In the

Supreme Court of the United States

WILLIAM E. ARNOLD COMPANY,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, ETC., ET AL.

No. 73-466

Washington, D.C.
March 20, 1974

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WILLIAM E. ARNOLD COMPANY, Petitioner,	:	
v.	:	No. 73-466
CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, ETC., ET AL.	:	

Washington, D.C.

Wednesday, March 20, 1974

The above-entitled matter came on for argument at 10:39 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:

JOHN PAUL JONES, ESQ., Post Office Box 40089, Jacksonville, Florida 32203 For the Petitioner

JOSEPH S. FARLEY, JR., ESQ., 350 East Adams Street, Jacksonville, Florida 32202 For the Respondent

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 73-466, William E. Arnold Company v. Carpenters District Council.

Mr. Jones, you may proceed when you are ready.

ORAL ARGUMENT OF JOHN PAUL JONES, ESQ.

ON BEHALF OF PETITIONER

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

The case before you is a case involving a state court's jurisdiction to enjoin the violation of a no-strike promise by a union. The Petitioner in this case is a general contractor and for purposes of clarity in keeping the parties straight, I'll refer to the William E. Arnold Company, Petitioner in this case, as "Company."

The company and the union had an agreement which provided that there would be no strikes over the jurisdictional dispute. The general contractor of the company's subcontractor, who had a contract with another union, pursuant to that agreement, assigned certain work to this other union.

The Respondents here, the union, then struck in violation of the no-strike clause, which also provided that the grievance arbitration procedure of the National Joint Board would obtain in any dispute over jurisdictional dispute.

The company then filed an action in the state court for a temporary restraining order, which was granted after notice to the union's attorney and after the pre-emption doctrine had been argued before the state judge. The temporary restraining order was issued enjoining the union from further breech of the collective bargaining agreement.

The union then filed a suggestion for writ of prohibition in the First District Court of Appeal. Pardon, sir?

QUESTION: That was a 301 suit in the state court, was it?

MR. JONES: Yes, Mr. Justice Brennan, it was. It was not denominated as such in the pleadings, but it was a fair warning.

The suggestion for writ of prohibition was filed in the First District on the basis that the Garmon Doctrine, as it had been enunciated by the Supreme Court of Florida, in both the sheet metal and the Florida Heat and Power cases, preempted the state court from taking jurisdiction in any labor dispute, regardless of whether or not it was a contract violation, if the conduct involved was either arguably protected or arguably prohibited under the National Labor Relations Act.

The district court rejected this argument, affirmed the jurisdiction of the state court.

The union then filed a petition for writ of certiorari with the Supreme Court of Florida, which was granted, and the Florida Supreme Court reversed the District Court in a five to two decision, relying on it's previous holdings in the Scherer and Sons case and in Florida Heat and Power. In both of those cases, the Florida Supreme Court had enunciated this Court's doctrine of Garmon.

We filed a -- the company filed a petition for rehearing, which was denied and we are here today on writ of certiorari to the Florida Supreme Court.

Our petition for writ of certiorari was filed because of, as we contend in our brief and in the petition for writ of certiorari, the decision of the Supreme Court of Florida flies in the face of Smith v. Evening News and Lincoln Mills and Dowd Box.

We submit that the simple question in this case is whether a not a state court is preempted from enjoining the breech of a no-strike promise in a collective bargaining agreement, simply because the conduct which is involved in the brief is also an arguable or admitted unfair labor practice.

In this case, we concede that the conduct of the union in striking over jurisdictional dispute was a violation of Section 8(b)(4)(d) of the Act. So it was concededly an unfair labor practice.

We submit that the simple question can be answered by reviewing this Court's holding in Smith v. Evening News and Carey v. Westinghouse.

We submit that if the state court has jurisdiction to entertain an action for breech of a collective bargaining agreement for damages or to compel arbitration, as was the case in Carey v. Westinghouse, which also involved a jurisdictional dispute or representation question, depending on how you look at the case, then all the more so the state court should have jurisdiction to enjoin the breech of a no-strike clause because this promotes the free flow of commerce which is so basic in the purposes of the Act and it merely reduces industrial strife by requiring the party who committed the breech to be bound by the promise they made in that agreement and to settle this dispute in a peaceful manner.

