

MARKET STRUCTURE AND EMPLOYEE RELATIONS: AN ANALYSIS OF THE NEWSPAPER INDUSTRY

*Mary Ellen Benedict**
Judith Stilz Ogden

I. INTRODUCTION

Since the late 1970s, researchers have raised concerns about the growing agglomeration of the media. Mergers and acquisitions over the past two decades and new laws have placed the power of the "fourth estate" into the hands of a few dominate corporations. Past research has mainly focused on how the media industry concentration affects democracy and information control.¹ More recent evidence suggests that the bottom line has influenced corporate decisions about what information is presented to the public.² Antitrust cases also indicate some anticompetitive behavior within the industry.³

This paper investigates one aspect of the growing domination of a few corporations in the newspaper industry that to-date has not been investigated thoroughly. We examine what impact industry labor market concentration has on the labor relations process. The newspaper industry had a history of strong unions until recent years.⁴ Technological advancements, which reduced many job categories within the industry, and the general decline of unionism in the United States likely contributed to the decline of strong unions in the newspaper industry. One study examines the technological impact on the labor relations process in New York City and finds that as papers move to an advanced production process, job security and labor relations decline.⁵ An economic study analyzes the impact of structural economic change on the United States unionization rate,⁶ but did not examine the newspaper industry specifically. We extend the literature by investigating whether

* Professor of Economics, Bowling Green State University; Ph.D., 1991, Heinz School of Public Policy and Management, Carnegie Mellon University; M.S., 1985, Heinz School of Public Policy and Management, Carnegie Mellon University; B.A., 1974, Waynesburg College.

** Attorney, arbitrator, and mediator; Member, Pennsylvania and Indiana Bars; LL.M. candidate, Dispute Resolution, Pepperdine University School of Law; J.D., 1979, Duquesne University School of Law; M.S., 1986, Robert Morris University; B.S., 1974, Duquesne University.

+ The authors thank Xiao Ying for her data research and data entry work, Louis Benedict for his editorial aid, and Matt Summers from the Bureau of National Affairs, Inc., for his aid in compiling the strike data used in the paper.

1 *See generally* Ben H. Bagdikian, *THE MEDIA MONOPOLY* (2000) and Robert G. Picard & Jeffrey H. Brody, *The Newspaper Publishing Industry* (1997).

2 *See generally* BAGDIKIAN, *THE MEDIA MONOPOLY* (2000) (Bagdikian presents a number of examples supporting his contention that the media industry generally, and the newspaper industry specifically, have not always presented the news when it may hurt the corporate image or take a view different from the executives of these corporations.).

3 PICARD & BRODY, *supra* note 1, at 176-78.

4/ff. at 110.

5 *See generally* STEPHEN R. SLEIGH, *ON DEADLINE: LABOR RELATIONS IN NEWSPAPER PUBLISHING* (1998).

6 *See* DAVID CARD, *FALLING UNION MEMBERSHIPS AND RISING WAGE INEQUALITY: WHAT'S THE CONNECTION?* (National Bureau of Econ. Research Working Paper No. 6520,1998).

industry power in the labor market adds to the decline of union strength in the industry.

Our study uses several approaches to examine the changing labor relations process in the industry:

- A review of industry employment levels and union- related changes from a national perspective.
- An examination of the 1970 Newspaper Preservation Act and how it has affected the balance of power in labor markets.
- An investigation of the 1990s Detroit newspaper strike as an example of current labor relations within two of the largest newspaper corporations who also have a Joint Operating Agreement (JOA).

This study briefly overviews the newspaper product market, with a particular emphasis on the two corporations that own the newspapers in Detroit. It integrates national trends with the Detroit case in order to argue that monopsonistic control in the labor market has reduced the power of unions in the industry. A monopsony labor market is comprised of one firm, or a few firms that act as one, which can control wages in the market due to a lack of competition for labor resources. This analysis finds two forces creating a monopsony environment in the newspaper industry: (1) The economic changes in the industry that allow for more regional control over the printed news; and (2) The legal structure of JOAs that allows for regional papers to combine operations. Both of these forces are described below.

n. THE NEWSPAPER INDUSTRY

A. Economic Changes in the Newspaper Industry.

There are generally two views of the increased concentration of the newspaper industry. A libertarian assessment would suggest that the profit motive leads toward a natural progression to newspaper chains due to the efficiency gains related to economies of scale.⁷ Further, this view believes that the profit-motive make chains more sensitive to community interests and therefore local newspaper management has editorial control in order to meet the needs of the local communities and maintain revenues.⁸ On the other hand, a market failure view holds that increased industry concentration results in too much control on what the public hears because of how the information is presented, if it is presented at all.⁹ The media is influenced by advertisers and media owners impose too much of their political biases into editorial decisions.¹⁰

⁷ See generally BENJAMIN M. COMPAINE, WHO OWNS THE Media 11 (1979)

⁸Id.

⁹ BAGDIKIAN, *supra* note 1, at 231 -35.

¹⁰Id

Has the industry grown more concentrated and therefore are firms more powerful? Based on a review of the statistical evidence of industry concentration, the answer is a weak "yes" in terms of fewer corporate owners with more power. Concentration ratios from the Census of Manufacturers indicate some increased concentration at the national level,¹¹ but generally the newspaper industry is much more competitive than other industries, such as tobacco and automobile manufacturing.¹² Such statistics, however, calculate industry concentration estimates for national markets while newspapers do not usually compete with each other on a national level. Further, other forms of media produce news and compete with newspapers. An additional reason why defining competition within the industry is not straightforward is that newspapers provide two main products: information and advertising. Therefore, firms compete not only for readers, but also for advertisers. These two groups are highly interrelated because advertisers desire a high degree of circulation in order to benefit from placing an ad in the first place. Therefore, each newspaper must determine the right set of strategies to attract the best combination of the two groups. Strategies may include targeting a particular audience for readership, which in turn targets a specific type of advertiser, or developing a particular "look" to the newspaper.¹³ For example, a weekly shopper newspaper targets housewives and, therefore, attracts advertisers who want housewives as customers.

Other trends, however, do indicate some movement toward industry concentration. Increasingly, independent owners have sold their papers to large corporations during the last forty years. The number of newspapers has declined since the 1940s, while the percentage of papers associated with chains has grown.¹⁴ In the mid 1940s, 80 percent of the daily newspapers were independently owned; by 1989, corporate chains owned 80 percent of the dailies.¹⁵ This trend can be attributed to two factors that developed by the 1960s: (1) Newspapers started with a few hundred thousand dollars in the early part of the century and became multimillion-dollar investments for corporations because of growing profit margins; and (2) Inheritance tax laws had a significant impact on the third generation descendants of family-founded and owned newspapers.¹⁶ Grandchildren of the newspaper creators often had little direct involvement in the daily operations of their firms during this period and could make substantially more money by selling the family paper than by keeping it. The 70 percent income tax rate on the wealthiest citizens at that time,

¹¹ The U.S. Bureau of Census, *Census of Manufacturers Publications for 1992 and 1987*, various tables, present industry concentration ratios, which are the share of industry sales for the top firms. The four-firm industry concentration ratio grew from 21 percent in 1947 to 25 percent in 1992. Other ratios show slightly more concentration for the top 8 and 50 firms in the industry, but these numbers are not particularly dramatic, such as with the tobacco industry, where the 8-firm concentration ratio is 100 percent.

¹² *Id.*

¹³ PICARD & BRODY, *supra* note 1, at 46.

¹⁴ *Id.* at 50; Bagdikian, *supra* note 1, at 4.

¹⁵ Bagdikian, *supra* note 1, at 4.

¹⁶ Picard & Brody, *supra* note 1, at 50.

combined with weak management and family infighting also contributed to a reduction in the number of family-owned, independent newspapers.¹⁷

In recent decades, there has been little incentive for investors to create new newspapers capable of competing with the chains. New technology that now makes newspaper production more efficient involves huge start-up costs. The most important change occurred as newspaper production shifted to offset printing technology, which uses complex microelectronic processing and highly specialized labor to create high quality, color print newspapers.¹⁸ The machines that perform offset printing are costly to purchase and operate, especially in light of high skilled labor costs.¹⁹ In addition, technological and structural demand changes in other communication industries, such as broadcasting and the Internet, may have lured entrepreneurs and profit-seekers from newspapers to other media outlets. Rising stock prices of the telecommunications industry in the 1990s, for example, may have enticed investors away from newspapers.

Despite the market constraints for new entrants into the newspaper industry, existing newspaper firms have been able to use the industry's technological advances and economies of scale to their advantage. Real payroll costs per employee for the newspaper industry declined between 1977 and 1992.²⁰ Between 1990 and 1992 alone, the industry lost more than 26,000 workers, including a decline in the percentage of production workers from 42 percent in 1977 to 32 percent by 1992.²¹ On the whole, these statistics suggest an industry that has made efficiency gains in the production process.

While national statistics provide some information about the industry, researchers use the "umbrella competition" model to describe the market complexities of the newspaper industry.²² This model considers four layers of papers in terms of competition.²³ At the top level are the metropolitan dailies, such as the *New York Post* or the *Los Angeles Times*. The second level contains satellite city papers that are regionally recognized and focus on regional news. The third level consists of suburban daily papers, while the fourth level is comprised of small daily and weekly papers. Only the top level competes beyond the metropolitan area of the paper, and within the region, the top daily tends to dominate the market. The papers in the other

¹⁷ CAMPAIN, *supra* note 7, at 33.

¹⁸ SLEIGH, *supra* note 5, at 21.

¹⁹ *Id.* at 22.

²⁰ Payroll is defined as "gross earnings" and includes all forms of compensation to employees, except "payments to proprietors or partners of unincorporated concerns," "payments to members of the Armed Forces," and to "pensioners carried on the active payrolls of manufacturing establishments." CENSUS OF MANUFACTURERS, U.S. BUREAU OF CENSUS A-2 (1992).

²¹ *Id.*

²² Campaine, *supra* note 7, at 37-39, citing James Rosse & James N. Dertouzous, *Economic Issues in Mass Communication Industries*, submitted to the Federal Trade Commission, Dec. 14-15 57 (1978), and PICARD & Brody *supra* note 1, at 43-46, citing James Rosse, *Economic Limits of Press Responsibility*, Stanford University Studies In Industry Economics, NO. 56 (1975).

