In the

Supreme Court of the United States

GRANNY GOOSE FOODS, INC., et al.,

Petitioners,

v.

BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS, LOCAL NO. 70 OF ALAMEDA COUNTY, etc.,

Respondent.

No. 72-1566

Washington, D. C.
January 8, 1974

Pages 1 thru 49

HOOVER REPORTING COMPANY, INC.
Official Reporters
Washington, D. C.
546-6666

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v.	:	No. 72-1566
BROTHERHOOD OF TEAMSTERS & AUTO TRUCK DRIVERS, LOCAL NO. 70 OF ALAMEDA COUNTY, etc., Respondent.	:	

Washington, D. C.,

Tuesday, January 8, 1974.

The above-entitled matter came on for argument at 11:01 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:

GEORGE J. TICHY, II, ESQ., Littler, Mendelson & Fastiff, 593 Market Street, San Francisco, California 94108; for the Petitioners.

DUANE B. BEESON, ESQ., Brundage, Neyhart, Grodin & Beeson, 100 Bush Street, San Francisco, California 94104; for the Respondent.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 72-1566, Granny Goose Foods against Brotherhood of Teamsters, Alameda County.

Mr. Tichy, you may proceed whenever you're ready.

ORAL ARGUMENT OF GEORGE J. TICHY, II, ESQ.,

ON BEHALF OF THE PETITIONERS

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

This case arises out of the U. S. Court of Appeals for the Ninth Circuit, and presents three major issues. These are: whether or not section 1450 of the Federal Removal statute takes precedence over State law concerning the effective period of a removed State court injunctive order; secondly, whether section 1450 takes precedence over conflicting provisions of the Federal Rules of Civil Procedure; and thirdly, whether or not the denial of a motion to dissolve a removed State court restraining order is tantamount to the issuance of a preliminary injunction for purposes of enforcement.

The facts in this case arise out of a contractual dispute in a labor situation. Teamsters Local 70 and the companies involved here had for many years been parties to the National Master Freight Agreement and the Local 70 Supplemental Agreement.

Preparatory to 1970 negotiations, the National Freight Industry Negotiating Committee of the International Brotherhood of Teamsters notified the companies that the union committee desired to negotiate changes and revisions in the existing agreements.

The critical provision here is that the notice did not terminate the existing agreement, but they did continue in effect.

The union, Teamsters Local 70, was most desirous to break away from national negotiations and to impose a new independent agreement on the companies involved. The vehicle which it used to enforce this approach was a work stoppage, initially against Granny Goose Foods and Sunshine Biscuits and ultimately against Standard Brands.

The companies believed that because there was compulsory grievance procedures in the collective bargaining agreement that the matter should be resolved in accordance with the grievance procedures rather than through a work stoppage.

Consequently, when the strike continued to persist, Granny Goose Foods and Sunshine Biscuits went into State court to seek a restraining order against the illegal strike activity.

In advance of the hearing, the attorney for Local 70 was notified, he in fact appeared before the judge, he

presented arguments to the court that he believed that the contract had not been breached, that there was no basis for a restraining order. But, despite the existence of these arguments, a restraining order was in fact issued.

Thereafter the picketing, the work stoppage, extended to Standard Brands, where Standard Brands of course joined as a party plaintiff in the litigation, went to court and sought a modified temporary restraining order. But, prior to the application, again Local 70's attorney was advised. He did not personally appear, but in Alameda County there is a practice that no labor injunction will issue unless the labor union's attorney has a chance to make the position of the union known.

The court thereupon insisted that the counsel for the union be called. He was reached in his office. The judge talked with him over the phone. The union's attorney advised that he was relying on the same arguments initially presented when Granny Goose Foods and Sunshine Biscuits appeared.

After hearing the argument of counsel, the judge then granted the modified restraining order, which is in issue in this particular case.

The date of the modified restraining order was May 18, 1970. And that has a significance to this Court, in that Boys Market vs. Retail Clerks was up before this Court,

and no decision had been rendered.

The union believed that Atkinson vs. Sinclair was still the law with regard to federal injunctive orders, and sought to have the matter removed to federal court.

In what has to be a classic case of forum shopping, the union filed a petition to remove the action to federal court, hoping to rely on Atkinson vs. Sinclair, to dissolve the restraining order. And, in essence, to abate the entire action and proceeding that occurred in the State court.

When the motions came on for hearing, it was the position of the companies that Atkinson vs. Sinclair was not the applicable law, this Court having indicated in AVCO that it made a review of the application of Atkinson vs. Sinclair, and having before it Boys Market, we relied on the arguments which were being presented to this Court in Boys Market.

The judge took the matter under submission, and on June 4th, 1970, seventeen days after the issuance of the modified temporary restraining order, the District Judge denied the motion to dissolve, thereby continuing the order in effect.

It's important to note that between June 4th, 1970, and December 4th, 1970, no answer or responsive pleading was ever filed by the union in this particular case.

QUESTION: When you say that the judge, by denying

the motion to dismiss, or to dissolve, thereby continued the order in effect. That really is one of the arguments you're making here, isn't it? I mean that isn't an obvious conclusion, just from that statement, is it?

MR. TICHY: Well, I think there's two points to be made here:

One is that at the contempt proceeding, the court, in ruling on a motion raised by the union that section 527 of the State law applied, thereby causing abatement of the order after fifteen days, replied, and I quote: Am satisfied that my ruling of June 4th, in which I denied the motion to dissolve on the grounds of lack of jurisdiction, continues in full force and effect the order.

So the first thing we have is the judge's own intention, as admitted in the contempt proceedings.

Secondly, and this of course gets to my argument, but I'll address myself to it at this point, we're talking about really two concepts, when we distinguish between a restraining order and a preliminary injunction.

