



Starbird, E. (2002). The saga of the Neptune Jade: Free speech at Laney College. *Workplace*, 8, 136-142.

THE SAGA OF NEPTUNE JADE:

Free Speech at Laney College

Ellen Starbird

In the globalized world order transportation unions in the US, particularly the Longshore union and the Teamsters, are being attacked, witch-hunted, and privatized, in order to silence any effective workplace opposition to the introduction of goods produced under exploitative working conditions.

The current transportation costs of overseas production cannot be sustained indefinitely, due to the finite nature of the world's oil reserves and to demand eventually outstripping the available supply. Thus corporations must make hay while the sun shines. It is, after all, only cheaper to manufacture in Taiwan if it is cheap to drag your goods half way round the world in search of cheap labor and then also cheap to drag them back half way round the world again to the market. The mobility of goods from the "low wage" nations to the consuming nations can only be sustained so long as transportation costs compensate for this geographical inefficiency. The assault on labor, pitting poor workers in the third world against unionized workers in the first, must occur now, not simply because of the global mobility of Capital but also because of the ultimate unsustainability of hop scotching all over the planet.

In 1995 the Mersey Docks & Harbours Co fired five hundred dock workers in Liverpool, England for refusing to cross a picket line. Under the Thatcher regime privatization had become a tool of unionbusting, and the docks that had been under the control of the government were turned over to Mersey Docks & Harbours Co.

Coincidentally in 1995 I introduced a course in computers and organizing on the internet in the Laney College Labor Studies Department. The purpose of the class was to explore the promise of this new technology to flatten hierarchy, allowing direct worker to worker communication across borders.

Using solidarity as a motivational tool to gain computer efficiency proved successful. Students were urged to select a project with workers who were doing similar work in a different country, or, in some cases, doing the same work overseas that the student had done before losing his job, due to the provisions of the North American Free Trade Agreement.

On hearing about the Liverpool Dockers, one of the Laney students decided these were the workers he would contact. Frustrated by being unable to reach the Liverpool dock workers successfully except by phone, he coached them how to use e-mail and establish a web page. The strikers subsequently used the web to call for several days of solidarity work stoppages globally.

During the next two years of the locked out workers' struggle to win back their jobs, these web actions "kept the issue alive" (Lannon, 1998) through various tactics, including two shutdowns of US ports on the west coast by the International Longshore and Warehouse Union (ILWU).

On 28 September 1997, the second anniversary of the Liverpool lockout, the Neptune Jade, a Mersey-loaded ship, arrived in Oakland, California. The student project came full circle as the ship, docking at dawn that Sunday at the Yusen Terminal, Berth 23, was greeted by a picket line of community activists, retirees, and students, called out by internet invitation from Liverpool. The picket line included the banners of the International Workers of the World, the Labor Party Golden Gate Chapter, and the Laney College Labor Studies Club.

Longshore work at Oakland is governed by contract between the Pacific Maritime Association (PMA)--the multi-national corporation that rents the pier from the Port of Oakland, and the union (ILWU). The contract includes a no strike clause preventing longshore workers or their union from refusing to unload cargo, except when there is a "bona fide health and safety hazard". Under California State law (the CAL-Occupational Safety and Health Act), workers may refuse to work under unsafe conditions without reprisal.

At shift change (5 AM and 5 PM) on 28 September 1997 longshore workers encountered a boisterous crowd maintaining a picket line, which they refused to cross. Frantically, the PMA called the police. However, on no occasion did the Oakland police department see fit to arrest any of the picketers. The PMA then called for instant arbitration to force the ILWU members to cross the community picket. Arbitrator Gerald Sutliff ruled that the size of the crowd constituted a health and safety risk (International Committee for Victory to the Liverpool Dockers).

PMA called again for new arbitration. Of the six occasions in the next four days when an arbitrator was dispatched to the Oakland scene, twice a ruling was made that the crowd had thinned to a level of safety and thus there was no bona fide health and safety danger. Nevertheless, on those occasions, too, the longshore workers still did not cross the picket line of labor and community activists (Lannon, 1998). Most of these workers were sacrificing a day's pay to honor the community picket. The Mersey Harbour Company issued statements that there had been some mistake, that its subsidiary, Mersey, was a separate company, and that it was unfair to pick on the Neptune Jade. The Liverpool dock workers responded quickly, dispatching a message via the web that the ship was indeed associated with their dispute and carrying scab cargo, and urging the community to keep up the good fight.