²³ *Id.*

layers of the model have heavier competition for readership and advertisers. For example, in the Detroit metropolitan area, there are two newspapers, the *Detroit Free Press* and the *Detroit News*. Both compete at the top layer of the umbrella model, but they do not compete with other national papers (New Yorkers do not buy the Detroit newspapers). Local dailies and weeklies from Wayne, the county that includes Detroit, and the surrounding counties compete with each other, but not with the two top papers. Lack of competition at the top layer is further confounded by the institution of JOAs, agreements between first-layer papers to combine some operations to reduce costs in order to maintain "competition." This aspect of local monopolization in the industry is discussed in detail below. The end result of the umbrella model in the case of the Detroit area is a large degree of regional monopolization for two newspapers and much more competition at the lower layers.

B *Two of the Newspaper Power Players: Gannett Company and Knight-Ridder, Inc.*

This section examines the major players in the newspaper industry, with a particular interest in the two corporations involved in the Detroit Newspaper Agency: Gannett Company and Knight-Ridder, Inc.

The list of companies at the forefront of the newspaper industry today is fundamentally unchanged since 1978. Table 1 presents the top ten firms by circulation in 1978 and again in 1994. Gannett Company and Knight-Ridder, Inc. have been in the top two positions in terms of daily circulation at least since 1978, and the other eight firms maintained a position in the top ten between 1978 and 1994. In Table 2, when the list is compiled by total revenues or by total assets, Gannett and Knight-Ridder rank 3 and 6, respectively, following Capital Cities (1st in both rankings), Times Mirror (2nd and 4th in assets and revenues, respectively), and Thomson Newspapers (2nd in revenues). The share of circulation for the top ten newspaper companies has also grown, from 38.6 percent in 1978 to 43.7 percent today.

Table 1.
Top Ten Newspaper Firms by Circulation, 1978 and 1994

1978		1994	
Name	Circulation (thousands)	Name	Circulation (thousands)
1. Knight-Ridder	3,742	1. Gannett	5,831
2. Gannett	3,142	2. Knight-Ridder	3,606
3. Newhouse Newspapers	3,281	3. Newhouse Newspapers	2,960
4. Tribune Co.	3,199	4. Times Mirror	2,624
5. Scripps- Howard	2,038	5. New York Times	2,435
6. Dow Jones	1,920	6. Dow Jones	2,366
7. Hearst	1,904	7. Thomson Newspapers	2,071
8. Times Mirror	1,880	8. Tribune	1,348
9. Cox	1,365	9. Cox Enterprises	1,315
10. Thomson	1,146	10. E.W. Scripps	1,295
Percent of Daily Circulation	38.6	Percent of Daily Circulation	43.7

Sources: BENJAMIN CAMPAGNE, WHO OWNS THE MEDIA (1979), Table 2.13; Picard and Brody, The Newspaper Publishing Industry (1997), Table 2.3.

Gannett and Knight-Ridder have made concerted efforts to remain media conglomerates over the years, especially since 1985. Gannett controls about 10 percent of circulation nationally, which is almost double its percentage of total circulation in 1978, while Knight-Ridder has maintained approximately a 6- percentage share of all circulation since 1978. A review of mergers and acquisitions of Gannett and Knight-Ridder indicate not only their desire to gain in the newspaper industry, but also in the media industry more generally.²⁴

²⁴ Detailed tables, gathered from MOODY'S INDUSTRIAL MANUAL (1997), are available from the authors on request.

Table 2. Newspaper Rankings by Assets and Revenues, 1994					
Assets (millions)			Revenues (millions)		
Rank	Company	Assets	Rank	Company	Revenues
1	Capital Cities/ABC	6,766	1	Capital Cities/ABC	6,379
2	Times Mirror	4,265	2	Thomson Newspapers	5,849
3	Gannett	3,707	3	Gannett	3,825
4	New York Times	3,138	4	Times Mirror	3,357
5	Tribune	2,786	5	Cox Enterprises	2,939
6	Knight-Ridder	2,447	6	Knight-Ridder	2,649
7	Dow Jones	2,446	7	New York Times	2,358
8	E.W. Scripps	1,723	8	Tribune	2,115
9	Washington Post	1,697	9	Dow Jones	2,091
10	Media General	787	10	Hearst	1,800

Sources: PICARD AND BRODY, THE NEWSPAPER PUBLISHING INDUSTRY (1997), Table 2.5

Gannett has made a number of newspaper acquisitions since 1985, including both dailies and weeklies: the company acquired four papers in 1985 and four in 1986.²⁵ In addition, a merger created the Evening News Association in 1986, and this group now publishes five daily papers. Two more small papers were acquired during the period from 1987 through 1996 and four were sold. Today, Gannett operates 91 dailies and controls smaller papers in more than 23 states.²⁶ In addition, Gannett seems to have expanded its interest in television and radio broadcasting, even though it divested 9 radio stations between 1985 and 1996.

Knight-Ridder also focused its acquisitions on media-related companies.²⁷ It purchased 7 newspapers between 1985 and 1999. Six of these papers were acquired as sets (The Sun Herald and the Sun News in 1986; The Kansas City Star, Fort Worth and Arlington Star-Telegrams, and the Belleville News-Democrat in

²⁵ *Id.*

²⁶ Editor & Publisher int'l Y.B. II-4 (1999).

²⁷ Detailed tables, gathered from MOODY'S INDUSTRIAL MANUAL (1997) are available from the authors on request.

1998 from Walt Disney Company's ABC Inc.). Knight-Ridder sold 2 papers in 1987 but the firm still owned 31 dailies in 1996.

Knight-Ridder has also made acquisitions in broadcasting and in database-related companies during the same period, suggesting that its interests in other forms of media have grown in recent years. Although the two companies do not generally own shares of the same companies, Gannett and Knight-Ridder, along with Landmark Communications, have equal shares in Infinet, an Internet provider and electronic publishing company.²⁸

In summary, the top players in the newspaper industry have remained unchanged over the years. In particular, Gannett Company and Knight-Ridder are important firms in the media industry generally, and the newspaper industry specifically. Their ranking as the top two firms in circulation has remained unchanged since 1978, and they rank in the top six in revenues and assets. Their merger and acquisition records indicate a concerted effort to maintain a high profile position in the industry. Based on 1997-98 Securities and Exchange filings, Quicken ranks Gannett first in market capitalization in the industry and Knight-Ridder sixth, suggesting that the two firms have strong financial reputations in the newspaper industry.²⁹

II. OVERVIEW OF JOINT OPERATING AGREEMENTS AND THE NEWSPAPER PRESERVATION ACT

In a joint operating agreement (JOA), two separately owned newspapers agree to combine certain business functions, such as circulation, advertising and publication, while still publishing separate papers. The papers keep separate news and editorial staffs. Although JOAs have been used in other industries, the first JOA in the newspaper industry occurred in 1933 in Albuquerque (see Table 3). By the second half of the 1960's, twenty-two cities across the United States had JOAs (Table 3). Five more cities obtained JOAs during the 1970s and 1980s, and thirteen operate today (Table 3).

A joint operating agreement would appear to run afoul of antitrust laws, in particular, Section 1 of the Sherman Act,³⁰ which prohibits unreasonable restraints of trade or commerce, and Section 2 of the Act,³¹ which prohibits monopolization. Any question as to whether antitrust law applied to newspapers was resolved by the United States Supreme Court in *Associated Press v. U.S.*³² This case deals with provisions of the Associated Press' by-laws that prohibited providing news service to non-members. The U.S. Supreme Court found that newspaper publishers were not entitled to different treatment under antitrust laws since they are engaged in a busi

²⁸ EDITOR & PUBLISHER, *supra* note 26, at II-6.

²⁹ QUICKEN.COM at http://quicken.elogic.com/sec_key.asp?ticker=GCI (last visited June 27, 2003).

³⁰ 15 U.S.C. §1 (2001).

³¹ 15 U.S.C. §2 (2001).

³² 326 U.S. 1 (1945).

ness for profit in exactly the same manner as businesses that “sell food, steel, aluminum, or anything else people need or want.”³³ The Court rejected arguments about conflicts with the First Amendment, which the Court found protects the printed or spoken word, but not business practices that violate antitrust law.³⁴

A joint operating agreement was specifically challenged in *Citizen Publishing Co. et al v. U.S.*³⁵ In 1940 Tucson’s two daily newspapers, the *Citizen* and the *Star* negotiated a JOA, which was scheduled to run for 25 years. The newspapers were to retain their news and editorial departments, but business operations were to be combined. The papers were distributed by a jointly held company, and subscriptions and advertising rates were set jointly. Profits were pooled. In 1965, the *Star*’s stock was acquired by the *Citizen*’s shareholders under an option to the agreement. The *Star* was then published by a company formed for the acquisition. Subsequently, the United States filed a complaint charging an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Antitrust Act and a monopoly in violation of Section 2. There was also a charge under Section 7 of the Clayton Act arising from the stock acquisition.

In *Citizen*, the Supreme Court ruled that the JOA violated antitrust law. The Court noted that price-fixing is illegal *per se*, and the pooling of profits at least reduces the incentive to compete and runs afoul of the Sherman Act. The only real defense available was that of the “failing company.”³⁶ This was a judicially created defense that was discussed in *International Shoe v. FTC*,³⁷ in which the Court found that “the resources of one company were so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a business failure.”³⁸ In that case there was no other prospective purchaser.

The *Citizen* Court found that at the time the JOA was entered into, as well as when this JOA became effective, there was no evidence that Citizen Publishing was on the verge of going out of business. The Court noted that bills had been introduced in both the 90th and 91st Congress to exempt JOAs between newspapers from antitrust laws, but as of the date of the opinion (March 10, 1969), Congress had taken no action on those bills.³⁹

³³ *Id.* at 7.

³⁴ *Ai.* at 11.

³⁵ 394 U.S. 131 (1969).

³⁶ *M.* at 136.

³⁷ 280 U.S. 291 (1930).

³⁸ *Id.* at 302.

³⁹ 394 U.S. at 138 n.4.