In a restraining order situation, generally speaking you wouldn't have notice or opportunity to defend, but in this particular case we believe that that did exist. But the primary distinction between a preliminary injunction and a temporary restraining order is notice and opportunity to defend.

In the case of the motion to dissolve the restraining order, the union filed in those, in fact got an order shortening time for the hearing in that particular proceeding, and, in essence, had adequate notice by its own admission in seeking the proceeding, obviously had opportunity to defend.

QUESTION: But I'm -- my reading of the record, and you certainly may correct me if I'm wrong, is that the union's basic position on the motion to dissolve was that Sinclair v. Atkinson prevented the continuance of this restraining order, not as a matter of discretion or anything like that, but simply because of the Norris-LaGuardia Act.

And I don't make, perhaps quite as easily as you do, the jump that that sort of a hearing is the same thing as if the union had come in and moved to dissolve a temporary restraining order on the merits, in effect, before the time set for the hearing on the temporary injunction.

MR. TICHY: You Honor, the choice rests entirely with the union as to which argument it wished to present on the motion to dissolve the restraining order.

Now, it could have raised an issue as to the merits, it could have controverted the factual issues, but it did not do so. It chose to rely exclusively on Atkinson vs. Sinclair. And the fact that it chose to rely on a narrow tactical approach to this did not deprive it of the opportunity, which is the critical point, I believe, to depend on whatever point

it felt would best defeat the existence of the restraining order.

QUESTION: But, of course, even if they never made any motion, it's still fair to say they would have had the opportunity to defend, the rules give them the authority to come in and move to dissolve a temporary restraining order.

Is that enough, just the fact that they have the opportunity to do it, to convert a temporary restraining order into a preliminary injunction?

MR. TICHY: Your Honor, in this case the issue that was relied upon by the Court of Appeals in vacating the contempt judgment was the fact that section 527 of the California Code of Civil Procedure apparently imposed some sort of twenty-day limitation on the duration of State court orders.

Now, this particular section applies only to orders issued without notice, and we believe that there was adequate notice in this case, if, in fact, the court had to reach that issue.

But, more importantly than this, the law in California is that where you have proceedings which continue the order in effect, they may take into account such things as merely getting a continuance on a hearing on a preliminary injunction. In fact, cases which are cited by the respondents in this situation rely on -- which are relied upon by the

respondents in this particular case, include cases where the court specifically notes that you can continue the restraining order through all these other types of proceedings. And what --

QUESTION: So under California law, then, had this type of proceeding taken place in the State court, --

MR. TICHY: That's right.

QUESTION: -- it would have controverted the temporary restraining order into a preliminary injunction?

MR. TICHY: It would have continued the restraining order in effect, and the denomination of whether or not it was a restraining order or a preliminary injuction would be irrelevant for contempt purposes.

QUESTION: Well, assuming, then, that the State law -- ordinarily, you know, we don't second-guess Courts of Appeals on --

MR. TICHY: Yes.

QUESTION: -- their determination of a State law -- assuming now that the State law, as the Court of Appeals held, 526, would have terminated this interim restraining order at the end of twenty days. Suppose you had never got to the federal court, what would have been necessary, under your California procedures, to convert that twenty-day interim restraint into a temporary injunction?

MR. TICHY: Your Honor, if the union had taken the

same action that it did here in federal court, the fact that that motion was dissolved, I believe, under California law, it would have had the effect of continuing the order for purposes of contempt --

QUESTION: Beyond the twenty-day expiration?

MR. TICHY: Yes. Yes.

QUESTION: If there had just been a motion, as they made it in the federal court?

MR. TICHY: That's right.

QUESTION: To dismiss, and that had been denied, --

MR. TICHY: Yes.

QUESTION: -- that would automatically have converted your interim restraint into a temporary injunction?

MR. TICHY: Yes, I believe it would, Your Honor.

And I would like to say something about the point that you raise, concerning interpreting State laws. That's what this case is all about.

If the Court of Appeals were correct, it would require federal courts in all the fifty jurisdictions, the fifty States in which they sat, to go into a wholesale witch-hunt to determine what the State law was in terms of restraining orders, and then you have the complex ambiguities which are present in this case, resulting in conflicting interpretations which might exist, disparate treatment throughout the federal judiciary, and a vast waste of federal time involved

in State questions.

That's why Congress, when it enacted section 1450, dealt specifically with regard to the duration of removed orders, making it to continue in effect subject only to dissolution of modification, to avoid those wholesale investigations that would be imposed upon the federal judiciary in cases removed from State courts.

We believe that the particular statute in this case, 1450, is clear on its face. It talks, first of all, in terms of all injunctions. It's not restricted to injunctive orders, which have no duration under State court.

Secondly, the language is "until dissolved or modified by the District Court".

It must be kept in mind that this restraining order was set for a hearing on a preliminary injunction.

QUESTION: Well, I gather this is an argument that, under 1450, even if, as a matter of State law, --

MR. TICHY: Yes.

QUESTION: -- its restraining order had a terminal date, --

MR. TICHY: That's right.

QUESTION: -- once it was removed, the statute operates on that order, --

MR. TICHY: You bet.

QUESTION: -- you continue it until it's in fact

dissolved.

MR. TICHY: That is correct. That is, in essence, our position, Your Honor.

And I think it stems from basic concepts of congressional legislation, and that being that the right to remove is a matter of legislative grace. And the union in this case assumed the benefits as well as the burdens of the statute.

The benefit it thought it had was that it could remove to State court through forum shopping -- or remove to federal court and through forum shopping obtain the benefits of Atkinson vs. Sinclair and get the whole matter thrown out.

The burden that it assumed was that it had the moving obligation to go into court and seek the dissolution or modification of the order. And until it did so, the order continued in effect pursuant to section 1450.

