
Vicky M. Phillips

The *Interboro* doctrine\(^1\) provides that an individual's honest and reasonable assertion\(^2\) of a right grounded in a collective bargaining agreement is concerted activity within the meaning of section 7 of the National Labor Relations Act,\(^3\) even in the absence of interest by fellow employees.\(^4\) Section 7 protects employees against employer sanctions when they engage in concerted activities for mutual aid or protection.\(^5\) In *NLRB v. City Disposal Systems*\(^6\) the United States Supreme Court held that the National Labor Relations Board's *Interboro* doctrine constituted a reasonable interpretation of section 7.\(^7\)

By its holding, the Supreme Court resolved the dispute which had existed between the Board and the circuits supporting the doctrine\(^8\) and those circuits that had rejected it.\(^9\) Jus-

\(^1\) The doctrine was enunciated in *Interboro Contractors*, Inc., 157 N.L.R.B. 1295 (1966), enforced, 388 F.2d 495 (2d Cir. 1967).

\(^2\) See infra note 32 and accompanying text.

\(^3\) 29 U.S.C. § 157 (1982) (section 7 of the Act) provides:

Employees 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 . . . .


\(^5\) See supra note 3.


\(^7\) Id. at 1510. See infra text accompanying note 62 for the standard of review of Board interpretations of the Act.

\(^8\) See, e.g., *NLRB v. Ben Pekin Corp.*, 452 F.2d 205 (7th Cir. 1971) (per curiam); *NLRB v. Selwyn Shoe Mfg. Corp.*, 428 F.2d 217 (8th Cir. 1970); *NLRB v. Interboro Contractors*, Inc., 388 F.2d 495 (2d Cir. 1967).

\(^9\) See, e.g., *Royal Dev. Co. v. NLRB*, 703 F.2d 363 (9th Cir. 1983); *Roadway Express, Inc. v. NLRB*, 700 F.2d 687 (11th Cir. 1983), vacated and remanded, 104 S. Ct. 1699 (1984); *ARO, Inc. v. NLRB*, 596 F.2d 713 (6th Cir. 1979); *NLRB v. Buddies Supermarkets*, Inc., 481 F.2d 714 (5th Cir. 1973). See also Kohls v. NLRB, 629 F.2d 173, 176-77 (D.C. Cir. 1980) (questioning the validity of the doctrine), cert. denied, 450
tice O'Connor, dissenting, adhered to the view of the circuits rejecting the doctrine. She stated that the Interboro doctrine was an unwarranted exercise of legislative power by the Board.

This Note will discuss the history of the Interboro doctrine as set forth in the Board's decision and its treatment in the courts of appeals. It will also examine the opinions in City Disposal Systems discussing how the majority opinion creates a disparity between the treatment of union and nonunion employees, while the dissent's criticism of the decision as an unwarranted expansion of section 7 is without merit.

I. STATEMENT OF FACTS

James Brown was employed as a truck driver by City Disposal Systems to haul garbage from Detroit to a landfill outside the city. Brown was assigned to drive truck number 245. One day while hauling garbage, Brown experienced problems with his truck. He took the truck back to the shop, but was told the truck could not be repaired that day. Brown reported to his supervisor who asked him to drive truck number 244. A few days earlier brake problems on truck number 244 had nearly caused a collision. Brown refused to drive the truck, stating that it was unsafe. Although he did not specifically refer the supervisor to the collective bargaining agreement, he later claimed he was attempting to enforce its provisions. Brown subsequently clocked out and went

U.S. 931 (1981); NLRB v. Dawson Cabinet Co., 566 F.2d 1079, 1082-84 (8th Cir. 1977) (finding statutory basis for Interboro doctrine questionable).

10. Chief Justice Burger and Justices Powell and Rehnquist joined in the dissent.

11. See City Disposal Sys., 104 S. Ct. at 1516-17 (O'Connor, J., dissenting).

12. Id. at 1517. See infra text accompanying notes 70-76.

13. NLRB v. City Disposal Sys., 104 S. Ct. 1505, 1509 (1984). Brown observed truck number 244's difficulty and was, in fact, nearly involved in the collision. Id.