We submit that the only distinction that can be had between the Smith case and the Carey case and the case before you is that this case involved an injunction to enjoin the further breech of a no-strike promise and we submit, further, that the Florida Supreme Court's reliance on the Gharman Doctrine is erroneous in that there is a major distinguishing factor between Garmon and the instant case.

In Garmon, we are not concerned with a contractual relationship between the parties and in both of

the cases relied upon by the Supreme Court of Florida, the Scherer and Sons case and the Florida Heat and Power, we admit that the result was right, but the reason was wrong because they reasoned that any activity arguably prohibited or protected is prempted in a broad spectrum and not taking into account the fact that there may be a contractual relationship between the parties.

Now, in neither of those cases, Scherer and Sons nor in Florida Heat and Power, was there a contractual relationship between the parties. It did not involve a contract breech. It involved activity which should have gone to the National Labor Relations Board because it was activity prohibited under Section 8 of the Act.

We submit, therefore, that under the prevailing labor law, the state courts are not preempted in circumstances such as the instant case and that the Supreme Court of Florida should be reversed.

We turn next to what we believe is the larger question in this case, and that is the role of state courts in the adjudication of disputes over breeches of collective bargaining agreement and the uniformity of national labor policy and both among the states and the relief that is available for breeches of most strike clauses for other contractual promises as between the states and the federal courts.

We respectfully submit that this Court's opinion in this case can lay down guidelines for the state courts to be guided in their jurisdiction as to the adjudication of breeches of collective bargaining agreements and that this will go a long way in achieving uniformity of results between both states and federal forums.

QUESTION: Mr. Jones, is that really before us? My understanding is that the Supreme Court of Florida issued a writ of prohibition saying that whatever standards might apply to the Florida State Courts in the enforcing of 301 action if they had jurisdiction, that they were simply prempted by the national act and they didn't pass -- the district court of appeals didn't pass on what standards would guide them if they had the right to entertain this suit.

MR. JONES: Well, Mr. Justice Rehnquist, what we would submit is that this question, so far as we can tell, is one for the first time for this Court to decide as far as the jurisdiction of the state courts to enjoin the breech of a no-strike promise by way of injunction and as was pointed out in the footnote in Dowd Box, that question was not before the Court, whether or not Norris-LaGuardia applied to the states so as to preclude their issuance of an injunction.

I believe that question was answered in Mr. Justice Brennan's opinion in Boys Markets, where in that

opinion, you adopted the reasoning of Justice Trainer in the Mercaro case that in that regard, Norris-Laguardia, although Congress could have precluded the states from jurisdiction to issue injunctions, they did not do so, that Norris-LaGuardia applies only to the federal courts.

Now, we submit that the question is before the Court in terms that we are here to decide whether or not a state court has jurisdiction to enjoin the breech of a collective bargaining agreement and in that context, then, the opinion in this Court will decide for the first time, do state courts have jurisdiction to enjoin a no-strike promise by injunction?

And we submit that they do, that it would be consistent with this Court's prior holdings. It would be consistent with the objective of the National Labor Relations Act to achieve a uniform policy and promote industrial peace, rather than industrial strife.

We -- I think that the parties here agree, both the Respondent and the Amicus, the National Chamber, that there should be a uniform policy throughout the country.

QUESTION: Well, would this be met, do you think, simply by a holding that applicable or pertinent federal law is to govern the state court determination?

MR. JONES: Yes, Mr. Justice Brennan, I would submit that this question could be answered in a holding by

this Court that state courts have jurisdiction to enjoin no-strike breeches by injunctions and that the equitable relief --

QUESTION: Well, that is if federal law would produce that result and the state courts may apply federal laws, as I understand it.

MR. JONES: That is correct, Mr. Justice Brennan. I believe that --

QUESTION: They not only may, they must. Isn't that -

MR. JONES: I'm sorry?