Table 3. JOA Agreements Listed by States				
CITY & STATE	YEAR FORMED	PARTICIPANTS	TERMINATION	JOA EXPIRATION DATE
BIRMINGHAM, ALABAMA	1950	Birmingham News (News- house) Birmingham Post Herald (Scripps Howard)		2015
ANCHORAGE, ALASKA	1974	Daily News Times	JOA dissolved 1979	
TUCSON, ARIZONA	1940	Tucson Citizen (Gannett) The Arizona Daily Star (Pulitzer)		2015
SAN FRANCISCO, CALIFORNIA	1964	San Francisco Chronicle (Chronicle Publishing Co.) San Francisco Examiner (Hearst)		2005
MIAMI, FLORIDA	1966	The Miami News (Cox) The Miami Herald (Knight- Ridder)	News ceased publishing 1988	
HONOLULU, HAWAII	1962	Honolulu Advertiser (Gannett) Honolulu Star Bulletin (Liberty Newspapers Ltd.)		2022

EVANSVILLE, INDIANA	1938	The Evansville Courier (Scripps Howard) The Evansville Press (Hartmann Publication)	JOA expired 1998; press ceased publishing	
FORT WAYNE, INDIANA	1950	The Journal Gazette (The Journal Gazette Co.) The News Sentinel (Knight- Ridder)		2020
SHREVEPORT, LOUISIANA	1953	The Shreveport Times (Gannett) Shreveport Journal (Independent)	JOA dissolved in 1991, Journal is no longer published	
DETROIT, MICHIGAN	1989	The Detroit Free Press (Knight- Ridder) The Detroit News (Gannett)		2086
SAINT LOUIS, MISSOURI	1957	Globe Democrat (Newhouse) Post Dispatch	Globe Democrat was sold and ceased publishing in 1986	
ALBUQUERQUE, NEW MEXICO	1933	The Albuquerque Journal (Journal Publishing) The Albuquerque Tribune (Independent)		2022
LINCOLN, NEBRASKA	1950	The Lincoln Star (Lee Newspapers MIDwest) The Lincoln Journal (Independent)	Not covered by NPA; determined to be joint monopoly	
LAS VEGAS, NEVADA	1989	Review Journal (Don Rey) Sun (Las Vegas Sun, Inc.)		2049

CINCINNATI, OHIO	1979	The Cincinnati Enquirer (Gannett) The Cincinnati Post (Scripps Howard)		2007
COLUMBUS, OHIO	1959	Columbus Citizens Journal (Scripps Howard) Columbus Dispatch	Journal ceased publishing in 1985	
TULSA, OKLAHOMA	1941	Tulsa World (Independent) The Tulsa Tribune (Independent)	Tribune ceased publishing in 1992	
FRANKLIN-OIL CITY, PENNSYLVANIA	1956	The Derrick The News Herald	The Derrick purchased the News Herald in 1985	
PITTSBURGH, PENNSYLVANIA	1961	The Pittsburgh Press (Scripps Howard) The Pittsburgh Post- Gazette (Block Newspapers)	Press ceased publishing in 1992	
YORK, PENN- SYLVANIA	1989	York Dispatch (Buckner News Alliance) Daily Record (Garden State Newspapers)		2090
BRISTOL, TENNESSEE VIRGINIA	1950	Herald-Courier Virginia- Tennessean	Was actually a joint monopoly	

CHATTANOOGA, TENNESSEE	1942	The Chattanooga Times (Times Printing Co.) Chattanooga News-Free Press (Chattanooga Free Press Co.)	JOA ended 1999; Times was sold & the two papers merged	
KNOXVILLE, TENNESSEE	1957	The Knoxville Sentinel (Scripps Howard) The Knoxville Journal (Gannett)	The Journal ceased publishing in 1992	
NASHVILLE, TENNESSEE	1937	Nashville Banner (Nashville Banner Publishing) The Tennessean (Gannett)	Banner ceased publishing in 1997	
EL PASO, TEXAS	1936	El Paso Times (Gannett) El Paso Herald- Post (Scripps Howard)	Herald Post ceased publishing in 1997	
SALT LAKE CITY, UTAH	1952	The Salt Lake Tribune (Kearns Tribune Co.) Deseret News (LDS Church)		2012
SEATTLE, WASHINGTON	1982	Seattle Post- Intelligencer (Hearst) The Seattle Times (Seattle Times Co.)		2032
CHARLESTON, WEST VIRGINIA	1958	The Charleston Gazette (Daily Gazette Co.) Charleston Daily Mail (Thomson)		2036

MADISON,
WISCONSIN

1948	Wisconsin State Journal (Lee Newspapers, MIDwest) The Capitol Times (Independent)	Not covered by NPA. Determined to be joint monopoly
------	--------------------------------------------------------------------------------------	-----------------------------------------------------

Sources: (1) Mark Fink, *The Newspaper Preservation Act of 1970: Help for the Needy or the Greedy?* 1990 DET. C.L. REV. 93, 95; (2) JOHN C. BUSTERA AND ROBERT G. PICARD, JOINT OPERATING AGREEMENTS: THE NEWSPAPER PRESERVATION ACT AND ITS APPLICATION, 58 (1993); (3) Frederick R. Blevens, *A New Weapon. Buyout, Closing Emerge*, THE QUILL, Apr. 1997, at 39; (4) Robert Neuwirth, *Death Toll Mounts as Weak JOA Papers Die Anyway*, EDIT. & PUB, Apr. 18, 1998, at 18; (5) Lucia Moses, *Do JOAs Still Work? (Have They Ever?)*, EDIT. & PUB, Sept. 11, 1999, at 18; (6) *Information Resource Center of the Newspaper Association of America* (visited Feb. 2000)

<http://www.naa.org/irc/facts99/26.html>.

However, on July 24, 1970, the Newspaper Preservation Act (NPA) was signed into law by President Nixon, who was not otherwise known for his love of the press.⁴⁰ Michigan Senator Philip A. Hart called the bill, "a poverty program for the rich."⁴¹ Following an intense lobbying campaign by segments of the news media, the bill had passed the Senate by a vote of 64 to 13, and in the House by a vote of 292 to 87.⁴² Media chains and the American Newspaper Publishers Association supported the bill. Fearing the growing corporate newspapers, newspaper labor unions and small newspapers opposed the Act.

The Act recognized the public interest in maintaining the independence and competition in the editorial and reporting functions of all newspapers.⁴⁴ The Act also declared existing JOAs not unlawful under antitrust law,⁴⁵ while JOAs entered into after July 24, 1970 had to secure prior written approval by the Attorney General of the United States.⁴⁶

⁴⁰ Bagdikian reports Richard E. Berlin, president and CEO of the Hearst corporation, sent letters on his own behalf and on behalf of six other men representing media corporations (these corporations included Cox, Knight, Worrell, Block, Scripps-Howard and Newhouse) to President Nixon and to Nixon's assistant attorney general in charge of antitrust, Richard W. McLaren, making it clear that the media would remember what Nixon did now when he was up for reelection in 1972. McLaren had previously spoken against the bill. *See* BAGDIKIAN, *supra* note 1, at 96-97 (2000).

⁴¹ BEN GRULEY, PAPER LOSSES 172 (1993).

⁴² *Id.* at 173.

⁴³ Thomas C. Marvin, *Above the Law? Dealing with the Abuse of Joint Operating Agreements under the Newspaper Preservation Act*, 42 WAYNE L. REV. 1719, 1727, 1728 (1996), citing 26 CONG. Q. ALMANAC 241 (1970).

⁴⁴ 15 U.S.C §1801 (2001).

⁴⁵ *Id.* § 1803(a).

⁴⁶ *Id.* § 1803(b).

Detailed procedures for receiving approval can be found in the regulations.⁴⁷ Written application and the required documentation should be filed with the Attorney General, with copies going to the Assistant Attorney General of the Antitrust Division.⁴⁸ Public notice of the application must be published on the front page of the newspapers in question, as well as in the *Federal Register*.⁴⁹ Although a hearing is not required, the Attorney General may determine that a hearing should be held before an administrative law judge.⁵⁰ Members of the public may also request a hearing.⁵¹ At the conclusion of a public hearing, the administrative law judge makes a recommendation to the Attorney General.⁵²

A significant aspect of the NPA is the standard for granting a JOA. The newspapers must demonstrate that one of the papers is determined to be "failing,"⁵³ with its financial condition determined without reference to the identity or the financial resources of its owner or owners.⁵⁴

Section 1801 of the NPA indicates that the Act's purpose is to preserve the publication of newspapers.⁵⁵ At the time of its passage, Senator Hruska claimed that the NPA was "designed to offer a means of protection to small suburban and weekly newspapers, and to newspaper employees and their unions, while preserving the separate editorial voices."⁵⁶ However, there is serious question as to whether the Act does any of these things. As indicated in Table 3, many newspapers have ceased publication since 1933 despite the institution of JOAs. On the first of the year in 1992, the newspapers in Tulsa, Oklahoma, the *Tulsa Tribune* and the *Tulsa World*, were operating under a JOA. By September 30, 1992, the *Tulsa Tribune* had died. That same year, *The Knoxville Journal* ceased publication. A paper with a JOA failed in Shreveport, Louisiana in 1992. In the 1980s papers failed in Miami, Columbus, and St. Louis. Pittsburgh lost a newspaper since 1992, as did Evansville, Indiana, Nashville, Tennessee, and El Paso, Texas. Many believe that JOAs merely postpone the inevitable.⁵⁷

JOAs possess an unprecedented level of protection. The Attorney General is given wide discretion to grant them, and the courts have limited ability to review the Attorney General's decisions, as will be illustrated in the Detroit case. Furthermore, few parties are able to challenge the alleged antitrust violations by

⁴⁷ 28 C.F.R. §48.1-10(2001).

⁴⁸ *Id.* §48.4.

⁴⁹ *Id.* §48.6.

⁵⁰ *Id.* §48.7.

⁵¹ *Id.* §48.8.

⁵² *Id.* §48.10.

⁵³ 15 U.S.C. §1802 (2001). Section 1802 (5) defines a failing newspaper as a publication which is in "probable danger of financial failure." This definition is much less stringent than the normal antitrust requirement for a failing company.

