1-1-1982

LABOR LAW—ACCESS TO BULLETIN BOARDS—Teamsters, Local 515 (Roadway Express), 248 N.L.R.B. 83 (1980), enforcement denied sub nom., Helton v. NLRB, 656 F.2d 883 (D.C. Cir. 1981)

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I. INTRODUCTION

Section 7 of the Labor-Management Relations Act, (the Act)\(^1\) provides that

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\text{[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.}^2
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The Supreme Court has implied that the employees’ right of access to bulletin boards in the workplace is encompassed by section 7.\(^3\) A violation of an employee’s rights under this section may be an unfair labor practice.\(^4\) All unfair labor practices are defined in section 8 of the Act.\(^5\)

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4. An unfair labor practice has been defined as “a statutory ‘wrong . . . [which] is not a crime’ [but] is more closely akin to a common-law tort [in that] it amounts to an invasion of a publicly declared right.” 2 LAB. L. REP. (CCH) ¶2230. An unfair labor practice under the Labor-Management Relations Act (the Act) may be prosecuted only by the agency created by the Act, the NLRB and the NLRB’s General Counsel. Id.
5. 29 U.S.C. § 158 (1976). There are two statutory sources of unfair labor practices: acts of an employer, found in sections 8(a) & (e) of the Act, and acts of labor organizations, found in sections 8(b) & (e) of the Act. This note will focus only on those unfair labor practices falling under section 8(a)(1) and section 8(b)(1)(A). Section 8(a)(1)
Questions involving the right of access to bulletin boards have previously arisen under section 8(a)(1) in the context of unfair labor practices by employers. The issue of employee access to a union bulletin board, however, had not previously been decided by the National Labor Relations Board (the Board). Teamsters, Local 515 (Roadway Express) presented this issue to the Board and subsequently on appeal to the United States Court of Appeals for the District of Columbia in Helton v. NLRB. The Board determined that a union could prevent an employee’s access to a union bulletin board. The court of appeals in Helton disagreed and stated that the union had violated the employee’s rights under the Act by denying access to the union bulletin board.

This note will focus on the proper interpretation of section 8(b)(1)(A) and the section’s application to the facts in Helton in relation to case law that has evolved regarding employee distribution of literature on workplace bulletin boards. This note will analyze the statute, its legislative history, and case law to determine whether there should be a double standard governing union and employer obligations at law under the unfair labor practice sections of the Act. Additionally, this note will determine whether the court of appeals expanded section 8(b)(1)(A) by finding an unfair labor practice on the part of the union when no physical restraint was present.

of the Act, 29 U.S.C. § 158(a)(1) (1976), provides that “it shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title.” Id. Section 8(b)(1)(A) of the Act, 29 U.S.C. § 158(b)(1)(A) (1976), provides that

[it shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Id. (emphasis in original).

6. See infra notes 130-50 and accompanying text.

7. Although cases arose and charges were filed, they were later withdrawn. See Roadway Express, Inc., 239 N.L.R.B. 653, 653 (1978) (employee filed an unfair labor practice charge against union for removal of Professional Drivers’ Council (PROD) literature from bulletin board, then subsequently withdrew the charge). For a brief explanation of PROD, see infra notes 17-18 and accompanying text.


10. 248 N.L.R.B. at 83. See infra notes 40-44 and accompanying text for an explanation of the board’s holding.

11. 656 F.2d at 897. See infra notes 50-55 and accompanying text for the holding of the court of appeals.

12. While the author recognizes that there are other valid issues involved in this
II. Case Background

Teamsters Local 515, a labor organization, represented the employees of Roadway Express Company at its Chattanooga, Tennessee, terminal. Article 19, section 2 of the collective bargaining agreement between Roadway and the union provided that the employer would provide space for a union bulletin board but that postings on the board would be confined to official union business. Roadway provided three separate bulletin boards in the employee breakroom: One was used exclusively by the company; another, known as the “sick fund board,” was used by the company, union, and employees, and; the third was used primarily by the union for posting official notices to employees. The third bulletin board also had been used for ten years by employees and nonemployees for posting all types of personal, political, and social notices. Prior to the incident in this case, the restrictions on the use of this bulletin board were not enforced as the collective bargaining agreement provided.

Helton, an employee of Roadway Express, Inc., was a member of Teamsters Local 515. In late 1978, he joined the Professional Drivers’ Council (PROD), an organization of rank and file Teamsters existing chiefly to achieve reformation of the Teamsters Union.

On December 14, 1978, Helton posted on the union’s bulletin board a PROD editorial and a newspaper article critical of the union. The union job steward removed Helton’s materials from controversy, such as the applicability of the internal affairs proviso of section 8(b)(1)(A), the free speech rights guaranteed by the Labor-Management Reporting and Disclosure Act, Pub. L. No. 86-257, 73 Stat. 519 (1959) (codified at 29 U.S.C. §§ 411-415 (1976) (LMRDA)), the duty of fair representation, and the relevancy of alternative methods of communication, an indepth discussion of these issues is beyond the scope of this note.

13. 656 F.2d at 884.
14. Id. The provision provided: “The Employer agrees to provide suitable space for the union bulletin board in each garage, terminal or place of work. Postings by the union on such boards are to be confined to official business of the union.” Id. (quoting Art. 19, § 2 of the collective bargaining agreement).
15. 656 F.2d at 884-85.
16. Id. at 884.
17. Membership in the Teamsters Union is a prerequisite to joining PROD. Id. at 885.
18. Id. PROD seeks to promote truck safety and expose union corruption and pension fund abuses. PROD also serves as a vehicle for employee expression of concerns over their conditions of employment. Id. For a brief history of PROD and its focus and concerns. See S. Brill, The Teamsters 312-20 (1978).
19. 656 F.2d at 885. The newspaper article described I.R.S. charges against a Las
the board. Several weeks later, Helton again posted PROD material on the union bulletin board and again the job steward removed it. The union took no action against Helton. Shortly thereafter, the bulletin boards were removed so that the breakroom could be painted. When the boards were replaced, only the employer's bulletin board and the union's bulletin board were returned. The union bulletin board was placed behind locked glass. When Helton asked union officials for permission to post PROD material on the union board, they refused to grant it. The union did, however, continue to allow the board to be used by other employees for non-union business and for personal notices.

