle among the ruins.



## Controlling Sympathetic Action: The 1987 Morrell Strike

### Overview

The U. S. meatpacking industry was the site of numerous labor-management skirmishes throughout the 1980s. Indeed, the 1985-86 strike by Local P-9 of the United Food and Commercial Workers (UFCW) against the Hormel Company in Austin, Minnesota was arguably "one of the most bitter and controversial labor conflicts" of the entire decade (Bensman, 1990a: 248).<sup>197</sup> Though receiving much less national attention, the 1987 strike by Local 304A of the UFCW against John Morrell and Company ("Morrell") was no less bitter. More importantly, many of the issues marking other disputes in the meatpacking industry during the 1980s were in evidence in this 1987 conflict as well.

On May 1, 1987 approximately 2500 UFCW workers at the Morrell plant in Sioux Falls, South Dakota walked off the job.<sup>198</sup> This work

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<sup>197</sup> I did consider selecting the Hormel strike as one of the cases for the present investigation. However, Local P-9 in Austin did not have the support of the UFCW international union, which eventually placed the local under trusteeship. Ultimately, I felt this internal union strife proved too confounding for the purposes of the present study.

<sup>198</sup> This chronology of strike events draws primarily on accounts from the Daily Labor Report, local newspapers (in particular, the Argus Leader out of Sioux Falls), as well as descriptive material provided in relevant court cases.

stoppage by members of Local 304A was a sympathy strike spurred by the presence of numerous pickets from nearby UFCW Local 1142.

Members of Local 1142, who had traveled approximately ninety miles from their own plant in Sioux City, Iowa, had been on strike against the company since March 10, 1987. They came to the plant in Sioux Falls, Morrell's largest facility, "in the hopes of forcing the company to negotiate" (Daily Labor Report, 11 May 1987). Morrell was demanding steep wage cuts, something that the union had agreed to three years earlier but was not willing to do again. While approximately eight hundred Local 1142 members had been working without a contract since January 31, 1987, they voted to go out on strike in early March when the company began to fire union workers (Daily Labor Report, 11 May 1987).

The roughly 2500 Local 304A members in Sioux Falls had engaged in similar sympathy strikes twice before in recent months to honor the pickets of other UFCW locals.<sup>199</sup> Union leaders in Sioux Falls indicated to the company that once the pickets from Sioux City left South Dakota, Local 304A members would return to work immediately. Morrell responded by hiring replacement workers, something they had already

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<sup>199</sup> As I will discuss in greater detail in the next section, Morrell would eventually file a single lawsuit against Local 304A that covered all three sympathy strikes.

done at the Iowa plant and had threatened to do in South Dakota during the previous two sympathy strikes. Nevertheless, those two earlier conflicts had lasted only one day each, so the company's threats never came to fruition (Argus Leader, 3 May 1987).

The use of replacement workers sparked violence on the Sioux Falls picket line on May 4, 1987. Approximately 400 strikers had gathered around the plant's main gate and yelled obscenities and hurled rocks at the replacements and their vehicles. The strikers also clashed with police clad in riot gear who tried to break up the melee. Though not officially condoning the violence, Local 304A president Dennis Foster tried to justify the behavior of his rank and file. He noted: "This is the first time the Sioux Falls plant has been scabbed since 1935. It brings out our members' emotions" (Argus Leader, 6 May 1987).

The afternoon of May 4, South Dakota Circuit Judge R. D. Hurd issued injunctions against Locals 304A and 1142. The orders "prevented union workers from blocking comings and goings at the plant, obstructing the use of streets and sidewalks, having more than 25 people at the plant, threatening and intimidating others who have right to enter and leave the plant, and using violence against people entering and leaving the plant" (Argus Leader, 8 May 1987). These injunctions

initially had little effect, for mass picketing and the harassment of replacements took place again on May 5 and 6. Indeed, many of the replacement workers had decided to stay in the Sioux Falls plant rather than chance crossing the picket line again. Morrell ultimately provided cots for sleeping and allowed the replacements to spend their nights in the facility (Argus Leader, 6 May 1987).

On May 7 the company asked Judge Hurd to find Local 304A members in contempt of the court injunction against them. Hurd complied, finding the UFCW local in contempt and threatening a fine of \$25,000 dollars a day if the mass picketing and violence continued. He also threatened Local president Foster and another union leader personally with \$100-dollar-a-day fines. The impending sanctions apparently had the desired effect, for the numbers and hostilities on the picket line quickly subsided (Argus Leader, 8 May 1987).

Starting in mid-May and continuing throughout the summer months, the center of the conflict became more diffuse as most activity occurred further and further away from the picket line in Sioux Falls. To begin with, UFCW attentions returned to the negotiations between Local 1142 and Morrell back in Sioux City, Iowa. Resolution of the sympathy strike by Local 304A was contingent on reaching an agreement between

the company and the approximately 800 union members in Iowa. Nevertheless, very little progress was made on this front. The union and Morrell remained very far apart with respect to wage concessions. Negotiations in mid-May lasted little more than a day, and they broke down after four hours when they resumed again in mid-July of 1987 (Argus Leader, 1 May 1988).

Of course, another scenario could end the sympathy strike in Sioux Falls, and that involved the Sioux City pickets retreating back to Iowa before the latter had reached an agreement. However, this possibility appeared highly unlikely in the early months of the dispute. Leaders of the UFCW International had taken the position that Morrell had drawn a line in the sand when it hired replacements, first in Iowa and then at its largest facility in South Dakota. UFCW officials also anticipated that the company's demands for wage concessions would eventually be repeated at other plants as their collective bargaining agreements expired; thus, the national union wanted to take a stand as soon as possible. The UFCW International was, then, firmly behind the primary dispute as well as its spread to another Morrell facility. For their part, national union leaders orchestrated an economic boycott and corporate campaign

against the company (Argus Leader, 9 May 1987, 10 May 1987 and 3 August 1987).

The struggle between Morrell and the UFCW was also being waged along legal fronts during the summer of 1987. Though I will discuss this aspect of the dispute in greater detail in the next section, here I will briefly note two key lines of development. First, at the local level Judge Hurd extended indefinitely his injunction that limited the number of pickets at the South Dakota plant to twenty-five. The threat of \$25,000 per day fines for contempt also remained in effect against Local 304A (Argus Leader, 22 May 1987). Second, at the federal level, Morrell's lawyers had filed suit against the union, arguing that the sympathy strike was illegal and thus the company was entitled to millions in damages (Argus Leader, 9 June 1987). As I will later elaborate upon, this line of legal development would eventually have significant consequences for the union.

