In the

Supreme Court of the United States

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, ET AL.,	)	
PETITIONERS,	)	No. 80-710
V.	)	
LOCAL 334, UNITED ASSOCIATION, ETC., ET AL.	)	

Washington, D.C.
April 29, 1981

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ORIGINAL

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Petitioners,	:	No. 80-710
v.	:	
LOCAL 334, UNITED ASSOCIATION, ETC., ET AL.	:	

Washington, D. C.

Wednesday, April 29, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:08 o'clock a.m.

APPEARANCES:

LAURENCE S. GOLD, ESQ., 815 15th Street, N.W., Washington, D.C. 20005; on behalf of the Petitioners.

JOHN AXELROD, ESQ., Beins, Axelrod & Osborne, 1511 K Street, N.W., Suite 300, Washington, D.C. 20005; 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 next in United Association of Journeymen of the Plumbing and Pipefitting Industry v. Local 334. Mr. Gold, I think you may proceed when you are ready.

ORAL ARGUMENT OF LAURENCE S. GOLD, ESQ.,

ON BEHALF OF THE PETITIONERS

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

This case which is here on a writ of certiorari to the 3rd Circuit concerns the status of suits brought on national union constitutions under Section 301 of the Labor-Management Relations Act of 1947. That provision states, and I quote from page 2 of our opening brief, the blue brief: "Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in the Act or between any such labor organizations may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

This case, as that makes clear, is about the second clause of that section. At the present time, three courts of appeals, the 2nd, 4th, and 6th have taken the position that national union constitutions are within that jurisdictional

grant. One court of appeals, the 10th, has taken the opposite view, and six other courts of appeals have taken the view that the jurisdictional question depends on whether the actions affect labor-management relations and have stated that test in widely varying ways.

QUESTION: Mr. Gold, isn't there a certain undesirability in the test advanced by the last six circuits that you mentioned, you don't know when you go into court whether there is jurisdiction or not, depending on a whole bunch of factors?

MR. GOLD: Our position, Mr. Justice Rehnquist, in part for the consideration you just stated, is that national constitutions fit the language of the statute, fit the purposes of Section 301, and are within the section. We do not believe that the better view is that the parties by their pleadings or the courts by going though a factual inquiry should be deciding this matter on a case-by-case basis. We think that that complicates the administration of the law and is not necessary in any way to carry out the proper view of the statute.

QUESTION: Well, there is that other view that the union constitution shouldn't ever be within this.

MR. GOLD: Yes.

QUESTION: That would make it simple too, wouldn't it?

MR. GOLD: That's right. There is no doubt that the risks of disagreeing with Mr. Justice Rehnquist, or of agreeing with him, are there. There are two different straightforward

views, one, yes, and one, no. We believe that for the reasons I am going to state yes is the proper answer rather than no. Obviously, if the Court doesn't agree that yes is the answer and maybe would be a better answer as far as we're concerned than no, but we do think that yes is the proper approach.

QUESTION: Yes wouldn't preclude a state action, would it?

MR. GOLD: No, under Dowd Box v. Courtney the jurisdiction under 301 is the jurisdiction both in the federal courts and in the state courts. Section 301 does not displace state court jurisdiction. It supplements it with federal court jurisdiction. The Court has so held.

QUESTION: But the state is obligated to apply federal substantive law?

MR. GOLD: That's correct, Mr. Justice Stewart.

QUESTION: In that case or in Lucas Flour, I've forgotten which.

MR. GOLD: Yes, under Textile Workers v. Lincoln Mills, the Section 301 law is federal.

QUESTION: What kind of law will govern this dispute? Federal law of interpreting international union constitutions?

MR. GOLD: That's right, Your Honor, it would be the task, and our view would be the same as the task the Court outlined in a case like Carbon Fuel in 444 U.S. where you dealt with the question of how to interpret a collective

agreement.

QUESTION: I understand. Of course, there's a lot of federal law with respect to collective bargaining agreements, but is there any body of federal common law dealing with fights between unions to which there are contracts? You know, the contract between two unions could cover all sorts of different things. Would all of those contractual disputes be governed by federal law in your view?

MR. GOLD: Insofar as the contract is between the organizations.

QUESTION: Well, say, we'll say one labor union rented office space in New Jersey to another labor union, entered into a contract, and one of them breached the contract. Would that be actionable in federal court?

