

ORIGINAL

No. **26 - 5573**

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Zak Shimose — PETITIONER
(Your Name)

vs.
International Longshore & Warehouse Union, Local 142,
National Labor Relations Board, U.S.A. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

1. Does the First Amendment nullify section 8(a)(3) of the National Labor Relations Act (NLRA), the entire NLRA, 29 U.S.C. 158(a)(3), and/or 29 U.S.C. Chapter 7 Subchapter II?
2. Is the International Longshore and Warehouse Union (ILWU), as a private party exempt from the First Amendment?
3. What is the threshold that preserves "due process" jurisdiction, in a labor practices complaint?
4. Was the removal of Peter Robb as National Labor Relations Board's (NLRB) General Counsel (GC), illegal?
5. What is the threshold to determine a violation of NLRA's mandate to fairly represent all employees?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

1. International Longshore and Warehouse Union
2. Local 142
3. National Labor Relations Board
4. United States of America

RELATED CASES

Not Applicable

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 5/14/26

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 6/23/26, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. I- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. Amend. V- No person shall be ... deprived of life, liberty, or property, without due process of law.

NLRA 8(a)(3)- by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act [subchapter], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization

28 USC 1254(1)- Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

STATEMENT OF THE CASE

Petitioner (Zak) is an xray tech at North Hawai'i Community Hospital (NHCH) since 2008. In 2020 ILWU and NHCH entered into an initial Union contract. Zak requested to be a nonmember, never paid dues, and objected and challenged the dues. ILWU asserted they were in compliance with all laws and instructs NHCH to suspend Zak for failing to pay dues.

Whereupon, Zak filed an unfair labor practice with the NLRB on 11/12/20, with nine charges:

1, the Union issued unlawful fines/internal charges; 2, the Union refused to honor the revocation of the dues check-off; 3, the Union requires nonmembers to pay dues and fees that are not related to representational activities; 4, the Union caused the employer to discriminate against an employee(s) in retaliation for failing to pay union dues; 5, the union can't lawfully demand suspension for nonpayment of dues without disclosing the necessary steps to avoid suspension;

6, not informing employees of their Beck and General Motor rights; 7, ILWU's notification of Beck rights through a newsletter is deficient; 8, Constitutional right to not to pay union dues afford to public employees should be extended to private employees; 9, reserving the right to be a religious objector.

On 2/18/21, NLRB Regional Director (RD) dismissed the complaint. On 2/22/21, Zak filed an appeal of RD's decision to the NLRB General Counsel (GC). On 3/30/21, NLRB GC denied Zak's appeal. On 4/1/21, Zak filed a reconsideration of GC's decision. On 6/2/21, NLRB GC denied Zak's reconsideration. On 9/20/21, Zak filed Petition for Review of Order of a Federal Agency, etc. in the 9th Circuit Court of Appeals. On 11/9/21, 9th Circuit dismisses Zak's petition. On 10/30/22, Zak filed his Second Amended Complaint in US District Court for District of Hawaii (USDC), listing six complaints:

1. ILWU requiring nonmembers to pay for non-representational activities amounts to discriminating against nonmembers to pay for non-representational activities, violating the Union's duty to fair representation; 2, ILWU causing employer to suspend Zak for not paying dues, is discriminatory, violating the Union's duty to fair representation; 3, ILWU service of Beck notice is improper, violating the Union's duty to fair representation; 4, NLRB violated Zak's constitutional right to due process; 5, Zak being forced to pay union dues violates his First Amendment rights; 6, Zak challenges the authority of NLRB Interim General Counsel Peter Ohr.

On 3/31/23, USDC dismisses Zak's complaint. On 4/22/23, Zak files an appeal in the 9th Circuit (Zak asked the 9th Circuit to review the 6 complaints from the District Court). On 5/14/26, 9th Circuit affirms USDC's dismissal. On 6/23/26, 9th Circuit denies Zak's Petition for Rehearing.

REASONS FOR GRANTING THE PETITION

Question 1. *Does the First Amendment nullify section 8(a)(3) of the National Labor Relations Act (NLRA), the entire NLRA, 29 U.S.C. 158(a)(3), and/or 29 U.S.C. Chapter 7 Subchapter II?*

Congress made Section 8(a)(3) of the NLRA, 49 Stat. 452, as amended, 29 U.S.C.