Most employers (98%) rely on the arbitration process to settle grievances with their unions. Only a tiny fraction attempt two bites at the legal apple, seeking to get relief from a judge that the arbitrator found unwarranted. "Fed up with a wave of job actions, employers say the only way to dissuade illegal disruptions is to make the union pay.... Internal arbitration—the time-honored system that West Coast waterfront employers and leaders of the International Longshore and Warehouse Union use to settle their differences—has been shattered. It is being replaced by an aggressive employers' organization that brings the union to court and files multimillion-dollar damage claims whenever the ILWU engages in what employers believe are illegal work stoppages" (Mongelluzzo, B. 1997).

Rushing to the courts on Monday 29 September the PMA requested an injunction, which judge Sandra Margulies denied "on its merits" (International Committee for Victory to the Liverpool Dockers). The picketing continued day and night. On the following day (Tuesday) a different judge granted the employer's persistent attorney a temporary restraining order (TRO) limiting pickets to four at Berth 23. Armed with the TRO, the company sought to coerce the Oakland longshore workers to unload the Neptune Jade. But the crowd had swelled in defiance of the judge's order, and it now included mayoral candidate Jerry Brown, the former Governor of California. Again the dock workers honored the picket line. "Many ... ignored the TRO; mass picketing continued" (Lannon, 1998). But picket captain and Laney alumnus Robert Irminger was cited for contempt.

At one point the ship attempted a feint by leaving the port, only to surreptitiously return and find the

pickets still in place. On day four the ship set sail for San Francisco Bay, then went up to Vancouver, Canada. It became a point of honor among longshore workers to refuse to unload her. The Neptune Jade crossed the Pacific, and at Kobe and Yokahama, Japan, the dock workers likewise refused to unload the Mersey Dock cargo from the Neptune Jade. Finally the ship was sold to a Taiwanese company, cargo still in her hold (Stallone and Price, 1997).

Three months later the Mersey Corporation returned to the bargaining table rather than risk future disruptions abroad. Eventually, the lockout was settled when the Liverpool dockers were offered 20,000 pounds and an offer to return to work.

Meanwhile, stymied by this infuriating solidarity, the PMA sued the Oakland local of ILWU in federal court. It argued that the crowd on the community picket line was safe, the Oakland longshore workers could have crossed it, and by refusing to do so had violated the no strike clause of their contract.

In addition, PMA filed a lawsuit in California state court against all the community organizations that it could visually identify as having participated in the Oakland action, such as the Labor Party, the Labor Party Golden Gate Chapter, the Peace and Freedom Party, and the Laney College Labor Studies Club, as well as all individual pickets ("John Does"). The Laney College Labor Studies banner, lovingly hand painted by Oscar Toback (a retiree from the sign painters union) made the school name easy to spot from across the street where Pinkerton private eyes were spying on and videotaping the festivities.

Contrasted with its claim of a safe crowd in its federal suit, in its lawsuit against community groups PMA alleged that flyers carried by picketers with the message, "Crossing a picket line can be hazardous to your health," constituted a threat of physical harm (Lee, 1998). The company sought millions in damages from the community pickets.

The defendants in PMA's suit were required by subpoena to name all persons known to have participated in the picket on the pier. Additionally, Laney College and its Labor Studies chair, Albert Lannon, were required to produce membership lists of the Labor Studies Club and minutes of all the club meetings, and to name all students enrolled in or associated with the program of labor studies at Laney College (Eisenscher, 1998).

In their pre-trial interrogatories the employers demanded to know all current and past political and organizational affiliations of each and every participant. Defendants were asked questions like, "Name everyone you know who attended the demonstrations", and, straight out of a McCarthy-era witch hunt, "What political parties have you ever belonged to?", etc. "Faculty cannot be asked to be stool pigeons against students," declared department chair, Albert Lannon (Neilson).

Initially, and somewhat reluctantly, the administration of Laney College agreed. California law protects student privacy: names and academic information cannot be turned over to anyone without their express permission. Privately, however, the college administration indicated that if the subpoenas were not quashed, they would not risk contempt of court penalties. Lannon consistently stated that he would go to jail for contempt before he would betray the name of a single student.

To make matters worse, the college administration refused initially to provide attorneys to defend the college in the PMA lawsuit. Legal assistance was donated by Oakland attorneys Will Flynn and Kirsten Spalding, until the Peralta Federation of Teachers (AFT, AFL-CIO) threatened a grievance and assigned a union attorney to demand that the college defend itself and its instructors.

