In the

Supreme Court of the United States

COMPLETE AUTO TRANSIT, INC., ET AL.,	)	
PETITIONERS,	)	No. 79-1777
V.	)	
DANNY REIS ET AL.	)	

Washington, D. C.
February 24, 1981

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ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

COMPLETE AUTO TRANSIT, INC., ET AL.,

Petitioners,

v.

DANNY REIS ET AL.

No. 79-1777

Washington, D. C.

Tuesday, February 24, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:56 o'clock p.m.

APPEARANCES:

R. IAN HUNTER, ESQ., 100 W. Long Lake Road, Suite 102, Bloomfield Hills, Michigan 48013; on behalf of the Petitioners.

HIRAM S. GROSSMAN, ESQ., 402 E. Court Street, Flint, Michigan 48503; on behalf of the Respondents.

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 now in Complete Auto Transit v. Reis.

Mr. Hunter, you may proceed whenever you are ready.

ORAL ARGUMENT OF R. IAN HUNTER, ESQ.

ON BEHALF OF THE PETITIONERS

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

The issue submitted to the Court in this case is limited to a determination whether individual employees who engage in a violation of a collective bargaining agreement and who acted without the authorization of their labor organization are responsible for damages sustained by their employer and liable to it arising out of their individualized breach of that collective bargaining agreement.

And I might note that it would appear that is the very issue reserved by this Court in its decision of Atkinson v. Sinclair Refining. I think a --

QUESTION: Is this exclusively a question under Section 301?

MR. HUNTER: Yes, Your Honor.

QUESTION: Of the 1947 Act?

MR. HUNTER: Yes, it is, Your Honor. A brief recitation of the facts, I think, are important to a determination of this issue.

In June of 1967 the respondent employees engaged in a work stoppage against the three petitioners for up to and including two weeks in time. Now, petitioners alleged and respondents admit that at no time did their labor organization, aid, abet, condone, or authorize this work stoppage, that this was indeed an individual action on their part.

QUESTION: You're equating that to ordinary breach of contract between private parties?

MR. HUNTER: I'm equating it to the violation of the agreement that contained a no-strike clause.

QUESTION: Just as though there was no union entity involved?

MR. HUNTER: Well, I can't involve a collective bargaining agreement without acknowledging the role of the union, but I do know that the no-strike clause should be equally enforceable against the employees as well as the union.

QUESTION: Just as though 124 individuals had signed a contract with the employer without any union?

MR. HUNTER: To the degree that they signed a no-strike clause, yes. Yes, Your Honor.

QUESTION: Yes. That's what I'm driving at.

MR. HUNTER: Petitioner employers now attempt to hold these employees responsible for the damages directly resulting from their individualized breaches of the collective bargaining agreement pursuant to this lawsuit brought in

accordance with Section 301 of the Labor Management Relations Act.

Now, although 301 on its face contemplates suits alleging violation of collective bargaining agreements, petitioner concedes that the language does not expressly address the issue of individual liability arising out of those violations. A review of relevant congressional history, in the opinion of petitioners, indicates that Congress did not specifically authorize or prohibit such actions against individual employees, when their conduct was not authorized by their local unions.

QUESTION: Well, I gather though the statutes, the genesis, initially, was that there wasn't any way previously of suing unions.

MR. HUNTER: Yes, that was one of the principal concerns.

QUESTION: And 301 was enacted so that unions might be made subject to suits.

MR. HUNTER: That's right. That was one of the principal concerns. That was one, as I understand, not the only concern.

QUESTION: Well, I know, but -- it may not have been the only one, but was there one that individual employees should be subject to suits?

MR. HUNTER: Was there -- ?

QUESTION: Was one of the reasons to make individual employees alleged to have violated collective bargaining agreements subject to suits?

MR. HUNTER: No, I don't believe that there was any specific discussion covering that subject matter in the Taft-Hartley.

The purpose of the Taft-Hartley, as I understand it, and in reading this Court's decisions, not attempting to tell you what you meant, but attempting to read as what I understand it to be, is that Section 301 was intended to permit the enforcement of labor agreements against labor organizations, as pointed out by Justice Brennan; to hold these agreements equally binding upon all parties to that collective bargaining agreement; to foster a collective bargaining process as the desired method of resolving industrial disputes in this country.

QUESTION: Now, as I recall it, there was a lot of discussion in the legislative history of the Danbury Hatters case, wasn't there?

MR. HUNTER: There was, particularly in the Case bill and to some degree as it related to Section 301(b). Now, there was indeed some congressional concern about that, but petitioners respectfully suggest that the facts confronting the Court in this issue are considerably different and not analogous to Danbury Hatters. As I understand Danbury Hatters

it was a decision which arose out of a consumer or secondary boycott by the Hatters' Union against Danbury Hatters. It's my understanding that the members of the union who were ultimately held responsible for damages may or may not have known of the actions of their union. It was a consumer boycott. But by their association with the union the court held that they were responsible for the damages imposed by the union. And this was the spectrum --

QUESTION: But that the union, as union, could not be held responsible?

MR. HUNTER: No, the union could have been held responsible but in that time they couldn't have because it was under court-abridged association; right.

QUESTION: That's right.

MR. HUNTER: And therefore they had to go to the employees to seek the assets to fulfill for damage remedies. Congress was concerned about that and sought in 301(b) specific language which said that a damage judgment against unions is not to be held -- the individuals are not to be held responsible. And we are not attempting by this decision to invade that, or this Court's prior decision in Atkinson v. Sinclair. But we are addressing another issue.

