Supreme Court of the United States

October Term, 1968

In the Matter of:

HERHOOD OF RAILROAD TRAINMEN, et al.,

Petitioners,

vs.

SONVILLE TERMINAL COMPANY,

Respondent.

Docket No. 69

Place Washington, D. C.

Date December 11, 1968

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

******

IN THE SUPREME COURT OF THE UNITED STATES

October [redacted], 1968

Brotherhood of Railroad Trainmen, et al.,

Petitioners

vs. No. 69

Jacksonville Terminal Company,

Respondent.

Washington, D. C.
Wednesday, December 11, 1968

The above-entitled matter came on for argument at 11:10 a.m.

BEFORE:

EARL WARREN, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
ABE FORTAS, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

NEAL P. RUTLEDGE, ESQ.,
601 Flagler Federal Building,
111 N.E. First Street,
Miami, Florida 33132

DENNIS G. LYONS, ESQ.
1229 Nineteenth Street, N.W.
Washington, D. C. 20036

PROCEEDINGS

MR. CHIEF JUSTICE WARREN: Number 69, Brotherhood of Railroad Trainmen, et al., Petitioners, versus Jacksonville Terminal Company.

THE CLERK: Counsel are present.

MR. CHIEF JUSTICE WARREN: Mr. Rutledge, you may proceed with your argument.

ORAL ARGUMENT OF NEAL P. RUTLEDGE
ON BEHALF OF PETITIONERS

MR. RUTLEDGE: Mr. Chief Justice, may it please the Court, this is another of a long series of cases that have come before this court with increasing frequency in this century which poses a familiar problem of states' rights on one hand versus federal control or preemption of economic relations affecting interstate commerce.

This is the second appearance before this court of this case in the sense of the conduct that is involved. The prior case came up in the federal court and it arises out of a long-standing strike against the Florida East Coast Railway which runs in Florida roughly from Jacksonville to Miami. The Florida East Coast Railway is the last one-way railroad covered by the Interstate Commerce Act and the Railway Labor Act.

The strike involved is a legal strike arising out of the Railway Labor Act. The strike concerned proposed changes in working conditions.

The unions that are involved in the case are the

Brotherhood of Railroad Trainmen, Order of Railway Conductors, and Brotherhood of Locomotive Firemen and Enginemen, all who represent railroad employees who operate the trains.

Those unions went on strike against the Florida East Coast Railroad in April 1966 and within a few weeks following the beginning of that strike, the picketing commenced. The picketing was peaceful and orderly and it went on for a period of only a few yearsand it was enjoined in a suit brought by the respondent in this case in the United States District Court in Jacksonville.

That court issued a temporary restraining order and subsequently converted to a preliminary injunction. That injunction was appealed to the United States Court of Appeals of the Fifth Circuit which vacated the injunction May 1966.

The respondent then promptly filed an application to reinstate the injunction. This court extradicted the time involved in the petition to assert and reinstated the injunction over a summer recess and set the case down for hearing in October 1966, at which time the decision of the Court of Appeals for the Fifth Circuit under Chief Judge Tulley of that court was affirmed.

The picketing that is involved is picketing that concerns the Florida East Coast Railroad and also the Jacksonville Terminal Company and also, we submit, it was of crucial importance to examine the relationship between those

two.

In Jacksonville, which is the northern terminus of the Florida east coast, there is a Jacksonville Terminal Company which is jointly owned by the Florida East Coast Railroad together with the Atlantic Coastline, Seaboard and Southern Railways.

Q Mr. Rutledge, the Court of Appeals for the Fifth Circuit set aside the injunction?

A That's right. In other words, the holding of that court, as I understand it, was that the Norris-LaGuardia Act did not preclude issuance of an injunction in this case. There were other contentions raised before the Court of Appeals specifically the contention we raise here and this is a case argued in the National Labor Relations Act. The court did not pass on that.

The Jacksonville Terminal Company, as I say, is owned by the Florida East Coast and its operations are controlled by a document which is approved by the Interstate Commerce Commission and which is in evidence in this case, which in essence is a document which spells out a joint venture by the four owning railroads whereby each one is entitled to use,without discrimination, of all of the facilities and to receive the labor services of the employees of the terminal.