QUESTION: The state courts not only may apply federal law, but they must do so.

MR. JONES: Under Lincoln Mills, they must, yes, sir.

QUESTION: Right.

MR. JONES: And we submit that for clarity and for uniformity of national labor policy, that that is what this decision should mean, that state courts are bound by federal law. The law is unclear at this point because the question was left open in the Boys Market opinion, as, Mr. Justice Brennan, you are well aware.

But we would submit that under Boys Market, it answered the question for whether or not federal courts could issue an injunction in a labor dispute, not withstanding Norris-LaGuardia restrictions.

We submit, though, that Boys Markets has left

open certain questions and placed certain restrictions upon the parties in their pre-collective bargaining process.

We submit that the holding in this case should be that a modified Boys Market holding would apply to both state and federal courts in their entertaining any suit to enjoin the breech of a no-strike promise and we submit further that no no-strike promises are generally enforceable in either state or federal courts.

We would turn now to several of the items in Boys Markets which we consider were left open and would like to advance argument to the Court on them.

In Boys Markets, one of the conditions preceding, which Mr. Justice Brennan outlined in that opinion, which was the adoption, of course, of the dissenting opinion in Sinclair, was that as a condition precedent, the subject matter of the dispute had to be subject to a final and binding grievance and arbitration clause.

We submit that a no-strike promise in a collective bargaining agreement should be enforced in either a state or a federal court, notwithstanding whether the underlying grievance is subject to a binding grievance and arbitration clause or not.

Now, to do otherwise, we submit, dictates the terms of a collective bargaining agreement which goes against this Court's decision in American National Insurance

Company, 1952 and in the H. K. Porter case.

The reason we say that is this. When the parties sit down at the bargaining table and negotiate, there are a lot of factors at play at that table when they meet and discuss the terms of a collective bargaining agreement.

The employer may well be willing to pay more in terms of wages and fringes to the members of the bargaining unit if he gets in return, therefore, a specific exclusion from the arbitration clause of some management decision, for example, in subcontracting, the matter that was involved in the Steelworkers trilogy in Warrior and Gulf.

Now, we submit that the parties should be left free to negotiate their own terms of the agreement. In Warrior and Gulf, Mr. Justice Douglas recognized that the parties could have specifically excluded from arbitration that matter of whether or not they had the right unqualifiedly to subcontract the work and that it would not be subject to the grievance and arbitration procedure.

We note that in the Gateway decision, Mr. Justice Powell noted that the parties could, if they chose, negotiate a broad grievance and arbitration clause and yet specifically, by terms in the agreement, negate any no-strike promise.

We submit that if the parties can do that, then albeit they can exclude a narrow area from arbitration and that to do so and to still have the no-strike promise

enforceable, even though the subject matter in dispute may be within that narrow confine that is not subject to arbitration, promotes the policies of the Act rather than to do them violence because the underlying purpose of the Act, of course, is to promote industrial peace and harmony and to reduce interruptions of work through strikes and work stoppages.

The whole underlying purpose of the Taft-Hartley Amendment was to equalize the bargaining positions and the enforceability of collective bargaining agreements as between employers and unions because at that point, employers had little incentive to enter into collective bargaining agreements if they could not have them enforced and therefore came the Section 301 jurisdiction which, it seems clear, takes into its sphere not only legal relief, but equitable relief. The legislative history of that seems somewhat clear.

We submit that the rule as to enforcement of no-strike promises should follow along the lines of a doctrine enunciated by Mr. Justice Douglas in Warrior and Gulf and in that case, the argueably arbitrable doctrine was established that anything that was argueably arbitrable would be deemed to be subject to the arbitration clause of the contract.

We submit that no-strike promises should be argueably enjoinable and that if the union promises for the

duration of the contract not to strike --

QUESTION: This is a jurisdictional dispute in this case, isn't it?

MR. JONES: Yes, Mr. Justice Brennan.