MR. GOLD: I think that that would be.

QUESTION: And federal law would govern the dispute?

MR. GOLD: That's right. Now --

QUESTION: Mr. Gold, if there isn't any present federal law we have to fashion it for you.

MR. GOLD: That would be right, Your Honor, and I would --

QUESTION: I mean, isn't that what Lincoln Mills held?

MR. GOLD: And Lincoln Mills, as I remember it -- I don't have the quotation before me -- suggested that one source

of federal law, even in the collective bargaining area, would be the law that had been developed in the states.

QUESTION: Mr. Gold, let me take you -- a little more extreme example. Say one union sells out its office building to an entirely unrelated union but it is also a union. It takes back a first mortgage and a lot of notes and so forth, and there's a foreclosure. They could foreclose in the federal court and federal law would govern the foreclosure proceeding.

MR. GOLD: I would think that in most cases the federal law would adopt the state law, but there is no dispute, unless we're going to throw the statute entirely over our shoulder, that it covers contracts between labor organizations. The posit which is opposed to our view that the statute means what it says is that there ought to be coverage only for contracts between unrelated labor organizations. Your examples have been between unrelated organizations, and it is more common, I think, to have those kinds of property or contractual relations between unrelated organizations than otherwise.

What would happen if you were to cut out agreements between related organizations is that the section would not cover matters which we think certainly were at the forefront of Congress's attention, agreements about work jurisdiction, who should be the collective representative, mergers, affiliations, no raiding, pacts within unions. All of these matters, which certainly on any fair meaning of the term affect how management

and labor work out their disputes, would be within the section. I do not know in terms of the series of hypotheticals you have given any indication, aside from the theory that you would import a limitation on affecting labor management relations, to reach the result that an agreement between Union A and Union B concerning a promissory note, which is one of the examples given by respondent, would be outside the section if the entities are unrelated.

QUESTION: But Section 301(a) by its terms has simply conferred jurisdiction, it doesn't say what body of law shall be applied.

MR. GOLD: Yes, but as Mr. Justice Brennan pointed out, the Court in the Lincoln Mills decision, it construed Section 301 to call for the creation not only of jurisdiction but of federal law.

QUESTION: Well, do you think that we're bound by Lincoln Mills to construe the example Justice Stevens gave you as governed by federal law?

MR. GOLD: I would say, Mr. Justice Rehnquist, that it would be, that you would reenter the very difficult dispute which the Court confronted first in the Westinghouse case and then in Lincoln Mills as to constitutional questions, whether you can simply provide jurisdiction without substantive law. It was not without quite a lengthy and considered dialogue within the Court that that conclusion was reached, and over a very

vigorous dissent by Mr. Justice Frankfurter.

QUESTION: Certainly in diversity cases we provide jurisdiction without providing substantive law.

MR. GOLD: Well, that is provided for in the Constitution. The question, as I remember Lincoln Mills, was whether under the Commerce Clause Congress could do the same, and the answer was (a) that it was Congress's intent, reading all the material, to provide for a body of federal law, and (b) that that intent had to be read against the background of a constitutional doubt.

But, in saying that it would seem to me that if you had a situation in which local A rented a building to local B there is no reason to believe that the federal law would be a law different from the law of the state. That would be a natural place to absorb the state law. After all, the purpose of Section 301 overall was to deal with the difficulties and imperfections of state law in permitting parties to enforce contracts. That was the overriding interest to the extent that federal law --

QUESTION: Mr. Gold, do you have any examples in 301 cases of borrowing state law with the result that you do not have a uniform rule?

MR. GOLD: On statutes of limitation, at least, outside of the area which we hope the Court will reach on duty of, hybrid duty of fair representation, Section 301 cases. That is

an area where the Court concluded --

QUESTION: So you would suggest -- you don't suggest that as an ironclad rule that one of the purposes of 301 and of Lincoln Mills was to end up with a uniform federal rule in every contracts case?

MR. GOLD: No, I think the Court --

QUESTION: That it would be consistent with its history to say that in the proper cases you could borrow?