Operating under this agreement, the Florida East Coast regularly runs its trains under the terminal company

and that is the only way they are able to receive deliveries from other railroads or make deliveries to other railroads and, very significantly, on those premises of the Jacksonville Terminal Company, FEC regularly and on a regular, daily basis receives essential labor services performed for it by the employees of the Jacksonville Terminal Company.

I think the best illustration of that is shown in the record at page 99 where the president and general manager of the Jacksonville Terminal Company formally advises the general chairman of one of these unions as follows:

"Jacksonville Terminal Company employees represented by Order of Railway Conductors are expected to perform service for the Florida East Coast Railway Company in line with their previously assigned duties and you are requested to join with me to see that the Order of this high court is carried out."

So that these employees of the TerminalCompany are daily performing labor services for this common carrier.

It is significant, we submit, to examine in detail the nature of the arguments here in two lights, one by us, of course, and the other by the respondent.

The respondent is contending that this picketing is secondary picketing, whatever that means. It is significant in this respect, however, to note that our picketing was limited exclusively to points around the perimeter of the Terminal Company where the Jacksonville Terminal Company

employees reported for work, in other words, reported to begin their day in which they would be asked to do labor services for the strike area, or to entrances where employees of connecting carriers would come on the premises either to take to or take a delivery from the Florida East Coast Railway.

There is one particular crossing, the Dennis Street crossing, which is referred to in here which we did not picket. There is no evidence of our picketing that crossing. There was a dirt road next to it which we picketed where employees came on the premises. But the Dennis Street crossing was used exclusively by the Atlantic Coastline and was not picketed.

We submit that we were not going to the Atlantic Coastline to say that "we want you to stop making deliveries to FEC" and picketing the Atlantic Coastline in order to put pressure on them.

We were picketing as close as we could to the actual site where work was being performed for FEC or where delivery was being made to or from the FEC.

Under this situation, the picketing began May 5, 1966 and the Court of Appeals for the Fifth Circuit vacated the injunction in a matter of weeks later that same month in May 1966 and after the injunction was vacated and while the respondent was applying to this court to reinstate the injunction, the respondent filed the state court suit in the Court of General jurisdiction in Jacksonville.

That court, after hearing testimony over the weekend of May 30, entered a preliminary injunction. We sought a reversal in the appellate court as the state court had no jurisdiction. That was denied. We came to this court asking for a reversal of the order of the intermediate appellate court and that petition was denied.

Meanwhile, the state court proceeded on final hearing and a permanent injunction was entered July 1966. That was appealed to the intermediate court and the supreme court.

The holding of the Florida court was that the picketing here involved was illegal under Florida state law and was also illegal under Florida common labor law which, according to the court, is illegal under Florida law.

Significantly, the Florida state court did not rely on either the Florida statute which regulates public utility labor relations because the Florida legislature in passing that law expressly exempted railroads and railroad employees covered by the Railway Labor Act.

Significantly the Florida court did not rely on the Florida statute that regulates labor relations generally in Florida because that statute also exempts railroads or airlines covered by Railway Labor Act.

The underlying question in this case is whether federal law or state law governs the conduct that is here involved? The conclusion that has to be reached is

whether the conduct is legal or illegal under federal law. And significantly the question has to be reached whether the Norris-LaGuardia Act applies to the state court which is adjudicating a labor dispute case controlled by federal law?

Is such a court under those circumstances covered either expressly by the Act is in any event a court which must apply principles of the Norris-LaGuardia Act because these are the principles controlling the federal law?

If, on the other hand, this court should decide that the state law applies here, then the question must be presented as to whether or not this is a case which is argued to the exclusive primary jurisdictions of the National Labor Relations Board and therefore under this San Diego Building Trade decision and many decisions, the state court lacks jurisdiction to even try the case.

Underlying the entire case is the contention raised in the trial court, passed upon by the state court, that the conduct involved in this case protects the conduct by the person.