On February 6, 1979, Helton filed an unfair labor practice charge with the NLRB under section 8(b)(1)(A) against Teamsters Local 515. A complaint was issued by the General Council and in June, 1979, a hearing was held before an administrative law judge. The administrative law judge ruled that because Helton's activity was protected by section 7, the union had committed an unfair labor practice under section 8(b)(1)(A). The administrative law

Vegas gambler to whom the Teamsters' pension fund had loaned large sums of money; the PROD editorial was critical of the Teamsters' pension fund management. Id.

20. Id. Business agent Perkins testified that he felt he should not permit the PROD material to be posted because "it was derogatory, it was adverse toward our local union and the Teamsters in general. And, I felt it shouldn't be there because it created controversy among the members . . . I felt it should not go on the board. . . ." Id.

21. Id.
22. Id.
23. Id.
24. Id.
25. Id. The employer's bulletin board was also placed behind locked glass. Id.
26. Id. This fact is significant in that it indicates that the union discriminated against Helton in its posting policy. See infra notes 141-50 and accompanying text for a discussion of the implications of discriminatory posting policy.

27. See supra note 5.
28. 248 N.L.R.B. at 84.
29. Id.
30. Id. at 86. An employee's membership in PROD as well as his activities on behalf of PROD, including the posting of PROD literature on the bulletin board in the workplace, are protected by section 7 of the Act. See Roadway Express, Inc., 239 N.L.R.B. 653 (1978); Transcon Lines, 235 N.L.R.B. 1163 (1978), enforced, 599 F.2d 719 (5th Cir. 1979). Cf. NLRB v. Nu-Car Carriers, Inc., 189 F.2d 756 (3rd Cir. 1951) (drivers were not members of PROD), cert. denied, 342 U.S. 919 (1952).

Helton's act of posting the PROD notices and inviting his fellow employees to join him in union activities constitutes protected concerted activity. See Republic Aviation Corp. v. NLRB, 324 U.S. 793 (1945); see also NLRB v. Magnavox Co., 415 U.S. 322 (1974).

31. 248 N.L.R.B. at 87. Under these same facts, an employer would be held to have committed an unfair labor practice under section 8(a)(1), so the union should be held to the same standard. Id. at 86.
judge reasoned that the case fit under the Board's prior case law dealing with discriminatory application of a valid no-solicitation rule. 32

The union bulletin board had originally been established strictly for the union's official use. 33 The administrative law judge, however, stated that since the union had permitted the bulletin board to be used freely by employees for general purposes, it could not now prohibit the use of that board for the posting of literature critical of the union. 34 The administrative law judge found it immaterial that the employees were able to disseminate the PROD literature to employees by other means and the union's contention that employees would mistake the PROD material for official Teamster's material was held to be without merit. 35 The administrative law judge further noted that the controversial nature 36 of the material did not cause it to forfeit its statutory protection: 37 "There can be no restriction upon employees when they begin to question the quality

32. Id. The administrative law judge relied primarily on NLRB v. Magnavox Co., 415 U.S. 322 (1974). In Magnavox, the Supreme Court held that a union's contractual waiver of objection to the employer's rule against distribution of literature on company property interfered with the employee's rights under section 7 of the Act and that the union cannot validly waive those rights. Id. at 324-26. The Court reasoned that because the concept of allowing the union to waive an employee's statutory rights presupposes that the selection of the bargaining representative remains free, employees supporting the union and those in opposition to it must be equally secure in their rights under the Act. See id. at 325-26. Note, however, that statutory rights that are not waivable are a rarity, and are confined mainly to selection of a bargaining representative. The Board has found that a bargaining representative may waive various rights guaranteed to employees by the Act. See Shell Oil Co., 77 N.L.R.B. 1306 (1948) (the right to strike); Tide Water Associated Oil Co., 85 N.L.R.B. 1096 (1949) (the right to bargain over pension plans); Shell Oil Co., 93 N.L.R.B. 161 (1951) (the right to handle grievances). The policies of the Act, however, may not be thwarted by contractual agreement. See C. Morris, THE DEVELOPING LABOR LAW (1971).

33. 656 F.2d at 884.

34. 248 N.L.R.B. at 86. The administrative law judge stated that had the use of the bulletin board previously been confined strictly to official business of the union, there would have been no violation. Id. See infra notes 47-49.

35. 248 N.L.R.B. at 86. Even though the material did not state explicitly that it was published by PROD, the administrative law judge reasoned that a reading of the literature would disclose its authorship. Id. The newsletter was entitled Prod Dispatch and thus its authorship was clear. Id. at 85.

36. The administrative law judge characterized the literature as extremely critical of the Teamsters and its leaders. Id. at 85.

37. Id. The material "was not so offensive, flagrant, violent, or extreme as to render it unprotected." Id. at 86. See Container Corp. of America, 244 N.L.R.B. 318 (1979), enforced in part, enforcement denied in part, 649 F.2d 1213 (6th Cir. 1981); Timpte, Inc., 233 N.L.R.B. 1218 (1977), enforcement denied, 590 F.2d 871 (10th Cir. 1979); Dreis & Krump Mfg., 221 N.L.R.B. 309 (1975), enforced, 544 F.2d 320 (7th Cir. 1976); see also infra note 144 for a discussion of the test used to determine when union-related material
of their representation . . ."  

The union filed exceptions to the administrative law judge's decision in September, 1979. A three-member panel of the NLRB reversed the administrative law judge by a vote of two-to-one. The majority did not overturn any of the findings of fact but held instead that a union could lawfully remove dissident members' materials from a union-controlled bulletin board. The Board distinguished sections 8(a)(1) and 8(b)(1)(A) and ruled that despite their similarity, unions should not be held to be the same standard of conduct as employers. The Board found no "restraint or coercion" in the union's conduct toward Helton. The Board's view was that restraint or coercion was a prerequisite to finding an unfair labor practice under section 8(b)(1)(A), and though mere interference would be enough under section 8(a)(1), it was insufficient under section 8(b)(1)(A). Thus, the case was dismissed.

Dissenting Member Jenkins maintained that the union's conduct toward Helton constituted an unlawful restriction upon employees during a period in which the employees began to question the quality of their representation. Jenkins cited NLRB v. being distributed by an employee loses its statutory protection because of its controversial nature.

38. 248 N.L.R.B. at 86. The administrative law judge stated that the union's contention that the literature could lead to altercations between parties is mere conjecture and without any evidentiary support. Id. But see supra note 20.

39. 248 N.L.R.B. at 86.

