In the

Supreme Court of the United States

IOWA BEEF PACKERS, INC.,

Petitioner,

v.

EDWARD D. THOMPSON, et al.,

Respondents.

No. 70-286

Washington, D. C.
January 12, 1972

Pages 1 thru 48

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Wednesday, January 12, 1972.

The above-entitled matter came on for argument at 11:13 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

LOUIS S. GOLDBERG, ESQ, 300 Commerce Building, Sioux City, Iowa 51101, for the Petitioner.

A. RAYMOND RANDOLPH, JR., ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D. C. 20530, for the United States as amicus curiae.

RAYMOND EDWARD FRANCK, ESQ., Raun, Franck & Mundt, 203 North Main Street, Denison, Iowa 51442, for the Respondents.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We'll hear arguments next in No. 70-286, Iowa Beef Packers against Edward Thompson.

Mr. Solicitor General.

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

I move that A. Raymond Randolph be authorized to appear for the United States as amicus curiae in this case. Mr. Randolph is a member of my staff, a member of the bar of the Supreme Court of California, and I believe he's well qualified.

MR. CHIEF JUSTICE BURGER: Your motion is granted, Mr. Solicitor General. We'll be glad to hear from Mr. Randolph.

Mr. Goldberg.

ORAL ARGUMENT OF LOUIS S. GOLDBERG, ESQ.,

ON BEHALF OF THE PETITIONER

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

There is a motion in this case, as called by the respondents, that's called a suggestion of the writ having been improvidently granted, and we have a resistance on file to that.

As I understand the rule of the Court, there is to be no oral argument as to that motion.

MR. CHIEF JUSTICE BURGER: The grant is limited, yes.

MR. GOLDBERG: On the merits, if I may, at the outset I would like to present very briefly the three central points that petitioner believes are critical in this case.

One is that the case invites a policy decision in the area of labor-management relations, and we urge that the decision of this Court in Republic Steel v. Maddox governs this case.

No. 2, the substantive rights involved in this case, as in Maddox, derive simply from the contracts, the collective bargaining agreements. There is no such right provided for in the Fair Labor Standards Act.

Third, that our case is not at all an attack on the Fair Labor Standards Act. Our contract does not diminish rights under the Act, it enlarges rights.

Now, the facts here are quite simple. Iowa Beef was and is engaged in the processing of meats and the shipment of meat interstate, throughout the country.

The 14 respondents, who brought 14 separate actions in this case, were employed -- and some of them still are employed -- by Iowa Beef in the Maintenance and Repair Department, to keep the machinery in operation for production.

They worked under a collective bargaining agreement which is set out in the record. The agreement provides, among other things, for a lunch period.

The respondents argue that -- did argue in the court below and they were sustained by the court below on the facts, as to those facts -- argue that because the machinery broke down from time to time they were called upon to do repair work during their lunchtime, even though they got the lunchtime later on; or even when they weren't actually called upon, that they were subject to call during their lunchtime, in case there were a breakdown.

For those reasons, the respondents argue that there was a violation of the collective bargaining agreement by the petitioner, which, then, they say, gave rise to a cause of action under the Fair Labor Standards Act.

Now, the collective bargaining agreement also provides for grievance procedures and for arbitration in three or four steps. Instead of proceeding through the grievance procedures, the respondents began these 14 separate actions directly under the Fair Labor Standards Act.

The Iowa court sustained them on the merits of their claim, and we don't challenge that here, although we don't agree with the correctness of it.

But we did challenge, by answer and by motion, the point that these respondents should have applied or attempted the grievance and arbitration provisions instead of proceeding directly to court action under the Fair Labor Standards Act.

That was overruled, and, incidentally, on the record,

on page 4 of the record, plainly states that these respondents admitted that they did not attempt to utilize the grievance procedures.

Q Let's assume in the ordinary situation under this contract that a grievance is filed, or that an employee has a grievance. Were the grievance procedures and the arbitration provisions open to use by an employee alone?

MR. GOLDBERG: The --

Q Or did the union have to energize the process?

MR. GOLDBERG: No, Your Honor. Either the union or the employee, the individual employee or the union could initiate the grievance procedures.

Q Then could an individual employee, if he was turned down by the employer in the initial steps,request arbitration?

MR. GOLDBERG: Not directly, no. The union then is directed to undertake the further steps.

Q So the employee could initiate a grievance procedure, but he couldn't take it to arbitration?

MR. GOLDBERG: Not entirely on his own, Your Honor.

Q Well, "not entirely", if the union said no arbitration, that was the end of the process, wasn't it?

MR. GOLDBERG: No, I would say -- well, it might, but it wouldn't terminate the employee's rights.

Q Well, it wouldn't terminate his rights, but it

would terminate his rights to arbitration?

MR. GOLDBERG: Well, Vaca v. Sipes, of course, requires the union to exercise proper diligence and so forth.

Q Well, I know, but Vaca v. Sipes also says that -- said that every time the union refuses doesn't mean that it's wrong.

MR. GOLDBERG: Well, that is true, Your Honor.

Q Now, let's assume that a union, at the end of the grievance procedure, refuses to take the case to arbitration. Now, the employee, I suppose, has then exhausted the contract rights, hasn't he?

MR. GOLDBERG: That is right.

Q And he could go to court under 301?

MR. GOLDBERG: But, in this case, they didn't even attempt the first step, Your Honor.

Q They didn't even attempt to take it to grievance?

MR. GOLDBERG: That's right, Your Honor.

Q Now, let's assume that they had, and is he entitled to represent himself, or is the union entitled to be there at the grievance procedure?

MR. GOLDBERG: Well, the first step plainly recites, I believe, in the collective bargaining agreement, that the individual employee may initiate that first step in the grievance.