In this regard, it is important to note that the trial court made a finding in this case that there was absolutely no force, violence, threat of violence, mass picketing, or any force of any sort involved in the picketing. It was peaceful. It was orderly.

There were single pickets stationed around the

perimeter and there was no kind of violence or blockage of traffic or interference in any way.

Petitioners contend that federal law controls here and that federal law makes the conduct here involved legal and therefore the decision should be remanded in order that the case be adjudicated in accordance with the federal law.

The problem here is, what is and what is not legal of a strike arising out of a Railway Labor Act major dispute which picketing is entirely peaceful and does not entrench on any of the areas concerning preserving law and order in picketing?

Congress has regulated railway and labor relations since 1888. It would be anomalous indeed to have a situation where in an interstate industry which has not been regulated by labor relations, have not been regulated by Congress until 1935, and where the title of the regulation is so detailed as to be autonomous, to say that those labor relations are completely preempted by federal law, but the labor relations in the railway industry which is directly in interstate commerce have not been preempted and are subject to varying state policies, fifty different policies.

We submit that in deciding which law, state or federal, applies here, that this is again a situation that Justice Holmes refers to where "a page of history is worth a volume of logic" and it is quite clear that with passage

of the Interstate Commerce Act in late 1880's and passage of the Sherman Act in 1890, the kind of conduct that is here involved was subjected to federal control and there were a series of cases following enactment of those federal statutes which ruled that picketing seeking to interrupt the conduct of business between two railroads was illegal conduct.

Following those decisions there were the Railway Labor Acts of 1926 and 1932, the Wagner Act and the Taft-Hartley Act, which we submit show that Congress has repeatedly taken under consideration whether to make this kind of conduct legal or illegal, and it has on a pragmatic basis passed laws which, although originally may be the kind of conduct herein, from 1940 or at least from 1942 on, legalizes the kind of conduct.

And the State of Florida cannot by its law make illegal that which Congress, regulating the railroad industry, has deliberately made legal.

Q Would you cite the legislation?

A Yes, your Honor. The legislative history of the Clayton Act, the frustration of what the proponents of the Clayton Act felt was the purpose by this court decision in the Deering case, then the legislative history of the Norris-LaGuardia Act, then the passage of the Taft-Hartley Act in 1947, which the legislation is set out in our brief, in which Senator Taft said that with the passage of the Act, it has become impossible to stop a secondary boycott, and the purpose

of the Taft-Hartley Act was to make secondary boycotts in business affecting interstate commerce illegal.

Then the question came up, what about in the railroad industry? In other words, with the passage of the Clayton Act and the Norris-LaGuardia Act, secondary boycotts did not become illegal.

Q That is what I am trying to get to. Was there a specific reference then to the situation of picketing for the purpose of stopping an interchange of cars?

A No, your Honor. The reference that we cited was whether the passage of the Taft-Hartley regulating the type of picketing should be applicable to the railroad industry and employees.

We submit that Congress has had this question before it. There is no question but that under the decision of this court in the Webb case and many cases, that any kind of picketing that interfered with interchange of railroad cars is illegal.

It is interfering with interstate commerce and interstate trade.

This court's decision establishes the fact that the intent of the Clayton Act and Norris-LaGuardia case was to change the decision of this court and it was to adopt the view of Justice Brandeis.

We say this has been a matter of very close federal and congressional attention, and for the state now to come in

and hinder the balance of economic power would create an intolerable situation particularly when you magnify that fifty times, particularly when you have in this area these large mergers.

There is a merger going on in the Pacific northwest to create a railroad system spanning thousands and thousands of miles.

You have, we submit, individual state legislation by which the state court is legislating the balance of economic power in the railroad industry, which we submit would create chaos.

As Mr. Justice Frankfurter stated in his dissent in the Burlington case, "The railroad world is a world unto itself." And we submit that this is the kind of a case which must be controlled, deriving its authority from any federal statutes and from the entire scheme of those statutes.

Our basic contention in this case is that the conduct involved is to go by federal law and to legalize this type of conduct.