⁵⁴ *Independent P-1 v. Hearst Corp.*, 704 F.2d 467 (9th Cir. 1983).

⁵⁵ 15 U.S.C. §1801.(2001).

⁵⁶ Marvin, *supra* note 43, at 1745 n. 164, *citing* 116 CONG. REC. 2005.

⁵⁷ Keith Naughton, *JOAs: Is It Time to Lay the Funeral Wreath?*, 81 THE QUILL 14 (1993).

newspapers. In *Province v. Cleveland Press Publishing Co.*,⁵⁸ workers who lost their jobs when the Cleveland Press ceased operations brought suit alleging a conspiracy to monopolize by Cleveland's two newspapers. Although Section 4 of the Clayton Act⁵⁹ allows private parties who suffered injuries to bring antitrust actions, the court of appeals found that the loss of jobs was not the direct result of a conspiracy, and therefore, the union lacked standing to bring suit.⁶⁰

Likewise, a JOA appears to be a powerful tool for a paper when a labor dispute occurs. In the summer of 1995, 90% of the unionized workers struck against Detroit's two newspapers, which had been operating under a JOA. For two months the papers issued a joint weekday publication, which had not been provided for in the JOA. In November of 1995, a group that described itself as being made up of home-delivery subscribers brought suit for violations of the Sherman Act and the Clayton Act. The Court of Appeals for the Sixth Circuit found that the plaintiffs were unable to establish any actual or threatened injury associated with the newspapers' action.⁶¹

III. LABOR IN THE NEWSPAPER INDUSTRY

Before examining how the JOAs and regional monopolies affect the labor relations process, an examination of the labor market for the industry is warranted because this article contends that these two forces created a monopsony in the Detroit market for newspaper workers. This section analyzes trends in the newspaper industry in terms of employment, unionization, and occupational changes in the industry. When possible, specific reference to the Detroit region is made.

The newspaper industry follows a traditional monopsonistic model for reporters, editors, and press operators. According to the monopsony model, workers in these markets have few alternatives for employment in other industries or may face geographical constraints that reduce their mobility. The result is that workers will face relatively low wages and low employment levels due to the power firms have over the labor pool. Monopsony markets can be candidates for unions, which often form to counteract the economic power of firms in the labor market.⁶²

As Table 4 demonstrates, the earnings for those employed in the newspaper industry tend to be lower than for all nondurable manufacturing and for other printing and publishing industries, even though the percentage of workers with at least a college degree is relatively high at 30 percent. The percentage of part-time workers is also relatively high, 25 percent, despite a decline in part-time workers in the industry since 1988. Both patterns suggest some degree of monopsonistic power in the labor market, which may be one reason union membership rates in the newspaper industry show a relatively stable pattern of approximately 13 percent. Table 4 also

⁵⁸ 787 F.2d 1047 (6th Cir. 1986).

⁵⁹ 15 U.S.C. §15(2001).

⁶⁰ *Province v. Cleveland Press Publishing Co.*, 787 F.2d 1047 (6th Cir. 1986).

⁶¹ *Mahaffey v. Detroit Newspaper Agency*, 1998 U.S.App.LEXIS 25472 (6th Cir. 1998).

⁶² Ronald G. Ehrenberg & Robert S. Smith, *Modern Labor Economics: Theory and Public Policy* 515-16 (1996).

shows that since 1988, unionization rates have fallen for the United States labor force, and for other printing and publishing industries. In other printing and publishing industries, the unionization rate stands at about 7 percent. In 1998, the newspaper industry compared favorably to the overall U.S. unionization rate of 13.9 percent and to the 14.7 percent rate for all nondurable manufacturing.

Table 4: Union Membership Rates in the Printing and Publishing Industry: Weekly earnings, average hourly wage, percent part-time and percent college Selected years: 1988,1993,1998									
Mfg-Nondurables		Print/Publishing (excluding Newspaper)				Newspaper Industry			
% Union	Earnings/Wage	% Unio	Earnings/Wage	% Part-time	% College	% Union	Earnings/Wage	% Part-time	% College
19.9	602/14.50	11.0	609/15.10	10	20	12.8	522/14.02	29	26
17.2	517/13.70	8.1	602/14.60	9	25	12.7	498/13.27	32	29
14.7	617/14.46	7.0	675/15.91	9	27	13.1	527/13.74	25	30

Source: The Bureau of National Affairs, Inc. *Union Membership and Earnings Data Book: Compilations from the Current Population Survey (1999 Edition)*.
 Weekly earnings and average hourly wages are in 1998 constant dollars.
 % Part-time=the percentage of workers who work less than 35 hours per week.
 % College=Percentage of workers with a college degree or higher.

Although there are small, independent unions and a few other national unions in the industry, five unions dominate the newspaper industry: The Communications Workers of America (CWA), The Graphic Communications International Union (GCIU), The International Machinists Workers of America (IAM), The International Brotherhood of Teamsters (IBT), and the Newspaper Guild (TNG). Table 5 presents trends in union membership for these unions since 1955. Note that since these unions represent workers in other industries, we can only make general inferences about the newspaper industry from the descriptive information in the table.

Membership in the three major unions (GCIU, IAM and IBT) has declined, with IAM membership declining by 34 percent over the past forty years.⁶³ GCIU also suffered a decline in membership, but the membership statistics for this union have only been available since 1985. These figures indicate a 34 percent decline since 1985. On the other hand, CWA and TNG, which often represent skilled workers and professionals, have either had membership growth or have remained stable.

⁶³ The AFL-CIO membership list is representative of unions, but because some unions are not members of the federation, the numbers in Table 6 probably underestimate union membership in the newspaper industry.

The CWA has almost doubled since 1955, reaching its highest membership in 1985. A large part of this growth can be attributed to the general growth of the telecommunications industry, which employs a substantial number of CWA workers. The Newspaper Guild, however, is mainly focused within the newspaper industry, and its level of membership is almost unchanged since 1955, at 22,000 members.

Table 5: Average Per Capita Union Membership (expressed in thousands) for Five Major Unions in the Newspaper Industry as affiliates of the AFL-CIO

Union	1955	1965	1975	1985	1995	1997
CWA	249	283	476	524	478	480
GCIU				141	94	93
IAM	627	663	780	520	448	411
IBT					1280	1276
TNG	21	23	26	24	20	22

Source: The Bureau of National Affairs, Inc. *Additional Earnings Data Book: Compilations from the Current Population Survey (1999 Edition)*. Abbreviations are as follows: CWA=Communications Workers of America; GCIU=Graphic Communications International Union; IAM=International Machinists Association; IBT=International Brotherhood of Teamsters; TNG=The Newspaper Guild (merged with CWA in 1997).

Note that missing data were not provided by BNA, but the data on the Teamsters are likely missing, because IBT was excluded from the AFL-CIO for many years due to its criminal associations.

Details regarding the labor relations process in the newspaper industry are difficult to obtain, although anecdotal evidence of the tension between labor and management, particularly in the newspaper industry, can be readily found at the websites of any of the unions mentioned here. In addition, there have been 30 strikes or job actions at newspapers around the country since 1985 as shown in Table 6. Many of these job actions involved a small number of workers or lasted for a very short duration, such as the Boston Globe strike in 1993. There have been 8 strikes involving 1,000 or more employees, and all but one of these involved multiple unions. These 8 strikes represent only about 1 percent of all strikes in the U.S. involving 1,000 or more workers during the same period.⁶⁴ The strikes in the industry involving a large number of workers also tended to be longer and associated with high profile dailies. Because of the size and nature of the industry, these 8 strikes received national attention. These strikes included: the Philadelphia papers in 1985, the New York papers in 1991 and 1992, the *Pittsburgh Press* in 1992, the San Francisco papers in 1994, the Detroit newspaper strike in 1995, and the Seattle

⁶⁴ Using the most recent Bureau of Labor Statistics strike information, 675 work stoppages involving 1,000 or more workers occurred between 1985 to 2001. *Work Stoppages Involving 1,000 workers or more, 1947-2002* available at <http://www.bls.gov/news.release/wkstp.t01.htm> (last visited June 27,2003).

papers in 2001. Accounts of the New York, Pittsburgh, and Detroit strikes indicate a high degree of tension between the two sides, at times resulting in violence.⁶⁵

Because most of these papers are chain-owned, the strikes also involved the top firms in the industry. Knight-Ridder was involved in the Philadelphia and Detroit strikes and Gannett was also part of the Detroit strike; The Tribune Co. and Times Mirror were associated with New York papers; and E.W. Scripps owned the Pittsburgh Press at the time of that strike. In the New York and Detroit cases, management changes and previous labor relations negotiations had built up a level of tension between labor and management.⁶⁶ In the Detroit strike, which began in 1995, tensions began to surface soon after the JOA was instituted between the *Detroit Free Press* and the *Detroit News*. Labor strife was unusual between labor and management prior to 1985, and especially when the companies were independently owned and workers felt "safe and secure."⁶⁷

It is likely that the deterioration of labor relations is directly related to the desire by newspaper chains to reduce labor costs. Table 7 presents the trends in union and nonunion wages for two categories of newspaper workers: editors and reporters, and printing press operators.⁶⁸ A third category, typesetters and compositors, is too small to examine union wages closely, although general inferences about the union/nonunion wage differential are possible. As Table 7 indicates, union workers represented higher labor costs to the companies in 1988 when compared to nonunion costs. Unionized editors and reporters earned 57 percent higher wages than their nonunion counterparts, while unionized printing press operators earned 37 percent more than nonunion printing press workers. Nonunion typesetters earn over 8 percent less than the average wage, suggesting at least some differential between the union and nonunion typesetters. For these three occupations, the wage differentials in the newspaper industry are higher than the national average of 24 percent. Union wages may have provided an impetus for management to take a hard-line negotiation stance in the 1980s and 1990s. Since 1985, for example, newspaper management hired replacement workers in 10 of the 30 strikes, and in many cases the replacements were permanent (Table 6), while lockouts were used in three of the strike cases (Pittsburgh Press-1992, Sunday Independent-1993, Dayton-1999).