QUESTION: This order, by its terms, didn't have a specific terminal date, did it? It just said --

MR. TICHY: No, it didn't.

QUESTION: -- pending the hearing on the temporary injunction, you are enjoined from doing such-and-such.

MR. TICHY: That's correct, Your Honor.

QUESTION: But your argument, I understand from your response to Mr. Justice Brennan's question, is that even if it is said you were enjoined until June 4th or June

7th from doing this, you say that once it went into federal court you were enjoined in July and August as well?

MR. TICHY: That's right, Your Honor, because it transferred the burden of proceeding. Because the union, the defendant -- we don't even have to talk about it in a labor-management context -- the defendant is the only person who can remove an injunctive proceeding to federal court, because the complaint for injunctive relief would be directed against the defendant, and only the defendant has that right under the Act.

Because he has broken up the process, the law transfers the burden from the plaintiff to the defendant to bring the issue before the court. Because the plaintiff, who would have brought the issue before the court under his original order, has been deprived of that because of the action of the defendant.

We believe that with regard to section 1450 there are some additional factors which may assist the Court in its interpretation. In this regard it's significant to note that there are attachment provisions in section 1450 in which Congress specifically makes their enforcement subject to State law. It's obvious, in drafting 1450, Congress had at its command the language to make a State court order subject to State law, however it did not do so with regard to injunctives and other restraining orders. The only conclusion

that can be reached is that in not making it referable to State law, that Congress intended that the specific language of 1450 would apply and that the restraining order would continue in effect.

Now, just to add some emphasis, if I could, to my position that this would involve the courts in some sort of wholesale involvement in the interpretation of State law, it's significant to note that there are at least three major arguments that can be made in support of the position that 527 did not cause this particular order to dissolve.

First of all, 527 applies only to orders issued without notice. In this case the definite argument could be made that this was a restraining order issued with notice.

Additionally, 527 does not cause an order to expire automatically, if there is some act of continuance; in this case we believe the denial of the motion to dissolve was, in essence, a type of action which resulted in a continuance.

And more importantly you have here in this particular situation a fifteen-day statute. Now, at the time of the June 4th order, it was seventeen days after the issuance of the modified restraining order. And the judge entered into some sort of speculative wishful thinking that the order would have continued in effect for twenty days rather than fifteen days, and if it in fact assumed the

order was in effect on June 4th, there is but one reason that it could have been in effect on June 4th, and it wasn't section 527 of the California Code of Civil Procedure, it was 1450, which we rely on in this Court.

We also believe that 1450 must take precedence over the Federal Rules of Civil Procedure, more particularly rule 65(b).

In this regard we rely on 28 USC Section 2071, which provides that the rules of this Court and of other courts must be consistent with Acts of Congress, to the extent, if any, that there is a conflict between rule 65(b) and section 1450, then of course, under 28 USC 2071, 1450 would prevail.

Furthermore, 1450 is specifically directed to removed orders. Rule 65(b) is not.

It is interesting to note that neither the legislative history of rule 65(b) nor the legislative history of 1450 would suggest that somehow or another the 1450 was in any respect to be subservient to rule 65(b).

Furthermore, even if 65(b) did apply in this case, it applies only to situations where there is an order issued without notice. And, as we indicated previously, we believe that there was sufficient notice in this particular case to dispense of any of the time limits set forth in 65(b).

In summation, we believe that 1450 should prevail over State law, as well as the Federal Rules of Civil

Procedure, with regard to the duration of a removed State court restraining order; that even if this Court were to engage in an analysis of the State law, as well as the Federal Rules of Civil Procedure 65(b), that the order would have still continued in effect, and the contempt proceedings would have been appropriate at the time they occurred.

And, furthermore, that the denial of the motion to dissolve the restraining order was tantamount to the issuance of a preliminary injunction for purposes of continuing the injunction effect for enforcement.

On these grounds, jointly and alternatively, we submit that the decision of the Court of Appeals should be vacated and that the contempt judgment issued by the District Court should be reinstated in its entirety.

MR. CHIEF JUSTICE BURGER: Mr. Beeson.

ORAL ARGUMENT OF DUANE B. BEESON, ESQ.,

ON BEHALF OF THE RESPONDENT

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

The respondent union was found to have violated a temporary restraining order in this case more than six months after it had been issued, without hearing, and was adjudicated guilty of criminal contempt.

The basis upon which the petitioners seek to sustain that finding, which was overturned by the court

below, is that section 1450 of Title 28 converted the temporary restraining order of the State which, as I say, was issued without a hearing into an order of unlimited duration. So that it continued on in perpetuity until such time as the federal court might act on it.

QUESTION: I'm not sure that it's relevant, but do you disagree with your friend, who said that the union was represented at the preliminary stage and that they were invited to participate when the order was entered. Is that about what he said?

MR. BEESON: Yes, that is what he said, and essentially that is what happened.

There was a telephone notice given, which is a matter of common practice in this jurisdiction. An attorney for the respondent union did appear at the time that the original restraining order was issued. It was no hearing in the ordinary sense. The attorney, under those circumstances, is handed the papers two or three minutes before a conference takes place with the judge, and such arguments as can be put together on the spur of the moment may be made.

I was not the attorney who was present on that occasion, but I think that I'm familiar enough with the practice to represent that this is the way it works out.

QUESTION: I suppose this is what is common in many trial courts, that the trial judge, dealing with ex parte

injunction, at least wants to be alerted to possible factors that might lead him to call a hearing before he issues.

MR. BEESON: That may well be, and I think that that is particularly true in labor dispute cases.

There was no hearing, in the sense that I think you had just used the phrase, however, that is an opportunity to examine the papers, collect evidence, talk with the clients and the witnesses and so forth, and bring forth some kind of considerations which would support the respondent's position, either by way of affidavits or oral testimony. There was nothing of that kind.