We don't concede in this that what we are doing here is a secondary boycott at all. What it means nobody can say in the decision. The idea of the secondary boycott is the idea of what happened in the Duplex case . You have a manufacturer. He sells to a customer 200 miles away and you go picket the customer and he attempts to do business with the

prime. That is a secondary boycott. We don't have this here. Here we were picketing as close as we could possibly come without trespassing to the actual place where work was being performed for the prime contractor. Therefore, we say this is a primary contractor, not secondary.

Q Were you also picketing a length of the line?

A We were picketing south of Jacksonville, sir.

Q And at no junction?

A We faced injunctions all up and down the line and we had litigation which is cited in our brief which the state court down in Miami accepted that they don't have any jurisdiction. The state court in Jacksonville refused to follow the precedent of the district court.

Q There was no claim of secondary boycott?

A Yes, there was a claim, your Honor, as in the case cited in our brief, Broward County Port Authority versus Railroad Telegraphers, which appears in our brief. And there was, of course, picketing at Cape Kennedy.

Thank you, your Honor.

MR. CHIEF JUSTICE WARREN: Mr. Lyons.

ORAL ARGUMENT BY DENNIS G. LYONS

ON BEHALF OF RESPONDENT

MR. LYONS: Mr. Chief Justice, may it please the court, with respect to the facts in this matter, there are three factual questions which I would like to speak to further

than counsel for petitioners has.

Those three questions are, first, what goes on in the terminal? Second, what was the conduct of the petitioners? Third, what was the effect of that conduct?

The name, Jacksonville Terminal, is rather a misnomer. The Jacksonville Terminal is not simply a terminal place where trainmen stop. It is primarily a place where trains must go through. The principal main line of the Atlantic Coastline Railroad is this line here, this blue line coming down through the terminal property which is shown in green and exiting here at the south, being shown in blue.

One of the principal main lines of the Seaboard Railroad is this line coming through here, this orange line coming through north of Savannah and going through the terminal here and exiting here and then going to the south.

The terminal stands athwart the main railroad lines that serve the State of Florida. If you cut off the terminal, you to a very substantial extent cut off all railway service to Florida.

Florida is a peninsula. There is one basic way to get to it by land from the north and, accordingly, the State of Florida is quite vulnerable to a cutting off of the Jacksonville Terminal.

We have heard a great deal of talk about work done for FEC. Let's put that in prospective. FEC uses the

terminal in two ways. In one way, trains are interchanged. These cars are brought across the bridge across the St. Johns River, up from the FEC yard which is down about another twelve miles to the south, and they are brought here by their crews and at various places around here they meet the carriers that they are to be delivered to, and delivery is made.

Similarly, at pickup the cars are brought in the terminal or elsewhere and interchange takes place and the cars pull back down.

Only 30 percent of the interchange movements within the terminal property or using the terminal facilities are FEC. So on one side you have all of these going through which are of the non-struck carriers, Seaboard, Coastline and Southern, none which has a labor dispute.

We also have interchanges which do involve handling of the cars from one railway to another. Only 30 percent of those are FEC's. We also used to have some FEC passenger train activity within the terminal. The other carriers ran 42 passenger trains a day through the terminal, the non-struck carriers. FEC ran 2 passenger trains a day into the terminal and in that connection they received the same terminal services, selling tickets, washing of cars, that the other non-struck carriers received.

These passenger movements accounted for less than one percent of the total passenger cars handled through the

terminal.

Incidentally, after making the record in this case, there is no dispute about it, FEC received permission to extend more passenger service and accordingly there is no use whatsoever of the terminal by the FEC passenger trains.

Now, as to the content of the petitioners' question, what does the picketing consist of.

The picketing consisted, as the trial court found, of placing pickets at every entrance to the terminal, every entrance by rail, road and on foot.

The trial court's finding covered the entrance at Dennis Street and found they were only placed at the Coastline exit and entrance.

It is undisputed that there was picketing at Acorn Street which is right here where only Seaboard main line movements enter, as you see. The Seaboard terminal movements would have to come in this way or come across from its yard and come across this way.