Q Yes, but what it says is: "The employee

involved, with a Union representative if he so desires". That's the first step, isn't it?

MR. GOLDBERG: Yes, Your Honor.

Q But every step after that, apparently, has to be handled, that is Steps 2 and 3 and up to arbitration in any event has to be handled by a union representative, doesn't it, un these provisions?

MR. GOLDBERG: That is right. But these employees and the union knew the effectiveness of these grievance procedures because, as the record shows, --

Q Well, yes, but apart from that, I gather you rely, in any event, on the 14 individual employees did not even discuss the process of grievance with the immediate supervisor; is that right?

MR. GOLDBERG: That's right. They did not attempt even the first step.

Q Isn't this all very theoretical, there's no more union --

MR. GOLDBERG: I'm sorry, I don't hear very well.

Q Isn't this all very theoretical, there's no more union, the union isn't even in the picture?

MR. GOLDBERG: No. The same point, Mr. Justice, was made in the Maddox case, and this Court summarily overruled that.

Q Well, the union doesn't represent these employees

any more, does it?

MR. GOLDBERG: That is right. But that is three years after, after this case was begun, and it was long after the case had been decided in the trial court, and the people --

Q Yes, butt he question --

MR. GOLDBERG: -- were put on notice here by our answer and by our motion that they were required to utilize grievance procedures, and didn't even attempt to do so even then.

Q But the present posture of the case is quite different, isn't it?

MR. GOLDBERG: Well, I think the individual still has the right to initiate grievance procedure, and I would think, Your Honor, that in the absence of a union there would be no rule of law, no court would bar him from proceeding on his own toward the subsequent steps in the grievance procedures and in arbitration.

Q But the only provision that would be required would be the provision in the union contract that no longer exists.

MR. GOLDBERG: That was so argued in the Maddox case, and Maddox overruled that point, Your Honor, very summarily, and said --

Q Well, I'm just raising it again. I just wondered. I don't want to distract you.

MR. GOLDBERG: Oh. Pardon me.

The Iowa court relied chiefly on the Arquelles case, on which its decision was opposed to us on our point about attempting grievance.

Now, these 14 separate actions were started in 1967, five years ago. And this is the record that they faced in beginning these actions:

In 1947 Congress enacted the Labor-Management Relations Act, declaring grievance procedures as a desirable method for settling wage disputes between employer and employee.

Ten years later, Lincoln Mills ruled that grievance procedures were enforcible at the demand of the union, but didn't include individual employees at that time.

In 1965, this Court ruled, in Maddox, that the individual employees were eligible then and could enforce grievance procedures and arbitration.

And it's on that basis that we present -- like to present our case.

The Maddox case also stressed the comprehensiveness and the uniformity of law desirable under the congressional mandate and the policies as formulated by this Court.

Q Maddox was not -- what was the claim in Maddox? Was it for termination pay or for wrongful discharge?

MR. GOLDBERG: It was for severance pay, Your Honor.

Q Severance pay?

MR. GOLDBERG: Under the contract.

Q Severance pay under the contract. It wasn't damages for wrongful discharge, was it?

MR. GOLDBERG: And the mine had been closed there and there was no foreman, and Maddox said that therefore there was no way to attempt the grievance procedures. But this Court, in Maddox, summarily overruled that contention.

Q And of course in Maddox the only substantive right he had to severance pay was by reason of the collective bargaining agreement, isn't that right?

MR. GOLDBERG: That is right. And we say here that also the only substantive right involved here is lunch period and the violation of that agreement by the employer.

Q Well, it's according to how you look at this. Here at least you do have in the background the Fair Labor Standards Act, which gives overtime for -- at pay and a half, for anything worked over 8 hours a day or 40 hours a week.

MR. GOLDBERG: That's over 40 hours a week. Our contract does the same, Your Honor, and they don't get to Fair Labor Standards Act status, under the facts of our case, until, first, the employer has violated the contract right. It's the violation of that contract right, not any violation of the Fair Labor Standards Act requirements.

The violation of the contract right then may trigger

remedial rights under the Fair Labor Standards Act.

Q Well, except the Fair Labor Standards Act gives more than remedial rights, doesn't it? It gives substantive rights to pay and a half over 8 hours a day or 40 hours a week.

MR. GOLDBERG: That is right, Your Honor. And the --

Q So if there were no collective bargaining agreement here, you would concede that on the allegations of the plaintiffs' complaint, they have a cause of action under the Fair Labor Standards Act. Wouldn't that be true?

MR. GOLDBERG: That would be true.

Q And by contrast, in the Maddox case, if there had been no collective bargaining agreement there could have been no cause of action; isn't that also true?

MR. GOLDBERG: No, the -- there's this difference, though, Mr. Justice, that the Fair Labor Standards Act does not require the granting of lunchtime.

Q I understand that.

MR. GOLDBERG: We could have provided for eight hours' consecutive work without lunchtime. We'd never have had this problem.

Q Yes.

MR. GOLDBERG: But we did agree to give lunchtime. We violated that agreement. So we have a right, purely a contract right, and a violation of that contract right that then triggers remedial processes. And we say this, that the

arbitrator, under the arbitration requirements and under the decisions, is bound to follow the law. So that the arbitrator would have to apply all the remedial provisions of the Fair Labor Standards Act.

And I believe that Mr. Justice White, in the dissenting -- in the opinion for four Justices of this Court in the Arguelles case, emphasized that point, that the arbitrator could apply all the remedial remedies. And we have four decisions of the United States Circuit Courts of Appeals in Fair Labor Standards Act cases, which they said that arbitration must be -- must precede any court action.