MR. GOLD: Yes. If I can backtrack just very briefly to the facts, this case concerns an effort by the international union to merge local unions in an area of New Jersey. The international union proceeded as provided under the international constitution, an order of consolidation was promulgated, a hearing was held, in which the affected unions could state their views, a hearing officer's decision was issued, it was reviewed by the international president and by the general executive board and finally promulgated. At that point one of the local unions affected by the proposed merger went into state court. There was a complaint and an amended complaint. The amended complaint, which is on page, begins on page 54 of the Appendix, states among other points that the defendant is an international labor organization consisting of many locals in New Jersey and elsewhere throughout the United States and Canada, and that the relationship (rights and duties) between Local 334 and the international is governed by the said

constitution. The gravamen of the first count was that the actions of the general president do not constitute a consolidation of local unions within the meaning of the constitution and therefore the order insofar as it applies to plaintiff is illegal. Plainly from what I have said, the issue and the primary issue between the parties was the meaning of Section 86 of the national constitution which is set out at page 25 of the record and provides for the merger of local unions.

Our basic position is that national constitutions insofar as they determine the relationship between the national and locals, and between locals inter se, are contracts between labor organizations representing employees in an industry affecting commerce. We are proceeding in this instance without secondary guidance aside from the words of the statute to which I have already referred. The second clause, the clause on contracts between labor organizations, was added in conference and the conferees did not explain their intent.

In that instance we believe, in such an instance we believe that the proper approach is to consult the ordinary contemporaneous meaning of the terms, and as we show at some length in our brief, both as a matter of federal law under the current, leading Coronado case of this Court by Mr. Chief Justice Taft and uniformly, so far as we can tell, under state law, constitutions have been regarded as contracts in the law. After all, they are agreements, serious agreements, which the

parties intend to define their relationship and the courts have recognized them as such.

We think, too, that the reading we suggest is in accord with the basic purpose of Section 301. As I have already stated, Congress was concerned about the difficulties of bringing suit against unions as unincorporated associations. Congress didn't overestimate that difficulty. The Senate report and the House report are very careful compilations of the diversity in state law on the question of how to sue an unincorporated association, when you can get jurisdiction, when you can't, what the prerequisites are, and the difficulties of obtaining relief.

The purpose of Section 301 is to end those difficulties and to provide in Congress's terms a high level of responsibility between labor organizations and employers when they enter into agreements, and obviously between labor organizations because that is what the language says.

I think, too, that the evolution of the section, the fact that Congress completed its work in the House and the Senate and went to conference and said, this section is incomplete as it stands because it only covers contracts between employers and labor organizations, indicates that Congress must have been of the view that contracts between labor organizations ought to be enforceable in the same way as contracts between labor organizations and employers in order to accomplish the congressional

end, and we think that in light of what Congress said and what it did that the language ought to be accorded its fair meaning. We think that this case is very much like Harrison v. PPG Industries in 446 U.S. where you had to grapple with a jurisdictional provision dealing with the scope of authority of the courts of appeals under, I believe it was, the Clean Water Act and the question was whether any other final action meant any other final action or only some final actions.

We think in this instance contracts means what it is ordinarily, contracts between labor organizations means what that term would normally have meant to the people who drafted the section, who were well aware --

QUESTION: Mr. Gold, are you arguing in effect that in constitutional terms, going back to Article III, that every time -- this statute having been enacted, every time one union sues another it's a case arising under the laws of the United States, within the meaning of the Constitution, regardless of what -- even if they say that they're suing them for some kind of a state tort or whatever it might be?

MR. GOLD: No, it has to be a suit on a contract between two labor organizations and Congress decided that in preference to the variation, complexity, and difficulty of determining when such suits will be entertained, that it was going to state a federal law which again, as the Court said in Carbon Fuel and was presaged by the Coronado case in which the entities,

the national union -- the national unions, if there are two; the local unions if there are two; the national and the local, if that is the situation; are to be treated as entities very much like corporations, that's the model. And you were going to permit suit.

Now, the Court in Lincoln Mills, when it was confronted with the question of could Congress so act, came to the conclusion that it was Congress's intent and it might have been a necessity to provide a body of federal law.

QUESTION: Of course, here you have rather comprehensive regulation by statute of the relationship between the collective bargaining agent on the one hand and the employer on the other. There really are no set of federal rules of which I am aware that comprehensively regulate relationships among different labor unions, which may or may not be affiliates, which may enter into all sorts of contracts. And you're suggesting that there's a very broad grant, by the creation of a very broad area of federal law that every such contract shall hereafter be interpreted by reference to some substantive rule of federal law that has not yet been identified.

