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Union Use of Authorization Cards to Obtain Recognition Under Section 8(a)(5)

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outer Continental Shelf. This limited "scope of employment" addition need not encroach on the adjacent state's jurisdiction. Non-seamen would receive basically the same coverage if injured or killed within the state boundaries. Man's exploitation of the wealth of natural resources off our nation's shores will send ever-increasing numbers of non-seaman workers into this harsh environment, and the protection of them and their families should be of prime importance to our lawmakers.

Ted A. Hodges

UNION USE OF AUTHORIZATION CARDS TO OBTAIN RECOGNITION UNDER SECTION 8(A) (5)

Members of Food Stores Employees Union, Local No. 347, began an organizational drive with a view to election and certification as the representative of the employees of Gissel Packing Company as provided in section 9(c) of the National Labor Relations Act.[1] In the early stages of this effort, the employer instituted his own vigorous antiunion campaign.[2] Nevertheless, a majority of the employees, 31 of the 47 in the bargaining unit, signed union authorization cards.[3] The company rejected the demand for recognition and continued its assault by interrogating employees, assuring higher wages if the company were not unionized, and warning employees of dire effects if the union were successful. Subsequently, the union filed unfair labor practice charges rather than seek an election. The three charges alleged refusal to bargain,[4] coercion of employees,[5] and a violation of section 8(a)(3)[6] due to discharge of union adherents. After the Board issued a bargaining order and after the Court of Appeals for the Fourth Circuit refused enforcement, a writ

1. Labor Management Relations Act (Taft-Hartley Act) § 9(c), 29 U.S.C. § 159(c) (1964).

2. NLRB v. Gissel Packing Co., 395 U.S. 575, 580 n.1 (1969). Despite a company vice-president's warning to two employees that union activity would result in "you God-damned things" leaving, they attended a union meeting at which a company agent was present and had their employment terminated shortly thereafter.

3. The authorization cards distributed to the employees unambiguously authorized the union to represent the signers as exclusive bargaining agent. This is the single purpose type. The dual-purpose or ambiguous cards, which the Court does not consider, contain statements that they may be used to obtain a Board election or that they provide the union representative bargaining status. It, however, does not take a strained reading of the decision to be warned away from the use of such ambiguous cards.

4. 29 U.S.C. § 158(a)(5) (1964).

5. 29 U.S.C. § 158(a)(1) (1964).

6. 29 U.S.C. § 158(a)(3) (1964).

of certiorari was granted by the Supreme Court. The Court unanimously *held* that authorization cards are valid indicators of employee desires and that a bargaining order is the proper Board response to an employer's rejection of the card majority when he also engages in concurrent "less pervasive" unfair labor practices. *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).[7]

The usual method by which a union achieves status as exclusive bargaining agent of the employees in the appropriate unit is through election and certification following the procedures of the National Labor Relations Act as outlined in section 9(c), and this remains the preferred route.[8] The ballot election is governed by an elaborate fabric of law designed to preserve the secrecy of the employee's choice and to allow him to make an intelligent, unintimidated choice by hearing employer and union arguments with opportunity for rebuttals. However, the employer could, through unfair labor practices, prevent an election from ever being held and thus prevent unionization by upsetting the laboratory conditions which the Board considers necessary for an untrammeled expression of employee choice. An alternate method, the use of authorization cards, has been frequently invoked in recent years where employer conduct has disrupted the election process. Its legislative support is based on the Wagner Act which provides that the NLRB may certify unions on the basis of an election or "any other suitable method"[9] and the Taft-Hartley amendment which includes the possibility of union majority representative status under the unfair labor practice clause of section 8(a)(5).[10] United States Supreme Court

7. Consolidated in this decision are three other cases. Two of them, *Heck's, Inc.* and *General Steel Products, Inc.*, provided in similar, straightforward factual settings the same legal problems as does *Gissel*. The third case poses several similar legal questions along with an attack on the Board's factual findings on first amendment grounds. This Note will be restricted to the issues presented specifically by the *Gissel* case.