Q In this case, in this case, Mr. Goldberg, suppose you were to prevail, then the employees would have to go back under a grievance procedure under the contract, is that right?

MR. GOLDBERG: Probably --

Q Or would they go directly into arbitration?

MR. GOLDBERG: Well, possibly, Your Honor, under the Maddox decision, there was just a reversal of the case below. What happens after that, I don't know. What would happen here after a -- if this Court were to reverse, I don't know, either. We'd have to leave that to the development of circumstances under the law.

Q Well, the first step of the grievance procedure prescribed in the contract doesn't set a time limit on grieving,

does it?

MR. GOLDBERG: Pardon? I didn't hear the last, I'm sorry.

Q The first step of the grievance procedure provided for in the contract doesn't set a time limit on discussing the matter with the foreman or the supervisor?

MR. GOLDBERG: No, I think not. There are time limits on the various --

Q After that. After that there are time limits?

MR. GOLDBERG: Yes, that's --

Q On the future steps?

MR. GOLDBERG: That is right. And the arbitrator, he'll be required to apply all the remedial provisions of the Standards Act: the statute of limitation provision; the penalty provisions for liquidated damages and costs.

As a matter of fact, I'm not at all sure that this case involves the liquidated damages provision, because there were no liquidated damages allowed by the court below.

It may well be -- well, now, as Mr. Justice Harlan, in his special concurrence in the Arguelles case, the seaman's case, is very much unlike this because there we had a special statute in which the distinctive doctrines that have been applied to seamen traditionally since 1790 by the Congress and by the courts, the seaman's case, the Arguelles case applied to that doctrine, to that very special statute. And that

statute made no provision, either, for administrative enforcement; whereas, under the Fair Labor Standards Act, the bulk of the enforcement, as shown by the reports of the administrator himself, cited in one of the footnotes to the original brief in this case, indicates that very few actions are brought by employees, and most of those that are brought by employees are brought by employees who came after -- who have already ceased being in the employ of the employer.

So that Mr. Justice Harlan indicated, plainly, that it was his clear understanding that the case of U. S. Bulk Carriers v. Arguelles did not decide simply because -- that there was a statute, that that made all the difference. The point was to examine the precise nature of that statute and see, then, which of the policies, arbitration on the one hand or direct action on the other, under the statute should apply.

And we respectfully submit here that our statute, the Fair Labor Standards Act statute, is not the type of statute that would come within the sweep of the seaman's case, under the Arguelles doctrine. Quite the contrary.

We have indicated in our brief that the Fair Labor Standards Act is not unqualified, and it is not all-inclusive. There we list in our -- indicate in our brief at least 37 exceptions under one section of the Act, and others under other sections, so that it's not the policy of the Congress to make that Act exclusive.

And the four cases in the U. S. Courts of Appeals, in Fair Labor Standards Act cases, indicate very plainly that -- two things, that I think are relevant here: one, that the Fair Labor Standards Act does not require a court action, it just says court action may be brought; and, secondly, that the arbitrators are bound to apply the law, apply all provisions of the Fair Labor Standards Act, in reaching a decision in arbitration.

I believe that's pointed out, too, in Wilko v. Swan and Mr. Justice White in the Arguelles case.

I'd like to say this, if I may, Your Honors, that the briefs of the respondents on the merits and the brief of the amicus -- the amicus brief were delivered to us only -- one of them seven days, the other one only five working days before this day of argument, so we've had no opportunity to file a reply brief. We did file a very short reply brief in the original proceedings for the writ, and I would beg the Court, if I may, to regard that reply brief as something of a reply to the briefs here on the merits.

And I think they are reasonably adequate for that purpose.

Among the many differences between the statute in the Arguelles case and the statute under the Fair Labor Standards Act are these: that the Fair Labor Standards Act makes provision for enforcement largely by the administrator, and that

has been the practice. The administrator can administratively require payment of wages. He may also bring court actions to require the payment of wages. And there's provision for injunction by the administrator and also for criminal proceedings.

I do hope to make it very clear to the Court that no steps, not even the first step was taken here by the employees to use grievance procedures. And the respondents have admitted on the record -- this is on page 4 of the record, beginning at line 25 -- they have expressly admitted that no steps permitted under the grievance procedures, provided by those agreements, were taken by the plaintiffs below, the respondents here.

It's a rather --

Q Is there any issue in this case involving the construction of the collective agreement?

MR. GOLDBERG: I think not. There's nothing in the record, Your Honor. The brief does -- the brief by respondent does argue the arbitrability, you know, but that's a matter of law. There was no exception taken in the record to that.

The respondents' brief, too, in a footnote, refers to --

Q So there's no problem relating to factory custom or usage or tradition or practices?

MR. GOLDBERG: No, Your Honor, there's nothing here

to rebut the requirement for using the grievance procedures.

There is a footnote in the respondents' --

Q Well, what, then, had the grievance procedure been invoked by these 14 employees, what would have gone to arbitration if it hadn't been settled? What would the arbitrator have had to decide?

MR. GOLDBERG: Precisely the thing that the court was called upon. One, did the contract provide for a lunch period? Second, was the lunch period actually furnished? Was there violation of that contract right?

Q Well, if that's so, then, there is a matter of construction of application of the contract involved. There is an issue for arbitration of the construction and application of the contract.

MR. GOLDBERG: Oh, definitely. I think the entire substantive right depends on the contract.

Q You just answered Mr. Justice Douglas that there wasn't anything.

MR. GOLDBERG: Well, I guess I didn't understand the purport of the question then. But we admit, we admit that the right was given and that, we admit, so far as the record goes, that we violated that right, which is a substantive contract right.

Q Well, does it come down to what is overtime under the statute?