By early September, company officials were confident that "the worst [was] over" and that they had weathered the strike storm fairly successfully (Argus Leader, 4 September 1987). Production levels were at approximately 80% of normal and roughly 2000 people were now working in Morrell's largest plant in Sioux Falls. The vast majority of

those inside were non-union replacement workers, some of who had originally been replacement workers at the Sioux City, Iowa plant. The union did concede, however, that somewhere around 70 of the 2500 or so sympathy strikers had crossed the picket line as the dispute wore on. On the morning of September 14, 1987 false rumors had spread "that up to 100 [more] striking union members planned to return to the job" (Argus Leader, 15 September 1987). This sparked a violent confrontation on the picket line between approximately seventy Local 304A members and replacement workers. After this incident, however, picket line behavior returned to its peaceful, and lawful, state throughout the rest of September and October 1987.

On November 4, 1987 the sympathy strike against Morrell in Sioux Falls, South Dakota ended as abruptly as it had begun. UFCW International vice-president Lewie Anderson made the announcement that there had been a change in union strategy and that the Sioux City pickets had been told to go back to Iowa. A letter was then sent to Morrell indicating that the approximately 2500 members of Local 304A were immediately available to return to work. According to Anderson, the move was designed to put added financial pressure on the company in the hope of bringing it back to the bargaining table at the Iowa plant.

If the company retained the replacement workers at the Sioux Falls facility and did not re-hire its original unionized workforce, the latter would be eligible for unemployment compensation under South Dakota law. Union leaders estimated that this could cost the company over seven million dollars (Argus Leader, 8 November 1987; Daily Labor Report, 9 November 1987)<sup>200</sup>

Though the sympathy strike was now technically over, several months would pass before the dispute was eventually resolved in the courts. I will address this lengthy and complex legal resolution in the next section. For now, however, let me briefly make some preliminary comments on the overall effectiveness of the sympathy strike, the original purpose of which was to aid Local 1142 members in their contract dispute with Morrell. On this score, the UFCW's efforts would be deemed a failure. Though the company clearly lost millions in profits because of the secondary strike, the use of replacements had brought production levels relatively close to normal by the dispute's end. Union leaders were thus forced to abandon the sympathetic action before a contract was reached in Iowa. Ultimately, in February of 1988, members

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<sup>200</sup> The UFCW was at this time operating on the presumption that the Sioux City strike was an unfair labor practice strike and, by extension, so was the Sioux Falls dispute. As I will discuss in the next section, the company legally contested this assumption.



of Local 1142 returned to work unconditionally, under the terms of a contract unilaterally imposed by Morrell (Argus Leader, 1 May 1988). Perhaps more significantly, the same fate awaited the UFCW's members in Local 304A. This outcome manifested itself, however, only after the union and the company traversed a complicated legal path involving federal courts, the NLRB, and numerous appeals. I now turn to this dimension of the conflict.

### The Role of Law

Of the three union strikes in the United States that I analyze, the 1987 sympathy strike by Local 304A of the UFCW against John Morrell and Company is arguably the most legally complex. This complexity stems both from the substantive issues addressed and from the number of governmental agencies involved. With respect to the former, not only was the exact nature of the sympathy strike in question, specifically in terms of whether it was an economic or unfair labor practice strike, but the legality of the walkout itself was also contested. With respect to the latter, courts at the local, state, and federal levels produced decisions of

relevance to the dispute's conduct and outcome, as did the National Labor Relations Board (NLRB), an independent arbitrator, and the Occupational Safety and Health Administration (OSHA).

The legal struggle between Local 304A and Morrell had its origins in two earlier sympathy strikes. On August 4 and 15, 1986 union members employed at the Sioux Falls plant staged one-day walkouts to honor pickets from Local 340 in Arkansas City, Kansas (Argus Leader, 9 June 1987). The company obtained an injunction from a U. S. District Court judge that prohibited any further sympathy strikes by Local 304A. The union appealed that decision and had the injunction vacated. Morrell attorneys then took the case before the United States Supreme Court. The High Court denied the company's appeal, ruling that an injunction prohibiting sympathy strikes was not allowed under the Norris-LaGuardia Act of 1932. The Supreme Court also cited its own ruling in the case of *Buffalo Forge v. United Steel Workers* (428 U. S. 397 [1976]), which effectively held that federal injunctions against sympathy strikes were not permissible even in circumstances where the secondary union had signed a no-strike agreement (Argus Leader, 21 April 1987).<sup>201</sup>

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<sup>201</sup> See Atleson (1983: 72-73) for a discussion of the Supreme Court's Buffalo Forge decision. See Falcone (1962: 404-405) for a discussion of Section 4 of the Norris-LaGuardia Act, which restricts the use of federal injunctions in labor disputes.

Also in response to the 1986 sympathy strikes, the company had filed a separate suit in U. S. District Court that challenged the legality of the two one-day walkouts. Morrell was simultaneously seeking damages of slightly more than one million dollars (Argus Leader, 21 April 1987). Company lawyers maintained that the no-strike clause in Local 304A's contract covered sympathy strikes, and thus the brief work stoppages were illegal. When the third sympathy strike by the union began in 1987, Morrell amended the original suit to include the six-month walkout as well and raised its damage claims to forty million dollars (Daily Labor Report, 18 March 1988).

This line of legal struggle would not be resolved until well after the third sympathy strike ended in November, 1987. On March 10, 1988 a federal jury found that Local 304A had indeed violated its contract when it honored the pickets of other UFCW locals. The jury based its decision on three factors. First, the language of the contract, which covered the period from 1985 to 1988, was explicit in stating that no work stoppage would occur during the duration the agreement. Second, and probably of greater significance for the jury's deliberations, was the fact that union leaders had attempted to have a clause that explicitly permitted sympathy strikes added to the contract during bargaining talks in 1985.

Management refused, and company lawyers pointed toward the request as evidence that the union was aware that sympathy strikes would not be allowed in light of the contract's no-strike wording. Finally, during the trial Morrell lawyers "had several union members testify that they did not believe their contract gave them the right to sympathy strikes" (Daily Labor Report, 18 March 1988; also see Argus Leader, 1 May 1988).

The March 1988 federal jury also ruled that Morrell was entitled to punitive damages from the union. However, the exact amount would be decided several months later by a separate jury. On November 10, 1988 the second federal jury awarded the company 24.6 million dollars, nearly one half of the UFCW's estimated assets of 59 million dollars. The company had asked for 40 million. The jury based its decision on the estimated losses in profits suffered by Morrell because of the three sympathy strikes. During 1987, the company was operating 3 million dollars in the red, compared to annual profits of 30 million dollars and 28 million dollars in 1985 and 1986, respectively (Argus Leader, 11 November 1988; Cincinnati Enquirer, 12 November 1988).