Now, respondent and amicus, we believe, erroneously attempt to convert some legislative history dealing with the Case bill as dispositive of the present issue. And in that

sense they attempt to persuade the Court that the Case bill discussions, which did deal with the issue of discipline being the sole remedy available to employers in an unauthorized strike, is applicable to the Taft-Hartley bill. And I direct the Congress's discussion as to 10(d) of the Case bill as the points in question that respondent attempts to emphasize.

They contend that this language and the congressional discussion attendant to this language provides a basis for the premise that Congress must have intended that discipline should be the sole remedy available to the employer. I believe these arguments avoid two very significant facts. One, the provisions of 10(d) of the Case bill did not survive the Taft-Hartley and, in fact, show up only briefly in the early days of the Taft-Hartley and disappear inexplicably. And we can't find out why, in reading the congressional history, but it disappeared. And the discussion relied upon by the respondents as well as the three circuit courts which have discussed this matter, do not recognize that this discussion was not repeated, it was not an integral part of the congressional history of the Taft-Hartley.

Effort to impose upon the Taft-Hartley the meaning of a provision not included within it seems to be erroneous in the opinion of petitioners. Moreover, the role of congressional silence as the adoption of a controlling rule of law is less treacherous, as I reflect the verbiage of

this Court in Boys Markets. We believe that more dispositive of the present issue, is the discussion in the House conference report, in the Taft-Hartley itself, where the House rejected the Senate's proposed unfair labor practice involving breaches of collective bargaining agreements, which ostensibly would have encompassed a violation of a no-strike clause; omitted that provision, in deference to the enforcement of collective bargaining agreements by the usual processes of law, a principle noted by this Court in Dowd Box and reflected in the House conference report, No. 510, p. 52.

Petitioners respectfully submit that a damage remedy against the proven violators of a contract certainly is more consistent with the usual processes of law than the total absence of such remedy or the total dependence upon a disciplinary device which is suggested by the courts, the circuit courts and respondents.

QUESTION: Well, does petitioner, your client, concede -- or does it? -- that this is a question of federal law?

MR. HUNTER: Absolutely.

QUESTION: Governed by the federal labor law?

MR. HUNTER: Absolutely.

QUESTION: And I suppose it is true that if the union had been liable in the case, the individuals would not have been?

MR. HUNTER: Would not have; exactly.

QUESTION: Now, is that -- do you really mean that, or is it that you mean just that a judgment against the union can't be collected from the -- ?

MR. HUNTER: No, I would mean that the facts of this case are such that given your Carbon Fuel decision, there would be no way that petitioners could seek to hold the labor organization involved here liable.

QUESTION: No, I didn't, that isn't my question. My question is, suppose that the union was liable in this case. Suppose on the facts of this case the union could be sued for violating the no-strike clause.

MR. HUNTER: Fine.

QUESTION: Could the employer also sue with the union the employees?

MR. HUNTER: I would suggest that 301(b) establishes a firmer foundation for precluding that remedy than it does in this case. The union itself would be held responsible for the actions of its members.

QUESTION: But would you just say, would you say that the -- you say that if the union were liable, the employees, the action against the employees should be dismissed for failure to state a cause of action?

MR. HUNTER: Yes. Yes, I would say that that would be my understanding of the current state of the law, when the

union can be held responsible for its actions. It is the principal party to the contract, but the employees must be viewed as party, at least they have been deemed parties for purposes of enforcing their rights. And if the union is not responsible and has taken whatever action it felt necessary and could to curtail the work stoppage, to eliminate the work stoppage, where else would the employer look for a monetary remedy?

QUESTION: Well, Mr. Hunter, what if you had an insolvent union? Why couldn't you sue the employees directly under your theory?

MR. HUNTER: Again, I suppose you could and maybe that's the next step in this development of the law, but, seeing as the union's responsible for the fact that it's insolvent is merely a question of collection, not a question of principle, because the --

QUESTION: But the individuals also have violated the contract under your theory?

MR. HUNTER: All under the auspices of their local union, their exclusive representative for that purpose. It's where they avoid that device along with a no-strike clause that I feel that they put themselves in jeopardy and leaving the employer without a remedy.

QUESTION: Well, don't you have a remedy in the state court?

MR. HUNTER: That's my understanding; we do not.

QUESTION: Why not?

MR. HUNTER: The federal law is exclusive under 301.

QUESTION: Well, if you say it, if the federal law covers it and there's no cause of action against the employees that's the answer, and if that's your relief, that would be true whether there was jurisdiction under 301 or not.

MR. HUNTER: The state court maybe at that point, but then, say, in light of a determination that there is no cause of action against employees in the federal law, therefore we have jurisdiction and we could --

QUESTION: Well, the question would be, whether a federal law affirmatively says there is no cause of action against individual employees --

MR. HUNTER: Then I would --

QUESTION: Or whether the holding is that federal law just is nonexistent in that area.

MR. HUNTER: Well, could there be a remedy available in the state court under either of those circumstances?

QUESTION: No, and the first one there, it clearly would not be.

MR. HUNTER: Not be, and the other one there might be.

QUESTION: Yes.

QUESTION: Well, why wouldn't there be, if federal

law is simply nonexistent, then there would no barrier to a state law, if you have -- isn't that right?

MR. HUNTER: Exactly.

QUESTION: But if federal law affirmatively says there cannot be a right of action against individual employees, then there can't be in a state court either.

MR. HUNTER: That's right.

QUESTION: But in our Boeing decision of some years ago, didn't we say that it wasn't up to the NLRB to decide whether the fines levied by a union on members who crossed a picket line were unreasonable or not, that that was an action that would have to be brought in a state court?

MR. HUNTER: It did, but I don't know how that points on to the issue. I would be hard pressed, until today, to argue that I could go into the state courts seeking remedies of damages for a violation of a no-strike clause between an employer and a labor organization in interstate commerce and not be told that I have to deal with federal law.