While PMA attorneys did not explain why they wanted the names of all Labor Studies Club members, Labor Studies students, and alumni, Terry Lane, a senior vice president at PMA, said the questions sent to the school were part of a "fact finding" expedition by association attorneys. He wouldn't say what

they planned to do with the facts they found (Johnson, 1997). However, at least three persons, Laney student Rod Neves and two alumni, Brian Wiles, ILWU, and Michael Eisenschel, who testified as witnesses in the temporary restraining order hearing about the peaceful nature of the picket, were subsequently told they would be named as defendants in an amended complaint of the million dollar lawsuit from the company. It is reasonable to assume that every name the employers acquired would become a lawsuit target. Wasting thousands of dollars extending their legal dragnet in pursuit of monetary damages they couldn't realistically expect to recoup from working class defendants, PMA's motivation was to chill the dissidents' ardor for future protests.

The strategy of filing SLAPP lawsuits (Strategic Lawsuits Against Public Participation) to discourage the exercise of First Amendment rights provoked a legal backlash. Thus California law allows targets of SLAPP suits to retaliate for litigious harassment. Charging that the PMA's suit was insincere, attorneys Rob Remar and Dan Siegel filed pro bono a counter suit for damages against PMA.

A community campaign was needed to infuse courage into the college administration. Deciding the best defense was a good offense, a Neptune Jade defense committee was formed to call to task the PMA for attacking a community college and the First Amendment.

At each hearing of the motions in the case the courtroom was packed with students and retirees. The judge, at the behest of the plaintiff's attorneys, ordered all picket signs to be left outside. But the presence in the courtroom of engaged citizens provoked the judge into tripling his contingent of sheriff's deputies.

Thousands of letters poured in from around the world to the PMA, stating that the signatory would have come out to picket had they known of the arrival of the Neptune Jade and requesting that they, too, be sued. The PMA spokesperson began to claim defensively that PMA harbored no ill will toward the college in its attempt to hold students "responsible for their actions."

On February 26, 1998, the day SLAPP suit motions were to be heard, a large protest of several hundred people, including dock workers from up and down the west coast, converged at the Oakland offices of PMA and ended with a march to Laney College. Judge Needham ruled that in the case of all picketers present, except Bob Irminger, the PMA had not proved its claim of damages, since all activity was protected by the First Amendment. He ordered the PMA to reimburse defendant Jack Heyman and the Labor Party Golden Gate Chapter for their legal expenses.

In the case of picket captain Irminger, the court decided to allow PMA to present evidence to substantiate its allegations in a full trial, since the industry, as the judge conceded, had shown it was likely to prevail (Lee). Irminger, who had continued to lead the picketing after the company secured a Temporary Restraining Order, had been found in contempt earlier, ordered to pay a fine of \$100 and do two days of community service for his violation, which the judge described as minor (Eisenschel, 1998). As the PMA legal strategy collapsed in a rather public embarrassment for them, the Mersey Co. made a final settlement offer in February to the Liverpool dock workers. [Update: the employer dropped all its suits against Irminger and others in November 1998. However, there are no more unionized ports in England, including the docks in Liverpool.—DB]

Can Academics Expect to Resist Corporate Domination with Impunity? Lessons Learned from the Neptune Jade Experience

Teachers do not possess express legal rights to refuse to disclose students' names, as do, for example, journalists with respect to sources, or researchers who can shield a subject in a research study.

Compelling public interests, as we have seen in this instance, may owe their ultimate success to the court of public opinion. The Neptune Jade victories, both in court and in public opinion, were won through concerted organization on campus and in the larger Oakland community.

In California the Leonard law declares, "no private post-secondary educational institution shall ... make or enforce any rule subjecting any student to disciplinary sanctions solely on the basis of conduct that is speech or other communication that, when engaged in outside the campus ... is protected from governmental restriction by the First Amendment to the United States Constitution" (O'Neil, 1997).

Working student and I.W.W. member Rod Neves reminded the student government--in calling upon them to challenge the administration's new rules--that the McCarthy witch-hunt did not begin in Hollywood but in academia. In so far as we can anticipate this avenue of retaliation against solidarity to become part of the arsenal of the New World Order, we can anticipate that schools will have to respond to harassment of student organizations.

Obviously the multinational corporations had little hope of recouping millions of dollars from an innercity college district with relatively meager resources. The lawsuit imputed an aura of deviance to the Labor Studies Department faculty and students, in an attempt to ostracize us from the college community at large and place us at odds with the administration.