Union lawyers contested the March 1988 federal jury decision and the damages award that followed from it. The basis of the union's appeal rested on the argument that the initial jury did not have the

authority to rule on the legality of the sympathy strikes. As explained by a UFCW spokesman, the U. S. District Court judge hearing the case should have issued the decision because:

It was a matter of law, and matters of law are not what juries decide. Juries decide matters of fact. It is a legal question whether the contract permits sympathy strikes. We believe it does (quoted in Daily Labor Report, 18 March 1988).

Despite the union's arguments, on September 7, 1990 the U. S. Court of Appeals for the Eighth District denied the appeal and upheld the federal jury's decision that the sympathy strikes by Local 304A violated its contract with Morrell and were hence illegal. The nearly 25 million dollars in damages was reaffirmed as well (Daily Labor Report, 13 September 1990).

The September 1990 decision by the U. S. Court of Appeals resolved other legal issues that emanated specifically from the six-month sympathy strike in 1987. Two lines of development, having different origins, yet eventually becoming intertwined, were of primary relevance to the employment status of both Morrell's replacement workers and striking union members. One line of development involved the NLRB, which was to decide whether the primary dispute by Local 1142 in Sioux City, Iowa, and by extension the sympathy strike by Local 304A in Sioux

Falls, South Dakota, was an unfair labor practice (ULP) strike or an economic strike. A second line of development involved the decision of an arbitrator who became involved in the dispute in the summer of 1988.

Recall that in the previous section I noted that members of UFCW Local 1142 in Sioux City, Iowa had worked without a contract in the early months of 1987 while negotiations with the company proceeded. Not until March of that year, after Morrell had disciplined and fired a number of union workers, did the local vote to go on strike. At this point union leaders filed ULP charges against the company with the NLRB. Morrell hired approximately 600 replacement workers at the Sioux City plant when Local 1142 walked out and eventually hired roughly 2000 more in Sioux Falls, South Dakota when Local 304A began its sympathy strike. When the primary dispute ended on February 6, 1988 and the secondary action ended on November 4, 1987,<sup>202</sup> union members from both locals offered unconditionally to return to work. Morrell, however, refused to rehire the former strikers at both plants, arguing that they had been permanently replaced (Argus Leader, 5 March 1988).

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<sup>202</sup> As I noted earlier, UFCW leaders called off the sympathy strike by Local 304A before an agreement had been reached between Local 1142 and Morrell.

On March 4, 1988 a NLRB regional director found that Morrell had not engaged in unfair labor practices when it disciplined and fired Local 1142 members in March of 1987.<sup>203</sup> The NLRB thus ruled that the dispute in Sioux City and the subsequent sympathetic action in Sioux Falls were economic strikes. This was a significant legal victory for the company, for economic strikers can be permanently replaced while ULP strikers can only be temporarily replaced (Argus Leader, 5 March 1988). The union appealed the regional director's decision to the NLRB's General Counsel in Washington, D. C., who reaffirmed that no ULPs by Morrell had transpired and that both walkouts constituted economic strikes. That decision came on November 8, 1988 and could not be appealed "any further through the [NLRB] administrative process" (Daily Labor Report, 23 November 1988).

Local 304A simultaneously pursued another line of legal redress with respect to Morrell's refusal to rehire the former strikers. Still maintaining that the sympathy strikes of 1986 and 1987 were legal, the union filed a grievance against the company on the basis that the seniority provisions of the existing contract required that the more

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<sup>203</sup> Thirty-seven union workers were suspended without pay and six were fired for what the company called "sabotage" in the Sioux City plant (Argus Leader, 5 March 1988).

recently hired replacement workers be displaced by the more-senior UFCW members. The union requested binding arbitration on the issue in August 1988, and company attorneys agreed (Argus Leader, 8 November 1988). Importantly, however, this agreement by the company came after a federal jury had ruled that the sympathy strikes were illegal breaches of contract.<sup>204</sup>

On November 5, 1988 arbitrator William Rentfro announced his decision. He ruled that the sympathy strikes were legal and that the former strikers were entitled to reinstatement with back pay. The rationale for his decision, as summarized in the case history portion of the 1990 U. S. Court of Appeals ruling<sup>205</sup>, was as follows:

Despite the earlier jury verdict expressly holding that the no-strike clause barred sympathy strikes, the arbitrator believed that he needed to independently interpret the clause because the reinstatement issue was fundamentally linked to the breach of contract issue. The arbitrator applied the doctrine of coterminous interpretation to hold that the no-strike clause barred only strikes over arbitrable matters, and therefore, did not prohibit sympathy strikes.

Union leaders and the rank and file were obviously elated with the arbitrator's decision. It represented the union's first legal victory and

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<sup>204</sup> Union attorneys were in the process of appealing the March 1988 decision at the same time the arbitration request was made.

<sup>205</sup> The 1990 appeal decision is reproduced in the Daily Labor Report (September 13, 1990, No. 178, E1-E13). The quoted passage is from E7.



could cost Morrell over 40 million dollars in back pay (Argus Leader, 8 November 1988).

The elation did not last long, however. As discussed above, three days after the arbitrator's ruling the NLRB General Counsel issued her decision that the Sioux City and Sioux Falls walkouts were economic strikes and hence Local 1142 and Local 304A members could be permanently replaced. Two days after that, the second federal jury awarded Morrell 24.6 million in damages. Local 304A president Jim Lyons did nevertheless try to dismiss these other legal setbacks:

The NLRB means nothing to us at this time. The arbitrator's ruling, which is virtually ironclad, gives everybody their department, their job and back pay (quoted in Argus Leader, 15 November 1988).

But was the arbitrator's ruling really 'ironclad'? The day after Rentfro issued his decision, company lawyers asked a federal judge in South Dakota to overturn the ruling. The day after that, "the union asked a federal judge in Illinois to enforce the award" (Daily Labor Report, 28 December 1988). The legal wrangling over Rentfro's ruling continued for months, and ultimately was incorporated into the union's appeal of the federal jury decisions that found the sympathy strike illegal and awarded the company millions in damages. As I noted earlier, the U. S. Court of Appeals for the Eighth District issued its decision about the

UFCW appeal on September 7, 1990. In that same ruling, the arbitrator's decision ultimately was vacated on the grounds "that Rentfro had exceeded his authority in determining the legality of the [1987 sympathy] strike" (Daily Labor Report, 13 September 1988).