14. See infra text accompanying note 29.

15. City Disposal Sys., 104 S. Ct. at 1509. Article XXI of the collective bargaining agreement provided:

The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with safety appliances prescribed by law. It shall not be a violation of the Agreement where employees refuse to operate such equipment unless such refusal is unjustified. Id. at 1507-08.
home. Later that day he received word that he had been discharged because of his refusal to drive the truck.\textsuperscript{16} Brown filed a grievance with his union. The union failed to process it. Brown then filed an unfair labor practice charge with the Board, challenging his discharge.\textsuperscript{17} The Administrative Law Judge (ALJ) found that City Disposal committed an unfair labor practice by discharging him.\textsuperscript{18} The Board adopted the findings and conclusions of the ALJ and ordered Brown reinstated with backpay.\textsuperscript{19} The Court of Appeals for the Sixth Circuit denied enforcement;\textsuperscript{20} however, the United States Supreme Court reversed and remanded for further proceedings consistent with its decision.

II. THE Interboro Doctrine

Section 7 of the NLRA gives employees "the right . . . to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . . ."\textsuperscript{21} Action by an employer "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section [7]" constitutes an unfair labor practice\textsuperscript{22} and empowers the Board to take action against the employer.\textsuperscript{23}

As early as 1962, the Board found that an individual employee who was fired for requesting show-up-time pay,\textsuperscript{24} which he believed he was entitled to under a collective bargaining agreement, was engaged in concerted activities.\textsuperscript{25} This rule became known as the Interboro doctrine.\textsuperscript{26} In Interboro

\textsuperscript{16} Id. at 1509.
\textsuperscript{17} Brown claimed the company violated section 8(a)(1) of the Act by discharging him. \textit{Id.} See infra text accompanying note 22 for the text of § 8(a)(1).
\textsuperscript{18} \textit{City Disposal Sys.}, 104 S. Ct. at 1509.
\textsuperscript{19} \textit{Id.} See 29 U.S.C. § 160(c) (1982).
\textsuperscript{22} \textit{Id.} § 158(a)(1).
\textsuperscript{23} \textit{See id.} § 160(a).
\textsuperscript{24} Show-up-time pay is compensation for reporting to work when, through no fault of the employee, work is unavailable. \textit{See} Bunney Bros. Constr. Co., 139 N.L.R.B. 1516, 1516 n.1 (1962).
\textsuperscript{25} \textit{Id.} at 1519.
Contractors, Inc.,\textsuperscript{27} the Board held that an individual's attempt to assert a right under a collective bargaining agreement was concerted activity, even in the absence of interest by fellow employees.\textsuperscript{28} The Board subsequently broadened this protection by holding that the employee need not refer specifically to the collective bargaining agreement nor even be aware of the existence of such an agreement.\textsuperscript{29}

The Interboro doctrine caused a great deal of controversy;\textsuperscript{30} prior to City Disposal Systems, only a few circuits had embraced it.\textsuperscript{31} Those that did placed some limitations on the doctrine, such as requiring the assertion of the right to be a reasonable one\textsuperscript{32} or requiring the employee to refer expressly to the collective bargaining agreement.\textsuperscript{33}

Several circuits, however, believed the Board had exceeded its jurisdiction in Interboro.\textsuperscript{34} They claimed that the statute unambiguously called for some activity which looked toward group action.\textsuperscript{35} These circuits criticized the Board for ex-
panding the definition of the word “concerted” to include activities that merely affected others in the bargaining unit.36 The idea that the assertion of a right was an extension of the concerted activity that gave rise to the collective bargaining agreement was denounced as a legal fiction.37

As a result, the courts rejecting the Interboro doctrine required that the action be made on behalf of other employees38 or at least have some relationship to group action.39 Under this standard40 an employee who engaged the aid of another employee41 or a union representative,42 sought to present a formal grievance,43 sought to represent other employees,44 or