MR. GOLD: Well, I'm not contending anything concerning the relations, the contractual relations between unaffiliated labor organizations. That isn't in this case. This case is whether agreements --

QUESTION: But in terms of the statute or the

Constitution, what difference does it make whether the unions are affiliated?

MR. GOLD: Oh, I agree that I don't see how there could be a dispute about the point you just raised. In other words, I do not understand except if we go to the expedient of saying that the contract has to be one which relates to labor-management relations, how the statute could possibly be said not to cover contracts between unrelated labor organizations. I know of no case which suggests that the statute would not do so, but the dispute between the parties here is whether that rule, even assuming the gloss of affecting labor-management relations, applies at all to national constitutions. We're not talking of, this is not a suit on a promissory note. We're talking about a situation in which an international union sought to merge local unions in a way which would change the hiring hall patterns in the area and change the nature of the collective bargaining representative.

Certainly we believe that in that situation, since the fight was over what the national constitution meant, since national constitutions have been understood to be contracts, and since on any -- what we would consider, under any sensible view, the merger affects labor-management relations, that's within 301.

QUESTION: But you also are contending then that there is some federal rule of law that answers this dispute?

MR. GOLD: I think we say that the federal, the question of how to interpret this section, just as the question of how the courts act in interpreting a collective agreement, is to be determined as a matter of federal law rather than state law. After all, this is the law of contracts. We're not talking about the federal courts saying what the relationship should be. The only federal law concerns the rules of construction and interpretation.

QUESTION: Well, now, in Lucas Flour we said we hold that in a case such as this, incompatible doctrines of local law must give way to principles of federal labor law. But first of all, I think you'd have to find that there's something in the local law that's incompatible, wouldn't you?

MR. GOLD: Yes, I would think that -- and that was why I answered Mr. Justice White's question the way I did. Where the federal courts have to create a body of law, we don't believe that the normal course is to start from scratch. It's a process of incorporation except in the case of incompatibility. It's difficult for me to visualize an incompatibility between federal law and state law if the dispute is on whether a local union which owes another local union that is unrelated $500 has in fact violated a promissory note.

I'd like to reserve the rest of my time.

MR. CHIEF JUSTICE BURGER: Very well. Mr. Axelrod.

ORAL ARGUMENT OF JOHN AXELROD, ESQ.,

ON BEHALF OF THE RESPONDENTS

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

With apparent seriousness, the United Association asked this Court to literally interpret the provision in Section 301 which provides jurisdiction for suits upon contracts between labor organizations.

Beginning at least in 1819 with the Dartmouth College case this Court has recognized that the meaning of contract is not clear and that the word contract cannot be literally construed. In Lion Dry Goods, where this Court for the first time discussed the definition of the word contract in Section 301, the Court again said the definition is not without ambiguity. In Sidell the 7th Circuit in a case similar to this again said, this issue is not without ambiguity.

But assuming that this Court will choose to interpret the statute literally and to conclude that any dispute between a local union and a national union is a contract between labor organizations, this Court will then direct federal courts to supervise the most mundane relationships between local union and parent and member.

For example, a constitutional provision requires a two-thirds vote at a convention prior to the raising of dues. At the constitutional convention the presiding officer says he will take a standing vote, and he determines on the basis of this standing vote that more than two-thirds of the delegates

to the convention favor the dues increase. There is a dispute as to the accuracy of the presiding officer's count and that dispute is then sued upon in federal counrt. Writing for the 7th Circuit in Rota v. BRAC, Mr. Justice Stevens said that that would not be a federal issue, that that was only a state law issue.

More recently, in New York State, there was a state court action to determine whether a bylaw committee had the authority to table a proposed amendment which would require the use of voting machines. That was a state law at issue which the United Association would now have raised to the level of a federal issue.

A member of one local union desires to transfer to another local union and the local union that he seeks to join says, no. The member claims that is a violation of his right to transfer between local unions, a right guaranteed to him by the constitution of his local union. In Vincent v. Plumbers the United Association here argued that that was not a federal issue, that was a state issue.

QUESTION: Well, that wouldn't be covered by the language of 301 because we're talking here about the language of 301 that confers jurisdiction upon the federal courts of lawsuits between any labor organizations; in your case it's an individual.

MR. AXELROD: The statute does not say lawsuits

between labor organizations, it says suits on contracts between labor organizations.