This resolution of the federal jury decisions and the arbitrator's ruling was arguably the most significant legal setback for the UFCW throughout the dispute, mainly because it cost the union millions of dollars and it prevented most of the rank and file from getting their jobs back at Morrell. It was not the only legal defeat for the union, however. The injunctions issued by Circuit Judge Hurd in the early days of the six-month sympathy strike, which limited the number of pickets outside of Morrel's largest facility to twenty-five and threatened \$25,000 a day fines, clearly represented a hindrance to the union's strategy. Recall that mass picketing by Local 304A members in Sioux Falls was effective in keeping many replacement workers out of the plant during the first few days of the dispute in early May of 1987. Once the injunctions were issued, however, the union immediately abandoned this tactic. The sympathy strike, the purpose of which was to aid the strikers in Sioux

City, was eventually called off as production levels approached normal in Sioux Falls.<sup>206</sup>

I should note, however, that the company was not always victorious and that the union was not always defeated in the legal struggles that emanated from the 1987 sympathy strike. In November 1988, acting on complaints filed by the UFCW, the Occupational Safety and Health Administration (OSHA) fined Morrell 4.3 million dollars for repetitive motion injuries suffered by about two thirds of its Sioux Falls workforce. It was a record fine at the time, and the company responded with threats to close its largest facility (Argus Leader, 13 November 1988). In addition, approximately 700 replacement workers from the plant petitioned OSHA stating that union members had "misled" federal investigators (Argus Leader, 11 November 1988). Despite company appeals, the fines eventually stood.

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<sup>206</sup> Recall that the isolated incident of mass picketing and violence in early September 1987 was primarily a spontaneous action by the rank and file in response to rumors that a large number of union members were going to cross the picket line. Judge Hurd eventually fined Local 304A six thousand dollars for the event (Argus Leader, 1 May 1988).

## Discussion

In sum, I contend that the law played a much more significant role in the UFCW's 1987 sympathy strike against John Morrell and Company than it did in the 1986-87 steel dispute discussed earlier in this chapter. Importantly, in contrast to the previous case study, legal interventions were much more skewed in favor of management and, indeed, ultimately determined the outcome of the conflict. In addition, whereas the USWA exhibited much success with its more proactive legal efforts, the UFCW's legal strategies typically met with failure. A key question remains however. To what degree can these outcomes be specifically attributed to the collective labor law project of the Reagan administration?

I feel that the impact of the Reagan labor law project on the UFCW sympathy strike is evident in two different places. The first involves the use of replacement workers. Morrell's hiring of replacements marked a significant departure from traditional industrial relations practice in the meatpacking industry. Recall the comments by Local 304A president Foster concerning picket line violence and the fact that the Sioux Falls plant had not been 'scabbed' since 1935. I contend that the increasing

use of replacement workers during the 1980s can at least in part be viewed as a consequence of Reagan's firing of PATCO workers at the beginning of the decade. In effect, I feel that the PATCO episode had symbolic significance in that it set a new standard for acceptable managerial behavior vis-a-vis unions.

The status of the replacement workers in the 1987 sympathy strike is another area where I feel that the effects of the Reagan administration's labor law policies can be observed. The definition of the Sioux City conflict, and by extension the sympathetic action in Sioux Falls, as an economic strike by the NLRB was a significant legal defeat for the UFCW because it meant that the strikers could be permanently replaced. Recall that the local in Sioux City had worked without a contract and did not go out on strike until after Morrell had disciplined and fired approximately forty union members. It was these unfair labor practices that the UFCW deemed to be the main cause of the initial walkout, but the NLRB found otherwise. Though I do not imply that this particular decision reflected a crass political agenda or had no legal merit whatsoever, it did nonetheless come from a Board dominated by Reagan appointees whose interpretive bias favored management.

What of the impact of the substantive legal changes embodied in the Dotson Board's case reversals? The ruling in *Indianapolis Power and Light* (273 NLRB 1715) is the one case that could have had direct relevance for the 1987 sympathy strike. As I discussed in Chapter Four, in this decision the NLRB held that a no-strike clause in a collective bargaining contract implicitly waives the right to sympathetic action. This is precisely what Morrell lawyers argued in federal district court when they tried to get the three sympathy strikes by the UFCW declared illegal. The case was decided by a jury, however, which based its decision on the facts of the case and not on legal precedent set by the NLRB or other courts. Recall that one key factor in the jury's decision was the fact that, during contract negotiations, union leaders had attempted to include an explicit exemption for sympathetic action. This move reflects agreement by the union with NLRB contentions that a no-strike clause also includes an implied waiver of the right to sympathy strikes.

Overall, I would maintain the effects of the Reagan collective labor law project, while of some significance, were not the primary factors shaping the course and outcome of the UFCW's sympathy strike against John Morrell and Company. The use of replacement workers by the

company, and the NLRB's eventual assignation of permanent status to them, were clearly deleterious to the union's cause. I feel that both of these actions can be attributed, to some degree at least, to the labor law policies of the Reagan administration. Nevertheless, other legal actions, namely the federal jury decision that the strike was illegal and the local injunctions against mass picketing, were to have more decisive effects.

### The 1989-90 Pittston Strike: Lessons Learned

#### Overview

As early as 1985, rank-and-file members of the United Mine Workers of America (UMWA) anticipated that industrial action against the Pittston Coal Group would eventually be needed.<sup>207</sup> Rumors had circulated among workers that Pittston planned to withdraw from the Bituminous Coal Operators Association (BCOA), the industry's multi-employer bargaining unit, when the existing union contract expired in

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<sup>207</sup> This summary of strike events draws primarily on accounts provided in the Daily Labor Report, the Roanoke Times and World News (RT&WN), and a special supplement to the RT&WN by Yancey (1990). Additional information comes from Couto (1993); Green (1990; 1996); Mills (1990); and Yates (1990).

early 1988. Indeed, by mid-decade the company had already distinguished itself from most other BCOA members by means of a controversial "double-breasting" strategy, whereby the calculated establishment of non-union subsidiaries allowed Pittston to circumvent a variety of BCOA contract provisions. Predictably, these activities garnered the attention of both UMWA leaders and working miners. Many were certain that Pittston was positioning itself for a future confrontation with the union (Yancey, 1990: 1).

In the spring of 1987, Pittston chairman Paul W. Douglas formally announced that the company would in fact withdraw from the BCOA when the existing contract expired on January 31, 1988. Douglas argued that Pittston needed to bargain with the UMWA independently because his company's market position differed significantly from that of other BCOA members. Specifically, he noted that while Pittston primarily mined metallurgical coal for global export, most other BCOA companies primarily mined steam coal for consumption by domestic power plants (Couto, 1993: 173). Douglas stressed that given this specialized market niche, Pittston could not remain globally competitive under the usual terms of a BCOA contract (Green, 1990: 15; Yancey, 1990: 2).