36. See, e.g., Royal Dev. Co. v. NLRB, 703 F.2d 363, 374 (9th Cir. 1983); NLRB v. Northern Metal Co., 440 F.2d 881, 884 (3d Cir. 1971).
40. The standard is known as the Mushroom Transportation test. See Dolin, supra note 26, at 553-58; Comment, National Labor Relations Act Section 7: Protecting Employee Activity Through Implied Concert of Action, 76 Nw. U.L. Rev. 813, 821-25 (1981).
42. See, e.g., NLRB v. J. Weingarten, Inc., 420 U.S. 251, 260 (1975); NLRB v. Adams Delivery Serv., Inc., 623 F.2d 96, 100 (9th Cir. 1980).
43. See, e.g., NLRB v. Ford Motor Co., 683 F.2d 156, 158 (6th Cir. 1982); Crown Cent. Petroleum Corp. v. NLRB, 430 F.2d 724, 729 (5th Cir. 1970).
44. See, e.g., NLRB v. Guernsey-Muskingum Elec. Coop., 285 F.2d 8, 12 (6th Cir. 1960) (it is not necessary to formally select a spokesperson). But cf. Southwest Latex Corp. v. NLRB, 426 F.2d 50, 56-57 (5th Cir. 1970) (self-appointed spokesperson that
at least attempted to initiate some group action\textsuperscript{45} was protected. An individual who made a personal gripe, however, was not protected even if it was covered by the collective bargaining agreement.\textsuperscript{46}

Although the Board does not recognize purely personal complaints by an individual as concerted activity,\textsuperscript{47} the Board did, for a time, attempt to expand the \textit{Interboro} doctrine to include some situations in which no collective bargaining agreement was in effect.\textsuperscript{48} In \textit{Alleluia Cushion Co.},\textsuperscript{49} a nonunion employee who complained to the Occupational Safety and Health Administration about various safety hazards was dismissed.\textsuperscript{50} The Board held that an individual who sought to enforce statutory provisions designed for the benefit of all employees was engaged in concerted activities, in the absence of any evidence that fellow employees disavowed such activities.\textsuperscript{51} The Board took this position still further in \textit{Air Surrey Corp.},\textsuperscript{52} by holding that an individual’s actions were concerted when they related to conditions of employment that were matters of vital concern to all employees.\textsuperscript{53}

The Board’s decisions in \textit{Alleluia} and \textit{Air Surrey} never gained acceptance by the courts of appeals.\textsuperscript{54} Even those circuits that supported the \textit{Interboro} doctrine were not willing to

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\textsuperscript{45} See Comment, supra note 40, at 822-25, for examples of what activities courts have found to be concerted.
\textsuperscript{46} See supra note 9 for those courts rejecting the \textit{Interboro} doctrine.
\textsuperscript{48} For a general discussion of the expansion of the \textit{Interboro} doctrine, see Bohlander, Employee Protected Concerted Activity: The Nonunion Setting, 33 LAB. L.J. 344, 345-50 (1982); Murphy, Protected Concerted Activity and Refusals to Work, 34 LAB. L.J. 654, 656-58 (1983); Note, Constructive Concerted Activity, supra note 37, at 91-93; Comment, supra note 40, at 830-36.
\textsuperscript{49} 221 N.L.R.B. 999 (1975).
\textsuperscript{50} See id. at 999.
\textsuperscript{51} See id. at 1000.
\textsuperscript{52} 229 N.L.R.B. 1064 (1977), enforcement denied, 601 F.2d 256 (6th Cir. 1979).
\textsuperscript{53} See id. at 1064.
\textsuperscript{54} See Note, Individual Rights for Organized and Unorganized Employees Under the National Labor Relations Act, 38 TEX. L. REV. 991, 1010-12 (1980) (none of the circuits protects unorganized individual activity).
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expand the doctrine to embrace the *Alleluia* holding.\textsuperscript{55} The Board has recently retreated from this position and has expressly overruled the *Alleluia* decision in *Meyers Industries*.\textsuperscript{56} In *Meyers*, the Board criticized the *Alleluia* decision. Instead of looking at the form of the activity to see if it was concerted as required by the Act, the Board had instead looked to whether the purpose of the activity warranted the Board’s protection.\textsuperscript{57} It distinguished the *Interboro* decision from *Alleluia* by stating that in the former case the focal point was the attempted implementation of a collective bargaining agreement; in the *Alleluia* situation, there was no such agreement and, therefore, no attempt to enforce one.\textsuperscript{58}