QUESTION: But I don't think that's universally true of every conceivable dispute.

MR. HUNTER: Oh, not every conceivable item, but certainly a violation of a no-strike clause would be one of those I would assume would fall within that area.

QUESTION: You don't have to assume it. That's been held.

MR. HUNTER: That's right.

QUESTION: And if you suggest that if you brought a cause of action against the union and the employees together, claiming the union is responsible and that the employees are responsible too, you told me a minute ago that the employees should be dismissed from the suit if the union is liable.

MR. HUNTER: They were, for example, in Atkinson v. Sinclair Refining on the plea that they were agents of the union.

QUESTION: And you wouldn't suggest then that you could turn around and sue them in state court?

MR. HUNTER: No, I certainly would not at this point. I feel I am limited to whatever remedy is available under the federal law at this point in the development of the federal labor laws. And the problem that we have as petitioners is that we don't know what that remedy is under the current state of the law.

In the context of the absence of any explicit congressional mandate, and at best an ambiguous congressional history, we look as petitioners to the language of this Court to determine the logic of our suggested remedy.

QUESTION: Well, could I ask you, is it clear under the lower court cases -- I'm not sure that we have a case -- that the employer, if the strike is still going on, a wildcat strike is still going on, may the employer enjoin the

wildcatters themselves?

MR. HUNTER: As I understand it, there is no decision of this Court which has resolved that issue.

QUESTION: How about the lower courts?

MR. HUNTER: I know that I have succeeded in enjoining wildcatters by a federal district court injunction but --

QUESTION: Under 301?

MR. HUNTER: And --

QUESTION: Under 301 and saying that the contract is enforceable against the individuals?

MR. HUNTER: For example, the 6th Circuit in this case. We brought this issue to you. They also determined than an injunction against these employees was forthcoming except that by the time the injunction was issued the --

QUESTION: It was moot.

MR. HUNTER: -- it was moot.

QUESTION: But did you get those injunctions in the context of collective bargaining agreements with arbitration clauses?

MR. HUNTER: Yes.

QUESTION: Not otherwise?

MR. HUNTER: Not otherwise.

QUESTION: And in a federal district court?

MR. HUNTER: In a federal district court; yes.

QUESTION: Under 301?

MR. HUNTER: Under 301. Additionally, for the Court's benefit, the strike began, we went for an ex parte, it was denied, we went for a hearing, we were denied the injunction because the lower court found that the dispute at that time appeared to be a dispute --

QUESTION: Buffalo Forge's case?

MR. HUNTER: Well, it was in the sense it was not arbitrable.

QUESTION: Yes.

MR. HUNTER: Ultimately, during the duration of the strike, the issue changed and was enjoined because it became a dispute that was arbitrable.

QUESTION: Yes. And only then.

MR. HUNTER: Only.

QUESTION: Otherwise Section 4 of Norris-La Guardia would bar you just as much --

MR. HUNTER: That's right. And it was so found, barred us in the early stages of that strike.

Now, as I understand it, Lincoln Mills directs that the lower courts fashion a body of substantive federal law for the enforcement of collective bargaining agreements, which was viewed by this Court a paramount concern of Congress. The Court recognized that the act itself provided some specific guidance. Other problems, admittedly, were within the penumbra of the express statutory mandate.

This Court envisioned that union as well as employee should be bound to the collective bargaining agreements. And the lower courts were asked to look at the policy of the legislation and fashion a remedy or remedies that would effectuate that policy, the enforcement of collective bargaining agreements. The degree of judicial inventiveness would be determined by the nature of the problem. We appealed to the judicial inventiveness of the 6th Circuit and were told that the remedy we sought was not available. We suggest that that was an error on the part of the 6th Circuit and the issue was framed accordingly.

Smith v. Evening News brings to fruition the ability of employees, ostensibly those same employees involved in this work stoppage, to enforce their rights under the collective bargaining agreement, and to bring an action under 301 to enforce the employer's obligation to them, whether be he terminated for unjust cause or whether his seniority was violated, but the employer is expected to comply with the collective bargaining agreement and if the union doesn't take care of it, the employee is entitled to under the conditions enunciated by this Court in its Vaca v. Sipes and Hines v. Anchor cases. So the employee is clearly made a party for enforcement purposes by this Court, I think consistent with the congressional intent, and as this case, wherein the petitioner seeks to allow the employer to enforce a right

afforded it by its employees when they seek to ignore both the contract and their local union.

QUESTION: Could I just ask you a question that's running through my mind?

MR. HUNTER: Justice Stevens.

QUESTION: There are two remedies available when the employee breaches a contract. One, you can get an injunction requiring him to go back to work. And secondly, you can discharge him. Those are both remedies.

MR. HUNTER: They are available within the limits imposed by this Court and the lower courts comply with its decisions. For example, in this case, the petitioners were unable to enjoin the strike in its early stages even though it was ostensibly a violation of the no-strike clause because the issue was viewed not arbitrable.

QUESTION: Well, perhaps sometimes the injunctive remedy is not available. The discharge remedy is always available.

MR. HUNTER: Discharge; it should be always available.

QUESTION: Now, on the damage remedy that you asked the judiciary to invent, what is the measure of damages?

MR. HUNTER: The measure of damages would be the proven damages as sustained by the employers as the result of work stoppage.

QUESTION: Loss of profits to the company?

MR. HUNTER: Loss of profits based upon the circumstances, whatever they could prove were damages.

QUESTION: Is there a body of law that tells us that that would be the measure of damages?

MR. HUNTER: I suspect that the courts would have to revert to the contract -- for a violation --

QUESTION: I'm going to ask a question, that's the next question down the road, I guess.