QUESTION: Is it -- let's see, I've forgotten -- it's an arbitration provision?

MR. JONES: Yes, sir.

QUESTION: So this is mandatorily an arbitration procedure, mandatory arbitration procedure.

MR. JONES: Yes, Mr. Justice --

QUESTION: So we don't have in this case, at least, the situation you are addressing now of simply a no-strike clause without an arbitration provision?

MR. JONES: That is correct, Mr. Justice Brennan.

QUESTION: But you are nevertheless asking us to decide that?

MR. JONES: I am asking this Court to look at that question in terms of the fact that the Boys Markets decision has left open whether or not it applies to the state.

QUESTION: Yes, we left it open rather purposely, I think, in Boys Market. We limited -- we said that the Boys Market decision dealt narrowly with the question of enjoinability of a strike in a situation where there was an arbitration provision for handling the grievance that provoked the strike.

MR. JONES: That is correct, but in Boys --

QUESTION: Your case would go beyond that.

MR. JONES: Yes, sir, but in adopting the Boys Market decision, of course, it was the dissenting opinion from Sinclair --

QUESTION: That's right.

MR. JONES: -- which set up these conditions precedent to invoking the arbitration, to invoking the Court's jurisdiction to enjoin the breech of the no-strike promise.

QUESTION: But one of those conditions, was it not, was that they determined whether or not it was an arbitrable grievance, wasn't it, in the Sinclair dissent?

MR. JONES: It was one of the conditions in --

QUESTION: Yes.

MR. JONES: -- the Sinclair dissent. It was listed and adopted just verbatim as this Court's holding in Boys Markets was that, one, it had to be -- the dispute had to be subject to the grievance and arbitration clause.

QUESTION: It had to be over a grievance which both parties are contractually bound to arbitrate.

MR. JONES: Yes, sir and also that in the court order, it should order the employer to arbitrate that.

Now, we would submit that the order should run both ways and order both parties and I believe that in the Boys Markets case that that was the case. The district

court did order both parties to submit to arbitration. We are simply, Mr. Justice Brennan, pointing out that in the Boys Market decision, the loopholes that were left there, we are pointing out here, will provide an opportunity, unless state courts are granted through this decision, broad jurisdiction to enjoin those strike promises, that we are going to be faced with a situation where --

QUESTION: Well, but it may be that the whole underlying premise of Boys Market was, you may enjoin violation of a no-strike provision only if there is a compulsory arbitration provision applicable to the grievance which provokes the strike.

MR. JONES: Yes, sir, and that, Mr. Justice Brennan, is our point in that if that is the clear holding of Boys Markets, then through that decision, we are dictating substantive terms of a collective bargaining agreement because if an employer knows that in order to have a no-strike promise enforced, he has to have everything subject to the grievance and arbitration clause, then we are telling the employer, you must agree, if you want your no-strike promise which you paid dearly to get, to have peace for a year or two years or three years, you must agree to a broad grievance arbitration clause that covers everything, then we are dictating to that employer the terms of a substantive term of that collective bargaining agreement.

We submit that if that is the holding, then we are placing restrictions on the employer that are not contemplated nor desired by the act which promotes and encourages free collective bargaining between the parties and leaves the parties at the door of the bargaining room and it depends then on the relative strength of the parties and the skill of the negotiators and how much each party is willing to pay to get an agreement.

We submit that there are several areas that are left open in Boys Markets, several loopholes, for instance, if a union wants to say, we are going to strike but we are not going to tell you what we are striking about. If they are dissatisfied with their union representation, call a wildcat strike.