40. Id at 84. (Chairman Fanning and Member Penello in the majority, Member Jenkins dissenting).

41. Id at 83. The majority found merit in the union's contentions that it had never allowed its bulletin board to be used for anti-union messages; that to require the union to allow posting of critical notices about the union would be patently unfair; that the material could be freely distributed elsewhere; and that no disciplinary action had been taken by the union against Helton. Id.

42. Id. The majority stated that the cases relied upon by the administrative law judge differed critically from the case at hand in that the former involved employer action whereas the latter involved union action; therefore, a different section of the Act governs. Id. See supra note 5. But, the Board did concede that under section 8(a)(1) an employer may not prohibit employees from posting union materials on its bulletin board when it allows them to use the board for other purposes. 248 N.L.R.B. at 83.

43. 248 N.L.R.B. at 83. The Board held that the union's actions in this case were "devoid of any implications of retribution" and hence were not "restraining or coercing." Id.

44. Id.

45. Id at 84 (Member Jenkins, dissenting).
Magnavox Co. as controlling because it also involved an improper balancing of interests in the application of section 7 rights similar to that which occurred in Roadway Express. Jenkins stated that the union curtailed Helton's freedom of expression when it refused to allow him to post PROD material. He maintained that there must be equitable dissemination of employee views in the workplace; and reasoned that "while a union may waive the right to distribute its own institutional literature, it cannot waive or preclude the employees' rights to disseminate [sic] literature pertaining to their union views."

Helton sought review of the Board's decision in Roadway Express. The Court of Appeals for the District of Columbia found that section 8(b)(1)(A) applied to the union conduct at issue and held that the union conduct violated Helton's section 7 rights. The court held that the NLRB's narrow interpretation of section 8(b)(1)(A) was inconsistent with the plain meaning of the statute, its legislative history, and was not supported conclusively by Supreme Court decisions or the Board's own precedent.

The court of appeals also held that the internal affairs proviso of section 8(b)(1)(A) was inapplicable. The court noted that while the proviso extended limited protection to union conduct that might otherwise violate the exercise of section 7 rights, it did not insulate the conduct at issue in this case.

47. 248 N.L.R.B. at 84 (Member Jenkins, dissenting). In Magnavox Co., the Supreme Court held that "a limitation of the right of in-plant distribution of literature to employees opposing the union does not give a fair balance to § 7 rights .... Employees supporting the union have as secure § 7 rights as those in opposition." 415 U.S. at 326. The Court continued, "[i]t is the Board's function to strike a balance among 'conflicting legitimate interests' which will 'effectuate national labor policy', including those who support versus those who oppose the union." Id. (emphasis in original) (quoting NLRB v. Truck Drivers Union, 353 U.S. 87, 96 (1957)).

Jenkins did not feel that Helton's section 7 rights had to be balanced against any right of the union to restrict posting on its bulletin board only to those views that were favorable toward the union. 248 N.L.R.B. at 84 (Member Jenkins, dissenting).

48. 248 N.L.R.B. at 84.
49. Id.
50. 656 F.2d at 887-86.
51. Id.
52. See supra note 5.
53. 656 F.2d at 893-94.
54. Id. The court held that the union action in Helton was not protected by the proviso of section 8(b)(1)(A) because it did not meet the three-prong test set forth in Scofield v. NLRB, 394 U.S. 423 (1969). 656 F.2d at 893-96. The proviso addresses union discipline of members who violate internal rules and regulations governing union membership. Id. at 893. To be protected under the proviso, an internal union rule must:
The court of appeals, agreeing with the administrative law judge and Board dissent, held that the availability of alternative means of communication was immaterial and irrelevant. While initially noting that it was not clear whether Helton actually did have access to equally effective means of distribution, the court further noted that even if Helton did have alternative channels, that fact did not justify the union's restraint of his section 7 rights.

III. ANALYSIS

A. Statutory Interpretation

The Supreme Court has held that the interpretation of a statute, particularly in the area of labor legislation, requires that one examine the plain meaning of the statute and the language in which it is framed.

The statutory provisions in sections 8(b)(1)(A) and 8(a)(1) contain the words "interfere with," "restrain," and "coerce." The ruling of the Board hinged on the absence of the words "interfere with" from the list of unfair labor practices under section

(1) reflect a legitimate union interest; (2) impair no policy Congress has imbedded in the labor laws; and (3) be reasonably enforced against the union members who are free to leave the union and escape the rule. Id. at 894 (quoting 394 U.S. at 430). For a full discussion of the applicability of the internal affairs proviso and the Scofield tests see 656 F.2d at 893-96. The court noted that even if the internal affairs proviso protected the conduct at issue here, it could not affirm because the Board did not rely on the proviso in its decision. Id. at 893 n.52.

55. 656 F.2d at 896-97.
56. Id at 896. Helton was not permitted to use the company board and the sick board was no longer available. Id. The court maintained that leaving the material on tables in the breakroom was not an effective alternative because the company custodians or the union itself could easily have removed it. Id.
57. Id at 896-97. The court noted that "[t]he NLRB has consistently ruled that the presence of alternative methods of communication is not relevant in determining the rights of employees." Id. at 897 n.71. The court analogized the situation involving union restraint to that involving employer restraint of employee distribution in the workplace. Id. at 897. The Supreme Court, in Magnavox Co., held that the only time an employer may validly curb an employee's right to distribute in-plant literature is when the employer can show a legitimate business justification, such as interference with productivity or threat to safety. 415 U.S. at 326-27. The court in Helton implied that since the union could not show any justifiable or legitimate reason for curbing Helton's distribution rights in a non-work area (the breakroom), there was no need to ascertain whether or not there were alternative means of communication available to him; the union had violated Helton's section 7 rights. 656 F.2d at 896-97.
59. See supra note 5.
60. Id.
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8(b)(1)(A). The Board maintained that the union did not restrain or coerce Helton, but that its conduct was merely an interference. Putting aside legislative history and looking only at the plain meaning of the words of the statute, the court of appeals properly held that the union restrained Helton. This follows from the fact that both English and law dictionaries define the word "restrain" in broad terms. Neither limit the definition of the word to purely physical obstruction and, in fact, both mention a "moral force" as the equivalent of a restraint.

Interference by a union or employer may take the form of a direct or indirect act. Not only can interference be an act itself; it also follows as the result or consequence of an act. The union interfered with Helton by prohibiting him from posting information on the union bulletin board. This direct interference resulted in the restraint of his freedom of expression in the workplace. One must look at the impact of an action by the union in the context of the relationship between the employee and the union. Dissenting

61. 248 N.L.R.B. at 83. Section 8(a)(1) prohibits an employer from interfering with, restraining, or coercing an employee, whereas section 8(b)(1)(A) prohibits a union from restraining or coercing an employee. See supra note 5.