⁶⁵ See e.g. SLEIGH, *supra* note 5, 137, 168; *Long-term effects of strike could cost jobs and papers*, The SEATTLE TIMES, Dec. 8, 2000, at A1, available at LEXIS-NEXIS, Academic Universe.

⁶⁶ See generally SLEIGH, *supra* note 5, and Ogden et al., *Timing is Everything: The Consequences of NLRB Delays When Requesting §10(j) Injunctions* (July, 1999) (unpublished manuscript, on file with authors).

⁶⁷ Interview with Mark Downey, Chairman of Pressmen and Plate Makers, Graphic Commercial International Union #13, in Detroit, Mich. (May 11, 1998).

⁶⁸ Information by detailed occupation is available to some degree, but impossible to attribute to the newspaper industry. For example, mailers are commonly used in the industry, but these workers will be combined with workers in other industries. Therefore, the focus in Table 7 is on the three occupations that are directly and almost solely tied to the newspaper industry, or at least the more broadly-defined printing and publishing industry.

These tactics, as well as the technological changes described earlier, have led to a decline in union wage differentials in the 1990s for the newspaper industry. Table 7 indicates that unionized editors and reporters have experienced a reduced wage advantage of 50 percent in 1993 and 37 percent in 1999. Similarly, unionized printing press operators experienced an increase in their wage advantage to 44 percent by 1993, but that advantage declined to 32 percent by 1999. These changes, from 1988 to 1999, are much more severe than for all unionized workers whose union/nonunion wage ratio has only declined by 2 percentage points since 1988. In all cases, the decline in the union/nonunion wage differential appears to result more from the increase in average wages for nonunion workers, while wages for unionized workers have declined or stagnated.

A review of employment trends in Table 7 reveals a 4 percent increase in the employment level for editors and reporters between 1988 and 1998. This is somewhat surprising given the many news wire services and celebrity columnists who are published nationwide. The other notable trend is the decline in unionization for this occupational group. Table 5 indicated that the Newspaper Guild had maintained its membership level in the AFL-CIO over the period. This fact, coupled with the rise in the total number in this group, would suggest a decline in the unionization rate. There is no clear link to any of the strike activity listed in Table 6 and, therefore, the reasons behind the decline are not evident. It might be hypothesized that this group has become disenchanted with unions and collective bargaining as "star" reporters gain celebrity and individual market power. It could just as likely be that antiunion tactics by management have discouraged these professional workers from joining unions.

The decline in employment and unionization for printing press operators follows national patterns for workers in the manufacturing sector. The number of printing press operators declined by 8 percent and the unionization rate fell 26 percent. Technology substitutions likely affected both union and nonunion workers in this occupation. Yet while typesetters experienced a 47 percent decline in employment, the unionization rate more than doubled. The most logical explanation is that the unionized typesetters kept their jobs over the eleven-year period, while the nonunion typesetters were replaced with advanced technology.

In summary, this analysis of the newspaper industry labor market indicates first that few unions dominate the industry. Those representing the professional workers have maintained their unionization rate or declined slightly, while those representing skilled and unskilled labor have experienced declines in membership and in the pool of workers. The latter makes the bargaining position of those union workers more tenuous than that experienced by the professional workers. However, even unionized editors and reporters have lost some wage advantage over their nonunion counterparts, suggesting at least some loss of union power.

Table 6: Work Stoppages in the Newspaper Industry, 1985-1999

Year	Company Name	Strike Length	Unions Involved	No. of Workers	Reason(s) for Strike
1985	Atlantic City Press, Atlantic City, NJ	2/21/85-unknown	ITU	65	Strike regarding contract changes on union security and work rules.
1985	Philadelphia Newspapers Div. (Knight-Ridder), Philadelphia, PA.	4/14/85-4/14/85	IBT	660	17-hour strike by janitors and elevator operators. IBT honored the picket lines.
1985	Chicago Tribune, Chicago, IL	7/18/85-11/30/87. ITU returned 9/87.	GCIU, ITU	1,000	Pressmen, mailers and printers on strike during contract renewal. Jobs transfer proposal the main issue. Unconditional offer to return 1/29/86.
1985	Philadelphia Newspapers Div. (Knight-Ridder), Philadelphia, PA.	9/7/85-10/22/85	GCIU, IAM, IBT, ITU, TNG	4,774	Nine unions striking at the Inquirer and Daily News at contract renewal. Wage and benefit increase the main issue.
1986	Daily Record, Milwaukee, WI	6/3/86-unknown	ITU	**	**
1987	Baltimore Sun, Baltimore, MD	6/11/87-6/18/87	CWA, GCIU, IBT, TNG, UFCW		Five unions striking, four in honor of the Newspaper Guild strike.
1987	Lillie Suburban Newspaper	11/19/87-6/18/88	CWA	14	Unknown
1988	Il Progresso	6/20/88 - 9/14/88	CWA, TNG	39	Contract renewal. Mail Handlers Union honor the picket line.
1989	Wilkie Co., Muskegon, MI	2/1/88-2/10/88	IAM	26	Press room strike.
1989	Knoxville News Sentinel, Knoxville, TN	2/18/89-3/16/89	IBT	8	Circulation Department; subcontracting.

1990	News-Gazette, Champaign, IL	2003]	Market Structure and Employee Relations: Analysis of the Newspaper Industry 3/22/90-unknown	CWA	100	Informational picketing protesting a company offer on a new contract.
1990	The Daily News Co. (The Tribune Co.), New York, NY	10/25/90-3/21/91	CWA, GCU, IBEW, IAM, TNG, and Local Mail Delivery Union	2,262	Drivers, reporters, editors, salespeople, printers, and pressmen on strike due to work rules, job security, wage and benefit concession issues. About 800 permanent replacement workers hired and 300 union members cross the picket lines. Agreement to sell the paper to British publisher Robert Maxwell on 3/14/91. Replacement workers subsequently dismissed and union workforce agree to 30% workforce reduction.	**
1991	Saint Louis Post-Dispatch (Pulitzer Publishing), St. Louis, MO	1/14/91-unknown	GCU	263		**
1991	Glens Falls Newspapers, Inc. (Howard Enterprises), Glens Fall, NY	3/16/91-unknown	GCU, TNG	34	Press operators strike during contract renewal. Replacement workers hired for the operators. 30 Newspaper Guild employees stage 1-week sympathy strike by withholding byline 4/1-4/6.	
1992	The New York Times Co., Newspaper Distributors, & Westfair Newspaper Distributors, New York, NY	5/6/92-5/28/92	Local Newspaper and Mail Delivery Union	1,000	Strike over concessions for overtime and work rules for the Times and distributors. Westfair and Newspaper Distributors were bought by Imperial Delivery Service on 5/7/92 and the union contract was terminated. Union fined for civil contempt for disrupting deliveries. Replacements were hired and six separate agreements ratified on 5/28/92.	

1992	Pittsburgh Press (E.W. Scripps Co.), Pittsburgh, PA	5/17/92-1/18/93	CWA, GCIU, IBT IBEW, IAM, IUOE, TNG, SEIU	1,300	The IBT drivers and circulation employees struck over a company plan for a new delivery system that would eliminate 450 IBT workers and 4,500 youth carrier jobs. The paper stopped publication and locked out 560 employees. 140 employees at the Post-Gazette (owned by Blade Communications) were laid off (Joint Operating Agreement in place). The Press resumed publishing 7/27/92 with replacement drivers, but suspended publication after one day. Paper sold to Blade Communications, agreements reached in December, and publishing resumed 1/18/93.
1992	New York Post, New York, NY	3/14/93-unknown	TNG	300	The editorial staff walkout to prevent the sale of the paper to Abe Hirschfeld and to protest intended downsizing.
1993	Boston Globe, Boston, MA	4/8/93 -4/8/93	Boston Globe Employees Assn	150	The employees walkout for less than ½ hour over health insurance.
1993	Sunday Independent, Wilkes Barre, PA	5/11/93-unknown	CWA, GCIU, ITU, TNG	**	The newspaper ceased operation and locked out employees.
1993	New York Post, New York, NY	9/27/93-10/4/93	TNG	300	Editorial, clerical and advertising workers struck over severance and pensions for employees dismissed when the paper was purchased by News America Publishing, Inc. Other unions refused to continue honoring the picket lines and strikers are forced to reapply for their jobs.
1993	Norristown Times Herald, Norristown, PA	9/29/93-9/30/93	TNG	47	Employees strike due to cuts in wages and benefits. Also use strike to protest the firing of 16 staff workers by new owners.
1994	A.B. Hirschfeld Press, Denver CO	4/29/94-9/12/94	GCIU	100	Employees strike for wage increase and union security. Replacement workers hired.

1994	Colonial Press, Inc. , Omaha, NE	8/24/94-6/6/95	GCIU	28	Employees strike over wages, increases for health insurance co-payments. Replacement workers hired.
1994	San Francisco Newspaper Agency (Chronicle and Examiner), San Francisco, CA	11/1/94-11/14/94	CWA, GCIU, IBT, TNG, SEIU	2,600	Employees strike over a company proposal for a new delivery system that would eliminate some driver positions, youth carrier jobs. Other issues include wages increases, a two-tier wage system, staffing levels, job security. Eight unions involved. One striker is killed in an accident while committing vandalism.
1995	News-Mercury, Malden MA	1/00/95-5/00/96	TNG, Boston Typographical Union	3	Workers are locked out.
1995	Detroit News and Detroit Free Press (Gannett Co. & Knight Ridder), Detroit, MI	7/13/95-2/20/97	CWA, GCIU, IBT, TNG	2,460	Employees strike over wages, job security, pension, union jurisdiction, and plan to turn carriers into independent agents. TNG also strikes over a proposed merit pay system. Replacement workers hired 8/95. Unconditional offer to return to work given 2/97. Replacement workers not terminated and strikers rehired as openings occur. NLRB finds the strike and unfair labor practice strike and orders strikers returned to their jobs. An appeals court reversed this ruling July 7, 2000.
1999	Dayton Daily News (Cox Ohio Publishing), Dayton, OH	6/26/99-unknown	IBT	31	Employer locked out drivers following a one-day strike and hired replacement workers. 13 strikers were fired and 18 placed on indefinite unpaid leave 7/1/99.
2000	San Jose Mercury News, San Jose, CA	10/8/00-10/15/00	Nonunion independent carriers***	557	Carriers wanted a 20 percent raise and earlier start time. Employer sought replacement workers; settlement at previously offered 12% raise.