MR. HUNTER: That's really something that at this point -- there's no specific difference between damages for a breach of a collective bargaining agreement and otherwise, to the best of my knowledge.

QUESTION: Well, there are not many suits by employers against employees generally, is there?

MR. HUNTER: No, there are not.

QUESTION: I'm just wondering what your --

MR. HUNTER: But there are against local unions.

QUESTION: I understand.

MR. HUNTER: And I believe they've measured those in loss of profits, whatever you can relate as to proven damages as a result of proven violations that occurred. It could be ordinary contract damages.

QUESTION: Sometimes, you know, there are different contract damage rules, whether it was in the contemplation of

the parties, and loss of profits, a lot of different -- I know you don't have a theory yet as what damage recovery would be?

MR. HUNTER: I do not. I have not been permitted to develop the theory of damages because the action was dismissed prior to any deliberations.

QUESTION: Getting into ancient history, the Danbury Hatters was a very big one, wasn't it?

MR. HUNTER: In the damages? Yes. Hundreds of thousands of dollars, I believe, against hundreds of members of the Hatters' Union.

QUESTION: But it was a big one?

MR. HUNTER: Most of whom, as I understand it, knew nothing about what was being boycotted, unlike here where we only would be able to sustain damages against those individuals who knowingly had violated the collective bargaining agreement. Boys Markets, the next in this Court's line of decision, reflects this Court's recognition of the vital importance of the no-strike agreement to the employer. This Court characterized it as the quid pro quo upon which the employer agreed to submit its industrial disputes to arbitration. An injunction was justified by this Court to enjoin violation of that important provision. And it recognized in Boys Market that frequently the circumstances surrounding the passage of labor legislation changes to a degree that it is necessary entirely to emphasize remedies and impose

responsibilities not necessarily contemplated by Congress at the time that they passed that labor legislation in question.

We then come to this Court's decision in Carbon Fuel which I believe puts into perspective the urgency of this Court's decision as to the issue submitted today. Carbon Fuel found that a labor organization is not obligated for the damages imposed by people acting beyond the common law rule of agency in the midst of a violation of a no-strike clause. That puts into focus the Atkinson v. Sinclair where individuals were not responsible for the actions of their union, and Carbon Fuel puts into the law that unions are not responsible for the actions of individuals not acting as their agents. The question we now raise, are those individuals who violate that contract responsible to the employer, given the fact that the labor organization is not?

QUESTION: What if you had sued in the federal district court under diversity of citizenship and alleged more than $10,000 in damages and said this was a breach of contract on the part of these particular individuals? Do you think it would have been thrown out?

MR. HUNTER: I think we would have been confronted with the same argument I am now confronted with, that this is a violation of a collective bargaining agreement and it constitutes part of the Lincoln Mills substantive federal labor law, and I think they would have been somewhat justified --

I think.

QUESTION: Why couldn't they have applied that in the diversity case?

MR. HUNTER: Well, diversity, I'd have trouble getting diversity in light of it's a Michigan corporation suing Michigan employees.

QUESTION: But it would be the same question of federal law.

MR. HUNTER: I think so. I'm convinced it would be.

QUESTION: Well, except that, as suggested earlier, just because you don't have a lawsuit under Section 301 in a federal district court doesn't necessarily mean that you don't have an action for a breach of contract in a state court.

MR. HUNTER: It does not --

QUESTION: If the result of this case is there just isn't any federal law, that this isn't under 301, but it's not prohibited by federal law, then you do have, presumably, subject to the state law --

MR. HUNTER: If this Court's decisions were like that very dogma, I think maybe an argument could be based on that --

QUESTION: Then it would be a matter of state law, whether or not you have one.

MR. HUNTER: It would be a matter of state law,

and the absence of uniformity in an area very closely related to federal labor law might be --

QUESTION: Might be very undesirable.

MR. HUNTER: -- undesirable. Well, one comment before -- I just want to make one point that respondents' and amicus's contention that discharge is a better solution and a better deterrent doesn't really make a lot of sense to me. Discharge has been viewed by many as industrial capital punishment and I don't think the employees being terminated are necessarily going to find their relationship with their employer any more harmonious than if they were being subjected to a lawsuit merely to collect those damages that they cost the employer.

QUESTION: If you have -- if a producer has a contract with Ingrid Bergman and she walks off honoring a no-strike clause, to discharge her is exactly what she wants. Damages is really the producer's only remedy for redress.

MR. HUNTER: I believe it was Senator Taft that even suggested that in some of his dialogue that after all, if an employee quits, he's quitting when he violates the no-strike clause and he ought to assuming that's what he wanted. And he concurred with that.

QUESTION: May I ask, isn't there some legislative history to indicate that Congress intended that the sanction should be limited to discharge or other discipline than damages?

MR. HUNTER: I respectfully suggest that that was in the Case bill dealing with Section 10(d) and 10(d) did not survive the Taft-Hartley.

QUESTION: And you think that's -- it's limited to that, or something?

MR. HUNTER: I do, and that's where the dialogue took place.

QUESTION: Well, the legislative history reflects that discharge was a remedy --

MR. HUNTER: A remedy suggested --

QUESTION: -- but it could not negate a private suit.

MR. HUNTER: That is my opinion of the Congressional history about this.

MR. CHIEF JUSTICE BURGER: Mr. Grossman.

ORAL ARGUMENT OF HIRAM S. GROSSMAN, ESQ.,

ON BEHALF OF THE RESPONDENTS

QUESTION: You might at some point, if you would, touch on that legislative history, but at your own time and convenience.