62. 248 N.L.R.B. at 83. The Board neither cited case authority for this view nor gave any concrete examples of what they thought would constitute interference, restraint, or coercion.

63. "Restrain" may be defined as, "to hold [as a person] back from some action, procedure or course: prevent from doing something [as by physical or moral force or social pressure]; . . . to limit or restrict to or in respect to a particular action or course: keep within bounds or under control." N. Webster, Third New International Dictionary 1936 (unabridged ed. 1961). Black's Law Dictionary defines "restrain" as to limit, confine, abridge, narrow down, restrict, obstruct, impede, hinder, stay, destroy. To prohibit from action; to put compulsion upon; to restrict; to hold or press back. To keep in check; to hold back from acting, proceeding, or advancing, either by physical or moral force, or by interposing obstacle; to repress or suppress; to curb.

64. See supra note 63 and accompanying text. Note that both authorities cite physical force as a prerequisite to coercion.

65. 2 LAB. L. REP. (CCH) ¶ 3701.

66. Id.

67. 656 F.2d at 896-97. See infra notes 122-24 and accompanying text regarding the importance of an employee's right to distribute materials in the workplace.

68. Some important considerations which should have been discussed by the Board are: (1) how were the union's acts cast? (2) was a threat inferred? (3) what did the union actor intend and what did the employee understand?; and (4) what was the intended import of the message not to post materials? NLRB v. Virginia Elec. & Power Co., 314 U.S. 469 (1941); NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). The Board's failure to take these ideas into consideration is interesting in view of the fact that the Supreme Court has previously held such considerations to be important to the Board's discussion of employer activity in other areas. See NLRB v. Virginia Elec. & Power Co.,
Member Jenkins reasoned that he could conceive of no “greater restraint or coercive impact on section 7 rights than that which suppress[ed] freedom of expression in matters protected by and inherent in that section.”69 Similar reasoning has been found in cases involving the term “restraint,” particularly actions that limit first amendment rights. These cases involved freedom of speech70 and expression,71 various labor cases discussing employees’ rights to distribute organizational materials,72 or employees’ discussions of self-organization.73 The Board, in the instant case, reasoned that since there was no physical restraint or retribution, there was no restraint or coercion.74 But, as the court of appeals held, the Board’s ruling ignored the varieties of miscellaneous union activity that involved neither physical restraint nor retribution, yet were found to violate section 8(b)(1)(A).75 These have included, inter alia, interference with employees’ activities during working hours,76 surveillance by the union of employees at a rival union meeting,77 interference with employees’ distribution of rival union literature,78 interference with

314 U.S. 469, 477-79 (1941); NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). In Gissel Packing Co., the Court noted that the Board has a duty to focus on the question: “[w]hat did the speaker intend and the listener understand. . . .” Id. at 619.

69. 248 N.L.R.B. at 84. Jenkins felt that both the absence of any implication of retribution, and the availability of alternative means of communication were irrelevant, “and a lack of a threat of reprisal does not legitimize the action.” Id.

70. See Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 553 (1975) (restraint of first amendment freedoms by denying a promoter of theatrical productions the use of a municipal facility for the showing of a musical).


74. 248 N.L.R.B. at 83. See supra note 43. One might interpret the Board ruling as requiring that the employee and the union come to physical blows before a violation of section 7 can be found. This rationale does not comport with the NLRB’s goal of promoting industrial peace. See Brief for Petitioner at 18-20, Helton v. NLRB, 656 F.2d 883 (D.C. Cir. 1981).

75. 656 F.2d at 892; see infra notes 76-82; 2 LAB. L. REP. (CCH) ¶ 3850.


77. Retail Clerks Int’l Ass’n, Locals 698 and 298 (Skorman’s Miracle Mart) 160 N.L.R.B. 709 (1966).

78. General Motors Corp., 158 N.L.R.B. 1723 (1966), enforcement denied, 65 L.R.R.M. 3103 (BNA) (9th Cir. 1967); General Motors Corp., 147 N.L.R.B. 509 (1964), vacated, 345 F.2d 516 (6th Cir. 1965).
employees' meetings,79 blacklisting employees,80 execution of contracts without evidence of majority representation,81 and union preclusion of employee's unfettered option to allow or disallow a payroll deduction for dues.82 In these cases, the union, in some way, violated an employee's rights or prevented the employee from exercising those rights. These violations were sufficient to support the finding of an unfair labor practice under section 8(b)(1)(A). The Board, in Roadway Express, departed from its past practice by finding no unfair labor practice although the union had restrained Helton in the exercise of his section 7 rights. It remains unclear as to how the Board will reconcile past decisions interpreting the Act and its goal of promoting industrial peace in light of its decision in Roadway Express.

B. Legislative History

In Local 1976, United Brotherhood of Carpenters and Joiners of America v. NLRB,83 the Supreme Court held that in construing a statute, the judicial function is limited to application of the Congressional enactment.84 The Court, however, must first ascertain exactly what Congress had enacted and the purpose behind its enactment.85 Most relevant to this inquiry is the language in which Congress has expressed its policy.86 The Supreme Court has not confined the search into legislative history simply to administrative or court decisions. The Court has held that while an agency's interpretation of a statute is entitled to some deference, courts retain an obligation to "honor the clear meaning of a statute, as revealed by its language, purpose and history."87

84. Id. at 100.
86. 357 U.S. at 100. See NLRB v. Industrial Union of Marine & Shipbldg. Workers, 391 U.S. 418, 425 (1968) in which the Supreme Court approved of the Board's judgment because it was consistent with the policy underlying the Act. Id.
The sponsors of the Taft-Hartley Act, in supporting section 8(b)(1)(A) and other amendments to the original Wagner Act, focused primarily on the need to control union violence and economic coercion. The legislative history makes it clear that Congress intended section 8(b)(1)(A) to cover as wide a range of conduct as that covered by section 8(a)(1). In explaining the amendment, Senator Ball, a cosponsor, stated that the purpose of section 8(b)(1)(A) was "to insert an unfair-labor practice [clause] for unions identical [to] the first unfair labor practice prohibited to employers in the present act." Senator Taft explained that the proposal was that unions be bound in the same way under section 8(b)(1)(A) as employers were bound under section 8(a)(1). He later stated that an equal application of almost identical provisions was all that the sponsors intended to accomplish. In response to a request for a definition of

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88. See supra note 2.