2000	San Francisco Newspaper Agency (Chronicle & Examiner), San Francisco, CA	10/16/00-10/20/00	Nonunion independent carriers***	40	Only 40 of the more than 2,000 carriers refused to carry papers and were replaced immediately.
2000	The Seattle Times (family-owned) and The Seattle Post-Intelligencer (Hearst Corp.), Seattle, WA.	11/21/00-12/27/00	The Pacific Northwest Newspaper Guild (with the Teamsters & CWA refusing to cross picket-lines)	Approx. 1,000	Employees strike over pay, length of contract, health care, 2-tiered wage system and commission pay. The Post-Intelligencer workers accept mgt. offer in Dec.; the Times workers return in January. Replacement workers used and kept on payroll, but all strikers returned to job. By April, 300 jobs were lost via attrition.

Sources: Bureau of National Affairs, unpublished data (1999); Kim Murphy, *Strike Threatens To Paralyze Two Seattle Newspapers*, L. A. TIMES, Nov. 22, 2000, at A-1; Jim Simon and Barbara A. Serrano, *Times Strike Ends*, SEATTLE TIMES, Jan. 9, 2001, at A-1.

Notes: *** represents blocks where information is not available. *** represents "job actions" and not official strikes because the workers were nonunion independent contractors. Some end dates for strikes are unknown. The following abbreviations apply: CWA=Communications Workers of America; GCIU=Graphic Communications International Union; IAM=International Association of Machinists; IBT=International Brotherhood of Teamsters; IUOE=International Union of Operating Engineers; TNG=The Newspaper Guild (which merged with CWA in 1997); and SEIU=Service Employees International Union; UFCW=United Food and Commercial Workers.

Table 7. Union/Nonunion Wages in Selected Newspaper Occupations

	Employment (1000s)	% Union- ized	W	W _{nu}	W _u /W _{nu}
<i>1988:</i>					
Editors & reporters	239.1	9.2	17.98	26.77	17.09
Printing press operators	313.3	22.7	13.75	17.34	12.70
Type setters & compositors	61.7	6.6	12.60	*	11.74
U.S. workers	101,407.4	16.8	14.38	17.08	13.83
<i>1993:</i>					
Editors & reporters	249.0	10.4	17.86	25.45	16.97
Printing press operators	267.7	24.2	13.10	17.03	11.84
Type setters & compositors	55.2	4.9	11.07	*	10.57
U.S. workers	105,067.4	15.8	13.66	16.36	13.15
<i>1998:</i>					
Editors & reporters	248.8	7.1	19.03	25.37	18.57
Printing press operators	288.1	16.7	13.24	16.62	12.57
Type setters & compositors	32.6	14.8	11.40	*	10.51
U.S. workers	116,729.9	13.9	14.17	16.81	13.74

Source: Bureau of National Affairs, Inc. *Union Membership Earnings Data Book: Compilation from the Current Population Survey (1999 Edition)*. All wages are in 1998 constant dollars. The sample for unionized typesetters was smaller than 15 and therefore average wages were not calculated for this group by BNA. W=average wage for all workers in a group; W_u = average wages for unionized workers within a group, and W_{nu} = wages for nonunion workers within a group.

Second, the level of work stoppages does not seem particularly high for the industry when compared to all U.S. strike activity. However, strikes involving multiple unions and chains tend to last longer and are often marked by violence. Other anecdotal evidence suggests a marked change in management behavior toward unions and collective bargaining.⁶⁹ The Detroit newspaper strike illustrates the erosion of labor relations in the industry.

IV. THE DETROIT NEWSPAPER AGENCY AND STRIKE

A. *The Joint Operating Agreement in Detroit*

The Detroit area is served by two daily newspapers: the *Free Press*, which has been owned since 1940 by Knight-Ridder; and the *News*, which had been owned since 1986 by Gannett Co., Inc.⁷⁰ Both newspapers had been involved in a costly war for dominance since the 1960s. The *Free Press* referred to the campaign as "Operation Tiger."⁷¹ They cut prices, discounted advertising rates, made significant capital expenditures, and at times even gave away free papers at fast food restaurants.⁷² The papers became the least expensive in the nation for buyers as well as advertisers. Detroit also had the highest per capita newspaper readership rate of any major metropolitan area⁷³. On May 9, 1986, not long after Gannett purchased the *News*, the two newspapers petitioned then Attorney General Edwin Meese for a Joint Operating Agreement as an alternative to increasing prices to erase operating deficits.⁷⁴ It could be argued that the *News* was the failing paper rather than the *Free Press*, but the newspapers decided to let their lawyers choose which was the failing paper. The lawyers chose the *Free Press*,⁷⁵ which claimed daily losses of between \$34,000 and \$45,000.⁷⁶ An essay critical of the JOA appearing on the *Free Press* ' opinion page observed that the *Free Press* was "not operating at all like a company on the verge of bankruptcy,"⁷⁷ and in fact, only one month after executing the JOA with the *News*,

⁶⁹ See e.g. Downey Interview, *supra* note 67; Interview with Louis Mleczko, President, The Newspaper Guild, Local 22, in Detroit, Mich. (May 11,1998). Note that the authors conducted a number of interviews with strikers, who had strikingly similar stories regarding the change from a familial to adversarial relationship with management.

⁷⁰ Michigan Citizens for an Independent Press v. Attorney General of the United States, 695 F.Supp. 1216, 1217 (D.D.C. 1988) (Michigan Citizens I).

⁷¹ JOHN C. BUSTERNA & ROBERT G. PICARD, JOINT OPERATING AGREEMENTS: THE NEWSPAPER PRESERVATION ACT AND ITS APPLICATION 58 (1993).

⁷² *Id.*; Gruley, *supra* note 41, at 141.

⁷³ Michigan Citizens I, *supra* note 70, at 1217.

⁷⁴ Gruley, *supra* note 41, at 176.

⁷⁵ *Id.*

⁷⁶ Michigan Citizens I, *supra* note 70, at 1217.

⁷⁷ Gruley, *supra* note 41, at 180.

the *Free Press* opened a completely new printing plant with modern production technology.⁷⁸

The proposed JOA was to last 100 years, and would keep the news and editorial staffs independent.⁷⁹ The two newspapers would establish a partnership called the "Detroit Newspaper Agency" that would oversee all advertising, production, circulation, and commercial operations.⁸⁰ This agency would be managed by a five- member committee, with three members appointed by *The Detroit News* and two members appointed by the *Detroit Free Press*.⁸¹ On weekdays, the *Press* would publish a morning paper, while the *News* would publish an afternoon edition. On weekends, they would publish one paper, with each paper having separate editorial and news responsibilities.⁸² During the first three years, the *News* would receive 55% of the profits, and the *Free Press* would receive 45%. In year four, the *News* would receive 53% of the profits, and the *Free Press* would receive 47%. The *News* would receive 51% of the profits, and the *Free Press* would receive 49% in the fifth year. After the fifth year, the profits and losses would be equally shared.⁸³

The Attorney General referred the matter to the Assistant Attorney General in charge of the Antitrust Division. On July 23, 1986, the Assistant Attorney General recommended that the application be denied and the matter be referred to an administrative law judge for a hearing.⁸⁴ Attorney General Meese referred the matter to Administrative Law Judge Morton Needleman who conducted three weeks of evidentiary hearings. On December 29, 1986, Judge Needleman issued a 129-page Recommended Decision, recommending that the JOA be denied.⁸⁵

The Detroit case was different from prior cases. Initially, the JOA did not involve one dominant paper and a second in the proverbial "downward spiral;" rather, these papers were fairly evenly matched and arguably in the situation because of their own efforts to acquire dominance in the market.⁸⁶ However, instead of evaluating the situation as of the date when the application was filed in 1986, Attorney General Meese and his advisers chose to evaluate the situation as of the spring of 1988. By that time the *Free Press*' losses had increased and it appeared to be more of a "failing paper."⁸⁷ Furthermore, Knight-Ridder had threatened to shut down the *Free Press* if the JOA were not approved.⁸⁸ Against the recommendation of the ALJ

⁷⁸ Mark Fink, *The Newspaper Preservation Act of 1970: Help for the Needy or the Greedy?*, 1990 DET. C.L. REV. 93,95 n.15 (1990).

⁷⁹ Michigan Citizens v. Thornburgh, 868 F.2d 1285,1289 (D.C.Cir. 1989) (Michigan Citizens II).

⁸⁰ Eric J. Gertler, *Comments, Michigan Citizens for an Independent Press v. Attorney General: Subscribing to Newspaper Joint Operating Agreements or the Decline of Newspaper?*, 39 AM. U. L. REV. 123,152 (1989).

⁸¹*Id.*

⁸² Michigan Citizens II, *supra* note 79.

⁸³ *Id.*

⁸⁴ Michigan Citizens I, *supra* note 70, at 1218.

⁸⁵*Id.*

⁸⁶ Fink, *supra* note 78, at 294.

⁸⁷ *Id.* at 296.