MR. GOLDBERG: The overtime under the contract, too, Your Honor. The contract provided for overtime not only after 40 hours but also after 8 hours in any one day.

Q Both use the word "overtime", is that right?

MR. GOLDBERG: Oh, yes, Your Honor.

So that a violation of the contract right automatically under the contract, would give them the right to overtime pay.

Q Do you claim any practice or custom in this industry that employees should be on call during their lunch hour?

MR. GOLDBERG: No, I think not. These employees were on call, as a matter of fact; there's no denial of that. And it's on that basis that the court below ruled that we violated the contract, and didn't pay for the overtime involved in eating.

Even though lunchtime was provided later in the day, but they were still subject to call there. So that under the decisions, clearly, we didn't furnish lunchtime and we should pay for time and a half during the lunchtime period.

And it's only the violation of that contract right that triggers the remedial rights under the Fair Labor Standards Act; and they have the same rights under the contract as the --

Q Well, if you admitted the right and the violation of the right, why didn't you just pay them?

MR. GOLDBERG: Well, we didn't -- we didn't -- oh, it's only at this level that we are not challenging that, Mr. Justice. We did challenge the factual matter in the trial court and in the Supreme Court, but the trial court ruled against us on --

Q But you would have wanted to present to the arbitrator your opposition to the claim; you would have wanted to say that you didn't violate the right? There wasn't a right and that you didn't violate it?

MR. GOLDBERG: Precisely. That's right. The same issues --

Q You wanted the arbitrator rather than the court to determine this?

MR. GOLDBERG: That is right, Your Honor.

Q I see.

Q But, Mr. Goldberg, might there have been evidence you could have introduced before the arbitrator that you couldn't introduce in a Fair Labor Standards Act case?

MR. GOLDBERG: I think not, Your Honor.

Q It would have been pretty much the same evidence?

MR. GOLDBERG: The same evidence, I think, in both situations.

Q You don't get a jury trial before the arbitrator.

MR. GOLDBERG: No, Your Honor. There was no jury trial, actually, in this case, either.

I would like to reserve some time for rebuttal, if I may.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Randolph.

ORAL ARGUMENT OF A. RAYMOND RANDOLPH, JR., ESQ.,
ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE

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

I think it's important to get the precise nature of the employees' claim in this case into proper focus right at the outset. The employees have never claimed throughout these entire proceedings that their employer violated the collective bargaining agreement.

Their complaint, which is set out on pages A-2 to A-4 of the Appendix, is related solely to their rights under the Fair Labor Standards Act. They obviously are not seeking a work-free lunch period for time between 1965 and 1967. That time has passed. A work-free lunch period, even if the employer said, "Yes, you are entitled to it", would not help them at all.

What they are seeking is simply wages that they claim were due under the Fair Labor Standards Act.

Q Well, this is a straight -- from your point of

view it's the straight excess of 8 hours and 40 hours, isn't it?

MR. RANDOLPH: The Fair Labor Standards Act only provides overtime compensation for over 40 hours in the workweek.

They claim they worked within the meaning of the Fair Labor Standards Act for over 40 hours in a workweek, because they were on call for this 30-minute period each day, and that they were entitled to pay, and that the employer violated the Fair Labor Standards Act by not paying them. It's a standard Fair Labor Standards Act claim.

The point is that even if the contract in this case said that employees were not entitled to pay for on-call time, that would be irrelevant, because it's been held by this Court, in the three-decade period after enactment of the Fair Labor Standards Act, that unions can't bargain away employees' rights under the Act. The Act was set up to create a uniform standard throughout the country, that's not to vary from industry to industry or from employer to employer.

Q Do you -- does the government challenge the arbitrability of the matter under the contract?

MR. RANDOLPH: The government does not challenge that. Co-counsel --

Q So that the arbitration clause was broad enough to include the claim under the Fair Labor Standards Act?

MR. RANDOLPH: Co-counsel has raised that issue, and

he will -- he will argue that point.

Q I understand.

MR. RANDOLPH: The government will assume that the grievance was arbitrable.

Q Then what's the reason for not remitting the matter to arbitration in the government's view?

MR. RANDOLPH: Well, I think there are many, many reasons. I think that examining those reasons has to begin with examination of the statute itself.

As I said, these employees sued solely under the Fair Labor Standards Act. They sued under Section16(b) of the Act, which is set out in respondents' brief on page A-2.

Under Section 16(b) an employee is entitled to sue, and I quote, "in any court of competent jurisdiction, to recover minimum wages or overtime compensation withheld in violation of the Act."

Also under Section 16(b), an employee is entitled to liquidated damages, in an equal amount to the wages that were unlawfully withheld, unless -- unless the employer "shows to the satisfaction of the court that he acted in good faith and did not -- and had reasonable grounds for violating the Act."

In that situation, and I quote again,"the court may, in its sound discretion, order a lesser amount of liquidated damages."

Also under the Act an employee is entitled to

attorney's fees from the defendant if he prevails, and also he's entitled to two years within which to bring a suit or, if the employer's violation was willful, he's entitled to three years.

The government contends that all these are matters of substance. They're quite important to enforcement of the Act, and the forum where the rights are to be enforced is tied up with the very rights and remedies of the Act. It's an integral part of the statutory structure.

Indeed, Section 16(b) itself speaks of "the right to bring an action", and we think that when Congress said employees have a right to bring an action, they meant just that; they didn't mean that employees have a right to bring an action unless they're governed by a collective bargaining agreement, in which case they have to go through arbitration or grievance processes first.

We think examination, close examination of all these provisions in the Act, particularly in light of their legislative history, leads to this conclusion.

First of all, let's look at liquidated damages.

Arbitrators, as this Court has pointed out in the Steelworkers trilogies, are confined to interpretation of the collective bargaining agreement. Their word is supposedly valid only so long as it draws its essence from the collective bargaining agreement.