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

Respondents respectfully urge this honorable Court to affirm the decision of the 6th Circuit Court of Appeals and conclude that petitioner is not entitled to a damage

remedy under Section 301 against its employees who breached a collective bargaining agreement by participating in an unauthorized work stoppage; and that the petitioners' remedies and relief under Section 301 are discipline and discharge of employees, which I may add, it has already done; it obtained a Boys Market injunction; and it quickly did end the unauthorized work stoppage which it has already obtained; and they had the cooperation and the assistance of the union in not authorizing or sanctioning the work stoppage, and also urging the employees to return to work.

QUESTION: Well, Mr. Grossman, what if a producer had a contract with Ingrid Bergman and she walked off the lot honoring a no-strike clause, or a sympathy strike, or something like that, and do you say that there would be no action even in diversity in a federal court against her for damages?

MR. GROSSMAN: Are we somehow saying that Ingrid Bergman is also covered under this collective bargaining agreement?

QUESTION: Yes, that she's a member of the Screen Actors' Guild.

MR. GROSSMAN: She's a member of the Screen Actors' Guild. I would say then, Your Honor, Mr. Justice Rehnquist, that the provisions of the Act, although not expressing it, the legislative history, and the policy behind the Act

would not allow a damage remedy.

QUESTION: In other words, the Congress affirmatively prohibited damages by simply conferring jurisdiction on federal courts under 301?

MR. GROSSMAN: Well, I think the purposes of the enactment of Section 301 are -- when I say limited, are -- It was to make unions responsible, allow a forum in which they could be sued to enforce collective bargaining agreements, it was to also assure the union -- let me back up. It was also to assure employees that even if they did violate terms of the collective bargaining agreement, they would not be subject to a damage action but --

QUESTION: Where do you find that in the language of 301?

MR. GROSSMAN: Okay. Well --

QUESTION: That a party whose agent negotiates an agreement for them is not subject to damages -- ?

MR. GROSSMAN: The language does not expressly state that, Your Honor, but what I am saying the purpose of the statute, the enactment of the statute, it was to accomplish certain limited ends. When I say, limited, it wanted to make unions responsible under the terms of the collective bargaining agreement.

QUESTION: It didn't want to make employees irresponsible.

MR. GROSSMAN: No, it didn't want to make employees irresponsible. And the nature of an employer's relief, I maintain, is that employees who do violate the terms of a contract are subject to discipline and/or discharge.

QUESTION: But why aren't they subject to damages the way any other person signing an employment contract is?

MR. GROSSMAN: Under Section 301, I am maintaining, they would not be, because Congress in enacting the legislation created these rights that can be used to enforce the terms of the contract to a specific group. And I say, it bound the union, it made the union responsible for its actions. It makes -- when I say it makes the employees responsible, it makes it that if the employee breaches the terms of a contract and the employer acts by disciplining or discharging the employee, the employee has, what I say, no recourse. The enactment, at the time Section 301 was enacted, the Taft-Hartley Act added union unfair labor practices, it also stated that if an employer discharges an employee and the employer has cause, the employee does not have a right of action under the National Labor Relations Act to allege that his discharge was violative of that.

QUESTION: Does an employee have a right to sue in a federal district court, not under 301, but under diversity jurisdiction, an employer for breach of his contract and and allege damages?

MR. GROSSMAN: I'm unaware of any actions that have happened. That isn't to say that there isn't any; I'm just saying that I am unaware of any, Your Honor.

QUESTION: Justice Rehnquist's question takes me back to the one I put to your friend at the outset: are you saying that you have the same kind of claim as though you have individual contracts with these employees with no union involved at all? And I think he said, yes. Now, to take the Ingrid Bergman or any other star, if Ingrid Bergman, for example, made a private contract, is not a member of any union, then walked off the scene when they'd done half of the film and spent millions of dollars, would there not be a suit for breach of contract for damages against her?

MR. GROSSMAN: Well, if there would, it wouldn't be under 301.

QUESTION: No, no, but, there's no question about if there would be, would there not? A breach of contract?

MR. GROSSMAN: There conceivably could be, if their rights were violated. But the focus that we have to put in front of us now is that this action was brought under Section 301, it wasn't brought under diversity, it wasn't brought under any --

QUESTION: Then the question arises, whether 301 precludes -- now, you, you, I take it, concede that there being no union contract, there being no 301 problem, the

producer could have an action for breach of contract against the actor or actress.

MR. GROSSMAN: Okay, I can't see any reason why they could not.

QUESTION: There's no equitable remedy available because they can't compel the painting of a picture or the performance of a work of art. So, what is the difference, then, because there happens to be a collective bargaining contract? Unless you can point to something that Congress intended to wipe out that private action.

MR. GROSSMAN: Okay. I'm not going to contend -- that I'm unaware whether Congress intended to wipe out --

QUESTION: Well, the question here is, isn't it -- or am I mistaken? -- whether or not Section 301 confers federal jurisdiction over a case such as this?

MR. GROSSMAN: But that is -- okay, that is a matter that, how this matter originally arose, and it arose in 1976. Yes, it was --

QUESTION: Well, is that the question or not?

MR. GROSSMAN: It is that whether it's under Section 301 --

QUESTION: Whether or not Section 301 confers the jurisdiction of a federal district court over an action such as this?

MR. GROSSMAN: Over a damage action against

individual employees.

QUESTION: Mr. Grossman, if you look at the statute, what the statute says is, jurisdiction is conferred on district courts of suits for violation of contracts concluded as the result of collective bargaining between an employer and a labor organization representing employees in an industry affecting commerce. And the question is whether this is a suit which is maintainable under that language, isn't it?

MR. GROSSMAN: It's a suit that is maintainable under 301 --

QUESTION: That's what I say, is it -- it's a question of construction of that language, isn't it?