Consequently, what has emerged are two lines of Board philosophy. When a collective bargaining agreement is in effect, an individual’s attempt to enforce a provision of the agreement will be found to be concerted, even in the absence of interest by fellow employees.\textsuperscript{59} When there is no collective bargaining agreement in effect, the Board will rely on an “objective standard” and find activity to be concerted only if it is engaged in with another employee or on behalf of another employee.\textsuperscript{60}

### III. THE OPINIONS

#### A. Majority

In *NLRB v. City Disposal Systems*\textsuperscript{61} Justice Brennan noted that it was the function of the Board, in the first instance, to establish the scope of section 7 and that a reasonable construction by the Board is entitled to great deference when its experi-

\begin{itemize}
  \item \textsuperscript{55} See, e.g., Ontario Knife Co. v. NLRB, 637 F.2d 840, 845 (2d Cir. 1980); Krispy Kreme Doughnut Corp. v. NLRB, 635 F.2d 304, 310 (4th Cir. 1980); Pelton Casteel, Inc. v. NLRB, 627 F.2d 23, 30 (7th Cir. 1980).
  \item \textsuperscript{56} 268 N.L.R.B. \textsuperscript{55} 115 L.R.R.M. (BNA) 1025 (1984).
  \item \textsuperscript{57} See *id.* at \textsuperscript{56}, 115 L.R.R.M. at 1027.
  \item \textsuperscript{58} See *id.* at \textsuperscript{57}, 115 L.R.R.M. at 1028. Accord Krispy Kreme Doughnut Corp. v. NLRB, 635 F.2d 304, 310 (4th Cir. 1980); NLRB v. Bighorn Beverage, 614 F.2d 1238, 1242 (9th Cir. 1980). But see Comment, *supra* note 40, at 832 (statutes that protect labor are partially a result of concerted action by employees and labor organizations lobbying for enactment of these laws).
  \item \textsuperscript{59} See *Interboro Contractors*, 157 N.L.R.B. at 1298.
  \item \textsuperscript{60} See *Meyers Indus.*, 268 N.L.R.B. \textsuperscript{60}, 115 L.R.R.M. 1025, 1028-29 (1984).
  \item \textsuperscript{61} 104 S. Ct. 1505 (1984).
\end{itemize}
tise is implicated.62 In this context, the Court found the Board's interpretation of section 7 reasonable.63

The majority reasoned that an employee's invocation of a right grounded in the collective bargaining agreement was part of the same concerted activity that gave rise to the agreement. The agreement was made by representatives of the group for the benefit of the group; if it was not honored, the power of the group could be brought to bear on the employer.64 Thus, the mere fact that an individual employee's assertion of a right under the collective bargaining agreement was divorced in time from the agreement was not sufficient to take the employee out of section 7 protection.65

In examining the history of section 7,66 the majority noted that the Interboro doctrine is not inconsistent with congressional intent and is in fact consistent with the purpose of the Act.67 The Court stated that Congress' intent was to equalize the bargaining power of the employees to that of the employer, by allowing them to band together to face their employer.68 There is no indication that Congress intended to limit that protection to situations in which employees combined in certain ways or that Congress intended the protection not to be extended to individuals who participated in an integral part of a single collective process.69

62. See id. at 1510. But cf: NLRB v. Bildisco and Bildisco, 104 S. Ct. 1188, 1198 n.9 (1984) (the Board's views are entitled to little deference when interpreting statutes other than the Taft-Hartley Act).

63. See City Disposal Sys., 104 S. Ct. at 1510.

64. See id. at 1511. See also Dolin, supra note 26, at 556 (attempting to implement the agreement constitutes group action as a matter of law); Note, Constructive Concerted Activity, supra note 37, at 90 (Interboro doctrine satisfied the requirement that activity be related to group action).

65. See City Disposal Sys., 104 S. Ct. at 1511-12. The majority noted that section 7 protects individuals who join or assist labor organizations, although these actions are also divorced in time and location from the actions of others. See id.