This is an informal courtesy type of proceeding, which has developed in the bar in the San Francisco Bay Area in the State of California.

QUESTION: You say that there was no opportunity for the kind of hearing to which you refer, under your practice?

MR. BEESON: Yes, I would say that, Your Honor. The application for a restraining order is going to be determined within a matter of minutes or a half an hour, or whatever time it took just to talk about the case a little bit. And that's what happened.

Now, --

QUESTION: If you had asked -- under your practice, if you had asked, then, for a continuance long enough to make

inquiry, is that normally done?

MR. BEESON: Well, Your Honor, that's just another way of saying: when shall the case be set down for return -- on the return date on the order to show cause why preliminary injunction should not be issued. And either the judge will or will not enter a temporary restraining order, pending that date, depending on how he feels about the case.

QUESTION: Was there a request for it by the union, for such a hearing?

MR. BEESON: I am sure that there was, in the sense that issuance of the restraining order without a hearing was opposed, on whatever basis the attorney for the union could come up with on that short notice.

QUESTION: Then you just filed a motion to vacate.

MR. BEESON: Yes, a motion to dissolve, Your Honor. That was simultaneous with the petition for removal, so that the motion to dissolve is filed in the federal District Court.

QUESTION: And once that was denied, what other step could you have taken?

MR. BEESON: The next step, in the ordinary course of a proceeding of this kind, would be the application for a preliminary injunction on the part of the moving party, namely, the person seeking it. And that would be the petitioners in this case.

QUESTION: But nothing you could have done?

MR. BEESON: Not that -- not certainly with any certainty. The reason that I hesitate, Mr. Justice, is that conceivably we might have tried to appeal from the ruling on the motion to dissolve. I do not think that that would have been an appealable.

QUESTION: I don't think so, either.

QUESTION: Is that clear?

MR. BEESON: The cases seem to be difficult to align, Your Honor, in this field. They turn on their own facts. A general rule, of course, is that the grant or denial of a temporary restraining order is not appealable; the grant or denial of a preliminary injunction is appealable.

Now, it is, of course, true that the particular label that may be put upon the order is not determinative, and there are cases in which, where the nature of the motion, the kind of evidence that was brought forth, the argument that was heard, is such as to be the equivalent of the raising of the issues that would be raised on a preliminary injunction.

QUESTION: The union made no effort to appeal the denial of this motion?

MR. BEESON: No, we did not. And --

QUESTION: Could you renew your motion in the federal court?

MR. BEESON: I'm sorry, Your Honor?

QUESTION: Could you have renewed your motion in the federal court?

MR. BEESON: The motion to dissolve was made in the federal court.

QUESTION: But not in the State court.

MR. BEESON: That is correct, it was not made in the State court.

QUESTION: It was made in the federal court originally?

MR. BEESON: Yes, Your Honor.

QUESTION: And did you have a hearing on the motion there?

MR. BEESON: We had a hearing on the motion to dissolve, --

QUESTION: To dissolve.

MR. BEESON: -- which was limited to the Norris-LaGuardia issue, raising, as we did at that time, the law as it was reflected in Sinclair v. Atkinson.

QUESTION: Limited by whom? By the parties?

MR. BEESON: It was the sole ground which the respondent union raised.

QUESTION: But you weren't limited, I mean you could have attacked the injunction on any ground you wanted to?

MR. BEESON: Well, you can file a motion to dissolve in the federal District Court on any ground that you think will

ultimately prevail, I suppose.

QUESTION: Just let me put that question in another way. In what respect did your hearing on the motion to dissolve fall short of being an adequate hearing on the issue of the propriety of an injunction?

MR. BEESON: The propriety of the issuance of an injunction, Your Honor, turns on altogether different considerations than those which were raised in the hearing on the motion to dissolve.

We raised the narrow jurisdictional issue as to whether the injunction could be maintained in the federal District Court.

Now, with respect to the issuance of a preliminary injunction, I suspect that the considerations which would have been put forth would be those which deal with the nature of the dispute, whether or not this was the -- a situation which could or should be arbitrated, whether or not the union and the employers were party to the contract which the petitioners --

QUESTION: But, in terms of Mr. Justice Blackmun's language, you could have raised any considerations with respect to the propriety of the restraining order?

MR. BEESON: I doubt if it would have been appropriate to do so. The answer to your question certainly is yes in a theoretical, abstract way, Mr. Justice White.

But the ordinary development of cases like this is to raise the broader equitable issues in connection with the hearing upon a motion for preliminary injuction, which ordinarily comes on a --

QUESTION: But I gather, Mr. Beeson -- do I correctly understand it -- what the union was saying -- suppose we had never decided Boys Market?

MR. BEESON: Yes.

QUESTION: What the union was saying: whatever might be the effect of Sinclair on the authority of State courts to issue injunctions, once this was removed, then 1450 has to be inapplicable, because Norris-LaGuardia prevents the federal court from continuing in effect any restraining order.

MR. BEESON: Well, we don't need to go that far, Your Honor.

QUESTION: Well, but that isn't what you -- was that not your position?

MR. BEESON: Our position --

QUESTION: At the time you made the motion to dissolve.

MR. BEESON: Oh, yes. As far as -- yes, at the time we made the motion.

QUESTION: That was your basic position, wasn't it?

MR. BEESON: That's correct.

QUESTION: Well, whether or not the State court could issue the injunction, Sinclair prohibited the federal court as a matter of jurisdiction, --

MR. BEESON: That's correct.

QUESTION: -- in light of Norris-LaGuardia; isn't that it?

MR. BEESON: That's correct.