MR. GROSSMAN: In construing Section 301(a), the type of suit, to seek the remedy of damage, I would say that Secton 301(a) does not intend that type of --

QUESTION: Cannot be construed to authorize a suit of this kind or confer jurisdiction over --

MR. GROSSMAN: No, it would not confer jurisdiction on a federal district court to entertain a suit of this type.

QUESTION: Now, that's what you have to persuade us, isn't it?

QUESTION: May I just add one question? Is it not also true that if 301 does not authorize this suit, then the suit may not go forward, because there's no other basis for federal jurisdiction here?

MR. GROSSMAN: True.

QUESTION: So we don't have to reach the question whether it's 301 prohibits the suit. We just have to first decide whether it authorizes a suit.

MR. GROSSMAN: That's right. If Section 301 does not authorize the suit, then --

QUESTION: That's the end of this case.

MR. GROSSMAN: That's the end --

QUESTION: And whether they could sue in a state court or sue Ingrid Bergman would be in another lawsuit, not this one.

QUESTION: Well, Mr. Grossman, on that other thing you're saying that the remedy is to discharge?

MR. GROSSMAN: Well, the employer has the option of disciplining or discharging the employees.

QUESTION: Let me ask you, if 90 percent of the employees go out on an illegal strike, is firing them an adequate remedy?

MR. GROSSMAN: If the employer so --

QUESTION: Because he couldn't run on ten, with that, can he?

MR. GROSSMAN: I'm sorry.

QUESTION: I said, if 90 percent are out, is his only remedy to fire 90 percent of his labor force?

MR. GROSSMAN: No, he can do what this employer did,

is go into federal district court and seek an injunction which it obtained.

QUESTION: How -- why can he do that under 301? Why do you concede that?

MR. GROSSMAN: Because in this particular action the employer in his filing of the lawsuit filed it against both the union and the employees and we did not raise the particular question at the time.

QUESTION: It would seem to me if he can, and if you concede that he can, then you're conceding away your lawsuit.

MR. GROSSMAN: Okay, I --

QUESTION: Well, you're conceding away the jurisdictional point that the federal courts set --

QUESTION: Which is the only point here, isn't it?

QUESTION: Well, you're not conceding the cause of action?

MR. GROSSMAN: No, I'm not conceding the cause of action, Your Honor.

QUESTION: Otherwise you would be out of our --

QUESTION: Well, the reason he could go into federal court and get an injunction is that Boys Market held that he could, if what he had was an arbitration clause in the agreement.

MR. GROSSMAN: With Boys Market this Court concluded

that if the matter is subject to the parties' collective bargaining agreement, and the walkout involves a dispute that is covered by the collective bargaining agreement, then an injunction can be obtained. And that's what the district court on the second hearing concluded, that the employer was entitled to a Boys Market injunction. Now --

QUESTION: Did the injunction in Boys Market run against the employees as well as the union? Do you remember?

MR. GROSSMAN: Yes.

QUESTION: Against both?

MR. GROSSMAN: It ran against the employees, it ran against the local, it ran against the international. And as soon as the injunction was issued they went back to work.

QUESTION: So to that extent we have recognized that there is a 301 action against the employees.

MR. GROSSMAN: See, the 301 action would refer to the ability under 301 to obtain a damage -- the remedy of damages against employees participating in an unauthorized work stoppage, it seems to me. And I say that under Section 301, which created certain type of rights which permitted certain types of actions against a union, that to presume because the language does not specifically say that the employer, you cannot sue individual employees individually for their participation in an unauthorized work stoppage, thereby you can read that into it because it doesn't explicitly say

you can't. I'm saying, in a statute of this type where there are rights that are created, you should -- if it was Congress' intent to have a remedy such as a damage remedy against individual employees who participate in unauthorized work stoppages, it should have been explicitly stated and expressly stated.

QUESTION: Well, Mr. Grossman, is your basic argument that there is no 301 jurisdiction in federal courts for this kind of an action, or that this kind of an action simply cannot be brought because Congress has prohibited imposing liability on individual members ?

MR. GROSSMAN: Okay, I would say that the language of the statute doesn't permit it, the legislative history doesn't say that Congress intended to allow it, and what petitioners are attempting to have this Court do is by the inventive -- because this is an area that's in the penumbra, is to use the judicial inventiveness to allow them to sue and obtain a money damage action, remedy, against employees where the language doesn't say they can.

QUESTION: Well, but -- so your argument is basically, no 301 jurisdiction, not that if there were diversity jurisdiction in a federal court? Which there wasn't here, but might be in some other cases, that federal substantive law prohibits the maintenance of this sort of thing?

MR. GROSSMAN: Yes, I would say, even if there were

diversity, if it was under a collective bargaining contract, that there would be a prohibition.

QUESTION: How do you explain Smith v. Evening News, then?

MR. GROSSMAN: Smith v. Evening News? Okay, it was basically a question of double jurisdiction. And you can -- this Court could have arrived at the decision at Smith v. Evening News without determining, for example, whether the employees, the employee who was suing for a wage claim, basically, was "a party" to the contract, I said, a party to the contract. Is it one of the -- when you talk in terms of 301(a), we talk in terms of jurisdiction of the parties.

Now, does that just mean the employer and the labor organization who are "the parties" who, to the contract? Would it permit in an individual who is a beneficiary of that contract to sue for rights under the contract? Suing for rights under the contract, this Court, I would say, allowed in suits such as Smith, allowed in suits such as --

QUESTION: Well, wouldn't you -- in the Smith and Lucas, those kinds of suits in a state court, under 301, they are governed by federal law.

MR. GROSSMAN: Yes, they are, Your Honor.

QUESTION: And I don't suppose you could get a remedy in a state court that, for example, against a union that Carbon Fuel said you couldn't get?