66. For a discussion of the history of section 7, see Gorman & Finkin, supra note 35, at 331-46.

67. See City Disposal Sys., 104 S. Ct. at 1512.

68. See id. at 1513. Prior to enactment of the labor laws, many states regarded group protests by employees as unlawful conspiracies subject to criminal or civil sanctions, while individual protests on the same matters were lawful. See Meyers Indus., 268 N.L.R.B. --, 115 L.R.R.M. (BNA) 1025, 1032-33 (1984) (Zimmerman, dissenting). See also Gorman & Finkin, supra note 35, at 331.

69. See City Disposal Sys., 104 S. Ct. at 1513. It has been suggested that Congress merely wanted to allow employees to band together if they wished and not to take away
B. Dissent

Justice O'Connor argued, as did the circuits rejecting the Interboro doctrine, that the Board had exceeded its jurisdiction and had engaged in an act of undelegated legislation.\(^7\) Merely because the right an employee seeks to enforce is grounded in the collective bargaining agreement does not make the individual’s action concerted.\(^7\) If this were the case, every contract claim could be the basis for an unfair labor practice complaint, and O'Connor felt that this interpretation was not a correct reading of the law.\(^7\) The labor laws were designed to encourage employees to act together. Protecting two employees acting together, while not extending this protection to an individual acting alone, was not inconsistent with this purpose.\(^7\)

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the protection afforded to a single employee. See Illinois Ruan Transp. Corp. v. NLRB, 404 F.2d 274, 285-89 (8th Cir. 1968) (Lay, J., dissenting). See also Gorman & Finkin, supra note 35, at 376-77. The majority also observed that although the primary means of enforcing a collective bargaining agreement was the grievance procedure established by the agreement, there was not likely to be a clear-cut distinction between a properly filed grievance, a complaint to an employer, or even a refusal to perform a particular job. It is, therefore, not unreasonable to extend section 7 protection to informal grievances.

In addition, the majority made the following points. First, the argument that the Interboro doctrine undermined the arbitration process is without merit. Second, although the action may be found to be concerted, that does not preclude the possibility that the activities may be found to be unprotected. Third, an employee should not be denied the protection of section 7 simply because of a failure to refer to the collective bargaining agreement. Finally, the majority noted that the employee’s belief that the right was grounded in the collective bargaining agreement need only be honest and reasonable because questions of merit do not go into the determination of whether the action was concerted or not. The Court pointed out that the arbitration process was similarly undermined by allowing two employees, acting together, to make an informal grievance and there is no reason to single out the Interboro doctrine as causing greater harm. See City Disposal Sys., 104 S. Ct. at 1513-15. See also supra text accompanying notes 28 & 34; Note, Constructive Concerted Activity, supra note 37, at 76.

70. See City Disposal Sys., 104 S. Ct. at 1517 (O'Connor, J., dissenting). See supra text accompanying notes 34-37.

71. 104 S. Ct. at 1517.


73. See City Disposal Sys., 104 S. Ct. at 1518. But see Note, supra note 54, at 1001-02 (protecting individual activity does not undermine unionization).
The dissent criticized the majority's position that the individual action was tied to the concerted activity creating the agreement. Such reasoning confused substantive contractual entitlements with the process by which these entitlements are vindicated. O'Connor stated that when employees act together their action is concerted, and the statute entitles them to seek enforcement through the Board. An individual expressing a personal concern, however, must seek enforcement through the union or the courts. In other words, to find concerted activity, an employee must act with, or expressly on behalf of, one or more other employees.

IV. CRITIQUE

The majority's opinion in *NLRB v. City Disposal Systems*, holding that the Board's *Interboro* doctrine is a reasonable interpretation of section 7, recognized the Board's expertise in labor relations and its function of interpreting and administering the Act. In recognizing the validity of the *Interboro* doctrine, the Court equated an individual's assertion of a right under the collective bargaining agreement with a formal grievance, an act which is recognized by the courts as concerted activity. In the ordinary situation, employees will probably still go to their union representatives for help or to file formal grievances. This decision, however, will protect employees in situations in which a "work now-grieve later" process would not be sufficient to protect the interests of the employees, as illustrated in the present case, in which an injury could have resulted had the employee driven the truck. The *Interboro* doctrine also extends protection to cases in

74. See *City Disposal Sys.*, 104 S. Ct. at 1518. Accord *NLRB v. Adams Delivery Serv.*, Inc., 623 F.2d 96, 100 (9th Cir. 1980) (when employee enlists the aid of union the requirement of concert is found).