Under Boys Markets, that would not be subject to the grievance arbitration clause. We submit that the instant case presents a perfect opportunity of demonstrating what will happen unless there is uniformity of decision among the states and that the thrust of the Florida Supreme Court's decision is that the employer can sit and negotiate terms of a bargaining agreement, extract a promise from the union through give and take process and yet, if that promise is not enforceable in a state court, then for all intents and purposes, the employer has been undermined in his bargaining attempts and we would point out, too, that unless the rule

is the same as to state and federal courts, that, one, if state courts have broader jurisdiction to grant greater relief than the federal courts, we will get into a situation of pre-Boys Markets where it is removed under the Avco because if they can narrow the relief, they'll remove it from federal court and if this is the case, or if the state courts do not have jurisdiction to enjoin breeches of no-strike promises, then we are going to add greatly to the workload of the federal court system and in that regard I would point out that in our jurisdiction in Jacksonville, we have 20 general jurisdiction state courts that are available to apply for a temporary restraining order.

We have two already overdocketed federal district judges and --

QUESTION: Mr. Farley, in his brief, tells us that there is no binding arbitration clause here. I suppose you'd be willing -- or are you willing to submit that the case turns on that?

MR. JONES: Well, Mr. Chief Justice, we don't believe that the case turns on that. We would submit that there is the binding arbitration clause when the whole contract is read, which is in the Appendix beginning at page A20, we submit that the parties have agreed to abide by the terms for settlement of jurisdictional disputes under the joint board and that that incorporates by reference that document

which would set up the final and binding provisions of the agreement.

QUESTION: Well, if he is right in his position that there is no binding arbitration agreement, then what happens to your case?

MR. JONES: If there is no final and binding arbitration?

We would submit that the state court still had jurisdiction to enjoin the no-strike promise because the union agreed there shall be no work stoppages because of jurisdictional disputes, period. Now, in this context --

QUESTION: Mr. Jones, wouldn't you contend that once you get to the end of the premption issue that if there is no preemption here, the state court has jurisdiction to decide, as the Chief Justice says, whether there was a binding or a no-strike clause, binding arbitration clause and decide whether that is required by the law. I mean, what you are appealing from is the decision of your highest state's -- what was it, the circuit court of Duval County can't even entertain an action like this, not how to decide it on the merits once it is entertained.

MR. JONES: That is correct, Mr. Justice Rehnquist. They decided that they had no jurisdiction in the first place of initio because of the Garmon Doctrine which is what they incorporated in their two decisions on

which they relied and we submit that that is erroneous reasoning and an erroneous result, that the state court is not prempted, that the state court has jurisdiction, that the case is the Smith case except in this case there was an injunction issued and this is where, we submit, is the broader question in this case which should be examined along with Boys Markets, that there ought to be uniformity both among the states and between state and federal courts.

QUESTION: But if the circuit court has jurisdiction, if it isn't preempted by Garmon, then, I take it, it has a right to issue an injunction erroneously under Boys Market as well as to issue an injunction correctly under Boys Market. There was an intimation in the District Court of Appeals' decision that maybe the judge writing the opinion for the District Court of Appeals thought the Circuit Court had made the wrong decision, but that did not deprive them of jurisdiction.

MR. JONES: Well, that is correct and I think that the District Court of Appeals made some mention about the application of Boys Markets and the statement, "Whether or not it is free of error," because he did not issue also an order for the employer to arbitrate.

MR. CHIEF JUSTICE BURGER: Mr. Farley.

ORAL ARGUMENT OF JOSEPH S. FARLEY, JR., ESQ.,

ON BEHALF OF RESPONDENT

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

I am in complete agreement with Mr. Jones as to we all would like to have uniformity in the federal labor law. The problem that this case presents is that you have two relatively well-gone-over doctrines in the federal labor law that are presented in this case. The first is the doctrine of federal premption over unfair labor practices, the Garmon Doctrine, Garner, Weber decisions saying that if a case presents a dispute that is argueably an unfair labor practice or a protected activity under the Act, that the Federal Government has prempted the area and that state courts should defer to the federal jurisdiction.

Then, in this particular case, you also have the question of the Norris-LaGuardia Act and the prohibition on federal courts of issuing injunctions in labor disputes.

The Florida Supreme Court held, essentially, that the fact that a contract is involved does not remove the prohibitions of preemption that the Federal Government has placed upon the states, that this area of the law, the injunction in a labor law dispute, is sufficiently of national concern and national interest that the state court should defer at least initial jurisdiction to the National

Labor Relations Board when injunctive relief is what is requested and when it is concededly an unfair labor practice involved.