But to say that § 8(b)(1)(A) covers only coercive organizational tactics, which the Court comes very close to doing, is to ignore much of the legislative history. It is clear that § 8(b)(1)(A) was intended to protect union as well as nonunion employees from coercive tactics of unions, and such protection would hardly be provided if the section applied only to organizational tactics. Also, it is clear that Congress was much more concerned with non-violent economic coercion than with threats of physical violence.

Id. at 211 (emphasis in original); see also Helton v. NLRB, 656 F.2d 853 (D.C. Cir. 1981) in which the court stated that "nothing in the legislative history supports the conclusion that violence and economic reprisal were the sole evils at which Section 8(b)(1)(A) was aimed." Id. at 888-89.

90. See S. Rep. No. 105, 80th Cong., 1st Sess. 50-56 (1947), reprinted in 1 NLRB, Legislative History, supra note 89, at 456 (supplemental views of Senators Taft, Ball, Donnell and Jenner); infra notes 92-97 and accompanying text.
91. The Taft-Hartley Act amended the original Wagner Act. See supra note 2 and accompanying text.
92. 93 Cong. Rec. 4016 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1018.
93. 93 Cong. Rec. 4021 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1025.
unfair labor practices that might be covered by this new provision, Senator Taft stated that “[i]f it be an unfair labor practice on the part of employers, why not on the part of a labor organization?” The Senator stated that the words “interfere with,” “restrain,” and “coerce” had been construed for so long by the NLRB in the case of employers that he thought it appropriate to use the same words in the comparable section regarding union actions. He further stated that this consistency in wording was necessary to ensure that the restrictions of union unfair labor practices would parallel those applied to employers.

Legislative history, however, can be deceiving when the wording urged on the congressional floor is not put into the final statute. Consequently, one must look to the purpose behind the deletion of specific language from the statute. In Roadway Express, the Board urged that since the words “interfere with” were not found in section 8(b)(1)(A) of the statute, Congress meant to establish a double standard for the conduct of employers and unions under the Act. From a search of the legislative history regarding the omission of the words “interfere with,” and as the court of appeals noted, an entirely different rationalization for the exclusion of those words emerges. Section 8(b)(1)(A) came to the Senate floor with the words “interfere with” intact in the provision. Senator Ives offered an amendment to eliminate the words “interfere with” from section 8(b)(1)(A) for fear of the construction that might very easily be placed on the words “interfere with.” “They could easily be construed to mean that any conversation, and persuasion, any urging on the part of any person, in an effort to persuade another to join a labor organization, would

95. 93 Cong. Rec. 4023 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1028; see 93 Cong. Rec. 4025 (1947), reprinted in 2 NLRB, Legislative History, at 1032 (Sen. Taft urged that what was being sought was merely to require that unions be subject to the same rules that govern employers).


97. 93 Cong. Rec. 4025-26 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1032-33. “If there are any such unfair labor practices [on the part of unions], then it is obvious that this is a most essential [restriction] to be included, a clear-cut one, one which is most parallel to the unfair labor practice on the part of employers.” Id.

98. 248 N.L.R.B. at 83.

99. 656 F.2d at 889. “Omission of the words ‘interfere with’ from Section 8(b)(1)(A) was not intended to indicate that union conduct should be measured against a less demanding standard than employer conduct.” Id.; see infra notes 100-04 and accompanying text.

100. 93 Cong. Rec. 4270 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1138.
constitute an unfair labor practice. After hearing Senator Ives' amendment, Senator Taft stated that he had consulted with his attorneys and that they informed him that elimination of the words "interfere with" would not result in any substantial change of the meaning of the statute, nor have any effect on the Court decisions. Senator Ball agreed that the words "interfere with" were vague and noted the importance of eliminating vague language from the statute. Senator Ball stated that the elimination of the words should not change the consequences of the statute since "in the corresponding unfair labor practice for employers, no complaint is ever issued on the interference angle."

It is apparent from the foregoing statements that Senators Ball and Taft envisioned the situation in Helton arising. In such a situation, a court's decision might turn on the explicit wording of the statute and on the inclusion of the words "interfere with" in section 8(a)(1) and their reciprocal omission from section 8(b)(1)(A). The Senators were not concerned with leaving the words "interfere with" out of section 8(b)(1)(A) because it appeared to them that the Board never distinguished between interference and coercion or restraint in prior cases, and consequently there would be no need for the Board

101. 93 Cong. Rec. 4270-71 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1138; see H.R. Rep. No. 245, 80th Cong., 1st Sess. 30 (1947) ("[I]t is the purpose of the Committee to make entirely certain that Congress does not forbid representatives, by reasonable means, to persuade employees to join the unions."); 93 Cong. Rec. 4435 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1205. Senator Smith stated that the words "interfere with" were eliminated because we were afraid they might imply that if a fellow member or an agent did something entirely legitimate, the words 'interfere with' might be construed as being sufficiently broad to prevent that happening. There is no intention whatever to prevent the legitimate building up of a union organization. The only intent is to prevent restraint or coercion by a labor organization or by employers, and we think the rules should be the same for one side as for the other.

Id.


103. 93 Cong. Rec. 4271 (1947), reprinted in 2 NLRB, Legislative History, supra note 89, at 1139.

104. See 2 Lab. L. Rep. (CCH) ¶ 3850.

Absence of the term 'interference' in the statutory language designating the union unfair labor practice is of no great significance. Congressional explanation states that the word 'interfere' was omitted so that unions and employers would be on equal footing. Employers were not held liable under the prior law [section 8(a)(1)] where the conduct complained of constituted "interference," but not 'restraint' or 'coercion'.

Id.
to do so in the future. While the Senators anticipated a factual situation similar to Helton, they did not envision a court making a distinction between the terms "coerce," "restrain," and "interfere." Omission of the words "interfere with" was not intended to reflect upon the degree of conduct to be exhibited by the union before a violation could be found.

Evident from the legislative history surrounding the omission of the term "interfere with" from section 8(b)(1)(A) is the fact that there was no congressional presumption of a double standard for employers and unions regarding the unfair labor practice provisions at issue. Sections 8(a)(1) and 8(b)(1)(A) were meant to parallel each other although differently worded. Accordingly, unions were to be held to the same standard of conduct as employers in unfair labor practice cases.