75. See *City Disposal Sys.*, 104 S. Ct. at 1518. See generally Note, supra note 54, at 994-95 (federal statutes protect employees from discharge on the basis of color, race, religion, sex, national origin, and age).

76. See *City Disposal Sys.*, 104 S. Ct. at 1519.


78. See id. at 1510.

79. See id. at 1513-14.

80. See supra text accompanying note 43.

81. See Comment, supra note 40, at 829.

82. See id.
which the union declines to process the grievance or in which other employees not similarly situated may not want to become involved.\textsuperscript{83}

The majority noted that there is nothing to indicate that Congress wished to withdraw the section 7 protection when a single employee "participates in an integral aspect of a collective process."\textsuperscript{84} However, by focusing on the fact that concerted activity in a literal sense exists,\textsuperscript{85} the Court creates an inequality between the protection afforded to union and nonunion employees. The Court vindicates the rights of a union employee to complain or refuse to work because of safety or health violations,\textsuperscript{86} but leaves nonunion employees without section 7 protection for the same activity.

This disparity is especially significant in light of the Board's retreat\textsuperscript{87} from \textit{Alleluia Cushion Co.}\textsuperscript{88} and \textit{Air Surrey Corp.}\textsuperscript{89} Under the Board's current policy, nonunion employees are without section 7 protection when they individually voice complaints to their employers, refuse to perform unsafe work,\textsuperscript{90} or try to enforce statutory provisions relating to their employment,\textsuperscript{91} although these activities directly affect coworkers as well.\textsuperscript{92} This is startlingly clear when James Brown's situation in \textit{City Disposal Systems} is compared with that in \textit{Meyers Industries}.\textsuperscript{93} In both cases, the individual employees refused to drive trucks they believed to be unsafe. In Brown's case, a collective bargaining agreement covering this refusal was in effect, so Brown's activity was deemed con-

\textsuperscript{83} See Dolin, supra note 26, at 584.
\textsuperscript{84} City Disposal Sys., 104 S. Ct. at 1513.
\textsuperscript{85} See id. at 1512.
\textsuperscript{86} It is well settled that safety and health are mandatory subjects of bargaining. See generally M. Rothstein, \textit{Occupational Safety and Health Law} (2d ed. 1983).
\textsuperscript{87} See supra text accompanying notes 56-58.
\textsuperscript{88} 221 N.L.R.B. 999 (1975).
\textsuperscript{89} 229 N.L.R.B. 1064 (1977), enforcement denied, 601 F.2d 256 (6th Cir. 1979).
certed. In contrast, the truck driver in Meyers had no protection under section 7 because his actions were not made with or on behalf of another employee and no collective bargaining agreement was in effect.

In both cases, other employees would benefit from the activities of these employees. The discharge of these individuals tends to discourage other employees from taking similar action, or attempting to enlist the aid of others in voicing similar grievances. This is especially tragic when unsafe conditions exist and the sole brave individual who speaks up in protest is discharged.

The labor laws were designed, in part, to protect employees from the tyranny of the employer. Protecting two employees acting together while refusing to extend this protection to a single employee not covered by a collective bargaining agreement and whose activities are likely to benefit other employees has no justification, and neither does a dictionary definition of the term "concerted activities." Indeed, perhaps the word "concerted" should never have been included in section 7 in view of the language of the section 9(a) proviso which provides "[t]hat any individual employee . . . shall have the right at any time to present grievances to their [sic] employer . . . ." This language clearly implies that an individual employee does have the right to complain to the employer. It would seem quite anomalous to suppose that Congress would encourage individuals to present grievances