An important consequence of Pittston's secession from the BCOA was that it would no longer have to make payments into the industry-wide health and pension funds. These funds arguably represented one of the greatest accomplishments of former UMWA president John L. Lewis. Initially established in 1946, the funds were integral components of every BCOA-UMWA contract since 1950, the year in which the employer association was formed. Under these agreements, all members of the BCOA agreed to pay tonnage royalties on union-mined coal. These contributions went into general funds from which all union miners, regardless of their specific employer, could draw health and pension benefits.<sup>208</sup>

On February 1, 1988, one day after the existing national agreement had expired, Pittston stopped contributing to the UMWA health and pension funds.<sup>209</sup> Pittston also ceased benefit payments to approximately 1500 disabled and retired miners covered under separate

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<sup>208</sup> The funds were established at no small cost to working miners, however. In exchange for BCOA contributions, Lewis offered union cooperation with coal operator efforts at modernization. Ultimately, between 200,000 and 300,000 miners had by 1970 lost their jobs because of mechanization (Couto, 1993: 168; Goldman and Rajagopal, 1991: 40; Mills, 1990: 240).

<sup>209</sup> The previous BCOA-UMWA contract ended January 31, 1988, though the UMWA successfully negotiated another four-year contract with those companies still remaining in the employer association. This new national agreement took effect on February 1, 1988 (Yancey, 1990: 2).

company plans. Further, the company unilaterally instituted "changes in wages, hours, and terms and conditions of employment" at its various mining operations (Yates, 1990: 28). Not surprisingly, rank-and-file miners angrily demanded an immediate walkout. Nevertheless, the union leadership would not call a strike until fourteen months later (Mills, 1990: 240).

By keeping miners laboring at Pittston coal faces, UMWA president Richard Trumka had broken a long union tradition of "no contract, no work" (Yancey, 1990: 2; Yates, 1990: 28). Trumka's delay in calling a strike against Pittston was a bold, yet strategically wise, decision. Specifically, as long as union members kept working, or until an official strike or lockout was declared by either side, the terms of the previous BCOA-UMWA contract remained legally in force. Importantly, by working without a contract the UMWA bought time to maneuver. Perhaps in the interim an acceptable settlement might be reached with Pittston; at the very least, the union could better position itself for a more direct confrontation.

The two sides continued negotiations throughout most of 1988. While the UMWA offered several concessions, Pittston maintained a hard-line stance. On November 8, 1988 the company made its "final and

best" offer, which the union rejected eleven days later (Daily Labor Report, 29 November 1988). As Yates (1990: 28) points out, the UMWA could not have possibly accepted Pittston's proposals:

This "last best offer" would mean the end of the union: it included complete company freedom to subcontract work, enforce mandatory overtime, compulsory work on Sunday, and massive cuts in health benefits, including those of retirees and widows.

Ultimately, it became apparent to the union that Pittston did not want a negotiated settlement. Rather, the company wanted the UMWA to strike.

On December 13, 1988 the UMWA leadership announced that the union would strike if Pittston did not return to the bargaining table for further negotiations. The strike date was set for January 31, 1989, precisely one year after the previous contract between the union and the company expired (Daily Labor Report, 14 December 1988). As the deadline approached, however, Trumka announced that the walkout would be postponed for approximately two months. This delay was purportedly a response to requests from the governors of Kentucky, Virginia, and West Virginia, three states in which Pittston's coal

operations were most highly concentrated (Daily Labor Report, 1 February 1989; also see Yates, 1990: 28-29).<sup>210</sup>

Pittston continued its refusal to negotiate, and on April 5, 1989 UMWA miners finally went on strike against the company. Over 1400 union members at approximately thirty different Pittston work sites walked out, affecting nearly 80% of the company's coal operations. Pittston's managerial and supervisory personnel did what they could in the initial days of the dispute to maintain production. Five days after the strike began, however, the company began to hire replacement workers at several of its mines, a practice that soon spread and accelerated. Many replacements nonetheless had great difficulties in getting past the extensive union picket lines. On April 17, 1989 Pittston decided to resume negotiations with the UMWA (Daily Labor Report, 18 April 1989).

The following day, thirty-seven women staged a sit-down demonstration in the lobby of Pittston's headquarters in Lebanon, Virginia. Calling themselves the "Daughters of Mother Jones", the group consisted of wives, widows, and other women who were close kin of

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<sup>210</sup> I will discuss another reason for the delay later in the chapter.

UMWA strikers.<sup>211</sup> They occupied the lobby for nearly two days, publicizing the union's position in the dispute and how Pittston's actions affected more than just working miners. The women left peacefully on April 19, 1989, having successfully carried out the strike's first act of civil disobedience (Daily Labor Report, 25 April 1989; Yancey, 1990: 4).<sup>212</sup>

The first official act of civil disobedience organized by the union and involving striking miners themselves began on April 24, 1989. Sit-down demonstrations were used to block the roads to three of Pittston's biggest operations in Southwest Virginia: the Lambert Fork Mine, the McClure Mine, and the Moss 3 preparation plant. While roughly two to three hundred strikers were outside of each of the two mines, the crowd outside of Moss 3 approached one thousand. Union members prevented replacement workers from entering and exiting the Pittston establishments for more than four hours. Virginia state police then moved to clear the roads, arresting over two hundred miners and injuring several dozen as they dragged them to waiting vans and buses.

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<sup>211</sup> Mother Jones, a.k.a. Mary Harris Jones (1830-1930), was a well-known coalfield organizer in the early twentieth century (Seltzer, 1985: 28-29; Yancey, 1990: 4).

<sup>212</sup> Though union leaders may have provided some guidance and support, the "takeover plot was homegrown" by the women themselves (Yancey, 1990: 4).

The scene was repeated over the next few days, with total arrests exceeding one thousand by the end of April (Yancey, 1990: 4-5).