In that situation, and that is the situation in this case, under this collective bargaining agreement, it's doubtful, at best, whether an arbitrator could award liquidated damages. He would have to go beyond the collective bargaining agreement to do so.

Well, let's suppose he could. Suppose the Court says that we can imply that. Well, even if he could, the point is that Congress said the court should decide; it said court, judicial discretion, which is guided by sound legal principles, is to be exercised in determining whether liquidated damages should be given.

More important, I've been assuming that the case goes to arbitration. But under this collective bargaining agreement, which is quite typical, after the very first step the union has control over the grievance.

The point is that the grievance may well be settled along the way before it reaches arbitration. Indeed, this Court has pointed out on many occasions that this is the preferable way of handling disputes, to get them settled. Because the grievance process itself is considered part of collective bargaining agreements.

The only trouble is that it's absolutely clear under the Fair Labor Standards Act that the minimum rates are not to be thrown on the bargaining table so that the union and employer can bargain over them. This is something that Congress

gave the employees. It's a minimum standard, and it's not to be reduced even upon agreement by the employer and the union.

Indeed, in the Schulte case, which was decided back in the 1940's, and which we discuss in our brief on pages 16 and 17, this Court held that even an individual employee entering into a settlement, a bona fide settlement agreement over a claim with his employer, could not be held to have waived his right to liquidated damages. Still less could a union do it for him.

Also, the Act, as I said before, provides that employees --

Q Well, that wouldn't necessarily prevent admission to arbitration. It's like the NLRB, deferring to arbitration and they aren't bound by it.

MR. RANDOLPH: My point is, Mr. Justice White, suppose --

Q This might avoid lawsuit is all, if they went to arbitration they might get everything they wanted.

MR. RANDOLPH: My point is that before you -- arbitration may or may not happen. Now, the claim here is that the employees should subject their Fair Labor Standards Act claims to the grievance process, which may or may lead to arbitration.

My point was that, suppose the grievance process works as it's supposed to work, that is, the claim is settled

between the union and the employer before it reaches arbitration.

Q But you just imposed a new law that they couldn't settle them.

MR. RANDOLPH: That's right. And my point is that if that's true --

Q But you conclude from that it shouldn't be presented to it at all.

MR. RANDOLPH: No. My point is -- I conclude from that that Congress could not possibly have intended employees to go through the grievance process before they submit their claim in court.

Q Which is the same conclusion.

MR. RANDOLPH: Sorry?

Q Which is the same conclusion, because it couldn't finally settle it, it shouldn't be sent there at all.

MR. RANDOLPH: I'm talking about what Congress intended, whether --

Q I understand that.

MR. RANDOLPH; And I think that Congress knew that as well as I do.

Q Do you think Congress put any limitations on the right of these men, these claimants, to settle their claim directly with the employer after it had been asserted, either before or after the pendency of the lawsuit?

MR. RANDOLPH: Well, this Court has held that when there's a dispute between the employer and the union -- this is the Schulte case, and involves a question of whether the Act in fact covers them -- that the only time the employee can be bound to a settlement agreement is if the settlement agreement is upon a stipulated judgment; that settlements outside of court will not be upheld.

Q Well, let's assume -- let's assume that they go by a stipulation for judgment, do you think your position puts any barriers in the way of having these matters disposed of without litigation?

MR. RANDOLPH: Oh, no, not at all.

Q You certainly would agree that it's better that these cases be settled rather than tried.

MR. RANDOLPH: It's certainly better that the employer would comply from the outside as -- I guess the next best thing is that he would comply as soon as the employee complains.

I certainly would hope that if the employee does point out the violation, he would comply.

Q We're not talking about compliance now, that means giving a hundred cents on the dollar of the total claim. I'm talking about compromise settlement.

MR. RANDOLPH: Well, you see, there's an interesting history to this --

Q Do you think there's any -- that the government or anyone has any interest in putting barriers in the way of compromise settlements of small claims?

MR. RANDOLPH: Yes, I think the government does. The reason is this: that if the employee and the employer get together and settle a claim for less than the amount that was due, that gives the employer an advantage over his competitors, who are bound to the minimum standards of the Act.

Suppose, for an example, an individual employee was only paying his employees a dollar an hour when he's supposed to be paying them a dollar sixty? Employees come to him and say, "You're violating the Fair Labor Standards Act, please pay us the amount we're due." And they compromise on a dollar thirty an hour.

Well, that gives the employer an advantage. And it also gives the employer who can bargain the hardest with his employees the advantage of getting that increase. I think it's absolutely clear that Congress never intended that. They wanted uniform application.

These are the reasons that led the court in the Schulte case and, indeed, in the Brooklyn Bank case back in 1943, to hold that settlement agreements were not valid, that employees could not be bound by them, that they can come into court and get more.

Q Mr. Randolph, are you saying that if, after all

of the facts have transpired, and the employees assert a claim for unpaid wages under the Act, and there's a fairly debatable or arguable point, those employees, even if they have advice of counsel, can't settle with the employer short of fighting it out in court?

MR. RANDOLPH: No, I said they can settle, but I think the government has an interest in making sure that they get exactly what they're entitled to under the Act.

But the question whether they can settle over a bona fide dispute involving the number of hours they should be paid has never been before this Court.

I don't think it's essential to this case. I mean, I think there are many other things under the Act that indicate that Congress could not have intended them to go through the grievance process.

For example, the limitations on actions point. Congress gave these employees two years within which to sue. Before 1947, State law controlled the statute of limitations. There were divergent views. And Congress found in 1947 that this lack of uniformity had created an undesirable situation in the United States. They therefore set a two-year federal standard.