Our position is simply that if state courts would follow this position, you would have your uniformity in your federal labor law. There is nothing to prevent the company, if they feel as though a no-strike position has been breeched, from going into federal court.

There is nothing to prevent the company, if they feel an unfair labor practice is being practiced upon them, to go to the National Labor Relations Board and there is nothing in the world preventing the National Labor Relations Board from doing something about it.

That is the whole purpose for which they were set up. They have the machinery to acquire injunctions. They have the machinery to issue cease and desist orders against activities like this. This area of the law has long been within the federal curtilage and jurisdiction, although it might also have been somewhat within the state jurisdiction. The state's haven't known what to do because the federal law is always changing with the times to keep up with the situations that arise in labor disputes and our position --

QUESTION: If the state court, Mr. Farley, if the state court is required to enforce federal law, is it

necessary to defer to their jurisdiction in order to accomplish that result?

MR. FARLEY: No, your Honor, but I would point out that this Court has held long before now that state courts entertaining 301 suits are bound by federal law, but I think it is fairly clear that that doesn't happen all the time. When you have got 50 states with numerous lower level trial courts coming in and accepting jurisdiction --

QUESTION: Well, this would have to be a general jurisdiction court in the state, would it not?

MR. FARLEY: Yes, sir.

QUESTION: That is not very low level, is it, a general jurisdiction court?

MR. FARLEY: Well, I don't know. There's 20 in Jacksonville.

QUESTION: Twenty judges.

MR. FARLEY: Yes, sir. Presumably and hopefully each one with the same opinion, but, again, as it turns out --

QUESTION: There is nothing unique about that. You have 27 trial judges in New York City in the federal court.

MR. FARLEY: Yes, sir.

QUESTION: And probably -- I don't know -- 50 or 75 state court judges. How does the number enter into it?

MR. FARLEY: Just in the reasoning behind Garmon,

with so many different --

QUESTION: Well, isn't your emphasis, really, that they aren't as familiar with federal laws that the federal district judge is at least presumed to be?

MR. FARLEY: Exactly, your Honor, exactly. And I don't think that there is any question but that this is the case and I think that it is just, with the federal machinery that is set up, particularly with the National Labor Relations Board, with this Court's holding in Boys Market making it obvious how important the injunction is in federal labor law, that you should allow all the trial courts in the different states to try and interpret the law, that because the labor injunction is of national concern, that outweighs the consideration that a contract was also involved and is sufficient reason to employ the Garmon Doctrine of federal preemption, especially in this case where there is concededly an unfair labor practice involved, especially in this case where, at least in my opinion, there is not a binding arbitration clause. There is no provision whatsoever for arbitration and I am not sure that there isn't actually an agreement as to what is going to be binding in front of the parties and, of course, then you have the problem of the labor union wasn't even a party to this contract.

The record, unfortunately, is silent as to what

procedures were taken by either the union involved here, the carpenter's union or the company, to attempt to follow the grievance procedure that was somewhat set out in the contract. There was no transcript made of the hearing and it is unclear whether the lather's union was unwilling to follow this procedure, whether the company was unwilling to --

QUESTION: What you are defending here, of course, is the decision of your supreme court that says the circuit court in Jacksonville can't even inquire into these issues, that they simply have no jurisdiction to look into the things you are talking about.

MR. FARLEY: Yes, your Honor. My position is that the Florida Supreme Court held exactly foursquare with Weber and with Garmon and in attempting to keep the law uniform, the federal labor law uniform, they followed what the United States Supreme Court said in those cases. They followed it very strictly that if, argueably, you have the unfair labor practice, the state courts should defer jurisdiction.

QUESTION: But then the kind of fact which you were just mentioning, you know, whether the lathers did this or did that, really don't bear on the jurisdictional issue, do they?