8. 29 U.S.C. § 159(c) (1964). The Board has always recognized the superiority of secret elections. NLRB v. Gissel Packing Co., 395 U.S. 575, 596 (1969).

9. National Labor Relations Act (Wagner Act), 49 Stat. 453 (1935).

10. Admittedly, the Taft-Hartley Act, in section 9(c), contemplates certification only on the basis of an election by secret ballot, thus deleting "suitable methods" from the statutory language, but the re-enacted sections 8(a)(5) and 9(a) retain card majorities as bases for an unfair labor practice charge levelled against the employer which can result in a Board order to bargain. It would appear from this that cards could not only support a section 8(a)(5) charge but also confirmation as a bargaining agent. Serious argument opposed to this conclusion has been advanced but the practically universal acceptance of an employer's duty to bargain despite the lack of a Board election is well established. An example of the arguments may be found in Comment, 75 YALE L.J. 805, 820-823 (1966). *See also* Lesnick, *Estab-*

interpretation of the legislation has yielded unfailing approval of the cards with particular reliance placed on *Frank Bros. v. NLRB*[11] as the pre-Taft-Hartley statement and more recently on *United Mine Workers v. Arkansas Flooring Co.*[12] Congressional anxiety with the Court's reading of the Act has prompted several bills which would limit the use of authorization cards and require bargaining only where there has been 9(c) compliance. Senators Javits[13] and Fannin[14] each proposed bills during the 1965 consideration of the repeal of section 14(b) of the NLRA and

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lishment of Bargaining Rights Without an NLRB Election, 65 MICH. L. REV. 851, 861-62 (1967).

11. 321 U.S. 702 (1944). *See also* NLRB v. Gissel Packing Co., 395 U.S. 575, 597 (1969).

12. 351 U.S. 62 (1956).

13. S. Bill 2395, 89th Cong., 1st Sess. (1965): "That section 9(c) of the National Labor Relations Act is amended by adding the following new paragraph: '(6) In any case in which it is alleged in a petition filed by an employer pursuant to paragraph (1)(B), that a labor organization seeking recognition as the representative of the employees of such employer has presented evidence purporting to show that a majority of the employees in the appropriate bargaining unit desires to be represented by such labor organization, it shall be the duty of the Board, if it determines that in all other respects a question of representation affecting commerce exists, to forthwith, without regard to the provisions of paragraph (1), direct the holding of such an election in such a unit as the Board finds to be appropriate and to certify the results thereof. The consideration of the petition and the holding of the election, in any such case, shall not be delayed by reason of the pendency of an unfair labor practice charge based upon the refusal of the employer to bargain collectively with the labor organization, and no such unfair labor practice charge based upon a refusal to bargain prior to the election shall thereafter be considered unless the Board determines that the labor organization had once been authorized to represent a majority of the employees in the bargaining unit, but that as a result of unfair labor practices committed by the employer (other than unfair labor practices under section 8(a)(5)), (a) such labor organization is no longer authorized to represent such majority or (b) the conditions required for the holding of a fair election no longer exist.' "

14. S. Bill 2226, 89th Cong., 1st Sess. (1965): "That section 9(a) of the National Labor Relations Act, as amended, is amended by inserting before the first proviso therein the following: '*Provided further*, That such bargaining representatives shall have been certified by the Board as the result of an election conducted in accordance with section 9(c), unless the employer shall have engaged in a course of conduct in violation of section 8 with intent to undermine a majority secured without coercion or misrepresentation by the labor organization or organizations seeking recognition in accordance with section 9(c).'