This line cuts right across the terminal and is used by the main line trains and that line is cut. The picket signs did not simply say, "Please don't handle FEC cars." The picket signs contained two exhortations on them. The first exhortation was: "Do not cross." The railroad men honored the picket line.

The condition stated later on, indeed, stated in

papers filed in this court by counsel, was that the solution to the matter was placing of an embargo on the FEC by the carriers. In other words, a refusal to handle their cars. But the appeal that the pickets made to the employees in order to make their employer hurt enough to do that was: "Do not cross." "Do not go within the terminal."

The effect of this picketing, as the trial court found, was a threat to the economic strangulation of the State of Florida.

Ninety-five percent of the U. S. mail to and from Florida passes through the terminal. If the terminal was shut down one day, it would take six days to catch up on the U.S. mail.

A very substantial portion of the citrus crop and other basic products of Florida exports, the phosphates from the fields in Florida, have to pass through the terminal if they are going to move by rail and rail is one of their primary means of movement.

There are numerous industries that have settled in Jacksonville either directly adjacent to the terminal property or on spurs leading off of the terminal property where cars have to go through the terminal property which are cut off from all rail access if the terminal were shut down.

So we have here, I don't purport to give an identification of secondary picketing, but I think if anything is secondary picketing, the conduct here is secondary picketing.

There was an appeal by these employees of the FEC, the former employees of the FEC to two other carriers' employees to induce them to stop work, not to go within the terminal until such time as their employers saw fit to stop doing business with FEC.

At appropriate times the terminal company, which is the respondent here, and in federal cases of the other non-struck carriers, sued both in the federal courts and after a decision that there was no federal court jurisdiction, sued in the state court for an injunction.

One basis on which the federal court backs the state court where this action took place was the finding of the Fifth Circuit that there was no federal court jurisdiction in the Norris-LaGuardia Act.

You are faced also with the fact that there was no jurisdiction in the appellate court at that time and that the complaint was brought solely under state law.

Q What was the judgment?

A The judgment of the Fifth Circuit was that the decision had to be reversed because there was no jurisdiction in the federal court. That was the Fifth Circuit Court which was a judgment in favor of the present petitioners.

Q That was on the same grounds?

A On the same grounds, yes, sir. So it has been ruled there is no jurisdiction in the federal court by reason

of Norris-LaGuardia. Whether that is binding in the present court is another matter.

This case comes before the court in this posture. There is a state court injunction granted under state law. There is no question to be raised with respect to state laws in this court.

The only question is whether there is some basis in federal statutes or federal constitution that precludes state courts from doing what they did. The petitioner has mentioned five or six bases. I will try to take them up in order.

Their most serious basis or at least the one they spent the most time on was that by reason of the Railway Labor Act and certain other statutes, they refer to the Safety Appliance Act, which doesn't seem to have much to do with the case, but by reason of these federal railway statutes, there is a supersession of state law jurisdiction here and they rely for analogy on this court's ruling under the Taft-Hartley Act where in the long line of cases after the Taft-Hartley Act and after addition of Section 84 to the Labor Management Relations Act in 1947, there was a long line of cases in this court holding that the states would not be prohibited by section 8(b) or protected under Section 7.

Our basic contention is that this whole line of argument is a false analogy. There is simply not a comparable

situation here between the Taft-Hartley Act and the Railway Labor Act.

Under the Taft-Hartley Act you have detailed the sort of conduct that is addressed against non-struck employees that is prohibited. That is found in Section 8(b)(4) of the Act, which is a very long and involved section. It is also found in Section 8(e) of the Act.

There is another side of that coin. There is Section 7 of the Act which to a great extent says that conduct which is not prohibited by Section 8(b) is protected under Section 7.

Beside that very detailed code, there is also an administrative agency which is charged with adjudicating matters under that code. There is nothing like that under the Railway Labor Act. There is no regulation whatsoever, no regulation whatsoever under the Railway Labor Act of assorted weapons that a union can use against management and certainly none whatsoever of the regulation of the weapons it can use against third parties to a labor dispute.