QUESTION: You had basically a one-two punch, the removal and the motion to dissolve and, under State law, you thought the case was going to be all over.

MR. BEESON: Yes. We were very confident at that time.

[Laughter.]

QUESTION: And what -- did Boys Market come down while that was pending, or what?

MR. BEESON: Yes, Your Honor, the sequence of events was that we filed the petition for removal, and the motion to dissolve, on May 19, and it was heard on May 27.

QUESTION: We decided --

MR. BEESON: Boys Market came down on June 1.

QUESTION: I see.

MR. BEESON: And the court, District Court, declined to rule from the bench on -- after hearing our argument on Sinclair, having been advised that this Court had Boys Markets under consideration.

QUESTION: I see.

MR. BEESON: And it was a wet-finger-in-the-air to see which way the wind was blowing.

QUESTION: And we brought it down within three or four days, was that it?

MR. BEESON: Yes. Yes. And then as soon as Boys Markets came down, the motion to dissolve was denied.

QUESTION: Unh-hunh.

MR. BEESON: And only on the ground that Boys Markets had required that result. Which, Mr. Justice Brennan, was a wrong conclusion.

QUESTION: Unh-hunh.

MR. BEESON: And we have developed this point to some extent in our brief. This is not a Boys Markets case.

But we never had an opportunity, in connection with the motion to dissolve, to discuss those matters, because Boys Markets at that time was still pending and we were relying upon Sinclair.

The central issue in this case, if it please the Court, I think is the correct interpretation and construction to be given section 1450 of Title 28.

Now, we start, in addressing ourselves to that question, with what I think is a firm premise; and that is that the State court order did have an expiration date, a terminal date, a maximum duration of twenty days after its

original issuance.

QUESTION: And what date was that to expire?

MR. BEESON: On June 7th.

QUESTION: June 7th.

MR. BEESON: This was the unanimous opinion of the Ninth Circuit, both the dissenting judge and the majority agreed with the fact that you had a limited duration, a maximum duration of twenty days, with respect to that State court order.

QUESTION: Mr. Beeson, you speak of twenty days, isn't there something in the statute about fifteen?

MR. BEESON: The statute reads that the return date upon the issuance of a temporary restraining order shall be no later than fifteen days after its issuance or, for good cause shown, twenty days.

Now, the court below felt that it was a realistic approach to assume that the twenty-day period probably would have been used up in proceedings before the State court, if the case had remained there; and I think that there's good sense to this point of view, in that by allowing the maximum duration to a State court order the court is giving the maximum application to section 1450 that State law would invite.

QUESTION: What if the judge of the Superior Court of Alameda County had said, in effect: I don't care

what State law says, and what limitations there are on a temporary restraining order, I'm making this one good for a year. And the order, by its terms, provided that it would last for a year. And then the same procedural history had obtained.

Do you think that you would have been bound to appeal or do something, or do you think you could just have flouted the order at the end of twenty days?

MR. BEESON: Well, State law makes very clear, Mr. Justice Rehnquist, that that order would have been invalid under State law.

QUESTION: Then how do you challenge that invalidity? Do you have to appeal, as some of our cases, like Walker v. Birmingham, have indicated; or may you simply disobey it, even though by its terms it prohibits the conduct?

MR. BEESON: In California, there will not be an adjudication of contempt for disobeyance of the void order. That's the California rule that's generally applicable.

QUESTION: Is that the federal rule?

MR. BEESON: Your Honor, I've read Ex parte Fisk, back in 1885, and United Mine Workers, and In re Green, and some of the other cases. The federal rule may be difficult to define in a cosmic way, but at least I think where there is a void judgment, within the meaning of Norris-LaGuardia, because there was lack of jurisdiction to enter it, along

with a lack of due process, in the sense that the opportunity to attack and challenge the order was never really fairly permitted, that there are very serious and cogent reasons for refusing to find the criminal contempt in those circumstances.

And we develop that point in our brief.

Now, this case does not need to turn on that, but I think it's a --

QUESTION: Well, what if we disagreed with you on that?

MR. BEESON: Well, you have to go a long way before you get to that point in this case. Disagreement there does not necessarily mean that the respondent union would not prevail here.

If the --

QUESTION: No. I gather here the question is whether there was an operative restraint on December 4, when the conduct, which was held contemptuous, occurred. Isn't that it?

MR. BEESON: That's correct. That's correct.

QUESTION: So the issue before us is was there or wasn't there?

MR. BEESON: That's right. And I think that that issue has to be read, has to be determined by reading section 1450 in the light of relevant federal policy.

But I think that that's the central point that we must ultimately return to, after considering everything else.

The words of section 1450 are brief, and certainly do not necessitate the kind of reading that has been given to it by petitioners and by the dissenting judge. I think it comes through loud and clear, as far as I'm concerned, that it means exactly what our position is in this case.

The section states that all injunctions, orders, and other proceedings had in such action prior to its removal, shall remain in full force and effect until dissolved or modified by the District Court.

Now, in order to know what it is that shall remain in full force and effect until dissolved or modified, I think that we are necessarily led to inquire as to what the State order said and what the State law is that places its gloss upon that order.

Here we start, as I indicated, with the premise that the State court order was of limited duration, and we feel that it's quite clear, as you read section 1450, that the purpose and intent and plain meaning of the language is to retain that State court order, in all of its substance, in all of its terms, in all of its conditions, precisely in the same manner in which it was issued.

The order here, as far as we are concerned, would be no different than if it had an express terminal date, June 4 or

June 7, whatever.

And I think that Mr. Tichy's argument recognizes that his position would have to be the same, even facing an order of that kind.

Now, --

QUESTION: So what you're really saying is that if it had twenty days, then there is no order in effect after twenty days to be dissolved and modified by the District Court?