QUESTION: I see.

MR. AXELROD: In Smith v. Evening News this Court said that the word "between" modifies suits rather than contracts.

QUESTION: I see.

MR. AXELROD: And since Smith v. Evening News, individual employees have been permitted to sue alleging violation of collective bargaining agreements.

QUESTION: But then your -- you make that point, I suppose, or would make that point if a suit for an accounting were brought, which would be an equity action, and that would not be covered by the statutes. Is that your point? Or that's one of the consequences of the point you make?

MR. AXELROD: Not necessarily. I think --

QUESTION: Unless the equity action for an accounting were based upon a contract. But if it was just no contract alleged but was a suit for an accounting, you --

MR. AXELROD: Under the Landrum-Griffin Act, Your Honor, a member has the right to examine the books and a right to have an accountant examine the books of the local union.

QUESTION: 301 confers jurisdiction only over suits for violations of contracts.

MR. AXELROD: That's correct. And if --

QUESTION: I see.

MR. AXELROD: -- the suit would not, arising under the contract or under the constitution, then 301 --

QUESTION: If they wanted an accounting suit, they'd operate under Landrum-Griffin.

MR. AXELROD: I presume so.

QUESTION: Mr. Axelrod, would you state once more what you just said about the holding in Smith v. Evening News?

MR. AXELROD: In Smith v. Evening News, this Court stated that the word "between" in Section 301 related to suits between -- related to contracts between employer and labor organization rather than suits between employer and labor organization. And it permitted an individual employee who wanted to allege a breach of contract to sue in federal court or to sue in state court alleging a breach of a contractual obligation owed to him.

Insofar as Smith would apply to this case, if an individual employee could sue upon a collective bargaining agreement in which he is at best a third-party beneficiary, then an individual union member could sue under a union constitution which he is at least a third-party beneficiary of. It is also clear that an individual union member is a party to the union constitution.

QUESTION: Can a union member, as the law presently stands, bring an individual suit, not against the union for failure to represent him correctly, but simply against the

employer for breach of a collective bargaining contract under Section 301?

MR. AXELROD: He can sue the employer individually but he must also allege a breach of duty of fair representation.

QUESTION: If there's no grievance procedure provided in the contract, he can certainly sue.

MR. AXELROD: That was the situation in Smith.

QUESTION: Yes, yes. But if there's a grievance procedure he must follow it.

MR. AXELROD: He must follow it, but he can sue the employer if he will allege a breach of the duty of fair representation.

QUESTION: But not without that allegation.

MR. AXELROD: That's correct.

QUESTION: But if there is no grievance procedure he may sue the employer directly, as the second step.

MR. AXELROD: That's Smith. The issue in this case is also a relatively mundane one, the issue of whether the word "consolidation" in Section 86 of the United Association's contract permits the severance of a local into two constituent parts in the guise of merging nine locals into three. Since 1957 when the first Section 301 case involving a union constitution reached the courts of appeals, with but one exception prior to this case national unions have always argued that this type of case should be considered in state courts. The one exception

prior to the instant case is the Sombrotto case, and in this case, when the suit was filed in state court, the United Association removed. As the 4th Circuit stated in Parks, "There is no clear indication of what Congress meant in the suits between labor organizations of Section 301, but it is clear that, with but two exceptions, national unions have never taken the position now urged in this court by the United Association. It is clear that national unions have never sought day-to-day supervision of the internal affairs of unions."

The key to the interpretation of Section 301 is of course garnered from the legislative intent. The legislative intent must begin with some consideration of what a union is. In both its original brief and in its reply brief the United Association says, "Union members should remain free to decide what the provisions of their constitution shall be."

The United Association's constitution provides for two methods of amendment of the constitution. The first is at its constitutional conventions and its conventions at which members are represented in a form of representational government. And the second is by referendum in which each member of the Association has the right to cast a vote to determine what the parameters of its constitution will be.

QUESTION: Just what effect does that have on this case?

MR. AXELROD: It suggests that the constitution is

controlled by the membership rather than by local unions.

QUESTION: Is that involved in this case?

MR. AXELROD: It is when you are asked to hold that the constitution is a contract between national and local unions.

QUESTION: Do you deny that it's a contract?

MR. AXELROD: I'm arguing that it is a contract.

QUESTION: Is it a contract within the word "contract" in 301?