And while there are certain administrative agencies that have been set up by Congress under the Railway Labor Act, the Adjustment Board and Ad Hoc Presidential Board under Section 10, there is no administrative agency set up under that Act which is charged with the duty of passing on whether specific union weapons or specific management self help are

protected or prohibited.

This is an area which Congress simply has not ruled on and our contention is that just as the case that was decided a few weeks ago, that there is room for a current regulation here, both by the state and by the federal court, in an area where federal power has not specifically asserted itself, and here the federal power has not asserted itself by regulating the sort of weapons that unions may use and particularly the sort of weapons that they can use against third parties.

There is no general law against picketing.

Q Is there a law under the Taft-Hartley Act that provides that employees of a railroad can picket?

A There is a "little" Taft-Hartley law or there is a State Interrelations Act in Florida which gives workers the right to engage in assorted activities.

It does not apply directly to workers and railway labor people.

The basis of the injunction here was the state law against secondary boycotting. The injunction was not passed against the picketing as such.

Q Did it enjoin all picketing in an area?

A No, there were exceptions. In the first place, curiously enough, the petitioners did not picket the main rail used by the Florida East Coast Railroad. The

picketing is permitted at the reserve gate for the use of FEC employees. There has been a reserve gate at the terminal for years and the injunction is limited and does not cover the men and they are free to picket there and are free to picket at the main railway entrance and are free to picket up and down the line of eastern Florida where FEC runs.

My argument would have fallacy in it if we could induce a basic contention by Congress to affirmatively sanction secondary picketing on railways, in other words, if we could say that Congress wanted to protect this sort of conduct.

The fact that it had been set up, which was designed to regulate, would not, of course, support the state court injunction.

I feel my case would be easier if it was and I am sure my brother feels his case would be easier if it was not. I suppose the fact, like the cases back in 1940, seems to hold that states have definite and recognizable interests with respect to remanding the extension of labor disputes to persons who are not parties to them through application of the anti-trust laws, such as was done here in the application. And I think that does affect the issues, although I would not say this is possible.

We contend there was absolutely no evidence that Congress ever intended to affirmatively sanction the use of the secondary boycott on the railroad industry.

The petitioners, as I understand it, point to the Clayton Act first, under which it was held that a secondary boycott was not legal. And the most amazing is the reference to the history of the Taft-Hartley Act in which they appear to contend that Congress is inclined to outlaw the secondary boycott of the railroads because they felt the secondary boycott was a good thing.

On page 46 of our brief we refer to a discussion by Senator Taft:

"In this bill we prohibit secondary boycotts all over this country."

And one of the other Senators raised the question and asked, "Well, what about railroads?" And the discussion quoted is that railway workers have not been engaging in such practices and there was no abuse here and no use for Congress to alter the scheme of the labor act.

We put that in our brief starting at page 45 to page 48. Senator Taft Said:

"We saw no reason to change that situation, because there were no abuses which had arisen in connection with the operation of the Railway Labor Act."

Indeed, this is really a neat case. There is no precedent for a situation like this in which there is picketing of non-struck carriers on an interchange.

MR. CHIEF JUSTICE WARREN: We will recess.

(Whereupon, at 12:00 noon, a recess was taken.)

AFTERNOON SESSION

(The oral argument in the above-entitled matter was resumed at 12:30 p.m.)

MR. CHIEF JUSTICE WARREN: Mr. Lyons, you may continue your argument.

ORAL ARGUMENT OF DENNIS G. LYONS, ESQ.

ON BEHALF OF RESPONDENT (continued)

MR. LYONS: Thank you.

Before recess we were developing the point that Congress never affirmatively sanctioned the use of secondary conduct against nonstruct carriers by rail unions. And we discussed the history of the Taft-Hartley Act.

The paradox in what the Petitioners are contending for, if Congress through some process of silent or some process of silent approval of this form of extended self-help against third parties, made this conduct lawful in this context, we would have the paradoxical situation in which it would be unlawful to engage in this conduct, in an industry regulated under the Taft-Hartley Act, a toy factory, a candy factory, any factory producing goods for Interstate Commerce in the jurisdictional minimum, but it would not be unlawful to practice this conduct against a railroad, against an instrumentality of Interstate Commerce, against one of the more vital and basic of American industries.