"Sec. 2. Section 10(c) of such Act is amended by inserting before the period at the end of the third sentence thereof a colon and the following: '*Provided further*, That the Board shall not issue an order to bargain in any case in which the bargaining representative shall not have been certified as a result of an election conducted in accordance with section 9(c), unless the employer shall have engaged in violation of section 8 with intent to undermine a majority secured without coercion or misrepresentation by the labor organization or organizations seeking recognition in accordance with section 9(c).' "

Senator Javits along with Senator Thurmond offered an amendment to section 9(a) in January 1969.[15]

There has arisen a dispute among the circuits on the inherent reliability of these cards as adequate manifestations of employees' wishes. This turmoil is best seen through the following history.

The landmark case of *Joy Silk Mills, Inc. v. NLRB*[16] announced a basic standard of good faith for determining whether a bargaining order could issue on the basis of authorization cards. The traditional Board approach was that an employer must bargain with the union demanding recognition, based upon its claim that a majority of his employees have signed authorization cards, unless he entertains a good faith doubt as to the union's majority status. Once a majority is demonstrated, the *Joy Silk* formula, on this point, has been universally accepted. Obvious lack of good faith doubt on the part of an employer might be illustrated by unfair labor practices[17] or refusal to bargain merely to gain time to undercut a union majority.[18] However, the Board and the courts have warned that not every independent unfair labor practice will trigger a bargaining order—thus refusing per se application of *Joy Silk*.[19]

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15. S. Bill 426, 91st Cong., 1st Sess. (1969): "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section 9(a) of the National Labor Relations Act, as amended (29 U.S.C. 159(a)), is amended by inserting before the first proviso therein the following: '*Provided further*, That such bargaining representation shall have been certified by the Board as the result of an election conducted in accordance with subsection (c).'

"Sec. 2. Section 10(c) of such Act (29 U.S.C. 160(c)) is amended by inserting before the period at the end of the third sentence thereof a colon and the following: '*Provided further*, That the Board shall not issue an order to bargain in any case in which the bargaining representative shall not have been certified as a result of an election conducted in accordance with section 9(c).'

"Sec. 3. The amendments made by this Act shall not be construed to require the holding of an election in any case in which an employer is required to recognize and bargain with a labor organization pursuant to a valid existing bargaining order entered by the National Labor Relations Board prior to the date of enactment of this Act, or in any case in which on such date an employer is voluntarily recognizing and bargaining with a labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act."

16. 85 N.L.R.B. 1263 (1949), *enf'd*, 185 F.2d 732 (D.C. Cir. 1950), *cert. denied*, 341 U.S. 914 (1951).

17. NLRB v. Southland Paint Co., 157 N.L.R.B. 795 (1966), *enforcement denied*, 394 F.2d 717 (5th Cir. 1968).

18. *See* Amalgamated Clothing Workers of America (Hamburg Shirt Corp.) v. NLRB, 156 N.L.R.B. 511 (1965), *enf'd*, 371 F.2d 740, 743 (D.C. Cir. 1966); Byrne Dairy, Inc., 176 N.L.R.B. 40 (1969).

19. Hammond & Irving, Inc., 154 N.L.R.B. 1071 (1965). *See* Comment, *Union Authorization Cards*, 75 YALE L.J. 805, 813 (1966).

Bad faith may also be proved by a showing that at the time of demand the employer could have had no bona fide doubt about the union's status even though he is guilty of no independent unfair practices. The leading case propounding this view is *Snow & Sons v. NLRB*, which held that the employer had no supportable doubt with respect to the union's majority—a rejection of the collective bargaining concept:

> "The manner in which an employer receives reliable information of union representation . . . is of no consequence. Once he has received such information . . . , insistence upon a Board election can no longer be defended on the grounds of a genuine doubt as to majority representation."[20]

Recently the Board distinguished *Snow & Sons* in *John P. Serpa, Inc.*[21] and refused strict adherence to card checks in the absence of other objective considerations.