⁸⁸ Marvin, *supra* note 43, at 1730.

and his own Antitrust Division, the Attorney General approved the JOA on August 8, 1988, while accepting all of the ALJ's findings of fact.⁸⁹

Edwin Meese issued the opinion four days before he resigned.⁹⁰ Meese himself was the frequent subject of newspaper articles due to the numerous scandals that characterized his term. Rumor and conjecture surrounded his last-minute approval of this JOA. Knight-Ridder had launched a public campaign in support of the JOA, which included a massive letter writing effort.⁹² Although aids tried to shield Meese from inappropriate contact on the matter, this was not always possible and in one instance, letters in support were actually attached to briefs filed on the case.⁹³ Bryan Gruley reports that Jerald F. terHorst, chief of Ford Motor Company's Washington public relations staff, met Meese at a social function in 1986, and when Meese discovered that terHorst had once worked for the *News*, Meese is reported to have stated, "I'd kind of like to approve it [the JOA] if I could, but I'm not sure I can do it just like that."⁹⁴ Meese later stated that he could not recall such a conversation.⁹⁵

Eight days after the Attorney General's approval, a group calling itself Michigan Citizens for an Independent Press filed suit in the federal District Court for the District of Columbia to overturn the approval of the JOA.⁹⁶ U.S. District Court Judge Joyce Hens Green, sitting in for Judge George Revercomb who was on vacation, granted a temporary restraining order barring the JOA and stating that Meese's approval was arbitrary and capricious, unsupported by the evidence and contrary to the law. However, Judge Revercomb eventually granted the defendant's motion for a summary judgment and allowed the stay to expire.⁹⁷ Judge Revercomb found that under the Administrative Procedures Act,⁹⁸ a reviewing court may set aside agency action and conclusions when they are found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Courts may not set aside agency action when it is not supported by substantial evidence. In such cases, the APA does not provide for a hearing.⁹⁹ The court found that the Attorney General's findings were not arbitrary, capricious or unreasonable, given the NPA's definition of "failing newspapers" and the Ninth Circuit's holding that this definition implies that losses

⁸⁹ Gruley, *supra* note 41, at 318. Delays of two years or more in receiving approval are not uncommon criticisms of the JOA process. Papers in dire financial straits have implemented some aspects of the JOA before receiving approval. However, this prolonged system also prevents newspapers from prematurely filing a JOA application. For a discussion of these issues, see Gertler, *supra* note 80, at 139-140.

⁹⁰ Stephen F. Ross, *Reaganism Comes to Detroit*, 1989 U. ILL. L. REV. 399, 399 (1989).

⁹¹ Gruley, *supra* note 41, at 178.

⁹² *Id.* at 246.

⁹³ *Id.* at 286, 287.

⁹⁴ *Id.* at 200.

⁹⁵ *Id.*

⁹⁶ Michigan Citizens I, *supra* note 70, at 1216.

⁹⁷ *Id.*

⁹⁸ 5 U.S.C. §706(2)(A) (2001).

⁹⁹ *Id.* §706(2)(E).

likely cannot be reversed.¹⁰⁰ The court was not persuaded by the argument that the JOA must be denied because the losses suffered by the *Free Press* were part of a conscious strategy to force prices too low. The court found that the Attorney General was not unreasonable in concluding the *Free Press* was primarily motivated by competitive aims and not by a desire for a JOA.

On January 27, 1989, the Court of Appeals for the District of Columbia Circuit affirmed the Attorney General's approval by a vote of two to one.¹⁰¹ The court noted that Congress had delegated die responsibility of interpreting the phrase "probable danger of financial failure" to the Attorney General, and they were unable to state that his interpretation, as applied to that case, was unreasonable.¹⁰² A dissenting opinion was written by now U.S. Supreme Court Justice Ruth Bader Ginsburg. She noted that Gannett acquired the *News* only after there was an indication of Knight-Ridder's willingness to consider a JOA. Also, the fact that the JOA provided for a nearly equal split of the profits was an indication that the *Free Press* would not have been leaving the market soon. Justice Ginsburg expressed serious reservations about Congress intending JOA protection for this "sort of self-serving, competition-quieting arrangement."¹⁰³ On May 1, 1989, the U. S. Supreme Court agreed to review the JOA's approval. The Court's final vote was four to four, thereby allowing the Court of Appeals opinion to stand, and with the Court providing no written opinion.¹⁰⁴

The JOA in Detroit proved problematic almost immediately. Losses continued until 1994 even though there were substantial increases in costs charged to advertisers and readers.¹⁰⁵ By the end of 1992, the companies had lost more than \$100 million since the JOA was first announced in 1986.¹⁰⁶ Meanwhile, ad rates rose as much as 300%.¹⁰⁷ The papers use the Detroit Newspaper Agency (DNA) to run the non-editorial operations of the two papers and to perform collective bargaining duties with the unions. In the early 1990s, management pled poverty and requested wage concessions during the collective bargaining process. The unions agreed to the request. One union, the Detroit Typographical Union, Number 18,

¹⁰⁰ *Independent P-I v. Hearst Corp.*, *supra* note 54.

¹⁰¹ *Michigan Citizens II*, *supra* note 79.

¹⁰² *Id.* at 1297.

¹⁰³ *Id.* at 1298-99.

¹⁰⁴ 493 U.S. 38 (1989). Justice White did not participate in the opinion, which was the cause of much speculation. Following the death of Justice Thurgood Marshall, his papers revealed a possible explanation for Justice White's recusing himself. While making small talk at a Washington cocktail party, Justice White was supposed to have asked Louis A. "Chip" Weil, then publisher of the *News*, "So how is your thing going in Detroit?" to which Weil responded, "Well, it's coming to your court." Justice White reportedly turned away without saying a word, and later declined to participate in the opinion. *See* Mark Fitzgerald, *One Toast Too Many*, 126 EDITOR & PUBLISHER 12 (1993).

¹⁰⁵ Mark Fitzgerald, "Justice 'Reviews' Antitrust Charges vs. Detroit Papers," EDITOR & PUBLISHER, Sept 2, 1995, at 11.

¹⁰⁶ Gruley, *supra* note 41, at 401.

¹⁰⁷ *Id.* at 396.

already had a lifetime guarantee of employment for some of its members.¹⁰⁸ However, as the next section describes, management took a hard-line stance with the unions and forced a strike that began in 1995 and persisted for several years.

Interestingly, as early as 1992, Gannett and Knight-Ridder had amended their agreement to allow for joint publications of the Detroit dailies in the event of a strike. *This* amendment went unreported and uncontested. Some question whether the NPA allows for this, and it has been suggested that this is an example of the JOA being used for union busting.¹⁰⁹ For two months during the strike, the papers did in fact publish a joint weekday publication. As was previously mentioned, in November of 1995, a group that described itself as being made up of home-delivery subscribers, brought suit for violations of the Sherman Act and the Clayton Act¹¹⁰. The plaintiffs argued that the Attorney General must approve any amendment to the JOA. Failure to receive this approval should strip the original agreement of its antitrust immunity. The plaintiffs further argued that even if the original agreement remained valid, the newspapers should be answerable to the subscribers for past and future implementations of any unapproved amendment. The Court of Appeals for the Sixth Circuit¹¹¹ found no evidence that Congress intended the original amendment to be stripped of protection. Furthermore, the Court found that the plaintiffs were unable to establish any actual or threatened injury associated with the newspapers' action.

B. The Detroit Newspaper Strike of the 1990s.

On July 13, 1995, nearly 2,500 members of six unions voted to go on strike against the two primary newspapers in Detroit.¹¹² By 2001, not all of unions had signed new collective bargaining agreements and replacement workers had permanently taken many of the jobs of union workers. The DNA proved to be a formidable adversary for the employees of the *Free Press* and *Detroit News*.

Using the strategy the companies developed, the unions joined together for the purposes of collective bargaining. In 1971 the unions formed an informal alliance, the Metropolitan Council of Newspaper Unions, to jointly negotiate with the papers concerning economic issues.¹¹³ Each union maintained its own contract with the newspapers and each had its own agenda on at least some issues. However, the

¹⁰⁸ Mleczko Interview, *supra* note 69. In 1975, the *News* and *Free Press* entered into a Memorandum of Agreement (MOA) with the DTU granting certain named printers lifetime job guarantees in exchange for ending some existing practices of reproduction. The MOA was subsequently adopted by the DNA. *See* Detroit Newspaper Agency, 326 N.L.R.B. No. 64,220-303 (Aug. 27,1998), *on reconsideration* 327 N.L.R.B. No. 146 (March 4,1999).

¹⁰⁹ David C. Coulson and Stephen Lacy, *It's Time to Repeal the NPA*, THE QUILL, Apr. 1997, at 36.

¹¹⁰ Mahaffey v. Detroit Newspaper Agency, *supra* note 61.

¹¹¹*Id.*

¹¹² *Ruling Issued in Detroit Newspaper Strike Case*, THE DAILY RECORD, June 23, 1997, at 17.

¹¹³ *Statement from the unions: Why we are on strike*, at <http://www.rust.net/~workers/unions/issues4.htm> (last modified Aug. 5,1995.) (on file with the authors.)

joint effort to bargain over economic issues created a more powerful position for the unions.

In the winter of 1995, negotiations for a new contract began. They did not proceed smoothly because the two sides had developed an acrimonious relationship and because the papers were seeking major changes in union contracts. The six unions involved in the dispute included the Detroit Mailers Union No. 2040 of the International Brotherhood of Teamsters, the Detroit Typographical Union No. 18 of the Communications Workers of America, GCIU Local No. 13N and GCIU Local No. 289, both part of the Graphic Communications International Union, the Newspaper Guild of Detroit Local 22, and the Teamsters Local No. 372.¹¹⁴ Four skilled trade unions completed negotiations with management before their contracts had expired.¹¹⁵ The management proposal for Guild members required a change to a merit-based pay system, curtailed overtime for other workers, requested a reduction in the mailroom workforce, and reduced health care benefits.¹¹⁶ The Teamsters protested the proposed elimination of jobs, reduced health care benefits, and pension changes.¹¹⁷ The GCIU and Typographical Unions did not agree to proposed changes regarding jurisdictional language that could allow for the subcontracting of union jobs.¹¹⁸ When the contracts expired on April 30, 1995, union members continued working while negotiations continued on these issues. However, when the papers stated that the changes proposed during negotiations would be unilaterally instituted without a final agreement,¹¹⁹ the union members voted to strike on July 13, 1995.¹²⁰

That summer, management instituted a number of strategies that indicated a hard-line attitude. For example, management used the services of an external security force during contract negotiations, which some union workers regarded as an intimidation tactic,¹²¹ resulting in increased tensions between the two sides and ultimately contributing to the vote to strike. Second, the papers hired permanent replacement workers and had them ready to take over early in the strike.¹²² Third,

¹¹⁴Detroit Newspaper Agency, *supra* note 108.

¹¹⁵ *Id.* at 156.

¹¹⁶ John Lippert, *Costly investments: warring sides inflict deep wounds*. THE DETROIT J., July 7, 1996, available at <http://www.rust.net/~workers/news/13cost7.htm> . (last visited Oct. 1996) (on file with the authors).