While not articulated clearly by the Court nor discernable from the legislative history, another reason why Congress may have omitted the term "interference" from section 8(b)(1)(A) was because debate focused on the effects of the conduct between the union and the employer rather than on the conduct itself. Employer conduct is much more likely to restrain workers than union conduct because employers have economic control of the employee. Union conduct usually has to be more severe before employees will refrain from the exercise of their rights. Nevertheless, in Helton, the union's actions had a limiting effect on the employee in that the actions of the job steward stopped Helton from exercise of his section 7 rights.

C. Supreme Court Decisions Interpreting Section 8(b)(1)(A)

The court of appeals maintained that the Board, in Roadway Express, in arguing for a narrow interpretation of section 8(b)(1)(A), relied on two Supreme Court decisions, namely NLRB v. Drivers,

105. See supra note 104.
106. See supra notes 92-106 and accompanying text.
107. See supra notes 65-68 and accompanying text.
108. There are certain situations where a union is held to a lesser standard of accountability for its actions than is an employer. This is so especially when a union is first organizing and trying to achieve representation. An employer may be held to a higher standard because of the inequality of status and power between the union and the employer. However, once the union achieves an equality of bargaining power with the employer, the union should be held to the same standard as the employer.
109. See 248 N.L.R.B. at 84 (Member Jenkins, dissenting). The union's conduct restrained Helton's conduct as it prohibited him from distributing union-related information, a right guaranteed to him under section 7 of the Act, regardless of whether the material is pro-union or anti-union. Id; see supra note 47.
110. 656 F.2d at 889-90.
Chauffeurs, Helpers, Union Local 639,111 and NLRB v. Allis-Chalmers Manufacturing Co.112 While these cases involved some interpretation by the Supreme Court of section 8(b)(1)(A), both are distinguishable from Helton on their facts and on their legal holdings.113 Accordingly, since neither case is analogous to the situation in Helton, neither can be properly cited as supporting authority for the Board's restrictive interpretation of section 8(b)(1)(A). Moreover, in a strong dissent in Allis-Chalmers, Justice Black stated that legislative history should not be ignored, and that an application of section 8(b)(1)(A) should result in the finding of a violation.114 Justice Black reviewed the legislative history and noted that the issue of an employee's relation to his employer, as contrasted with his relation to his union, arose in the congressional debates. On each occasion, however, the sponsors of the Taft-Hartley amendment did not foresee any difference between the two relationships.115 Thus, Justice Black concluded that the sponsors of section 8(b)(1)(A) intended it to parallel section 8(a)(1).116

A major Supreme Court decision omitted from the Board's decision, yet consistent with the court of appeals' construction of section 8(b)(1)(A) in Helton, was International Ladies' Garment Workers' Union v. NLRB.117 In that case, the union was held to

112. 388 U.S. 175 (1967).
113. 656 F.2d at 889-90. The court of appeals in Helton distinguished both cases. The first case, Drivers Local 639, involved peaceful recognitional picketing by a labor union. The court distinguished Drivers Local 639 by reasoning that the Supreme Court did not explicitly state that section 8(b)(1)(A) was directed solely at union violence. 656 F.2d at 889-90. Indeed, it was never determined that section 8(b)(1)(A) might not apply to union conduct lying somewhere between violence and simple peaceful persuasion. Therefore, the situation in the present case was not settled by Drivers Local 639. The second case distinguished by the court was Allis-Chalmers which involved a union fining its members for crossing a picket line. In that case the Supreme Court focused on the Board's authority to regulate internal union affairs under the proviso to section 8(b)(1)(A). 388 U.S. at 191-95. The court of appeals distinguished Allis-Chalmers by finding that in that case the Supreme Court relied on the internal affairs proviso to section 8(b)(1)(A) to take the fines out of a union violation, not on the lack of the word interference in the main body of the provision. 656 F.2d at 889-90. The internal affairs proviso of section 8(b)(1)(A) provides: "this paragraph [8(b)(1)(A)] shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 29 U.S.C. § 158(b)(1)(A) (1976).
114. 388 U.S. at 208 (Black, J., dissenting). He concluded: "I dissent because I am convinced that the Court has ignored the literal language of § 8(b)(1)(A) in order to give unions a power which the Court, but not Congress, thinks they need." Id. at 217.
115. Id. at 209-11; see 93 CONG. REC. 4022 (1947).
116. 388 U.S. at 209 (Black, J., dissenting).
have violated section 8(b)(1)(A) by its acceptance of exclusive bar-
gaining authority when it actually held only minority representation
status. The lower court held "that the provisions were intended to
be parallel is indicated by the similarity of the language employed
and is confirmed by the legislative history of the provisions." The
Supreme Court affirmed the lower court decision and added: "In the
Taft-Hartley law, Congress added [section] 8(b)(1)(A) to the Wagner
Act, prohibiting, as the Court of Appeals held, 'unions from invad­
ing the rights of employees under [section] 7 in a fashion comparable
to the activities of employers prohibited under [section] 8(a)(1).' The
Supreme Court also noted that "[i]t was the intent of Congress
to impose upon unions the same restrictions which the Wagner Act
imposed upon employers with respect to violations of employee
rights." 

D. Access to Bulletin Boards

The place of work historically has been held to be a place
uniquely appropriate for the dissemination of views regarding the
bargaining representative. In a long line of decisions, the Board
has taken the position that the promulgation and enforcement of
rules restricting distribution of literature are not valid, particularly
when applied to activities carried on in opposition to the incumbent
union. In fact, general rules prohibiting distribution of literature

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118. Id. at 937-38.
119. ILGWU v. NLRB, 280 F.2d 616, 620-21 (D.C. Cir. 1960), aff'd, 366 U.S. 731
(1961).
120. 366 U.S. at 738.
121. Id.
122. 415 U.S. at 325; see Eastex, Inc. v. NLRB, 437 U.S. 556 (1978); NLRB v. Mid­
     States Metal Prods., Inc., 403 F.2d 702, 705 (5th Cir. 1968); Gale Prods., 142 N.L.R.B.
     1246, 1249 (1963), enforcement denied, 337 F.2d 390 (7th Cir. 1964). It has been further
     explained that
     [t]heir place of work is the one location where employees are brought together
     on a daily basis. It is the one place where they clearly share common interests
     and where they traditionally seek to persuade fellow workers in matters affect­
     ing their union organizational life and other matters related to their status as
     employees. This is undeniably so in the case of employee dissatisfaction involv­
     ing efforts to change their bargaining representative.