Civil disobedience was but one dimension of a multi-faceted strike strategy utilized by the UMWA. Along with traditional picketing, the union also conducted a systematic corporate campaign to spread the conflict outside of the coalfields. Throughout the dispute, for example, striking miners and their families maintained pickets in Greenwich, Connecticut, the location of Pittston's corporate headquarters. And on April 21, 1989 "several hundred union leaders and supporters" demonstrated in New York City outside of the annual shareholder's meeting of the Manufacturers Hanover Bank to question its dealings with Pittston (Daily Labor Report, 25 April 1989). In addition, working people and labor organizations from across the country sent material support to the miners. Many even came to the coalfields in person to further demonstrate their solidarity with striking UMWA miners.<sup>213</sup>

After a brief lull in early May, the intensity of the conflict waxed again later that month and in early June. Repeated violations of state and federal injunctions prohibiting mass picketing brought severe legal

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<sup>213</sup> A temporary settlement, dubbed "Camp Solidarity", was established on the vacant land of a UMWA member as a place for out-of-town supporters to stay. The camp became the nerve center of the strike as the number of supporters increased from several hundred to the thousands during the summer of 1989 (Yancey, 1990: 8-9).

actions against the union. On June 3, 1989 a Virginia district court judge fined the UMWA three million dollars. Two days later, a U. S. federal court judge ordered three union leaders jailed for their failure to control illegal rank-and-file picketing (Yancey, 1990:8).<sup>214</sup>

On June 12, 1989 union miners from around the country walked off their jobs to demonstrate support for the Pittston strikers. Within a week, these wildcat sympathy strikes spread to ten different states and involved approximately 46,000 miners. Local UMWA leaders and participating rank and file indicated that the primary impetus for the unofficial actions was the severity of recent legal sanctions (Daily Labor Report, 20 June 1989; Green, 1990: 17). In an effort to attenuate what he characterized as the “volatile situation which exists in the coal fields”, Trumka announced a union-sanctioned national work stoppage of several days in mid-July of 1989 (Daily Labor Report, 11 July 1989). Overall, the "memorial shutdown" lasted seven days, and when it ended on July 17, 1989 the wildcats effectively ended as well (Daily Labor Report, 18 July 1989).

With the wildcat sympathy strikes over, Pittston and UMWA negotiators returned again to the bargaining table. This round of talks

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<sup>214</sup> I discuss these actions in more detail in the following section.

proved as unproductive as the previous ones. Job security, work scheduling, safety practices, and contributions to the health and pension funds remained key obstacles preventing an agreement. The health and pension funds continued to be particularly divisive issues. As noted earlier, Pittston maintained that it was no longer "obligated to make [fund] payments because it [was] no longer a member of the Bituminous Coal Operators Association" (Daily Labor Report, 7 September 1989). Fearing a dangerous precedent, the UMWA vigorously challenged the company's maneuver. Trumka told reporters in early September that if "other companies take the same tack, we're going to have 130,000 pensioners, widows, and disabled miners who are going to be without health care in a couple of years" (Daily Labor Report, 7 September 1989).

The dispute lulled again over the next several weeks but was re-energized on September 17, 1989. On that day, ninety-eight UMWA members and one Methodist minister, each possessing one share of company stock and claiming that they had come to investigate "their property", took over Pittston's Moss 3 coal preparation plant. Once the strikers had made it inside, the plant and the road leading up to it were immediately filled with throngs of other strikers, their families, and other community supporters. The numbers outside quickly reached two



thousand and swelled to five thousand by the fourth day of the occupation, creating a formidable human barrier that prevented easy entry into Moss 3 (Green, 1990: 20-22; Yancey, 1990: 10-14).

As the spectacle unfolded at Moss 3, Pittston and UMWA lawyers were in federal district court wrangling over a way to end the takeover. The company wanted the occupiers off their property as soon as possible; union attorneys called "for face-to-face meetings between [Pittston president] Douglas and [UMWA leader] Trumka" (Yancey, 1990: 13).<sup>215</sup> The judge hearing the case, after granting at least one delay, gave the strikers until 7:00pm on September 20, 1989 to leave the plant on their own. After that deadline, huge fines would be levied against the UMWA, union leaders imprisoned, and the illegal occupants of Moss 3 forcibly removed. Approximately two hours after the deadline, however, the strikers inside Moss 3 slipped out of the plant under the cover of darkness and anonymously melted into the thousands of supporters who had stood vigil for over three days (Green, 1990: 21; Yancey, 1990: 13).

The relatively undramatic resolution to the Moss 3 takeover in many respects foreshadowed the resolution of the dispute itself. As

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<sup>215</sup> Ironically, Douglas and Trumka were already meeting secretly in Canada the night of the Moss 3 takeover, a fact that later outraged the federal court judge (Yancey, 1990: 13).

Yancey (1990: 15) put it, "[t]he strike ended with a whimper, not a bang." In October 1989, U. S. Secretary of Labor Elizabeth Dole made her first visit to the coalfields. She then met with Pittston CEO Douglas and UMWA President Trumka together, and shortly thereafter announced the appointment of a "supermediator" to resolve the dispute. The supermediator was former U. S. Secretary of Labor William Usery, who instituted a media blackout and eventually kept negotiators at the bargaining table around the clock. Talks continued throughout November and intensified in early December as high level officials from both sides became involved. While Usery's first settlement deadline of Christmas came and passed, his next deadline of January 1, 1990 was met successfully. A tentative agreement had been reached shortly before midnight on New Year's Eve, and a new contract between Pittston and the UMWA was ratified by the rank and file in February of 1990 (Yancey, 1990: 15-16).

Ultimately, the final agreement reached between the two sides reflected concessions by both labor and management. In particular, Pittston won gains in terms of work and scheduling flexibility, while the UMWA "forced Pittston to stay in the industry-wide pension and health funds and...[also] won provisions to put more laid off miners back to

work” (Kwik, 1990: 1). Though substantively such an outcome would have to be deemed more or less a draw, the miners themselves and many throughout the U. S. labor movement declared it a union victory (e. g. Kwik, 1990). This perception stemmed not only from the fact that the UMWA had forced Pittston to remain a contributor to the health and pension funds and had withstood a concerted company effort to ‘break the union’, but also from the general context within which the dispute occurred. Specifically, given the anti-labor climate of the 1980s, holding the line against a hostile employer and receiving a few concessions in the process was at the very least, for the UMWA in particular and organized labor in general, a symbolic victory.

### The Role of Law

Pittston and the UMWA each made the law an integral component of their respective industrial conflict strategies in the 1989-90 strike. The company resorted to more legal interventions than the union. While recourse to the law by the UMWA was more infrequent, the union's legal offensive was simultaneously coupled with a more openly political

strategy that involved portraying the courts as allied with capital and unfairly operating against working miners and their communities.

Overall, as will be discussed in the following section, this two-pronged approach perhaps may have had the greatest significance for the eventual outcome of the dispute.