I think really the point needs no further development.

There is no evidence whatsoever that Congress ever put its stamp of approval on this conduct. Congress happened not to regulate this conduct. It happened not to provide an administrative agency for its regulation but that does not mean under these circumstances that it meant to leave it completely unregulated.

Now there are three further bases of contention that the Petitioners make. They contend first that the Norris-LaGuardia Act, second that the Taft-Hartley Act and third that the Fourteenth Amendment preclude the injunction that was granted here by the State courts.

I will give our responses to those briefly because we frankly submit these are make-way intentions.

Q Is it the same as saying, are you just saying here that, in addition to the Federal law doesn't control?

A Yes, this is an additional basis on which it doesn't control. There are other statutes that the Petitioners bring in on somewhat different basis.

Q You may be right in all those points you just made and Federal law could still control. Isn't that the -- then you would still have the question left what the Federal law is.

A Well you would. The basis, the various bases that we are submitting and that we have submitted are negations of the applicability of Federal law, any basis. We contend it

doesn't apply because of the Railway Labor Act and it doesn't apply because of the Taft-Hartley Act.

Q Well, would you say that if the court decided Federal law does govern in this case that you have lost the case?

A I wouldn't so submit, your Honor, because the, that would then for one thing throw open these questions, these additional questions.

First, whether the Norris-LaGuardia Act would have to be applied by the State Court in applying the Federal Court, second whether the Norris-LaGuardia Act prohibits this injunction and the only holding on this was a 4 to 4 decision by this court which is not a binding precedent. On that we submit everything that we said before.

And those would be our submissions, even if the Federal law did apply I don't think it necessarily means that the State court judgment would come first.

Q In other words, it would be what is the substance of Federal law.

A Yes. Yes, sir. And that could very well be, as we contended in the other case, where we sought injunction under the Railway Labor Act and the Interstate Commerce Act, but those statutes which aimed at minimizing the conflict on the railroads in trying to confine industrial disputes, certainly never contemplated that there would be any secondary

boycott against a nonstruck carrier, against a person who never had advantage of the processes of the Railway Labor Act.

We would also contend for reasons that we contended before that the Norris-LaGuardia Act wouldnot apply even if this case were governed by Federal law.

If it is governed by State law in a State court we submit there is no basis whatsoever for saying it applies. There is a somewhat different argument that the Petitioners make. It develops that the Petitioners, that the union that basically did the picketing, The Brotherhood of Railroad Trainmen, it also represents bus drivers. Seven percent of its membership are bus drivers and the bus drivers, of course, had nothing to do with this dispute.

But the Petitioners contend that it is therefore arguable that the National Labor Relations Board has jurisdiction. Now they further contend that it does not have jurisdiction, that is our contention, too. Nobody contends that the National Labor Relations Board has jurisdiction in this case.

But they submit that because seven percent of their membership off on these other launches are bus drivers, are not under the Railway Labor Act, that therefore as I understand it$ in every case involving this large union that there is an arguable applicability of the Taft-Hartley Act and that accordingly the State courts would have to stay their hands,

and I would assume also that the agencies set up under the Railway Labor Act, the Mediation Board and the Adjustment Boards would be in the same posture.

We think that to state that sort of contention is really to answer it that the courts have generally looked to the particular aspect of the union, particular aspect of the work that is involved. This is a dispute wholly within the railroad industry.

The brotherhoods are predominantly railroad brotherhoods, they are predominantly, their lodges are entirely railroad workers, the employers are all common carriers, we submit there is no basis arguable or otherwise for the applicability of Taft-Hartley.

On the First Amendment applicability our contention is that this is not a State law against picketing, this is a State law against specific abuses and the injunction was so limited.