MR. GROSSMAN: No, it would be inconsistent, it would not -- it would be inconsistent with the federal decisions that --

QUESTION: Yes. So, your real submission, it seems to me, is that under the federal law damage recoveries from individual employees are simply forbidden. There's just no cause of action against them for that.

MR. GROSSMAN: Yes, sir, that is true.

QUESTION: Whether under 301, or whether in state court, or whether in federal court, or -- ?

MR. GROSSMAN: Yes, I would say if you're going to be going under, if the theory of the lawsuit involves collective bargaining and a breach of the collective bargaining agreement.

QUESTION: Then that's as true of Ingrid Bergman who may have damaged the employer by $2 or $3 million, as by someone who quits voluntarily and can easily be replaced?

MR. GROSSMAN: Well, I don't know -- okay, if she's covered under this contract.

QUESTION: Well, this is a hypothetical.

QUESTION: The assumption is that she is, and then your answer's the same.

MR. GROSSMAN: Right, my answer would be the same again. Now -- and, what I see, employer-petitioner really has obtained all the relief that it can under the statute. As I mentioned, they did obtain a Boys Market injunction,

they did discipline and discharge employees, and they obtained the union's cooperation by not authorizing the work stoppage. The -- okay, in enacting the Section 301, the Congress indicated what it wanted to do is, it tended to make unions accountable. They wanted to insure enforcement of the contracts; I think did not want to impose a damage action remedy against individual employees who participated in unauthorized work stoppages; and again, it allows the employer the ability to discharge employees who were involved in an unauthorized work stoppage by disciplining them and/or discharging them.

QUESTION: As I recall the Taft-Hartley provision, one of them was to say that no worker should be penalized for engaging or for not engaging in collective activity. And yet your construction of 301 would immunize workers who worked under a collective bargaining agreement that was obtained by collective activity from any damage remedy. Whereas a single worker who signed an agreement to work would be liable.

MR. GROSSMAN: If the single worker was covered under the collective bargaining agreement, I don't -- okay, what I'm -- I guess, if you could imagine a situation where there were 100 employees and only one walked out, yet caused the employer damages, and what I would maintain is, that employee could only be discharged. The fact that he caused

his employer monetary damages, the employer could not bring a 301 action against the employee for the damages imposed.

QUESTION: Do you concede or do you not that this lawsuit comes within the literal language of 301(a)?

MR. GROSSMAN: It was brought under 301(a), yes.

QUESTION: Well, do you -- perhaps you didn't understand my question. Does the lawsuit come within the literal language of 301(a)?

MR. GROSSMAN: Okay, it involves --

QUESTION: This was a contract between an employer and the laborers' organization --

MR. GROSSMAN: Right.

QUESTION: Representing employees in an industry affecting commerce, wasn't it?

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

QUESTION: And this is a suit for violation of that contract.

MR. GROSSMAN: That is true.

QUESTION: And therefore, do you concede that it comes within the literal language of 301(a)? Or do you think that a suit for violation of that contract can as a matter of law be brought only against the labor organizations?

MR. GROSSMAN: Well, I think that it can be brought against -- okay, it has been brought against both. Had I looked -- looking backward, I may have in 1976 raised certain

questions at the point of time that initially the employer decided it wasn't going to pursue it any further against the union. But both parties were initially brought under the lawsuit. The lawsuit was filed against individuals as well as the local, and the international, and there was a work cessation and the court enjoined it and enjoined everybody at the time, including the employees.

QUESTION: How did the international and the local drop out of the case?

MR. GROSSMAN: The petitioners elected not to pursue the cause of action against them. Once the --

QUESTION: Proceed only against the employees?

MR. GROSSMAN: Once the work stoppage ended, everybody went back to work and the petitioners pursued the damage remedy against the employees. And may I add, the decision that the petitioners made was much, in point of time, earlier than this Court's decision in Carbon Fuel.

QUESTION: Well, was there ever any decision or any claim that the union couldn't have been liable even if the employees were?

MR. GROSSMAN: I'm sorry, I didn't hear you.

QUESTION: Was there ever a decision by a court that the union couldn't have been liable in all cases?

MR. GROSSMAN: No, it was, the only decision that the court made was to order everybody back to work.

QUESTION: Because certainly Atkinson v. Sinclair said you can't avoid 301(b) by just suing the employees, if the union is liable.

MR. GROSSMAN: No, that's correct. And this lawsuit, I guess, could have continued with the petitioner suing both the local and international --

QUESTION: Well, why don't you -- why isn't, why aren't you arguing -- maybe you are -- that you really can't tell, at least you can't hold the employees liable, until it's been legally determined that the union is not liable?

MR. GROSSMAN: Well --

QUESTION: Because if it is, Atkinson v. Sinclair says 301(b) bars it.

MR. GROSSMAN: Okay. Had they elected to continue with the lawsuit, I would have -- no, it would have had --

QUESTION: Well, they can't elect -- Atkinson says you just can't elect to sue employees.

MR. GROSSMAN: No, what I'm saying to you is that had petitioner elected to continue keeping all the parties in the lawsuit --

QUESTION: Yes?

MR. GROSSMAN: -- what would have happened is, I guess the same type of motions could have been brought, saying that you could not, by respondents, that you could not

have, permit a damage action against individual employees.

QUESTION: You couldn't have had judgment against both of them?

MR. GROSSMAN: Well, yes, under --

QUESTION: Under 301(b)?

MR. GROSSMAN: Well, you could have precipitated the matter by saying that 301 would not permit a damage remedy against individual employees; as I did.

QUESTION: And, or, and the employer could have said, could have said, well, we think they're both liable, but if the union isn't, certainly the employees are.