MR. AXELROD: It is a contract between member and national union or member and local union.

QUESTION: Is it a contract within the meaning of the word "contract"?

MR. AXELROD: It is a contract. It is not a contract between labor organizations.

QUESTION: You might wait till the end; you might not agree. Within the meaning of 301, that's my question?

MR. AXELROD: Within the meaning of state law it has always been interpreted to be a contract.

QUESTION: My question was, within 301, which you and I both understand is not state law?

MR. AXELROD: That's correct. I do not believe Congress meant union constitutions to be a contract within the meaning of this section. Section 301 was enacted --

QUESTION: What kind of contract do you think they meant?

MR. AXELROD: I think they meant no raiding agreements, jurisdictional dispute resolution agreements between unrelated labor organizations. I do not believe they meant contracts between related organizations.

QUESTION: Any legislative history to help you that you haven't mentioned? But I mean, is there any that you didn't mention?

MR. AXELROD: The legislative history of the Taft-Hartley Act, of which Section 301 is a significant portion, is replete with examples in which the Congress said we are not attempting to interfere in the day-to-day organization of a labor organization. Senator Taft said, we are not telling members how they should vote, we are not telling labor organizations how they should organize. The purpose of Section 301 --

QUESTION: What says that this is not a contract?

MR. AXELROD: It suggests --

QUESTION: A little jump there, isn't it?

MR. AXELROD: It's clear that in Section 8 of the National Labor Relations Act Congress was not attempting to work to --

QUESTION: Well, if it's not a contract, what is it? An agreement?

MR. AXELROD: It is a contract --

QUESTION: Oh, it is.

MR. AXELROD: -- but not a contract between labor

organizations.

QUESTION: What is a contract --

MR. AXELROD: It's a contract under state law between member and union, a contract which also governs how the subsidiaries or how the membership organizes into small groups.

QUESTION: In other words, your whole position is it should be governed by state law in a state court and not the federal courts?

MR. AXELROD: That's correct.

QUESTION: That's your problem.

MR. AXELROD: That's my position; yes. The purposes of Section 301 were to prevent disruptions in interstate commerce caused by unions which breach collective bargaining agreements, or caused by secondary boycotts or caused by union misconduct in organizing campaigns. It's clear that the impetus for Section 8(b) of the Act came from employers who were complaining to Congress. There is no evidence that any member of a labor organization complained to Congress and said, I cannot enforce the provisions of my union constitution. And the reason that no individual member was complaining was because in at least 45 of the then-48 states and perhaps in 47 of the 48 states, individual union members had the right to sue either their union or the officers of their union who allegedly breached the union constitution. Now that right was not perfect, but it was effective, and a member who was

illegally expelled from the union or disciplined by the union in violation of the union's constitution, had a right in the vast overwhelming majority of the states to sue to obtain reinstatement.

There is no evidence that a local union officer complained to Congress and said, I can't get my international union to follow the dictates of its constitution, because under the law of associations or under the state law concerning property members of a labor organization and officers of the labor organization had the right to sue in state court to enforce the union constitution. That right has existed since the late 1800s. The issue in Section 301, therefore, is what type of contracts between labor organizations presented the same problem which employers faced in Section 301 litigation under collective bargaining agreements?

Because members always had the right to sue their union under the law of associations, the issue is then, which contracts between labor organizations involved entities which were not part of the same association? The labor organizations which are not part of the same association within the meaning of the state laws were a suit between one national union and another national union, a contract between two national unions involving no-raid agreements, involving jurisdictional dispute mechanisms, involving the affiliation into a confederation such as the AFL-CIO. Those were the types of contracts which could not

be litigated simply because the parties to the contracts were not part of the same association and did not have the right of recourse to state law under the law of associations which was prevalent in almost all of the states.

If you accept the position of the United Association in this case this Court will be requiring the federalization of yet another area of state law. Now, in the first case in each of these areas of state law, it will be simple to say that we will apply the law of the state in which the problem arose. But that law will then become federal law, and if the law in New Jersey regarding the disposition of the property of a local union is different from the law in New York, in the second case in New York you have a conflict between a law of the State of New York and federal law.

Since 1907 at least, as we have pointed out in the two law review articles we cite concerning disposition of property, the states have always controlled that issue. If --

QUESTION: Well, maybe the federal law would be that in every case of this type the federal law incorporates the law of whatever state the controversy arose in. So there would be no conflict then.