The point is they did this not only to get uniformity but because they believed employees might not generally know their rights under the Act, and needed that long a period of

time within which to bring their suit.

Suppose you accept the employer's claim in this case, that employees are barred from court because they did not invoke grievance procedures when they were available? Well, this would bring about even greater lack of uniformity, and that's precisely what Congress legislated against.

I take it that that would mean when the grievance process was available, they'd be bound by the terms of the grievance process, which may set its own time limits on when they could bring the grievance.

In this case it sets a ten-day limit.

Mr. Justice White, you asked my colleague here whether there is any limit on the first step. As I read the contract, which is set out on A-29 of the Appendix, it says yes, ten days.

Q Where? Where?

MR. RANDOLPH: "In the event he does not receive a satisfactory answer," --

Q Well, that's the -- that isn't the first step.

MR. RANDOLPH: -- "he shall within ten days" --

Q Wait a minute.

Q That isn't the first step. The first step is that he has to go, either with or without a union representative, to his immediate supervisor.

MR. RANDOLPH: Well, it's titled Step I in the con-

tract, that's what I was referring to.

Q Yes. But they didn't even go through that step here?

MR. RANDOLPH: No. But I think that --the way I read it, it says he shallsubmit within ten days of knowledge of the incident. That certainly means the incident he's complaining about.

So after he goes to his employer and says, "Look, you're doing something wrong under the contract," then, within ten days he has to file a written grievance.

Q And you write out of that sentence, "in the event he does not receive a satisfactory answer"?

MR. RANDOLPH: Yes.

Q You write that out?

MR. RANDOLPH: No, I don't write that out. If he does receive a satisfactory answer, of course, there's no reason for him to file a written grievance.

But the point is that all collective bargaining agreements set their own time limits, and that's precisely the contrary of what Congress wanted. They wanted a uniform standard throughout the country, and they didn't want ten days or 15 days or a year, they wanted two years.

So, a further indication, and I think this is quite important, is that before 1947 unions could bring actions on behalf of their own employees. But in 1947 Congress, under

Section 16(b), deleted the provision allowing representative actions. So that now 16(b) reads that only the employee himself controls and prosecutes his own action.

Compare that to the grievance process. It's precisely the opposite of what Congress said. Because in the grievance process, beyond the very first step where the employee sets down his written grievance, it's the union that controls the prosecution of the claims. That's directly contrary to what Congress legislated in 1947.

Still further, and I think I have been talking about this already, the point is that the maximum hours provision is concerned more with -- than with simply helping the individual -- this is the important part -- helping the individual employee bear the burden of having to work over 40 hours. It's concerned with more than that, because one of the reasons that Congress set down a limit on maximum hours is to spread employment throughout the country by exerting pressure on employers to hire more people rather than working the people they have on overtime.

Also, since the minimum standards apply throughout the country, they have to be applied uniformly. If they're not, one employer gains an advantage over his competitors.

Congress could not possibly have thought that they could realize -- that these goals could be realized through the grievance process or even through arbitration. The claims

are settled by the union and the employer along the way, the lack of uniformity is quite obvious. Each employer in each industry is going to be treated differently, because the grievance process is tailored to the particular problems of the plant.

But even if the matter reaches arbitration, arbitrators aren't necessarily trained in the law, they don't necessarily follow stare decisis, they don't have to give reasons for their opinions. Their record is not as complete as in a judicial trial. There is very limited judicial review of what they've held.

So all these factors are quite important, if you're going to have uniform interpretation of what is in fact an important federal enactment that applies to people throughout the country.

In addition, finally, Congress, in Section 16(c) and in Section 17 of the Act, said the Secretary of Labor can enforce it even when the employee himself is unwilling or unable to bring the action.

Now, we think that if the Secretary has direct access to the court, it makes little sense to say that employees don't, that they have to go through the grievance process, where the Secretary can bring an action directly in court, and that the employees --

Q But there's one difference: the Secretary didn't

sign the contract.

MR. RANDOLPH: Well, that's true. The Secretary has to enforce the -- the Secretary is not going to lose any contract rights, that's the important thing, and neither is the employee.

Q What is there in this case that arbitration could not have done?

MR. RANDOLPH: Well, first of all, this is purely statutory --

Q Well, one, he couldn't have paid counsel fees. But what other reason?

MR. RANDOLPH: That's right.

Q What other reason?

MR. RANDOLPH: It's purely a statutory claim. The contract here is limited to interpretation -- limited to --

Q We're talking about dollars and cents, aren't we?

MR. RANDOLPH; Oh. Well, I said it's doubtful, at best, whether they can award liquidated damages.

Q Why?

MR. RANDOLPH: The employee is entitled to --

Q Why not?

MR. RANDOLPH: -- twice -- to twice the amount of the damages. And I take it if the -- suppose the contract is violated, what does that mean? That means the employer owes

the employee for the amount he has not paid him.

If the arbitrator is confined to the contract, that's what he awards.

The statute doesn't say that. It says, we think the employee is damaged even more than that, and he's entitled to an equal amount.

Q Well, I thought you said the arbitration provision was broad enough to include a statutory claim?

MR. RANDOLPH: That's right. In this case.

I'm saying in general.

Q Well, they agreed upon, that the arbitrator could deal with the statutory claim. I thought you admitted that?

MR. RANDOLPH: No, I said I would assume that; I didn't admit that. I said I would assume that for the purpose of the argument.

Q Well, assume it, then.

MR. RANDOLPH: Yes.

Q Then what about the arbitrator?

MR. RANDOLPH: Then I said it's doubtful, at best, whether the arbitrator can award liquidated damages.

Q Well, your assumption must not have meant much, then.