MR. GROSSMAN: Right. Then you would have been faced with the same matter --

QUESTION: Exactly. Well, how do we know whether the union would ever have been liable or not?

MR. GROSSMAN: We don't know. Your Honor, in looking at the legislative history, there was a congressional concern to avoid the repetition of Danbury Hatters, and as this Court recognized in the Atkinson case, that what the way the lawsuit developed was that it was only the individual employees who were sued, and it was only the individual employees who had a judgment against them. And the $250,000 that the Danbury Hatters employees were sued pales in significance to the amount of dollars that are being sought in this particular case. Now, that really has no bearing, but, see,

Congress was concerned that under Danbury that they didn't want to have a repetition of Danbury Hatters, and my contention is, with respect to that, is that not only in the situation where you could say conceivably it was the union that was at fault. I think Congress spoke and said, we do not want to have a situation where individual employees would be responsible in damages for even unauthorized work stoppages, their breaches of the collective bargaining agreement.

QUESTION: What section do you rely on for that? What language?

MR. GROSSMAN: Okay. I relied on the fact that had Congress intended to include and allow damage actions such as petitioner is seeking, it would have said so. Okay? Now, the reason that I say that is that it was, what I say, creating these rights in this legislation. So if it intended to do it, it would have said it. And you should not by implication say it is there because there's nothing in the language of the statute one way or the other. The reason that I feel that in 301(b) there's the language that says that if a union is responsible for a breach you should not look to the employees, is that that was the only type of remedy, monetary remedy that Congress was willing to allow. They were willing to allow a damage action against unions if they had breached the terms of the contract. Okay? And if they, the union, breached the terms of the contract, you can get a money damage

remedy against them. But not against the employees. And that is the only type of money damage remedy that in effect was flowing from 301 that was hitting, directed at the union, and if it's directed at the union, you can't direct it at, you can't collect from the employees. And there was no intention to permit a damage remedy against the individual employees. Okay, now --

QUESTION: So what you're saying is that Congress said, yes, you can collect from the union, if the union breaches the contract, that is, if the walkout is with the union's approval. But the individual members are immune from liability?

MR. GROSSMAN: From financial liability. They are not immune, no, but --

QUESTION: From financial --

MR. GROSSMAN: Right; financial liability, and as I said, the reason that that was the case is that Congress recognized, and acknowledged, that employees who do participate in unauthorized activity, who breach the contract, are subject to discharge and discipline, and they have no protection under the Act. And that was the type of relief that was afforded them. I don't think that any arguments of mutuality because the employee can sue the employer for money damages thereby entitles the employer to sue the employee for money damages.

QUESTION: Is there any express language in the Acts authorizing an injunction?

MR. GROSSMAN: No, but we have an overwhelming --

QUESTION: That's been read into the statute, now, hasn't it?

MR. GROSSMAN: We have an overwhelming policy to promote, to promote the adherence to the terms of the contract.

QUESTION: That's been read into the statute, notwithstanding the Norris-La Guardia Act -- ?

MR. GROSSMAN: That is correct. Under Boys Market. We read it, in those limited situations that the Court outlined in Boys Market. This Court, in Boys Market, also acknowledged that even -- and one of the reasons maybe that it was granted, that injunctive relief was granted in Boys Market, was this Court's acknowledgment that even to permit a damage action which happens when an employer sues a union is not conducive to promoting industrial stability, and that was a main purpose of the Act, to promote industrial stability. Now, you will not promote -- I maintain you will not promote industrial stability by allowing the damage remedy action.

This petitioner has discharged employees, it's almost five years after the incident in question, it's still pursuing the remedy of damages, and it does nothing but exacerbate the industrial peace.

QUESTION: Well, of course, then a wildcat strike also exacerbates industrial peace, doesn't it?

MR. GROSSMAN: It does. I'm not going to say that it doesn't, but within two weeks -- and that's a long time -- the entire matter was settled in terms of the, from the time that the action began to the time that they were ordered back to work, two weeks elapsed. And thereafter the discharges occurred which would have ended it but for this.

Thank you very much.

MR. CHIEF JUSTICE BURGER: Very well. Have you anything further, Mr. Hunter?

MR. HUNTER: Mr. Chief Justice, I believe I have a minute, and I want to address, very quickly, two issues.

ORAL ARGUMENT OF R. IAN HUNTER, ESQ.,

ON BEHALF OF THE PETITIONERS -- REBUTTAL

MR. HUNTER: Note that on page 25 of the Joint Appendix the respondents admitted in the answer that the local union did not authorize or condone the strike. So that's not at issue. Respondents admitted in their answer that the local union did not authorize the strike.

QUESTION: Well, is that -- do you think that's tantamount to admitting the union was not liable?

MR. HUNTER: It certainly is, it admitted that they did not condone it. And we have no foundation of asserting they hadn't, based on our understanding of the facts.

The injunction did go against the employees. The local union was only party to one of the three consolidated lawsuits so the injunction was intended to go against the employees in that the --

QUESTION: I think the -- I see a recitation in the Court of Appeals opinion that the district court actually found that the union had not authorized the strike.

MR. HUNTER: That's right. And it was found by the court; right.

And the jurisdiction of a matter of this nature was alluded to in this Court's decision in Smith v. Evening News, alluding to Atkinson v. Sinclair as a jurisdictional admission. Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

(Whereupon, at 2:54 o'clock p.m. the case in the above-entitled matter was submitted.)

CERTIFICATE

North American Reporting hereby certifies that the attached pages represent an accurate transcript of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

No. 79-1777

COMPLETE AUTO TRANSIT, INC., ET AL.,

V.

DANNY REIS, ET AL.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY: Bill G. Cox