MR. BEESON: That's correct, Your Honor.

At the time we filed the motion to dissolve, of course, there was an order.

QUESTION: Yes.

MR. BEESON: And we tried to get rid of it just as quickly as we could, because we thought that it was improper.

However, with the expiration of the maximum period which State law permitted it to exist, then there was no order. And that's what the majority held in the Ninth Circuit.

QUESTION: No matter where the case was then residing, in federal or State court?

MR. BEESON: Well, certainly that would be the case in the State court.

In the absence of consent by a defendant.

QUESTION: Well, where was it at the time?

MR. BEESON: Well, after removal it was in the federal

court.

QUESTION: Yes.

MR. BEESON: Yes.

And that is what gives rise to this case.

QUESTION: Yes, by its own terms.

MR. BEESON: The case came to the federal court by way of removal, and we were trying to find out what section 1450 did at that point, whether it maintained the order in precisely the same terms and conditions and with the same duration that it had, or whether it had converted it into a restraining order without duration. That's the central issue.

And I think that the -- to read the language as though this transformation took place is to take a very strained view, both of the language and the policy considerations which underlie restraining orders.

Certainly, in the abstract, an injunction is an extraordinary remedy, to be issued only upon a strong showing of irreparable injury and the other standard criteria; a restraining order without notice and without a hearing is an injunction in its most extreme form. And it would ordinarily be thought, apart from any particular statutory considerations we have at the moment, that anyone seeking to maintain a restraining order in effect for a very long period of time, indefinitely, would have a very strong burden of bringing the

matter on for a hearing and permitting the parties to make their considerations known to the court, as to whether it should continue or not.

Now, there are strong policy considerations in federal law which support our position in this respect.

QUESTION: Mr. Beeson, before you get to that. Is it your position that either under the California law of twenty days, or the federal law of ten days, this order was dead in twenty days?

MR. BEESON: That's correct, Your Honor.

QUESTION: Either way?

MR. BEESON: Either way. Either way.

And that we say that section 1450 would be to strain a concept beyond any reasonable means.

QUESTION: Well, you read 1450 as reading into the restraining order that this shall expire in twenty days, just as if it was written in there?

MR. BEESON: Yes, and that's what the --

QUESTION: Because the State statute put it in there.

MR. BEESON: That's what the Ninth Circuit did, also, Your Honor.

QUESTION: Yes.

MR. BEESON: And --

QUESTION: You disagree with Mr. Tichy that a comparable motion to dissolve, if it had been made in the

Superior Court of Alameda County, you say that would not have converted this order into a temporary -- into a preliminary injunction under California law?

MR. BEESON: I know of no State case that would support that proposition. And I disagree with it as a matter of analysis and logic.

And no case has been cited that would support that proposition.

I think that we have the same considerations in California law that would basically be applicable under rule 65(b), that before a preliminary injunction can be issued there must be notice of a hearing upon the conventional types of issues that are raised by applications for preliminary injunctions. And that that would be required in California law no less than under rule 65(b).

Rule 65(b) does reflect federal law generally, and section 7 of the Norris-LaGuardia Act also reflects federal law with respect to labor disputes. Both place very strict time restrictions upon the duration of temporary restraining orders which are issued without hearing.

Section 1450 does not need to be interpreted to conflict with those policy considerations.

And I might say, although we are dealing here with a labor dispute case, and we think that we are dealing with a case that falls within the Norris-LaGuardia Act, that the

interpretation of section 1450, which is before the Court, --

QUESTION: You mean the federal?

MR. BEESON: Yes, Your Honor.

-- the interpretation of section 1450, which is involved in this case, is one which has general application.

Section 1450 applies to all classes of cases, labor cases that are governed by Norris-LaGuardia, as well as cases generally. And it is appropriate to examine section 65(b) and the Norris-LaGuardia Act to see what policy considerations there are that might help us construe section 1450.

Those considerations, in brief, are that: temporary restraining orders are not to be permitted to endure indefinitely without a hearing.

And section 1450 plainly lends itself to a reading of that kind, and it is perfectly obvious, as Mr. Tichy has conceded, that if you do not read it, section 1450, in that way, you are confronted with a conflict between the meaning of section 65(b) and Norris-LaGuardia, in an appropriate case, on one hand, and section 1450 on the other.

We are suggesting a reading which is supported not only by the language and purpose of section 1450 but also one which is congruent with the policy that we find in other areas of the law.

The remaining point which I would like to deal with,

briefly, is the contention that even though we may be right with respect to our view of section 1450, that the ruling on the motion to dissolve converted the restraining order into a preliminary injuction, so that from that point on there was a preliminary injunction in effect, and that would have the consequence of continuing the restraint, irrespective of what may have happened to the temporary restraining order.

Now, this consequence is not one which I believe the District Court judge thought that he was dealing with when he denied the order to dissolve. He made very clear that he felt that he was simply construing section 1450 to keep the -- I should strike that.

He felt that the only issue that he was ruling on was the narrow issue of Sinclair v. Atkinson, which was raised by the motion to dissolve, which had to do only with whether or not there was jurisdiction to maintain that order in effect.

And there is nothing to indicate that he felt that he was doing any more than that.

The order which he handed down was entitled, An order denying motion to dissolve temporary restraining order.

There was no notice by any party that there would be an application for a temporary restraining order in connection with the hearing upon the motion to dissolve. There were no findings of fact or conclusions of law entered

by the district judge. He did not think that he was entering a preliminary injunction. And there was no opportunity, really -- well, I don't want to go further than I have to.

There was no actual hearing in which evidentiary matters or other matters were brought forward and considered and decided, which would ordinarily be relevant to the issuance of a preliminary injunction.

This hearing and this motion had to do solely with whether or not the order was sustainable in the light of the Norris-LaGuardia Act, and that was the single ruling that was made.