The best defense against attempts to chill the free speech of students and the Labor Studies program was the assertive offensive strategy of activism. Left to their institutional devices alone, without student and community pickets, letters of protest, hearings by the city council, and demonstrations at the courthouse, etc. the college, the corporation, and the courts would probably have dispatched the matter administratively, with less than full consideration for the students' First Amendment rights.

The Peralta Community College District, once sued by the Employer, made no attempt to defend itself in court, refused to provide legal counsel, and failed to turn over the names of students in answer to a subpoena by the plaintiffs only when the student body and the Labor Studies department chair, Albert Lannon, flatly refused to cooperate (Fuller, 1997). In refusing to honor the subpoena, Lannon said: "No teachers should be asked to snitch on their students."

The Labor Studies Club sought to mobilize support on campus for that position, and the student body passed a resolution addressed to the President of Laney College, Earnest Crutchfield, demanding that the college not turn over names of students. Crutchfield agreed that Laney college would not turn over any names of any students and staunchly held to that position throughout. Mr. Crutchfield, an Afro-American student at San Francisco State University during its student strike in the sixties, had been an active participant in the anti-apartheid struggle of the eighties. However, had the Laney College Labor Studies Club not taken aggressive measures to educate the campus community about the issues at hand, sternly reminding everyone of the constitutional issues involved, the situation could have been dramatic and unfortunate.

The college administration sought twice to rewrite the Laney student club constitution to preclude the display of "banners bearing the school name off campus." In response, the Labor Studies club recruited allies from among other student clubs to successfully resist any changes to club constitutions.

In the aftermath of the lawsuit against the college, school administrators, hoping to avoid future retaliation against the institution, issued new rules to stop clubs from exercising their right to "picket, boycott, protest." These attempts to restrict the civil rights of student organizations affiliated with the school were rejected by vote of the Associated Student Body, and protested by the Inter Club council of

students, the academic advisors to many of the campus clubs, and the faculty senate. Of the thirteen other clubs on campus eight faculty advisors co-signed a letter of protest to the administration. All of those who signed represented minority student groups. (These eight faculty advisors work with clubs dedicated to promoting participation of racial minorities and the disabled. None of the white tenured faculty signed the letter of protest.) Nonetheless, the grassroots organizing that came out of this effort had a profound effect on the campus and the student body's sense of empowerment. They went on to demand that no sweatshop clothing be sold on campus, and the Peralta Community College Board later adopted the student resolution, creating the most progressive rules protecting garment workers' rights on any US campus.

In addition, the courts denied PMA the opportunity to review e-mail between ILWU staff and members. The intent of the 1996 Congress in passing the Communications Decency Act, to forbid the transmission of certain materials, was set aside by the court. The Act nonetheless demonstrates the nervousness with which the elite considers the Internet. The courts have held that both print and electronic media receive the same Constitutional protection. Written or e-mail messages both are protected free speech (O'Neil, 1997).

These legal victories are not merely the result of brilliant lawyers. The social context in which the courts considered the evidence was powerfully marked by the presence of an engaged citizenry. The PMA's decision not to appeal the court's ruling, and, ultimately, to fire their chief spokesperson, was probably heavily influenced by the level of public embarrassment the students and community supporters were able to generate.

Strategies for Community Alliance with Labor Resistance

First we must not succumb to the rhetoric of inevitability. The New World Order of unaccountable corporations displaces democratic government only to the extent that we collectively allow it. Economics are a function of society's values and serve the interests of the elite few only if the rest of us abdicate our civic responsibilities. If we agree by silent acquiescence to the degradation of factory workers in Vietnam, because as consumers we find Michael Jordan's hucksterism irresistible, we will soon be accepting those degraded living conditions as our own.

Second we must defend those institutions with a vested self-interest in promoting equality: unions. Particularly the transportation unions now under attack, and those third world labor movements demanding a fair share of the fruits of their labor.

Economic models must serve the best interest of the community. They are tools, not forces of nature. If human society wants living wages, child care, humane working hours, holidays and universal medical care, it is the obligation of the economic system to adapt to our social needs and priorities. What we can no longer do is expect to have abundance in one nation at the expense of the pillage of resources of other nations. We must behave as world citizens, because the world is a small planet, with finite resources.

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Ellen Starbird (ellen_s@mindspring.com) teaches in the Labor Studies programs at Laney College in Oakland and at San Francisco State University.