The only notable abridgement of *Joy Silk*[22] is the limitation announced in *Aaron Bros. v. NLRB*.[23] There the Board imposed the duty on the General Counsel to prove the employer's bad faith. This has not lightened the burden of the employer who still must justify his doubt about the union's majority once any of the acts which give rise to a presumption of bad faith have

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20. Snow & Sons v. NLRB, 134 N.L.R.B. 709 (1961), *enf'd*, 308 F.2d 687, 692 (9th Cir. 1962). In *Snow*, a minister conducted the card check, checking the signatures against payroll forms and tallying the result. If an employer card check has been taken, and a majority found, the standard of good faith is difficult to meet. Recent expression of this policy is found in NLRB v. C & C Packing Co., 163 N.L.R.B. 669 (1967), *enf'd*, 405 F.2d 935, 936 (9th Cir. 1969), wherein a retired mediator, Halloran, was chosen to conduct the check. A union majority, 15 out of the 22 employees in the unit, was found and "[t]he *Company did not challenge nor question this card-check procedure when Halloran asked both sides if there were any problems or challenges.*" In several meetings which followed, no objection was made to the check but, subsequent to a union bargain demand, the company disputed the reliability of the card-check, arguing that it had a good faith doubt as to the union majority status. The Ninth Circuit Court of Appeals rejected the company's contention, noting a similarity with *Snow* and granted enforcement of the Board's bargaining order.

21. 155 N.L.R.B. 99 (1965), *reversed* and *remanded, sub. nom.*, Retail Clerks Union v. NLRB, 376 F.2d 186 (9th Cir. 1967). The court noted that the employer was entitled to consult an attorney concerning the legal significance of the cards but he was obliged to contact the union as soon as possible after this consultation.

22. 85 N.L.R.B. 1263 (1949), *enf'd*, 185 F.2d 732 (D.C. Cir. 1950), *cert. denied*, 341 U.S. 914 (1951).

23. 158 N.L.R.B. 1077 (1966).

been supported by the evidence. The burden which is then shifted to the employer is one which few have found sustainable.[24]

The circuits have accepted the *Joy Silk* doctrine and the *Aaron Bros.* limitation, but the related rule on the specific question of reliability of authorization cards, as set forth in *NLRB v. Cumberland Shoe Corp.*,[25] has caused a marked split in circuit court decisions. In *Cumberland Shoe*, the Board ruled that an unambiguous card—one which clearly states that the signer names the union as his bargaining agent without the necessity of an election—is valid, even though union organizers suggested that the card would be used to obtain an election. The cards could be excluded if these oral misrepresentations were to the effect that the card's *sole* or *only* purpose was for an election. Heated criticism of this rule has been voiced in academic circles[26] and some federal circuits. Several circuits, holding that the subjective intent of the signer must be probed, have voided cards and refused to enforce Board orders rather than apply the *Cumberland* test.[27] *NLRB v. S. S. Logan Packing Co.*[28] and *NLRB v. Sehon Stevenson & Co.*[29] placed the Fourth Circuit firmly in opposition to authorization cards as dependable indices and even suggested that union use of such cards gave the employer an automatic good faith doubt under section 8(a)(5). The subjective intent doctrine also found adherents in the Fifth Circuit; that court was prompted to write in *Engineers & Fabricators Inc. v. NLRB*:

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24. Welles, *The Obligation to Bargain on the Basis of a Card Majority*, 3 GA. L. REV. 349, 350 (1969), takes an apparently more moderate approach to this Board reversal. He writes: "Thus the employer need not express, or possess, objective or subjective reasons for his doubts . . . . [H]owever, the employer must express his doubt in response to the request. He cannot . . . merely refuse to bargain without giving any reason and then assert good faith doubt when charged with a violation of section 8(a)(5)."

25. 144 N.L.R.B. 1268 (1964), *enf'd*, 351 F.2d 917 (6th Cir. 1965).