MR. RANDOLPH: No, because my assumption went to the question whether the arbitrator can determine, under the

Fair Labor Standards Act, whether this was work. And I assume he can.

Q All right.

MR. RANDOLPH: But I'm talking about the remedies that he gives after he makes that determination, whether they're governed by the contract or not, it's doubtful, at best.

And the point is that this is supposed to be uniform throughout the country and it shouldn't turn on what the contract says.

Moreover, in the Republic Steel case, this Court's decision in the Republic Steel case is quite distinguishable from here, because Republic Steel dealt only with the question of contract interpretation.

The point is that neither Congress nor this Court has ever said that grievance proceedings in a labor contract are the preferred method of vindicating an employee's statutory rights independent of the contract.

MR. CHIEF JUSTICE BURGER: We'll continue there after lunch, Mr. Randolph.

[Whereupon, at 12:00 noon, the Court was recessed, to reconvene at 1:00 p.m., the same day.]

AFTERNOON SESSION

[1:00 p.m.]

MR. CHIEF JUSTICE BURGER: You may continue, Mr. Randolph.

MR. RANDOLPH: Thank you. Mr. Chief Justice, and may it please the Court:

I was discussing the Bulk Carriers case, which this Court decided last term, and I also made reference to the McKinney case, which was decided in 1957, which we have discussed on pages 24 and 25 of our brief.

In both of these cases, this Court held that when Congress provided that courts should be the forum for enforcing employee's statutory rights, the employee was entitled to direct access to the court.

The Court so held in both cases, even though the contract grievance procedures were available, and even though determination of the employee's statutory rights required interpretation of the collective bargaining agreement.

We think this is an even stronger case, because in this case they said at the outset the employees' claims do not require interpretation of the collective bargaining agreement.

Their claims under the Act of overtime compensation are derived entirely from the Fair Labor Standards Act.

And we think this case is also stronger than Bulk Carriers and McKinney, because Congress' intent to afford direct

access to the courts is even more apparent in provisions and policies of the Fair Labor Standards Act than it was with respect to the statutes involved in McKinney and Bulk Carriers.

Over the three decades that have passed since the enactment of the Fair Labor Standards Act in 1938, a considerable body of federal law has developed through both State and Federal court decisions construing and applying the Act.

These decisions and the Acts, provisions and legislative history, together with administrative determination, must be considered in deciding the merits of every case that arises under the Fair Labor Standards Act.

The point is this is a job for the courts and not the arbitrators.

The important point is that Congress made it a job for the courts. It's certainly not a task that can be handled through bargaining by the union and the employer in grievance proceedings; particularly since an employee's rights to minimum wages and overtime compensation under the Fair Labor Standards Act cannot be bargained away.

For these reasons we urge the Court to affirm the decision of the Supreme Court of Iowa.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Franck.

ORAL ARGUMENT OF RAYMOND EDWARD FRANCK, ESQ.,

ON BEHALF OF THE RESPONDENTS

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

I am the attorney representing the respondents in this case. We are in full agreement with the law as expressed by the government, as a general law.

But we must return to the facts of the instant case to determine just what the rights of the respondents were.

If we will refer to the contract which was entered into by the union and management, the first thing we must realize is that this is not a contract in any way like the contract in Bulk Carriers.

The contract in Bulk Carriers provided something to the effect that the arbitrators had the power to settle any and all disputes between the employees and the employer.

We must return to the individual contract in this case.

In the Steelworker cases, and especially the Wheel case and also in the Warrior & Gulf case, the Court held that the arbitrator's power came from the contract. That is why we must refer to this individual contract that I have before me, which is set out in the Appendix.

The first thing it does, it defines,by its terms, what a grievance is. A grievance pertains to the violation

of the agreement. No reference to any and all problems between employer and employee. No reference to any federal statutes. Just a direct reference to this contract.

Secondly, in Section 2 on page 30 the power of the arbitrator is specifically set out. "His decision in the grievance shall be final and binding on the parties, provided he shall not have authority other than to apply the terms and conditions specifically set forth in this contract."

So, let us refer back to our instant case again. At no point did any of the 14 respondents claim that they didn't get a meal break. No place in their petition, no place in their reply, no place in the trial of the lawsuit.

The respondents admit they got their meal break. Under the facts in this case, the contract provides that they're entitled to a meal break. It doesn't provide the length of the meal break, whether it's five minutes or whether it's an hour.

Now, there isn't any question that the employees got their meal break. Under the facts in this case, if they, -- five hours after they reported for work, they were on their meal break, in a special cafeteria set aside, not the general cafeteria where the other laborers worked, but only the maintenance men were permitted to use this special cafeteria.

When the bell rang for a breakdown, if that was during their lunch period, they left their lunch period, fixed the break, and came back and they were given their lunch period.

So we're not complaining about the fact that we didn't get a lunch period. What we're complaining about is that we never got paid, under the Fair Labor Standards Act, for the on-call time.

Q Mr. Franck.

MR. FRANCK: Yes?

Q As I read the majority opinion of the Supreme Court of Iowa, in the Appendix at page 17, Judge Uhlenhopp says that "The present controversy is undoubtedly arbitrable." Would you concede that the Supreme Court of Iowa at least resolved this point against you?

MR. FRANCK: Yes, I would; but I don't agree with the Supreme Court of Iowa.

I think we've got to consider that this is a different case, a much stronger case than either the McKinney case versus a railroad, or Republic Steel, or even the case of Bulk Carriers.

When we look at the McKinney case, we have a remedy, based upon a contract. The same is true in Bulk Carriers. When we go to the case of Republic Steel, we there have a contract right; but here we have a statutory right and a statutory remedy, which the respondents went in court and requested it be enforced against the employer.