The union may have made its most critical legal maneuver well before the strike was officially underway. Recall that though the BCOA-UMWA contract ended on January 31, 1988, union members continued to work under the terms of the expired agreement for nearly fourteen months. Once the contract expired, the UMWA began to file a series of unfair labor practice charges with the NLRB against the company. While the final decision on the ULP charges did not come until July 7, 1989, the NLRB issued a complaint on April 1, 1989 against Pittston for numerous violations of federal labor law (Render, 1995: 333-334). The violations included unlawful contracting out, implementing unilateral changes in various work practices, and failure to engage in good faith bargaining. When Pittston's UMWA employees walked out on April 5,

1989 "their stated reason for striking was the extensive and continuing unfair labor practices of the company."<sup>216</sup>

The significance of having the dispute legally defined as an unfair labor practice (ULP) strike was of pivotal importance for the company's union employees (Green, 1996: 518; Render 1995: 334). Had a walkout occurred immediately after the BCOA-UMWA contract expired, a move that both tradition and an angry rank and file demanded, the dispute would have likely been legally defined as an "economic strike" over wages and related benefit issues. In such a case, Pittston would have been allowed to permanently replace the striking miners, thus likely ridding itself of a unionized workforce for good. However, because the UMWA leadership delayed the walkout for over a year, allowing time for the NLRB's lengthy review process, the strike was eventually defined as an action against an ULP and the strikers could only be temporarily replaced. Hence, whatever the outcome, UMWA miners would still be able to reclaim their jobs at the end of the strike.<sup>217</sup>

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<sup>216</sup> See the Report on the Strike at the Pittston Coal Company by the House Subcommittee on Labor-Management Relations, 3 August 1989 (hereafter cited as "Subcommittee Report, 1989"). Though the report was never officially adopted by the Subcommittee, copies were made publicly available (e. g. Roanoke Times and World News, 5 August 1989; also see United Mine Workers Journal, November 1989).

<sup>217</sup> See Gold (1989: 31-32) for a discussion of the differing legal rights of economic and unfair labor practice strikers.

With the strike officially underway in early April 1989, Pittston took its turn with the legal system. In response to mass picketing and civil disobedience by striking miners, the company filed complaints at both the state and federal levels. The first complaints at the state level occurred in Virginia, where the majority of Pittston's coal operations were located. Donald McGlothlin, Jr., the Virginia Circuit Court Judge for Russell County, issued an injunction on April 12, 1989 against the union for a variety of actions deemed unlawful by the state's "right to work laws" (Render, 1995: 335). The prohibited activities specifically pertained to interfering with the movement of replacement workers, such as the blocking of roads to Pittston facilities, threatened or actual violence against company employees and replacements, and the use of tire-damaging "jackrocks" to impede the movement of coal trucks. In addition, McGlothlin restricted the number of UMWA pickets at any one site to a maximum of ten and ordered union officials to make sure the rank and file complied with all aspects of the injunction (Green, 1996: 520; Yancey, 1990: 4).

Large-scale picketing and other prohibited activities continued unabated for the next month, and on May 16, 1989 McGlothlin fined the union over six hundred thousand dollars for contempt. He also

indicated that each future violation of the injunction would result in a fine of one hundred thousand dollars. At a second contempt hearing held on June 2, McGlothlin imposed another fine totaling three million dollars and "threatened to bankrupt the [UMWA] if miners continued to ignore his order" (Yancey, 1990: 8). Despite this ultimatum from the Virginia courts, the UMWA did not alter its daily picket line activities to any great extent, for mass picketing and civil disobedience remained recurring features of the dispute.

By December 1989, McGlothlin had ultimately imposed roughly sixty-four million dollars in fines on the union for over 400 contempt violations of his April injunction. Twelve million of this was for lost profits by Pittston; the remainder was payable to the state of Virginia (Green, 1996: 542; Render, 1995: 348). When the dispute was settled, however, both the company and the union petitioned the court to have the fines rescinded. McGlothlin refused, and a complex legal struggle that would last five years ensued. The Virginia Court of Appeals removed the fines, arguing that McGlothlin had overstepped his authority in refusing to vacate the fines once both parties had resolved their differences and asked that the fines be lifted. The Virginia Supreme Court then overturned the Court of Appeals' ruling. The issue was

finally decided by the U. S. Supreme Court on June 30, 1994. The High Court held that McGlothlin's enormous fines ultimately represented punitive sanctions for criminal behavior, sanctions that could not be imposed without a jury trial. McGlothlin's fines were thus ruled unconstitutional.<sup>218</sup>

In addition to sanctions emanating from the local level, the union also faced legal interventions from the federal court system. In response to the mass picketing and other disruptions orchestrated by the union in the early weeks of the strike, Pittston lawyers filed a complaint with the NLRB as well as with the Virginia courts. The NLRB found merit in the company's claims and requested that a federal District Court judge issue a temporary restraining order against the UMWA's strike activities. On May 24, 1989 U. S. District Court Judge Glenn M. Williams issued a federal injunction "limiting mass picketing, the blocking of plant entrances, inflicting damage to company property and other restrictions similar to those contained in the state court injunction" (Subcommittee Report, 1989). As with the state injunction issued six weeks earlier, union activities on the picket line remained relatively unaffected. Thus,

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<sup>218</sup> See *United Mineworkers of America et al. v. Bagwell et al.* (114 S. Ct. 2552 [1994]). For an overview of case history, see Furfaro and Josephson (1994) and Render (1995: 348-351).



on June 5, 1989 Judge Williams ordered that three UMWA strike leaders be imprisoned for contempt (Green, 1996: 524).

Williams' action proved ill timed. Coming on the heels of McGlothlin's initial three million-dollar fine of June 2, the imprisonment of union leaders only served to enrage and energize the strikers and their supporters. One week after Williams' decision wildcat strikes involving over 45,000 miners began to spread throughout ten states, actions spurred in part by what the rank and file viewed as a clearly pro-management legal system (Daily Labor Report, 20 June 1989; Green, 1990: 17). Despite being an "unofficial" action, however, the UMWA leadership clearly had a hand in fomenting the militancy that gave rise to the mass walkout. Indeed, speaking to over 15,000 miners on June 11, 1989, the day before the walkouts began, Trumka stressed how the survival of the union was at stake and exhorted UMWA members to "rise up and fight back" (Yancey, 1990: 8).

The wildcat actions continued throughout the rest of the month, even after Williams had ordered the release of the three union leaders on June 19 (Yancey, 1990: 8). Another federal injunction, again issued at the request of the NLRB, was imposed by a different District Court Judge on June 26. It ordered all wildcat strikers in Virginia, West Virginia, and

Kentucky back to work and prohibited any further unlawful secondary action by UMWA members (Daily Labor Report, 28 June 1989). This second federal injunction also had little effect,<sup>219</sup> however, and not until mid-July did the 'unofficial' action finally come to an end.