26. A sampling of the academic disapproval can be found in the following articles: Comment, *Refusal-to-Recognize Charges Under Section 8(a)(5) of the NLRA: Card Checks and Employee Free Choice*, 33 U. CHI. L. REV. 387, 396 (1966); Lewis, *The Use and Abuse of Authorization Cards in Determining Union Majority*, 16 LAB. L.J. 434, 440 (1965); Note, *Union Authorization Cards*, 75 YALE L.J. 805 (1966). This last article recites: "Authorization cards are an unreliable index of employee choice. Compared with the secret ballot they replace, their solicitation is a woefully defective process, guaranteeing to employees neither a free nor a reasoned choice . . . . And even when the employer does illegally interfere with free choice, authorization cards are so unreliable that a rerun election—or two, or three, or ten—better protects employee freedom." *Id.* at 818.

27. *See* NLRB v. Southland Paint Co., Inc. 394 F.2d 717 (5th Cir. 1968).

28. 386 F.2d 562 (4th Cir. 1967).

29. 386 F.2d 551 (4th Cir. 1967).

> "When cards are challenged because of alleged misrepresentations in their procurement, the general counsel must show that the subjective intent to authorize union representation was not vitiated by such representations. Here the Board did not apply this legal standard. . . . The point is that the Board applied the facts to the wrong legal standard because there was no probing into the subjective intent of the challenged signer."[30]

The Second and Eighth Circuits join the Fourth and the Fifth in their distrust of authorization cards and demand a study of the signer's intrapsychic processes.[31] There is, however, an impressive array of decisions supporting the *Cumberland Shoe* rule. Indicative of these was the statement by the District of Columbia Circuit Court in *UAW v. NLRB*: "This Court has consistently upheld the rule, announced by the Board in *NLRB v. Cumberland Shoe Corp.*, that 'where the cards are unambiguous on their face, unless employees were told that an election was the *only* purpose of the cards, the employees would be held to the terms of the cards which they had signed. . . . Once again, we approve the Board's use of that rule.' "[32] The circuits have enforced or refused to enforce Board orders which involved the dispute over authorization cards as their acceptance or rejection of the *Cumberland Shoe* rule dictated.[33] The Board supplied its own warning in *NLRB v. Levi Strauss & Co.*[34] against an overly mechanical application of *Cumberland*. Trial examiners were cautioned to look to substance rather than to form: "[i]t is not the use or nonuse of certain key or 'magic' words that is controlling, but whether or not the totality of circumstances surrounding the card solicitation is such, as to add up to an assurance to the card signer that his card will be used for no purpose other than to help get an election."[35]

In reconciling the differences between the circuits, *Gissel* supplies ample guidelines instructing the employer on the proper attitude he should take when confronted with a union demand

30. Engineers & Fabricators, Inc. v. NLRB, 376 F.2d 482, 487 (5th Cir. 1967).

31. *Id. See also* NLRB v. Southland Paint Co., Inc., 394 F.2d 717, 730 (5th Cir. 1968).

32. 392 F.2d 801, 807 (D.C. Cir. 1967).

33. Browne, *Some Thoughts on the Board's "Decision" in Levi Strauss, or New Straws in Support of Cumberland Shoe*, 3 GA. L. REV. 334 (1969).

34. 172 N.L.R.B. 57 (1968).

35. NLRB v. Gissel Packing Co., 395 U.S. 575, 608 n.27 (1969).

for recognition and an offer to prove majority status with authorization cards.[36] The Court narrowly restricts its holding to unambiguous cards solicited in an atmosphere "where a fair election probably could not have been held."[37]

Each employer confronted with a recognition demand should consider several questions before deciding his course of action. The paramount questions are whether authorization cards may serve as conclusive evidence of employee choice and what contemporaneous independent activity will constitute an unfair labor practice and thus sustain a bargaining order. The employer knows that he is not allowed to recognize a minority union and that he may not take the union's word on the determination of its majority status without running afoul of the NLRA. Two other questions foremost in his mind are: May the employer entertain a good faith doubt as to the majority status claimed through possession of authorization cards? May the employer refuse to look at the cards, demand a Board-conducted election and insure himself of the industrial peace which comes of section 9(c),[38] or request the union to seek an election?