QUESTION: Isn't it also true that there was no way you could go after the, quote, "preliminary injunction"?

MR. BEESON: That's the obligation of the moving party who is seeking the preliminary injunction.

QUESTION: But if this -- what I mean is, if the temporary restraining order had merged into a preliminary injunction, you not only didn't have a hearing, you had no way of attacking it. Am I right?

MR. BEESON: Well, --

QUESTION: Well, you couldn't move to dissolve the preliminary injunction, could you?

MR. BEESON: Oh, I suppose we could move to modify it or perhaps move to dissolve it.

QUESTION: But it wasn't a preliminary injunction, was it?

MR. BEESON: It was not a preliminary injunction.

QUESTION: I thought that was your position.

MR. BEESON: That is precisely our position, and it is the position of the majority in the Ninth Circuit as well, that this was not a preliminary injunction.

It's an argument that is sort of -- been put together after all of the events in this case, trying to find some way in which this motion to dissolve could be turned into the equivalent of a hearing upon the motion for preliminary injunction. But, analytically, it simply can't be sustained. There was never a hearing, there was never a ruling with respect to the entry or issuance of a preliminary injunction.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Beeson.

Mr. Tichy, do you have anything further?

REBUTTAL ARGUMENT OF GEORGE J. TICHY, II, ESQ.,
ON BEHALF OF THE PETITIONERS

MR. TICHY: Yes, I do, Your Honor.

First of all, with regard to the opportunity to defend the modified temporary restraining order in this case, it must be realized that this was an amended complaint merely to include an additional plaintiff. There had been a prior

hearing on an initial temporary restraining order in which, according to my affidavit, which is the only one which is part of the appendix in this case, Mr. Silbert appeared before the judge and argued vigorously.

Now, there is also within my affidavit --

QUESTION: Where do we find that in the appendix?

MR. TICHY: On pages 52 and 53.

"Copies of the documents were served on Mr. Silbert shortly before the hearing before Judge Lercara. Both Mr. Silbert and I were present at this hearing. And Mr. Silbert presented the viewpoint of the union, that there was no breach of contract, and that the court should not grant the temporary restraining order.

"Despite argument by defendant's counsel, Judge Lercara granted the temporary restraining order."

The same matter is contained on pages 50 and 51, also one of my affidavits in this matter.

If I could impress the Court of one thing, I wish to impress it of this fact: we do not believe that labor injunctions are matters which are easily obtained in State courts. There are very rigorous procedures which are followed, because very basically the San Francisco Bay Area is a labor area, and we follow these rules when we go into court to get these injunctive orders.

And when the attorney for the union comes down

there and he has his people in the courtroom before he goes in to see the judge, and he says, Is there a strike or isn't there a strike? He goes in and makes the best arguments that he can.

And in this case he contended that the restraining order -- excuse me -- that the contract was of no force and effect, and therefore was not being breached, and therefore there was no temporary restraining order which should be ordered.

And it was circumstances in light of the fact that there was an initial complaint, an initial hearing, then an amendment of the complaint just to add an additional party plaintiff, that the matter was discussed with counsel for the union in advance of the hearing, that the court in fact made a telephonic communication with counsel for the union before the hearing -- before the restraining order was issued. There was more than sufficient time to be familiar not only with the moving papers, but with the issues which were involved in the particular situation.

QUESTION: Considering the absolute validity for the purposes of argument, of the temporary order, when did it become a preliminary injunction?

MR. TICHY: Your Honor, for purposes of enforcement, it would have had the effect of a preliminary injunction upon the denial of the motion to dissolve, which would have been

June 4th, 1970.

QUESTION: And the case you have that supports that is what?

MR. TICHY: I have --

QUESTION: Either federal or California.

MR. TICHY: Your Honor, I believe that the Appalachian Volunteers case is on point; I believe that Morning Telegraph is on point. In fact, --

QUESTION: "on point"?

MR. TICHY: With regard to the fact that the denial of a motion to dissolve a restraining order is tantamount to the issuance of a preliminary injunction for purposes of enforcement.

QUESTION: Do you cite those in your brief?

MR. TICHY: Yes, I do, Your Honor.

QUESTION: I missed them.

MR. TICHY: And I wish also to point out that this has been considered, I believe, by the appellate courts on numerous occasions, because, as was pointed out earlier --

QUESTION: Where in that brief? I missed it.

A VOICE: Section IV --

QUESTION: Twenty-five? Twenty-four.

QUESTION: Yes, page 24.

Page 24, Morning Telegraph, Appalachian Volunteers.

QUESTION: Yes, pages 24, 25, and 26.

MR. TICHY: Thank you, Your Honor.

QUESTION: Mr. Tichy, --

MR. TICHY: Yes.

QUESTION: -- ordinarily, if you had had a hearing on a preliminary injunction and the court had said, All right, it's ordered that a preliminary injunction issue, you would have prepared a document and submitted it to counsel entitled, Preliminary Injunction, wouldn't you?

MR. TICHY: That's correct. That is correct.

QUESTION: Now, what -- how do these Appalachian -- this Appalachian case, and the others that you cite, treat that problem that basically you need not only a hearing to grant a preliminary injunction, but when the court rules you need findings of fact and conclusions of law, and a description of the conduct to be enjoined?

MR. TICHY: Well, Your Honor, I believe that the court in those particular cases thought that on the motion to dissolve, that adequate opportunity was given to the defendants to raise the issues which were in defense, that the restraining order was sufficiently particular on its face so that the motion denying the -- that the denial of the motion to dissolve is tantamount to the reinstatement of the restraining order, as though it was a preliminary injunction.

Now, in this case there's one additional point that should be kept in mind with regard to the possibility of findings.