94. See City Disposal Sys., 104 S. Ct. at 1516.
95. See Meyers Indus., 268 N.L.R.B. at __, 115 L.R.R.M. (BNA) at 1029.
96. See Comment, supra note 40 at 836.
97. See City Disposal Sys., 104 S. Ct. at 1513.
98. See Gorman & Finkin, supra note 35, at 348 (a collective bargaining agreement should not be required before finding an individual's activities concerted). See also Comment, supra note 40, at 820-21 (there is nothing to suggest that congressional purpose of encouraging organization is furthered by protection of two employees). But cf. Note, Concerted Activity, supra note 37, at 389 (the underlying policy of the NLRA is to preserve the institution of collective bargaining).
99. See supra note 35.
100. 29 U.S.C. § 159(a) (1982).
101. But see Note, supra note 54, at 1004-05 (the federal courts have taken the position that the only effect of the proviso is to make it plain that employers can receive grievances without violating their duty to bargain with the exclusive representative).
and then allow employers to discharge them for exercising this right. 102

In a nonunion setting, where the employees have no collective bargaining agreement to protect their interests, allowing individuals to enforce statutory provisions relating to their employment would appear particularly important. By requiring the existence of a collective bargaining agreement before an individual can voice a complaint, nonunion employees are put at a severe disadvantage. 103 This inequality would seem contrary to the Act which provides that employees have the right to refrain from forming or joining labor organizations. 104

The dissent's position rests primarily on the fact that the holding of the majority will allow the Board to make unfair labor practice claims out of all disputes. 105 This argument loses much of its strength, however, because if an employee seeks the aid of a single employee or seeks to represent one other employee, the dissent would find the employee protected by section 7. 106 The dissent correctly stated that the labor laws were designed to encourage unionization, 107 but failed to point out how expanding this position to include individual activity would undermine unionization. The dissent adhered to a rigid, technical definition of the term "concerted" that was not, in all likelihood, intended by Congress.

V. CONCLUSION

The United States Supreme Court found the Board's Interboro doctrine to be a reasonable interpretation of section 7 of the NLRA. The decision protects the rights of individual

102. See Dolin, supra note 26, at 563-64. For a discussion of the section 9(a) proviso, see Gorman & Finkin, supra note 35, at 356-57; and Note, supra note 54, at 1003-05.

103. This is particularly true since about three-quarters of the workers in the United States are not members of unions. See Gorman & Finkin, supra note 35, at 287 (citing the U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES, 429 table 714 (101st ed. 1980)).


105. See Note, supra note 54, at 1013-14.


107. See id. at 1518. For a discussion on how extending protection to an individual would affect unionization and collective bargaining, see Comment, supra note 40, at 820-21; Note, supra note 54, at 1000-01.
union employees who assert a right under the collective bargaining agreement that will likely affect their co-workers. The decision, however, fails to extend this protection to nonunion employees who engage in the same activities, although these activities would affect the entire group as well. In this respect, the protection afforded in this decision is not complete.*

VICKY M. PHILLIPS

* In the wake of NLRB v. City Disposal Systems, the District of Columbia Circuit Court of Appeals reversed and remanded Meyers Industries, Inc. See Prill v. NLRB, DAILY LAB. REP. (BNA) D-1 (February 28, 1985).

The District of Columbia Circuit held that the Board's decision in Meyers rested on an erroneous view of the law, both when it decided its new definition of concerted activities was mandated by the NLRA and when it stated it was returning to the standard which the Board and courts relied on before Alleluia Cushion Co. See Prill, DAILY LAB. REP. (BNA) at D-1 to-2. The court stated that City Disposal "makes [it] unmistakably clear that contrary to the Board's view in Meyers, neither the language nor the history of section 7 requires that the term 'concerted activities' be interpreted to protect only the most narrowly defined forms of common action by employees, and that the Board has substantial responsibility to determine the score of protection in order to promote the purposes of the NLRA." DAILY LAB. REP. at D-8. In addition, the court found that the test in Meyers did not represent a return to the standard relied on by the courts and the Board before Alleluia, but created a more restrictive standard. See DAILY LAB. REP. at D-9. The court therefore remanded the case to permit the Board to reconsider Meyers in light of City Disposal.