Chief Justice Warren, writing for a unanimous Court, denies the charge of inherent unreliability of authorization cards,[39] strongly supports their use, and conceives of a situation in which even the preferred route of section 9(c) would probably not afford employees an effective opportunity to demonstrate their choice. Under well-settled Board policy and circuit court decisions, bargaining orders issue in instances growing out of substantial "outrageous" unfair labor practices without need of inquiry into majority status, and this policy is approved by the Court.[40] The effect of the *Gissel* holding, specifically directed at "less pervasive practices which nonetheless still have the tendency to undermine majority strength,"[41] is to permit the Board to order the employer to bargain, where the effects of these practices are not likely to be erased, where they have obstructed

36. Welles, *The Obligation to Bargain on the Basis of a Card Majority*, 3 GA. L. REV. 349 (1969), deals with the obligation of an employer to bargain with a union which has based its claim as exclusive representative on a majority of signed authorization cards.

37. NLRB v. Gissel Packing Co., 395 U.S. 575, 601 n.18 (1969).

38. *Id.* at 599 n.14.

39. "We therefore reject any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry." *Id.* at 608.

40. NLRB v. S. S. Logan Packing Co., 386 F.2d 562, 570-71 (4th Cir. 1967).

41. NLRB v. Gissel Packing Co., 395 U.S. 575, 614 (1969).

a fair election, and where employee majority sentiment, once witnessed by the cards, would be better protected.[42]

The employer cannot take the union's word that it does have a majority in the appropriate unit;[43] he may insist on a card check or conduct a poll of the employees. The poll must be executed with care because it must stay within the employee safeguards established in *NLRB v. Struksnes Constr. Co.*[44] If an actual majority is discovered, or if there was already independent knowledge of the majority status, the employer is not entitled to stall in an attempt to dissipate that majority but must bargain according to section 8(a)(5).

Inactivity might be the proper tactic since "an employer is not obligated to accept a card check . . . and he is not required to justify his insistence on an election by making his own investigation of employee sentiment and showing affirmative reasons for doubting the majority status."[45] Should the employer opt for this maneuver, he may decline the union's request and insist on an election, either by filing for it himself[46] or urging the union to do so.[47] The employer may also discredit the authorization cards if he is able to show that supervisors participated in their solicitation,[48] or that the cards were results of coercion, or that union adherents clearly directed the signer to disregard the language of the card.[49] Approval of the *Cumberland Shoe* rule re-

42. There is a third category of practices, though unfair, which have minimal consequences and will not cause the Board to issue an order. *Id.* at 615.

43. NLRB v. World Carpets of New York, Inc., 403 F.2d 408, 411 (2d Cir. 1968).

44. 165 N.L.R.B. 102, 65 L.R.R.M. 1385, 1386 (1967). The Board, in response to a remand from the District of Columbia Circuit, stated the considerations on which polling will be resolved by the Board in future cases: "Absent unusual circumstances, the polling of employees by an employer will be violative of section 8(a)(1) of the Act unless the following safeguards are observed: (1) the purpose of the poll is to determine the truth of a union's claim of majority, (2) this purpose is communicated to the employees, (3) assurances against reprisals are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere."

45. NLRB v. Gissel Packing Co., 395 U.S. 575, 609 (1969).

46. 29 U.S.C. § 159(c)(1)(B) (1964).

47. NLRB v. Gissel Packing Co., 395 U.S. 575, 599 (1969). The certified union has special privileges from which the employer may also benefit: under § 9(c)(3), the company premises will be safe from another election campaign for twelve months in which a rival union seeks to decertify the union; a reasonable time of protection against any disruption because of claims that the union no longer represents a majority; and the protection against recognition picketing by rival unions. 29 U.S.C. § 158(b)(4)(C) (1964).