MR. FARLEY: Only to the extent that you also have the question of the contractual agreement and if you get into

Boys Market, the area of injunctive relief, which this Court -- which this case did present to the Florida Supreme Court, they had been concerned in prior cases with the issuing of ex parte injunctions in labor disputes, it becomes important as to what went on because of Boys Market saying that it must be, for the federal courts, anyway, to enjoin an activity, there must be the binding arbitration procedure.

QUESTION: Well, supposing that that is the rule of Boys Market and supposing you are wrong on your Garmon point, that the circuit court in Duval County has jurisdiction to entertain this action, but it must follow Boys Market and that is the rule of Boys Market.

The fact that it may have wrongly issued an injunction in this particular case wouldn't support what the Supreme Court of Florida did here because they said it had no business even inquiring into the subject.

MR. FARLEY: Yes, your HOnor. I wasn't trying to imply that it would. I understand that if the state court had jurisdiction of this matter, it doesn't make it -- that is the question that we have here, not whether it wrongfully or rightfully enjoins if it had jurisdiction, but rather, does it have jurisdiction?

I believe it was the Attorney General that brought in their memorandum to the Court, brought up the question of abstention of state courts. I don't really see a

big distinction between the Florida Supreme Court saying, "We are going to abstain, we are going to defer our jurisdiction --"

QUESTION: They didn't say anything about deferring it, did they?

MR. FARLEY: Not in this case, they didn't say they were deferring it.

QUESTION: They said they didn't have any.

MR. FARLEY: Right.

QUESTION: They said there was no jurisdiction at all.

MR. FARLEY: Well, the way they phrased it in the prior cases, I believe it was Sheetmetal but it might have been Scherer, that the state court should defer initial jurisdiction, should defer jurisdiction, at least to the point of letting the National Labor Relations Board make the initial decision as to federal jurisdiction.

It may be that the Florida Supreme Court was taking the position of deferring and abstaining to the National Labor Relations Board. That was my reading of their opinion, was that they would be happy to take jurisdiction of the case if the National Labor Relations Board did not feel it came within the federal preemption doctrine or came under the National Labor Relations Board jurisdiction.

They didn't say flat out, we are not going to take

jurisdiction of cases that argueably come under the Taft-Hartley Act. They just said initially they would prefer, in the interest of uniformity, to have the National Labor Relations Board make a decision.

QUESTION: Of course, the language, if I am reading the correct opinion, Judge McKane, Justice McKane is the court's opinion, isn't it? The bottom paragraph is, "We hold that the district court erred in failing to prohibit the further exercise of jurisdiction by the circuit court." That does have some overtones of what you suggested, perhaps further exercise.

MR. FARLEY: I have tried to point out in my brief that regardless of the dictum that the Florida Supreme Court threw out, the case that they decided was a case for injunctive relief, that on the face of the complaint alleged an unfair labor practice and that they decided that in that situation, where there is no binding arbitration clause, at least the way I read it, that the state court should not utilize its jurisdiction, it should defer jurisdiction.

And again, to repeat, it seems to me that the best way to ensure national uniformity in our federal labor law and relations and especially in the area of unfair labor practices and injunctive relief, is to allow the state courts to defer to the federal courts for the National Labor

Relations Board.

Congress has set out what the unfair labor practices are. Congress determined that a national agency should oversee and should try and curtail and prevent these unfair labor practices. This Court has been very definitive in under what situations the district court could grant injunctive relief.

It seems to me that if the injunction is of such interest to Congress and to the federal labor law, that they would pass a law, the Norris-LaGuardia Act, prohibiting the district courts from granting injunctive relief and that, I think, is the national policy. That represents the national policy of being very careful under what situations you grant injunctive relief.

Now, I don't see any sense at all in having one layer of law, one pathway of law being the federal law saying only under these circumstances can injunctive relief be granted in the federal courts, but under any old circumstances, they can be granted in the state courts. That is just not in the interest of a national uniform labor policy.

QUESTION: Of course, what do you do about the limitation in the language of the Norris-LaGuardia Act that says it applies to courts of the United States and certainly intimates it doesn't apply to state courts.