¹¹⁷ *Id.*

¹¹⁸ *Supra* note 113.

¹¹⁹ The National Labor Relations Act permits employers to implement their final offer at the bargaining table once a contract has expired. 29 U.S.C. § 158(d) (2003).

¹²⁰ Felicity Barringer, *The Strike that Ate Circulation*, N. Y. TIMES, July 17, 2000, at C-1.

¹²¹ Mleczko Interview, *supra* note 69; Interview with Jeanette Bartz, union and community leader, in Detroit, Mich. (June 26, 1998).

¹²²Under the 1938 Supreme Court *MacKay* ruling, strikers can be permanently replaced during economic strikes, which occur when two sides reach an impasse and a contract has expired. Employers can replace workers as soon as a strike begins and need only to place former strikers on a recall list once a strike has been settled. Under the current law, permanent replacements cannot be used when an employer has committed unfair labor practices that either caused the strike or prolonged it. Thus, unless the NLRB can determine that an employer has committed an unfair labor practice strike, employees may face high risks.

the *Detroit Free Press* ordered the Newspaper Guild members back to work under the threat of permanent replacement and many Guild members crossed the picket line. The unions had hoped that organizing an advertising boycott, and seeking support from their national unions would weaken management's position.¹²³

During the next eighteen months of the strike, both sides used a variety of strategies with little movement toward settlement. The union and management teams met periodically but these meetings proved unproductive and at times, hostile, according to union representatives.¹²⁴ Finally, the strikers offered an unconditional return to work in February 1997. The papers accepted this unconditional return to work offer, but vowed to retain the replacement workers hired over the period of the strike. Eventually, the papers offered reinstatement to about 300 strikers of the original 2500 to strike, and about 80 percent of those recalled accepted work.¹²⁵

The union filed unfair labor practice charges with the NLRB.¹²⁶ These and subsequent charges were combined and pressed forward to the Board. In August of 1998, the NLRB found for the union and deemed the strike an unfair labor practice strike.¹²⁷ The Board found that the *Detroit News* had violated the law by unilaterally implementing proposals affecting editorial employees. Three of the five Board members found that the *News* had violated the law by refusing to provide the Guild with requested information about merit pay and overtime exemption proposals. The Board ordered the papers to cease and desist from failing to bargain in good faith, and in informing strikers that they had been permanently replaced. Also, the employers were ordered to reinstate all strikers who made an unconditional offer to return to work even if this meant displacing replacements.

Management appealed this and subsequent NLRB orders to reinstate the strikers. Meanwhile, the unions objected to the Board's determination that one employer's unilateral implementation of a change in work assignment rules was not unlawful. On July 7, 2000, the Court of Appeals for the District of Columbia granted the employers' petition for review while denying the unions' petition for review, and it reversed the NLRB's order holding instead that the strikers were not unfair labor practice strikers.¹²⁸

in permanent job loss with a strike vote. *See* NLRB v. MacKay Radio & Telegraph Co, 304 U.S. 333 (1938).

¹²³ Mleczko Interview, *supra* note 69.

¹²⁴ One example was a meeting on December 20, 1995. At the meeting, organized by community leaders, representatives from Detroit Newspapers Agency were reported to have "insulted the community leaders ... and repeated their illegal threats against union members." *Unions say newspapers violate labor law*, DETROIT J., Dec. 29, 1995, available at <http://www.rust.net/~workers/union/6strike29.htm>. (last visited Oct. 21, 1996) (on file with the authors).

¹²⁵ The Pressmen had an iron clad agreement for lifetime employment made in the 1980s. Others were recalled as openings arose.

¹²⁶ Detroit Typographical Union No. 18 v. N.L.R.B., 216 F.3d 109 (D.C.Cir. 2000).

¹²⁷ Detroit Newspaper Agency, *supra* note 108. The strikers were held to be unfair labor practice strikers in Detroit Newspaper Agency, 326 N.L.R.B. No. 65 (Aug. 27, 1998).

¹²⁸ Detroit Typographical Union No. 18, *supra* note 126.

In regard to the merit pay issue, the court found that, unlike prior cases in which employers had provided no details at all of their merit pay plans, management in this case had provided some details of its plan. The court further held that the Board's conclusion that the *News* had bargained in bad faith and, therefore, never reached a valid impasse, justifying imposition of its overall proposal, was not supported by substantial evidence. There was also no evidence that the Guild was prepared to engage in real negotiations on the employer's proposals. The court also found that the Board's decision that the *News* committed an unfair labor practice by failing to respond to the Guild's request for information about overtime exemptions rested on pure conjecture. Having determined that the Board's conclusions that the *News* had committed unfair labor practices were legally erroneous and unsupported by substantial evidence, the court of appeals reversed the Board's finding that the strikers were unfair labor practice strikers.¹²⁹

V. IMPLICATIONS OF INDUSTRY CONCENTRATION ON THE LABOR RELATIONS PROCESS

An examination of the growth in concentration in the newspaper industry at a national level reveals that although some market concentration exists, the top firms in the industry do not have a high degree of concentrated power. However, the evidence presented suggests that the top ten firms have remained the industry leaders for more than twenty years, whether the "top" is defined by circulation, revenues, or assets. Moreover, these top firms tend to be the chain newspapers rather than the independently owned papers. Further, Gannett and Knight-Ridder, the two firms of interest for the Detroit area, have dominated the industry in circulation since 1978 and continue to grow as media leaders.

At the regional level, the newspapers already have a monopoly because most areas cannot support more than one or two daily newspapers. JOAs only enhance regional monopoly power. For example, papers operating under a JOA often no longer compete for advertisers. JOAs may produce a joint Sunday paper, which is the largest source of advertising dollars, and in some cases, advertising functions are combined.

Monopsony labor markets follow the regional domination in the newspaper market, especially when the top dailies develop JOAs. Not only do combined operations reduce the need for some workers, the impact affects production workers much more than other types of workers in the industry, since advances in offset printing technology reduce the need for production workers. JOAs provide newspapers with the added opportunity to demonstrate a united front on labor issues that, individually, the papers may not be able to achieve. In particular, if the strikes in the industry are an indication of general industry trends, then subcontracting and other job security issues, as well as changing wage structures, are increasingly of concern to workers in the industry.

¹²⁹ *Id.* at 122.

An examination of the Detroit newspaper strike demonstrates that Gannett and Knight-Ridder have a great deal of power in the regional labor market as well as the product market. Regional employment in the newspaper industry is concentrated, with one newspaper in the county employing more than 1,000 workers and two other firms each employing within the 250-499 range, while all other local papers employ very small numbers of workers.¹³⁰ The *Free Press* and the *News* are the primary employers of editors, reporters, printing press and typesetter operators, and even delivery workers. The events leading up to the strike and the subsequent behavior of Gannett and Knight-Ridder indicate a concerted, joint effort to change the balance of power between management and labor.

During interviews with several union and religious leaders, the authors found a common theme reiterated. All interviewees believed that labor/management relations had been better before the JOA was instituted. Only one strike occurred between 1968 and 1988 when the JOA was approved; few grievances were filed during that period. In fact, the *Free Press* has been described as having a familial environment.¹³¹ Likewise, interviewees suggested that the onset of the JOA did not immediately have a negative impact on the labor/management relationship. However, negotiations had become hostile and left both sides bitter by 1995.¹³² Once the strike ensued, there were those who viewed Gannett and Knight-Ridder as "union busters."¹³³ Franklin quotes Robert Giles, the *News* editor and publisher at the onset of the strike: "We're going to hire a whole new work force and go on without unions or they can surrender unconditionally and salvage what they can."¹³⁴ This sentiment was again evident in a 2000 report about the strike. In this report, Frank Vega, president of the Detroit Newspaper Agency, presented a display of self-framed hate mail surrounding a Darth Vader statue. The display was likely created due to the union nickname for him, "Darth Vega."¹³⁵

Ultimately, management has succeeded in preventing union workers from returning to their jobs. Replacements have been on the job since 1995 and subsequent negotiations have led to little improvement in the labor relations process. The Detroit Newspaper Agency provides Gannett and Knight-Ridder with a united front from which to combat the unions, the community, and the NLRB. And although the strike cost the companies more than \$100 million, there is no evidence that the companies have suffered in reputation in the business world.¹³⁶ One must wonder

¹³⁰ The *Free Press* (Knight-Ridder) is the largest newspaper in Wayne County, and *The News* (Gannett) is the second largest. There is an additional paper falling into the 250-499 employment level, along with *The News*. Detailed tables are available from the authors. Data Source: Bureau of Labor Statistics, available at <http://stats.bls.gov/data> (last visited June 27, 2003).

¹³¹ Mleczko Interview, *supra* note 69.

¹³² Downey Interview, *supra* note 67.

¹³³ Interview with John Nowlan, Roman Catholic priest involved with the citizen's action group supporting the Detroit newspaper strikers, in Detroit, Mich. (June 4, 1998), and Steve Franklin, *Detroit: Which Side Are You On?* COLUM. JOURNALISM REV. 13 (1995).

¹³⁴ Franklin, COLUM. JOURNALISM REV. at 13 (1995).

¹³⁵ Barringer, *supra* note 120.

¹³⁶ Ogden, *supra* note 66, at 17 and Barringer, *supra* note 120.

whether healthy competition between the two papers, without the JOA, would have permitted the papers to spend nearly five years fighting against collective bargaining and the unions.

In conclusion, our research indicates that the trends in the newspaper industry are a sign of the monopsonist power of regional labor markets, which has an impact on the labor relations process. We come to this conclusion by examining descriptive statistical analyses of general trends since the 1980s, the Joint Operating Agreements in the industry, and the Detroit newspaper strike.

The evidence from national statistics on this matter is not definite. The real impact appears to occur at the local level. An analysis of the situation in Detroit leads to the conclusion that joint operating agreements enhance monopsony power and exacerbate already strained labor relations. Prior to the JOA in Detroit, Gannett and Knight-Ridder focused their finances and energy on intense competition between each other. After the JOA, their focus on lower labor costs intensified. Although changing times may have warranted such a shift in focus, it is unlikely that either company could have singly taken the hard-line stance exhibited in the summer of 1995 without the unity provided by the JOA and the Detroit Newspaper Agency.