48. NLRB v. Hawthorne Aviation, 406 F.2d 428 (10th Cir. 1969).

49. NLRB v. Gissel Packing Co., 395 U.S. 575, 606 (1969): "In resolving the conflict among the circuits in favor of approving the Board's *Cumberland*

sults in not requiring a probe into the subjective motivation of the employee; endorsement of the caveat of *Levi Strauss* allows the Board discretion in fashioning a remedy ensuring employee free choice.

On the question of employer good faith the Court states that it is not faced "with a situation where an employer, with 'good' or 'bad' subjective motivation . . . has insisted . . . that the union go to an election while at the same time refraining from committing unfair labor practices."[50] Though the Court writes that its decision is not keyed to the problem of good faith the employer might still read *Gissel* to assist him in discovering the proper course of action. The employer who has a good faith doubt as to the union's majority status and refrains from any unfair labor practices may insist on an election with no affirmative reasons for rejection of the recognition request. This is well within the *Gissel* holding because, in that instance, no unfair labor practices are committed. But if the employer knows from personal sources that the union has a majority and even though he does not commit any contemporaneous unfair practices, a Board order to bargain could still be supported on the grounds that the *Joy Silk* good faith test had not been met. This seems to be the only residual validity of the *Joy Silk* doctrine: "[U]nder the Board's current practice, an employer's good faith doubt is largely irrelevant, and the key to the issuance of a bargaining order is the commission of serious unfair labor practices that interfere with the election processes."[51]

The straightforward stand taken in *Gissel* in approving the use of authorization cards acknowledges an impressive line of decisions beginning with *Frank Bros.* The *Gissel* case disposes of the scholarly objections by correctly construing the intent of Congress when it drafted the Taft-Hartley Act and retained what are now sections 8(a)(5) and 9(a). No longer, it is to be hoped, will the disparateness appear between the circuits penalizing some and rewarding others, depending upon the district in which the request for enforcement was brought. In adopting

rule, we think it sufficient to point out that employees should be bound by the clear language of what they sign unless that language is deliberately and clearly cancelled by a union adherent with words calculated to direct the signer to disregard and forget the language above his signature. There is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election."

50. *Id.* at 601 n.18.

51. *Id.* at 594.

the oft-quoted *Cumberland Shoe* rule and the caveat of *Levi Strauss* prohibiting subjective probings, the Court no doubt hopes to prevent continued judicial disagreements in this area. In ratifying the Board's limitation of *Joy Silk*, the Court has taken the necessary action to provide more objective standards by which employer interference may be tested. Continued support of the Board's authority to issue bargaining orders is but the natural and necessary outgrowth of the Court's recognition that the disruption of election conditions must be remedied and the violations discouraged.[52] The Supreme Court has attempted in an exceptionally well-reasoned decision not only to calm the waters which have been troubled so often but also to obviate congressional response to the furor by deciding the issue in a manner assuring employees greater freedom in choosing to organize or not, the express purpose of the NLRA.[53] Recent decisions in the various circuits and by the Board indicate success in this attempt by the Supreme Court.[54]

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52. The Board has also recognized the viability of *Joy Silk* in the case of an employer's refusal to recognize the union on the grounds of doubt as to the appropriateness of the unit and his later claim that he doubted the union's majority status. *See* NLRB v. Gissel Packing Co., 395 U.S. 575, 594 (1969).

53. 29 U.S.C. § 157 (1964).

54. *E.g.*, NLRB v. American Cable Systems, Inc., 414 F.2d 661 (10th Cir. 1969); Food Store Employees v. NLRB, 413 F.2d 407 (D.C. Cir. 1969); Nash-Finch Co., 178 N.L.R.B. 77 (1969); General Stencils, Inc., 178 N.L.R.B. 18 (1969).