MR. AXELROD: The only area -- that's correct, but then there would be no uniformity which seems to be the goal --

QUESTION: Well, but maybe the federal law would be that in this or that or the other area there need not be

uniformity.

MR.AXELROD: That's contrary to the thrust --

QUESTION: It's not contrary to a case like Hoosier-Cardinal.

MR. AXRLROD: That's the sole exception to the general proposition that uniformity is the goal of Section 301 cases.

QUESTION: Well, would you argue that uniformity was the pervasive concept of the labor laws, the federal labor laws?

MR. AXELROD: No, because this Court in Boeing accepted the proposition that state courts were the proper forum for determining certain types of labor disputes. This Court in Gonzeles said that state courts were the proper forum for determining expulsion or wrongful discipline cases. Uniformity is not the goal --

QUESTION: Well, isn't that just saying that attaching the word "labor" to any number of kind of disputes that may involve a labor organization does not automatically make it a federal labor law question?

MR. AXELROD: That's correct. We're saying that these internal union disputes are not federal labor law questions.

QUESTION: Mr. Axelrod, what law does apply to this case in your view?

MR. AXELROD: The law of the State of New Jersey.

QUESTION: New Jersey.

QUESTION: Mr. Axelrod, Mr. Gold when he started off

outlined the three ways in which the federal courts of appeals have gone. And I take it he takes the one position of full jurisdiction.

MR. AXELROD: Yes?

QUESTION: You take the position of no jurisdiction. Is anybody here supporting the in-between, shall I say, majority view?

MR. AXELROD: Well, I'd first like to state that I disagree with Mr. Gold's interpretation of the state laws. In Trail, which is the 6th Circuit case I think he's relying upon, the Court said, we're not going to reach the Section 301 breach of the union constitution issue because all these facts can be determined in the fair representation case which we have before us. So we're not going to reach Section 301.

In Parks, which I believe is the 4th Circuit case he is relying upon, the Court said, this dispute has a traumatic impact on interstate commerce on labor-management relations. And the dispute there involved the right to strike, the union's right to strike. I think Parks can be properly classified as one of the Court's taking the intermediate position.

Now, under our interpretation of the intermediate position, we would take the position espoused by Parks, by Baker, by 1199, by Sidell, by Local 1219 of the Carpenters. All of those cases deal with disputes in which all of those cases take the position that there must be concrete evidence of

a disruption in labor-management relations.

QUESTION: But then you don't know until after the lawsuit is over whether the court had jurisdiction or not.

MR. AXELROD: All of those cases deal with inspection of the complaint. And inspection of the complaint is particularly important here because this is a removal case and the issue of removal, the appropriateness of removal, must be determined from the four corners of the complaint. If you look at the complaint in this case, the complaint says, we have bargaining relationships with a number of employers. If this order of consolidation goes forward, our members will be hurt. There is no allegation that there will be disruption in labor-management relations. Sidell alleged a disruption in labor-management relations. The complaint in this case does not. The most that can be read into the complaint in this case is that one set of stable management-labor relations will be supplanted by a second set of stable management relations, labor-management relations. The only harm suffered by anyone if the order of consolidation is implemented in this case is the harm to the members of Local 334 who will then be forced to choose between seeking referrals as plumbers and seeking referrals as pipefitters, whereas in the past they had the right to be referred as either plumbers or as pipefitters.

They will also be forced to compete with a vastly larger number of plumbers and pipefitters within the geographical

jurisdiction which used to be Local 334's. The harm in this case is suffered by union members and it is harm by union members which the United Association tells us does not raise a federal case because the United Association would not permit individual members to sue in federal court even upon alleged violations of the international constitution.

There is no evidence in this case of any harm to an employer of any disruption in labor-management relations. So even if you apply the substantial impact test which the 3rd Circuit applied, we think the 3rd Circuit reached the proper conclusion.

In Local 1219, which the United Association relies upon, there was an ongoing dispute between seven local unions and that ongoing dispute prompted a number of employers to file unfair labor practice charges. Obviously, in that case, employers were involved and employers were harmed. Employers were forced to make difficult choices between competing claims for recognition. There is no allegation in this case that an employer was forced to make any choice. If the order of consolidation was enforced, Local 334 would cease its existence and other local unions would assume its contracts. If the order is not enforced, Local 334 will remain in existence and there will be no change.