It's interesting to note that there was no answer interposed at any time in this particular case, even up through the situation where a contempt judgment was awarded. So, consequently, under rule 8(d) of Federal Rules of Civil Procedure, our allegations in the complaint stood admitted, including those factual and legal conclusions.

QUESTION: Mr. Tichy, you say in your affidavit it's at fault, don't you?

MR. TICHY: For purposes of considering the complaint as setting forth what -- excuse me. Perhaps I should state it this way:

The material allegations of the complaint were never controverted, and the issues that were presented in terms of our request for the restraining order, in terms of the motion to dissolve, and the issues of contempt proceedings, were very, very fundamental.

In the case of the restraining order, what we were talking about was, No. 1, was there a contract in effect; No. 2, was there a grievance procedure; No. 3, was there a strike.

When we got to the motion to dissolve, the only issue which the union chose to raise was whether or not

Atkinson vs. Sinclair applied.

And when we got to the contempt proceeding, the only issue was whether or not there was in fact a strike occurring at that particular time.

Now, all of these things were totally uncontroverted, and particularly at the contempt stage when no contrary evidence was presented whatsoever.

So the fundamental factual issues were always undisputed. It was the legal impact to be given to those particular facts which was dispositive, as far as the court was concerned; whether or not a restraining order should be issued initially; whether or not the motion to dissolve should be denied; and whether or not a contempt judgment should be entered.

QUESTION: If it wasn't for the motion to dissolve, you wouldn't have any right at all, would you?

MR. TICHY: I take issue with that, Your Honor. I believe that under 1450 that I would continue to have the restraining order, if it continued two days or two years.

QUESTION: The restraining order was for twenty days.

MR. TICHY: No, that -- I take issue.

QUESTION: Well, do you dispute the California law that he read to us?

MR. TICHY: Yes, I do, Your Honor. And I would point

out that the McDonald case --

QUESTION: I'm talking about -- what was it he read to us? Was that a statute?

MR. TICHY: He -- Your Honor --

QUESTION: It said fifteen days except for good cause, twenty days.

MR. TICHY: I take issue with the interpretation that there is a fixed --

QUESTION: Well, is that statute in existence in California?

MR. TICHY: Yes, 527 is in existence, Your Honor.

QUESTION: And is it twenty days?

MR. TICHY: No, Your Honor. It says on its face fifteen days and twenty days, but the courts have long since recognized, and I cite the McDonald vs. Superior Court case, which is in our brief, that where there is good cause it may be continued for a longer period if the court deems it appropriate.

And in this particular case --

QUESTION: Well, did you make any motion to continue it?

MR. TICHY: No. Your Honor, I believe --

QUESTION: So it is twenty days, isn't it?

MR. TICHY: No, Your Honor. In the McDonald vs. Superior Court case, it was the action of the defendant in

asking for a continuance on a hearing on a preliminary injunction which continued it outside the scope of 527.

QUESTION: I suppose if it can be continued, it would be continued on the court's motion, you wouldn't have to apply for it.

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

QUESTION: But your position, I take it, is that even if the California law was that this order was to last twenty days, a federal statute said it was to continue until it was dissolved?

MR. TICHY: Precisely.

QUESTION: Wholly aside from State law.

MR. TICHY: Precisely, Your Honor.

QUESTION: That's your fundamental position, isn't it?

MR. TICHY: That's our fundamental position.

QUESTION: And then if you get a temporary restraining order that says this restraining order shall be effective for twenty days and not one minute longer, when it goes over to the federal court it automatically is extended?

MR. TICHY: Yes, Your Honor.

QUESTION: That is your position?

MR. TICHY: That is the position I believe not only of the companies in this case but of Congress in enacting 1450, because the removal action necessarily breaks up the

State court proceeding, and because the defendant chose to remove it, he has the burden of proceeding to dissolve it.

Now, I wish to raise a couple of additional points before my time runs out.

First of all, in the brief to the Court of Appeals the respondents contended that this was a Boys Market case, and it wasn't until they filed their brief in this matter, before this Court, that they raised the issue that this might not be a Boys Market case.

The issue was never litigated before, and under rule 41(d) and (e) of the Supreme Court that is not properly before the Court at this time.

Furthermore, I wish to emphasize that if we were to analyze Boys Market and its implications from a policy standpoint in this case -- and let's keep in mind that this is a 301 suit that was removed from State court to federal court. And from the time of Lincoln Mills, from the time of Boys Market, it's always been recognized that it has been the purpose of 301 to deprive State courts of jurisdiction in this matter.

And if we were now to impose Norris-LaGuardia standards on every State court removed injunctive order, which are more stringent than State courts, it would have the natural effect of disposing of State court jurisdiction, because unions would, in every case, remove the matter to

federal court, where they could have more stringent procedural rules, which the employer or the companies would have to meet when they sought to maintain an injunctive or a restraining order.

QUESTION: Didn't the State Supreme Court, during the regime of Atkinson, hold that Atkinson had no effect upon the authority of State courts to issue --

MR. TICHY: That's right. And I think that when this Court ruled on Boys Market, it recognized that there was this conflict between State law and federal law, and that was one of the reasons why the Boys Market decision overturned Atkinson vs. Sinclair.

We believe that section 1450 is in fact dispositive in this particular case; that the problems that we've had to go through here today, analyzing State law, are indicative of the problems that the entire judiciary would have to go through in every removed restraining order, injunctive order case.

Consequently, we believe that 1450 should prevail over State law as well as the Federal Rules of Civil Procedure. And, furthermore, that the denial of the motion to dissolve the restraining order was tantamount to the issuance of a preliminary injunction for purposes of enforcement.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

[Whereupon, at 12:00 noon, the case in the above-entitled matter was submitted.]

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