MR. FARLEY: Well, I don't know that this is the

case where this Court could extend the language of the Norris-LaGuardia Act to state, state courts.

I would point out, though, that in Boys Market, this Court noted that a good number of the states already have anti-injunction statutes so that you got sort of a hodge-podge, anyway, with the state courts.

What I am saying is that to allow state courts, as this one did, to defer to the federal jurisdiction, would be better than allowing 50 states to go in 50 different ways on federal injunction labor law.

I don't know -- on the face of it, your contractural question, there is a conflict between the Florida Supreme Court's decision and the decision in Smith v. Evening News, but to say that it is such a conflict that we are going to just throw out to all the 50 states the question of federal injunctive relief and let them decide it as they may, I think that the latter is more important and that the contractual question should yield to the federal preemption doctrine in this situation.

Thank you.

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

Do you have anything further, Mr. Jones?

REBUTTAL ARGUMENT OF JOHN PAUL JONES, ESQ.

MR. JONES: Mr. Chief Justice and may it please

the Court:

Just one or two closing points. My worthy adversary has pointed out that in regard to the National Labor Relations Board, that they could well take cognizance of the matter and grant relief.

We would point out, one, they do not have the power to issue cease and desist orders. They must be enforced through a circuit court if it is an order of the board or, also under Section 10(k) they are required by statute to defer to a voluntary method if it is outlined in the agreement.

We would point out, as Mr. Justice Douglas pointed out in Lockridge , in the Lockridge dissent, that the machinery of the board is one of the slowest-grinding processes that one could experience and someone would be out of business by the time they invoked those procedures.

The NLRB has held, in the V&C Brickcleaning case, the Collyer case and the Laborers case that they will defer to an arbitration process, even when there may be a specific violation of an unfair labor practice.

We would point out also that in Carey, there were two unions involved and that it wasn't clear whether both of them were subject to the arbitration clause, but arbitration was ordered by the holding in this Court.

We submit that the question as to Norris-LaGuardia

and the application of the states was answered in the Boys Markets opinion in which Mr. Justice Brennan adopted Justice Trainer's reasoning in the Carroll case.

We would submit that by virtue of that, that question has been answered. The state courts do, then, have jurisdiction to issue injunctions and labor disputes in contractual matters when you apply the reasoning of Smith v. Evening News and we would submit that the best effectuation of national labor policy of freedom of collective bargaining, the free flow of commerce and of deferral to the party's choice of the terms of that collective bargaining agreement, that all of these things are best served by permitting the states to enjoin breeches of no-strike promises and that this will go a long way toward achieving uniformity among the states and between the state and federal system, that in -- as was pointed out in Boys Market, damage action may lie for the breech of a no-strike promise. But a damage action hardly is compensation for the irreparable harm that occurs to an employer when a strike occurs and that the injunction is so important a device in the enforcement of no-strike promises, that it should not be denied, and the maximum justice delayed is justice denied has no truer meaning than in this context.

When a strike occurs, irreparable damages begin to run and the employer is left with no formum. He cannot go

to the state court. If he goes to the federal court, it is a longer wait or, if he is required to go to the National Labor Relations Board, which really can grant him no immediate relief anyway, then he is left without any remedy at all and even under the injunction procedures of the National Labor Relations Board in 8(b)(4)(b) or 8(b)(4)(d) situations where, under the statute, the board is required to give them priority treatment, our practical experience has been that if you can get to the U.S. District Court within 10 days, it is a miracle and from that regard, then, we submit that the National Labor Relations Board is no forum to adjudicate this. They do not have the power to do so and they do not have the machinery and they have said themselves that they will defer to the parties.

We submit, therefore, that the basic question here that we face in determining the matter of whether or not state courts should be allowed to enjoin no-strike promises is, how can the purposes of the act be frustrated or the employees' rights be infringed if they are required to do what they promised to do in a collective bargaining agreement?

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Jones. Thank you, Mr. Farley. The case is submitted.

[Whereupon, the case was submitted at 11:25 o'clock a.m.]