More than any other factor, the UMWA national leadership proved pivotal in getting the sympathy strikers back to work. Recall that Trumka, expressing concern about the 'volatile situation' in the coalfields, in effect instituted a national work stoppage by authorizing a series of "memorial days" from July 10 through July 17.<sup>220</sup> This tactic of a memorial shutdown not only served to bring the wildcat activity of the rank and file within legal boundaries, it also reasserted national union control over the conflict. Indeed, the memorial period was intended to mitigate what Trumka called the "understandable and justifiable" outrage that rank-and-file members felt in the face of "excessive fines by federal and state courts, the arrest of thousands of union members and supporters by Virginia State Police, the threat of indefinite jailings of union leaders and supporters and Pittston's refusal to bargain in good

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<sup>219</sup> Nor did an additional \$800,000 fine from Judge Williams on July 5 (Green, 1996: 527).

<sup>220</sup> The 1988 Bituminous Coal Wage Agreement allowed the UMWA to sanction up to ten memorial days off a year as long as reasonable notice was given to coal operators (Daily Labor Report, 11 July 1989).

faith" (Daily Labor Report, 11 July 1989). Overall, the strategy was successful, for when the memorial period ended, "the International asked the miners to return to work and they did" (Green, 1990: 17-18; also see Daily Labor Report, 18 July 1989).

When the unofficial actions came to an end, federal District Court Judge Williams switched course and pursued a different tack to resolve the conflict between Pittston and the UMWA. While acknowledging that he had no legal authority to do so, Williams challenged parties from both sides to meet him at a Virginia hotel to renew bargaining discussions, exhorting that "[i]f only one side shows up, then the public and I will know who is refusing to talk" (Daily Labor Report, 18 July 1989). Williams' stated reasoning for this relatively unconventional move was as follows:

The court on which I sit has become totally consumed with side issues in this dispute...a dispute which greatly affects nearly every citizen in southwest Virginia...Indeed this whole situation illustrates the inadequacies of the agencies created by law to aid in the settlement of these disputes (quoted in Daily Labor Report, 18 July 1989).

Both the company and the union accepted Williams' challenge, and negotiations resumed on July 19. Nevertheless, this round of talks was no more fruitful than those earlier.

As July and August unfolded, the legal currents that had pushed persistently against union efforts in late May and June shifted slightly in the other direction. First, the NLRB issued its official decision on the numerous ULP charges that had been filed against Pittston by the UMWA on July 7, 1989. The Board specifically found that "[t]he company had violated federal labor law twenty-eight times and was 'failing and refusing to bargain in good faith'" (Green, 1996: 532).<sup>221</sup> Second, a Democratic-sponsored House of Representatives subcommittee investigating the dispute released a report in early August that was highly critical of the inequities in the administration of federal labor law vis-à-vis Pittston and the union. In particular, the subcommittee found the NLRB's lengthy delay in processing the UMWA's ULP claims, well over a year in fact, to be quite "troubling", while "within a matter of days after the strike began the company was able to obtain a court order restricting picket line activity" (Daily Labor Report, 21 August 1989; also see Couto, 1993: 178).

If little else, this shift in the legal current provided the UMWA with plenty of public relations ammunition that the union leadership used to great effect (e. g. Daily Labor Report, 21 August 1989). UMWA President

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<sup>221</sup> I have already noted the consequences of this decision for the use of striker replacements by Pittston.

Trumka repeatedly charged the existing system of U. S. labor law, from the police to state and federal courts to the NLRB, as being biased against the union. Trumka further characterized the miners' struggles with the law as symbolic of the problem facing the U. S. labor movement as a whole:

I think workers throughout this country, not just mine workers but workers in general from a number of different industries, genuinely believe that because of legal constraints and judicial interference there is a never-win situation for workers (quoted in the Roanoke Times and World News, 9 July 1989).

Trumka's rhetoric about the unjust nature of the courts proved effective in politicizing the strike among the public and in helping to maintain rank-and-file solidarity in the later months of the dispute. The Moss 3 takeover, with nearly 100 union members inside the plant and thousands more and their supporters outside, represented perhaps one of the most dramatic instances of collective action by a union in the postwar era. Another example of the strike's politicization was evidenced in the write-in campaign election of UMWA leader Jackie Stump to the Virginia House of Representatives. Unseating Judge McGlothlin's father, a longtime incumbent, the write-in campaign required the mobilization of thousands within the community. Overall, then, by pointing to the inequities of the U. S. labor law system, the

UMWA was able to expand the conflict beyond the typically narrow boundaries of business unionism and able to sustain high levels of rank-and-file support throughout the dispute.

### Discussion

When all was said and done, the impact of law in general, and that of the Reagan collective labor law project in particular, was not very significant in determining the outcome of the 1989-90 UMWA strike against Pittston. Though the sixty-four million dollars in fines could have been devastating for the union, these were eventually thrown out by the U. S. Supreme Court. In any event, these fines were the product of Virginia's right-to-work laws, not federal labor law. The federal labor law system did affect the dispute in two areas, but in one instance the intervention was beneficial for union objectives and in the other the law was effectively ignored. First, the NLRB agreed with the union that the company had engaged in unfair labor practices, which meant that striking mineworkers could not be permanently replaced. Thus, in contrast to the UFCW's sympathy strike, the UMWA was ultimately

successful in its legal strategy of converting the dispute from an economic to a ULP strike.

Second, a federal injunction to curtail mass picketing was issued, specifically at the request of the NLRB, but the union ignored it just as they did the state level injunction. Mass picketing was an integral component of the union's strategy, for it slowed production and cost the company millions in profit (Render, 1995: 344-345). This tactic arguably kept Pittston at the negotiating table and contributed to the somewhat favorable contract negotiated in early 1990. Though the union took a great risk in allowing contempt fines to accrue in the millions, it did not veer off course from this important strategy.

Overall, then, the Reagan labor law project had little direct impact on the 1989-90 coal strike. While the use of replacements by Pittston may be partially attributed to the "PATCO effect", the substantive legal changes embodied in NLRB case reversals played no apparent role. Interestingly, the targeting of U. S. labor law as unjust by union leaders, a claim that was supported by the U. S. House of Representatives subcommittee report issued in August 1989, can be seen retrospectively as helping to galvanize the rank and file and helping

mobilize community support. Thus, the purported biases of the NLRB throughout the 1980s might have ironically aided the UMWA's cause.