123. See NLRB v. Mid-States Metal Prods. Inc., 403 F.2d 702, 706 (5th Cir. 1968).
    "Solicitation and distribution of literature on plant premises are important elements in
giving full play to the right of employees to seek displacement of an incumbent union." 
    Id. at 705; see also Transcon Lines, 235 N.L.R.B. 1163 (1978), enforced, 599 F.2d 719
    (5th Cir. 1979); International Union of Auto. Workers (General Motors Corp.), 158
    N.L.R.B. 1723 (1966), enforcement denied, 65 L.R.R.M. 3103 (BNA) (9th Cir. 1967);
    International Union of Auto. Workers (General Motors Corp.), 147 N.L.R.B. 509 (1964),
in the workplace have been held to be presumptively invalid.\textsuperscript{124}

Employee access to bulletin boards in the workplace is an issue that has arisen repeatedly.\textsuperscript{125} Nevertheless, the issue has only been addressed by the Board with regard to employer restrictions upon employee access, not with regard to union restrictions on employees. The Board in \textit{Roadway Express} reasoned that since the cases it had decided regarding access to bulletin boards involved the application of section 8(a)(1) and not section 8(b)(1)(A), the rulings in those cases were not controlling in a case where an alleged union violation occurred.\textsuperscript{126} The Board failed to address the legislative history of the statute when applying it in \textit{Roadway Express}.\textsuperscript{127}

Since the proper interpretation of section 8(b)(1)(A) in this circumstance is analogous to section 8(a)(1),\textsuperscript{128} it is relevant to review the Board's decisions in bulletin board cases.\textsuperscript{129} The leading case in the area of discriminatory application of employee access to bulletin boards is \textit{Vincent's Steak House}.\textsuperscript{130} There, the Board found that the employer violated section 8(a)(1) by discriminatorily enforcing rules regarding permission to post materials on the bulletin board.\textsuperscript{131} Nu-

\textit{vacated}, 345 F.2d 516 (6th Cir. 1965); \textit{reversed}, 344 F.2d 621 (6th Cir. 1965); \textit{Gale Prods., Inc.}, 142 N.L.R.B. 1246, 1249 (1963), \textit{enforcement denied}, 337 F.2d 390 (7th Cir. 1964); \textit{Nu-Car Carriers, Inc.}, 88 N.L.R.B. 75 (1950), \textit{enforced}, 189 F.2d 756 (3d Cir. 1951), \textit{cert. denied}, 342 U.S. 919 (1951). The Board in \textit{Nu-Car Carriers} discussed the purpose of the Act as not foreclosing employees from questioning the wisdom of their representation or trying to align their union with their position. \textit{Id.} at 76.

\begin{itemize}
  \item 124. \textit{See} \textit{Magnavox}, 415 U.S. at 326; \textit{Armco Steel Corp.}, 148 N.L.R.B. 1179, 1185 (1964), \textit{reversed}, 344 F.2d 621 (6th Cir. 1965); \textit{Gale Prods., Inc.}, 142 N.L.R.B. 1246, 1248 (1963), \textit{enforcement denied}, 337 F.2d 390 (7th Cir. 1964); \textit{see also} \textit{Republic Aviation Corp. v. NLRB}, 324 U.S. 793 (1945).
  \item 125. \textit{See infra} notes 134-50 and accompanying text.
  \item 126. 248 N.L.R.B. at 83.
  \item 127. It is curious that an administrative agency charged with the duty of interpreting and applying a statute would not look at the legislative history surrounding the statute when applying the law to a new situation.
  \item 128. \textit{See supra} notes 87-103 and accompanying text for a discussion of the applicable legislative history.
  \item 129. Although the administrative law judge felt that this analysis was proper to make, neither dissenting Member Jenkins nor the court of appeals gave this analysis full consideration.
  \item 130. 216 N.L.R.B. 647 (1975).
  \item 131. \textit{Id.} at 647-48. In the Board's view, the entire course of conduct by the employer with regard to removing an offensive newspaper article from the bulletin board "made crystal clear to Respondent's employees that such a method of communicating information to fellow workers concerning matters relating to their 'mutual aid or protection' would not be permitted in the future." \textit{Id.} Thus, the employer "disparately denied employees' access to its bulletin boards for their concerted activities in violation of Section 8(a)(1) of the Act." \textit{Id.}
merous cases decided by the Board follow the line of reasoning in Vincent's, and many did not involve the use of threats or discipline by the employer.

In Green Giant Co., the Board found a violation of section 8(a)(1) in the discriminatory denial of the use of a farmshop bulletin board for the posting of pro-union literature. In two cases involving the General Motors Corporation, an employee filed an unfair labor practice charge against both the employer and the union for maintaining a collective bargaining agreement that contained a provision that restricted the right of employees to distribute union literature on the employer's bulletin board. In both cases, the Board found a violation.

The Board held that "neither an employer nor an incumbent union is entitled to attempt to freeze out another union by waiving the employee's right to urge a change in their collective-bargaining representative." In Roadway Express, the employee was merely criticizing the actions of officers and leaders of the Teamster's International Union and was not attempting to persuade employees to change their bargaining representative.

In Nugent Service, Inc., the Board held that an employer could prevent the posting of partisan campaign material. The Board, however, noted that

an employer who permits official union notices and communications to its members to be posted on its bulletin boards may not

132. See infra notes 134-50 and accompanying text.
133. See infra notes 140-50 and accompanying text.
134. 223 N.L.R.B. 377 (1976).
135. Id. at 379.
138. International Union of Auto. Workers (General Motors Corp.), 158 N.L.R.B. 1723, 1726 (1966), enforcement denied, 65 L.R.R.M. (BNA) 3103 (9th Cir. 1967). The Board continued, emphasizing that "the Act commands us to protect the employees' statutory right at appropriate times to review and reconsider their former selection of a union as a collective-bargaining representative, either by replacing it with another union or by completely abandoning collective bargaining." Id. (emphasis in original).
139. 248 N.L.R.B. at 85. There, the articles and editorials were not directed towards local officers or agents. Id.
141. Id. at 161.
thereafter discriminate against an employee who posts a union notice which meets the employer's rule or standard but which the employer finds distasteful; while an employer whose practice it has been to permit employees to post on its bulletin boards notices of various types unrelated to their employment but who remove only notices of union meetings violates section 8(a)(1) thereby.\(^{142}\)

This second situation is analogous to *Roadway Express* and therefore should be controlling.