158(a)(3), which permits an employer and an exclusive bargaining representative to enter into an agreement requiring all employees in the bargaining unit to pay periodic union dues and initiation fees as a condition of continued employment, whether or not the employees otherwise wish to become union members. In this instant case, it is this law which allows ILWU "to

compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical", (from *Janus v. AFSCME*, 31, 585 U.S. ___, 138 S. Ct. 2448 (2018), quoting Thomas Jefferson). What makes this a violation of the First Amendment is that, Congress created this law which allows the ILWU to force Zak's subsidization of ILWU's speech. Janus struck down Illinois State Law which allow public sector unions to collect union dues. Janus rationale should also apply here where the NLRA allows private sector unions to collect union dues.

Zak argued in US District Court (USDC), in his Second Amended Complaint (SAC), page 20, that it is "the NLRA which allow private sector unions to collect dues...the reasons set forth in Janus...union fees collected from non-union members...violates their First Amendment rights." The USDC did not address this argument. The USDC only addressed Zak's allegations that the ILWU is political, and therefore should be subject to the First Amendment. The Ninth Circuit only agreed with the USDC and stated that ILWU is not a "state" actor, as laid out in *Belgau v. Inslee*, 975 F.3d 940, 946-7 (9th Cir. 2020), and not subject to the First Amendment. However, this argument does not rely upon the ILWU as a "state" actor. This argument determines if the ILWU violates the First Amendment because Congress created a law (the NLRA) that allows the ILWU to violate the First Amendment. The NLRB's RD and GC never addressed this First Amendment argument.

Question 2. *Is the International Longshore and Warehouse Union (ILWU), as a private party exempt from the First Amendment?*

Zak would argue no. In applying the 2-prong test to determine "state" action, the first prong lends itself to the ILWU being a "state" actor, as it is the NLRA (created by the "state") that allows the ILWU to collect dues from nonmembers. For the second prong, if a private party acts "in concert" with the state then the entity would be bound by the First Amendment, *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1140 (9th Cir. 2012). Here, the government (NLRB, USDC, and the Ninth Circuit), has affirmed and authorized the unconstitutional conduct.

Question 3. *What is the threshold that preserves "due process" jurisdiction, in a "private right" labor practices complaint?*

At a minimum, a one-sentence explanation of a dismissal, may suffice the "due process" rigor. Here, the NLRB (both RD and GC) can not meet this minimal threshold, as they

incorrectly stated that Zak did not include the charge in the original complaint- that the union is requiring nonmembers to pay for non-representational activities. USDC stated that the Court lacked jurisdiction, as Zak is not entitled to an explanation of a charge within a complaint. The Ninth Circuit agreed with USDC that they lacked jurisdiction, and also noted that a written explanation would uphold due process rights. The issue is, not only did the NLRB never give a dismissal explanation (that ILWU is charging nonmembers for non-representational activities), but the NLRB erroneously stated that Zak did not include this charge in the original complaint. And, for the USDC and the Ninth Circuit to uphold the dismissal is plain error to not see a due process violation. In *Int'l Ass'n of Mach'ts & Aer'ce Wo'rs v. Lubbers*, 681 F.2d 598, 604 (9th Cir. 1982), the Court listed three potential exceptions to the "unreviewability" of a GC order: 1, made in excess of its' delegated powers and contrary to NLRA; 2, that violates Constitutional rights; or 3, made "wholly without basis in law". The GC stated that Zak's claim that the ILWU was charging nonmembers for non-representational activities, was not "encompassed by the original charge and was not investigated", checks all three boxes. 1, stating that a charge was not in the original complaint when it was in the original complaint is made in excess of GC's delegated powers (GC does not have the power to vanquish a allegation), and is contrary to the NLRA (GC is required to "investigate charges", section 3(d)). 2, stating that a charge was not in the original complaint when it was in the original complaint, violates Zak's Constitutional right to Due Process. 3, stating that a charge was not in the original complaint when it was in the original complaint, is made "wholly without basis in law", it is plain error and negligent.

And, in addition, when Zak challenged the dues, the Union gave two separate, and conflicting "statement of expenses", that neither were signed by a independent accountant, which violates "Beck rights", from *Communications Workers v. Beck*, 487 U.S. 735 (1988).

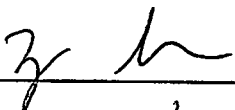
Question 4. *Was the removal of Peter Robb as National Labor Relations Board's (NLRB) General Counsel (GC), illegal?*

Both the USDC and the Ninth Circuit ruled that the President has the right to remove the GC at will, citing *NLRB v. Aakash, Inc.*, 58 F.4th 1099, 1104 (9th Cir. 2023). Zak argues that GC removal is not listed in the NLRA as a Presidential right. And, if allowed, there would be the potential for abuse, for the President to remove the GC on any whim, and thereby politicizing the position.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 9/5/26