Now, insofar as they will admit, and they do admit in their brief, that before you can come under the terms of

hours worked, which is Article VII of the contract, you must first establish whether or not the mealtimes were subject to be paid because they were on call. There is nothing in this contract about on-call.

And then if we proceed to the next step, it seems apparent to me that the government intended that the Fair Labor Standards Act should be treated differently than other union regulations, because of this two-year statute of limitations.

Now, it appears to me that the union fails in this, and they take over the matter, and they do not comply with their statute of limitations, which says, "in the event he does not receive a satisfactory answer, he shall within ten days of the knowledge of the incident", not of the discussion with his employer, "within knowledge of the incident"; he is barred unless he starts his grievance procedure.

This is going to create a tremendous hardship on the employees who are represented by the union and give a great advantage to a person who works in a non-union shop. For this reason: under the Act, it provides, the Portal-to-Portal Act and the Fair Labor Standards Act, that, No. 1, each workweek is a separate incident or a separate cause of action.

Now, if we proceed, then, to the Portal-to-Portal Act, where we have the two-year statute of limitations, and a

recent amendment to three years, we find that we are penalizing someone who is working in a union shop, taking away rights that a man in a non-union shop would have. And for this reason we feel that these people should be permitted, No. 1, irregardless of any other rule, that Maddox does not apply here, because we do not have the type of contract that would permit arbitration by its very terms.

Secondly, in the Bulk Carriers case, and the dissent therein does not apply because Bulk Carriers have this very wide contractual agreement which said, in effect, we're going to let them arbitrate or settle any problem between an employer and an employee.

Now, if the Court should decide that this was true in this case, then there wouldn't be any reason why you couldn't require a man who is hurt in the plant, under a State law, to arbitrate workmen's compensation.

That is a statutory right.

So I feel that the Supreme Court of Iowa should be affirmed, that there isn't any statutory or congressional intent which would obviate that reason.

I would also like to point out that the union contract is not of existence. Their union itself is not in existence. There is no way for these people to obtain a remedy unless, under the basis of this; and insofar as the facts of this case, in 1966, one year prior to the time of the

filing of these suits, an attempted grievance was filed. It never went beyond, into any formal situation.

The record is not clear as to whether payment was made or whether it wasn't made. There are statements on both sides.

However, we must remember that that was a grievance, according to the record, on a failure to have a lunch period, not an on-call lunch period.

And to show the problem that arose: After these suits were filed, and a letter was sent out from the company, which is a part of the record, instructing these people to use their grievance procedure and not to answer the bell if it rang, when they refused to answer the bell the foreman said to them, "Well, you answer that bell; don't pay any attention to what those people say upstairs. They don't know what's going on down here."

So I think that any attempt to make them do this would have been futile.

So, therefore, I respectfully urge the Court to affirm the Supreme Court of the State of Iowa.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Franck.

Mr. Goldberg, you have about two minutes left.

REBUTTAL ARGUMENT OF LOUIS S. GOLDBERG, ESQ.,

ON BEHALF OF THE PETITIONER

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

The amicus brief relies most largely for its position on the Brooklyn Savings Bank case. As we point out on page 22 of our brief, the Court there said that the Fair Labor Standards Act was designed to protect certain groups of the population from substandard wages due to the unequal bargaining power as between employer and employee.

We don't have that unequal bargaining power here, and that's the reason for distinguishing collective bargaining agreement.

Q Well, what's your answer to the assertion that the collective bargaining contract itself did not specifically give the arbitrator the power to hear a statutory, as compared with a contractual, claim?

MR. GOLDBERG: Well, Mr. Justice White, our understanding is that the operation of the law is just the other way; that under the -- well, in the opinion in Maddox and in the opinions in the Steelworkers cases, the rule seems to be, as we understand it, laid down that arbitration does apply unless there is an express exclusion of some subject matter in the contract.

Q Well, this provision says that arbitration is

limited to the construction and application of the contract. And if a claim is asserted based on a statute, independent of any contract, what business has the arbitrator got in there?

MR. GOLDBERG: I think that very point was made, Mr. Justice, in the Beckley case in the Ninth Circuit, and it was rejected for the reason that that becomes just a matter of semantics. The basis of the claim there as here was a violation of the contract, an agreement to give a lunch period, and a failure to give it because of the on-call provision.

Now, the -- that triggers entry into the remedial provisions of the Fair Labor Standards Act, but it doesn't provide the basic right; and that was argued unsuccessfully by the parties in the Beckley case, and decided our way.

Q Mr. Goldberg --

MR. GOLDBERG: Then the arbitrator -- pardon me.

Q Mr. Goldberg, if you prevail here, what remedies do these respondents have now?

MR. GOLDBERG: Well, I'd say possibly the same remedy that Maddox had or that the parties in the Lockridge case had, whatever they may be. That would have to be determined afterwards.

Maddox simply overruled the -- simply reversed the case, and left it there. These parties had notice of the law long before they filed their lawsuit.

I see my time has expired.

Q Well, the remedy might be zero.

MR. GOLDBERG: It may not be. It depends on what may develop. But, in any event, they chose their route at their own peril.

Q But the union is out, and the contract is terminated.

MR. GOLDBERG: Well, the contract, per se, I think terminated by its terms, but the -- I think the absence of a union doesn't terminate the rights under the contract that was in existence during the time that these people are talking about.

Q Is there a different union in now, with the Iowa Beef Packers?

MR. GOLDBERG: No. No, I understand there's no union now, Your Honor. But the individuals have the rights under the express terms of the contract.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Goldberg, Mr. Randolph, and Mr. Franck.

The case is submitted.

[Whereupon, at 1:16 o'clock, p.m., the case was submitted.]

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