In *Container Corp. of America*,\(^{143}\) the Board found a violation of section 8(a)(1) despite the fact that the employer believed that the material posted was "absolutely insulting and inflammatory" and in violation of the provision in the collective bargaining agreement.\(^{144}\) The Board admitted that there was no statutory right for employees or a union to use an employer's bulletin board.\(^{145}\) The Board went on to state, however, that

once an employer extends to a union the right to use the bulletin board, either verbally or by practice, or contractually, the union's right to use of the board takes on the protection of the Act to the extent that the employer may not thereafter bar the union from posting notices where it allows indiscriminate employee use of its bulletin boards for posting matters of general concern unrelated to union activity.\(^{146}\)

Applying this standard to *Helton*, once the union, by practice, allowed employees to post non-union business on the bulletin board, it thereafter could not bar employees from posting other notices, including notices the union found critical of it or otherwise "distasteful."\(^{147}\) In a similar manner, the Board decided *Challenge Cook Brothers of Ohio, Inc.*,\(^{148}\) which was enforced by the Court of Appeals for the Sixth Circuit. In *Challenge Cook Brothers*, the em-

\(^{142}\) Id. (footnote omitted).

\(^{143}\) 244 N.L.R.B. 318 (1979), enforced in part, enforcement denied in part, 649 F.2d 1213 (6th Cir. 1981).

\(^{144}\) *Id.* at 319. The Board held that the test for determining whether material loses its statutory protection because of derogatory language was set out in *Timpte, Inc.*, 233 N.L.R.B. 1218 (1977), enforcement denied, 590 F.2d 871 (10th Cir. 1979). The test is "whether the language is 'offensive, defamatory, or opp[or]orous [sic] and not simply intemperate, inflamm[atory], or insulting.' " 244 N.L.R.B. at 320. Note that in *Roadway Express*, the union's argument that they removed the material because it was derogatory, adverse toward the union, and controversial among the members did not withstand judicial scrutiny. *See* 656 F.2d at 885.

\(^{145}\) 244 N.L.R.B. at 318 n.2.

\(^{146}\) *Id.* at 321 (citations omitted).

\(^{147}\) *Id.* at 321 (citations omitted).

\(^{148}\) 153 N.L.R.B. 92 enforced, 374 F.2d 147 (6th Cir. 1965).
ployer had permitted employees to post various materials on the company bulletin board but removed notices of union meetings. The Board held that this discriminatory removal of materials, although unaccompanied by any threats or discipline by the employer, constituted a violation of section 8(a)(1). Again, the situation is analogous to Helton.

*Helton* is similar to the situations in previous bulletin board cases decided by the Board, with the only outstanding difference being that this case involved union conduct rather than employer conduct, thereby constituting a section 8(b)(1)(A) violation rather than a section 8(a)(1) violation. The background of Board decisions and the relevant legislative history confirming the use of the same standard under both sections provided the court of appeals with solid ground to simply apply the prior case law to *Helton*. If an employer violates an employee's section 7 rights in regard to access to a bulletin board, a similar finding of an unfair labor practice is warranted if the union attempts to restrain access in a comparable manner.

IV. CONCLUSION

It is evident from the legislative history that section 8(b)(1)(A) was meant to be the analogue to section 8(a)(1), although the specific language of the two sections varies. Although the legislative history is compelling in this case, the court of appeals was the only forum that addressed the legislative history at all. It is peculiar that the Board, an agency delegated with the duty to interpret the statute, did not consider the legislative history. Assuming, arguendo, that the legislative history is irrelevant, the union's conduct at issue here would still be covered by the explicit words of section 8(b)(1)(A). In *Helton*, the actions of the union did not constitute mere interference,

149. *Id.* at 94-95.
150. *Id.* at 99. For other recent Board decisions involving similar facts and findings see Stanley Furniture Co., 244 N.L.R.B. 589 (1979); North Kingston Nursing Care Center, 244 N.L.R.B. 54 (1979); Liberty Nursing Homes, Inc., 236 N.L.R.B. 456 (1978); George Washington Univ. Hosp., 227 N.L.R.B. 1362 (1977); Beryl Chevrolet, Inc., 199 N.L.R.B. 120 (1972); see Mid-West Stock Exch. v. NLRB 105 L.R.R.M. (BNA) 3172 (7th Cir. 1980), in which the court of appeals approved the Board's ruling that the company's unequal treatment and discriminatory enforcement of its no solicitation rule violated 8(a)(1). *Id.* at 3184.
151. *See supra* notes 140-50 and accompanying text.
152. *Id.*
153. *See supra* notes 89-104 and accompanying text.
154. *Id.*
but acted as a restraint. When such acts rise to the level of restraint, they constitute unfair labor practices. The Board also erred in its analysis by establishing a double standard under the Act for unions and employers. Since an employer, under the same conditions as in *Helton*, would violate the Act, a union similarly should be found to violate the Act when it restrains an employee’s exercise of his section 7 rights.

The impression gleaned from the Board’s decision is that the Board attempted to control dissent within the union. One wonders how far the Board would allow a union to go in curbing employees’ rights before it would put a halt to union restraint. A narrow reading of section 8(b)(1)(A), which only curbs union action when it meets the strict standard that the Board has employed here, undercuts the Act and defeats its policies and purposes.

Although most Board decisions are reviewable by the United States Court of Appeals for the District of Columbia,¹⁵⁵ it remains unknown whether the Board will adopt and enforce the ruling in *Helton*.¹⁵⁶ The Board should remember that the Labor-Management Relations Act was written primarily for the benefit of employees, not for the benefit of unions or employers.¹⁵⁷ Future Board decisions should reflect the intent of the legislature to hold employers and unions to an equal standard for violations under either section 8(a)(1) or section 8(b)(1)(A).

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¹⁵⁶. The Board could stonewall, or the General Counsel could refuse to even issue a complaint against the union for these types of violations.
¹⁵⁷. NLRB v. Schwartz, 146 F.2d 773 (5th Cir. 1945). The court stated that [c]ontrary to a rather general misconception, the National Labor Relations Act was passed for the primary benefit of the employees as distinguished from the primary benefit to labor unions, and the prohibition of unfair labor practices designed by an employer to prevent the free exercise by employees of their wishes in reference to becoming members of a union was intended by Congress as a grant of rights to the employees rather than as a grant of power to the union.

*Id.* at 774 (emphasis in original); accord NLRB v. Mid-States Metal Prods. Inc., 403 F.2d 702, 704 (5th Cir. 1968).