I think it is well just to take a moment to see what it is the Petitioners are contending for in this case before this court this morning. If they prevail this morning they will have established that there is no agency of Government, Federal, State or local, judicial or administrative, that can regulate their conduct in applying these measures, these economic warfare measures to these nonstruck carriers.

Let me recap.

It is common ground, I believe, that none of the agencies set up under the Railway Labor Act have jurisdiction. This is not a case for the Adjustment Board or for the Mediation Board. Both parties agree that the Labor Board has no jurisdiction. This court in its 4 to 4 decision in 1966 held that the Federal Courts had no jurisdiction.

That leaves as the sole basis on which the Petitioners conduct can be regulated, or if it is not applicable, left wholly unregulated, the State courts, and it is that last avenue of relief against this action which would tie up the entire economy of Florida, which would be unlawful if practiced in any other industry.

It is that last avenue of relief to these nonstruck carriers that the Petitioners are trying to close here today.

Thank you very much.

MR. CHIEF JUSTICE WARREN: Mr. Rutledge.

ORAL ARGUMENT OF NEAL P. RUTLEDGE, ESQ.

ON BEHALF OF PETITIONERS

MR. RUTLEDGE: Mr. Chief Justice, and may it please the Court.

Q Would you mind saying a word in response to this last point that counsel has made?

A To the point, your Honor, of -- that there is no authority ---

Q No man's land with no regulation of any kind.

A Certainly.

Your Honor, our response to that is that what Congress has deliberately left free to competing economic forces the States cannot move in and outlaw and as Senator Taft stated and quoted, there have not been abuses in the railroad industry. When there are abuses it will be time enough and I don't think it would take very long for Congress to act to make Section 8(B)4 of Taft-Hartley applicable to railroad unions. That has been proposed, it could be passed in a matter of days by Congress and Congress has acted in situations in the railroad industry where national disputes have occurred.

It set up, just recently, the unprecedented situation of compulsory arbitration on working conditions prospectively. So we say that this certainly isn't a matter that is beyond completely all regulation, and that Congress has left this kind of thing free and Congress can act if there is an abuse.

I would like to point out also in rebuttal that the decree in answer to question from Mr. Justice Stewart, counsel stated that the decree here did not prohibit all picketing here. We can still picket at the reserve gate. We can, the decree does accept that.

The evidence is also admitted by stipulation that that reserve gate is not enforced, people go in there who are not FEC people and FEC people go in other places so the reserve gate we say is an illusory issue here.

The decree does prevent us from picketing where the FEC comes on there so the decree here admittedly, we submit, must be construed as prohibiting both primary and secondary if you concede this is secondary, and we don't, picketing.

Now in answer to the question from Mr. Justice Black, counsel for Respondent stated that it was not determinative here whether this picketing be deemed secondary or primary and we agree with that.

In other words, what counsel for Respondent is saying by his answer to that question is that the States have power to regulate peaceful orderly picketing in the railroad industry regardless of whether it is secondary or not secondary so we say the whole question here about whether this picketing is secondary or not is really a question only designed to appeal to the emotions.

In short, we say that if this picketing is to be called secondary it is not outlawed by the controlling law, we say it is not secondary and we say that regardless of whether you call it secondary or not it certainly is not irresponsible conduct; it is conduct which was designed by us to limit as closely as we could the affect of this peaceful economic action to the party that we have the dispute with, the FEC.

And, in that regard, I would like to correct, if I may, what was referred to in Respondent's brief as an inadvertent implication on our part. It was not an inadvertent

implication. Footnote 12, page 10 of the brief, Respondent says that we inadvertently imply that we had proposed ways to limit this picketing to make adjustments.

In other words, to that this picketing would be limited to only FEC movements. Now it should be remembered that the picketing began in the early morning hours and that within hours after that, everybody responsibly concerned with it was in court trying a Federal court case on a TRO and the TRO issue that afternoon, so that the picketing here only went on a few hours.

At page 264, when that injunction was lifted we stated on the record in this case our willingness to make any kind of adjustment possible and the railroads stated that it was possible to do so.

Thank you.

(Whereupon, at 1:00 p.m. the oral argument in the above-entitled matter was concluded.)