QUESTION: Well, would you say that allegations in the complaint are not traversable by the union on remand, or on

a removal to federal court?

MR. AXELROD: This Court has always said that the allegations in the complaint govern removability. In this case, even if you consider the United Associations's answer, the United Associations' answer denied that there was even any harm to any employees, any members.

QUESTION: But at any rate there could be no hearing or factual determination as to whether or not it affected commerce or --

MR. AXELROD: Not in a removal case.

QUESTION: Yes, but it can be after it gets in the federal court. And you wouldn't say, if the case was filed there initially, that you would determine jurisdiction solely on the face of the complaint? You'd either have a motion to dismiss for want of jurisdiction and there would be a hearing, and similarly after removal.

MR. AXELROD: After removal, the motion to remand in a removal case is determined solely on the basis of the complaint and there is not an evidentiary hearing. There is not discovery.

QUESTION: All right. That may be so. How about a motion to dismiss the complaint for want of jurisdiction?

MR. CHIEF JUSTICE BURGER: You can answer that at 1 o'clock, counsel.

(Recess)

MR. CHIEF JUSTICE BURGER: Mr. Axelrod, you may continue.

MR. AXELROD: The pending question, I believe, is whether there would be an evidentiary hearing if the Court adopts the substantial impact test. And the answer is, perhaps. The majority of the courts that have considered the issue in cases in which the plaintiff alleged Section 301 jurisdiction have looked to the allegations of the complaint. They have considered whether the complaint states broad conclusory allegations or whether the complaint states specific facts which demonstrate an impact on labor-management relations.

QUESTION: But if this suit had been filed in the federal court in the first instance and there had been a motion to dismiss on the grounds that Section 301 did not provide jurisdiction in this case, there would have been an argument on the law. And if the district court agreed, it would have been dismissed.

MR. AXELROD: That's correct. There was an argument on the law and the district court agreed with the position of the United Association here.

QUESTION: Yes.

MR. AXELROD: But in the normal case, if there are conflicting factual allegations, the motion to dismiss would become a motion for summary judgment and if the Court concluded that one party alleged facts which would lead to jurisdiction

under Section 301 and the other party controverted those facts, then there would have to be an evidentiary hearing to determine whether there was Section 301 jurisdiction.

QUESTION: And that wouldn't necessarily -- as a matter of fact, it wouldn't be a hearing on the merits?

MR. AXELROD: It would be a hearing solely on the jurisdictional issue. In many cases interpreting the Landrum-Griffin Act this Court has held that the Landrum-Griffin Act was Congress's first attempt to regulate internal union affairs. If this Court holds today that Section 301 of the Taft-Hartley Act permits the federal courts to interpret union constitutions, the Court will be holding that in 1947 Congress enacted a much more pervasive, much more regulatory scheme than it had done in 1959.

QUESTION: But isn't there some difference between union affairs in the sense of the relation of the members of the union to the union itself as opposed to the relationship between two separate unions?

MR. AXELROD: Two separate unions? If by that you mean two national unions?

QUESTION: Two separate locals or two separate nationals.

MR. AXELROD: Two separate national unions, I think Congress did provide jurisdiction to interpret and resolve disputes on contracts between two separate national unions.

But what Congress was not doing was resolving internal union disputes. The case before us today is precisely an internal union dispute. What does the constitution of the United Association mean? That is of no concern on the facts of this case to anyone except the members of the United Association and the Association itself.

There is no allegation in this case that any employer is adversely affected. There is no allegation that any employer in this case would prefer to deal with Local 334 as opposed to Local 14 or Local 274. Absent that allegation, there is no evidence that there is any impact on labor management relations. And the United Association does not allege otherwise.

QUESTION: Mr. Axelrod, can I ask you, do you take the position that any dispute between two international unions, arising out of a contract between two international unions, even one for the sale of an office building or something, would give rise to jurisdiction under this statute?

MR. AXELROD: Section 301 was designed to resolve disputes affecting interstate commerce and the Court perhaps could conclude that a contract for the sale of real estate or a lease of office space was not a contract affecting interstate commerce.

QUESTION: Well, assuming it's a contract that affects interstate commerce but has no other relationship to any federal statute, just it's a lot of money involved or maybe it's on the

border between two states or something, would you say there's federal jurisdiction of that suit?

MR. AXELROD: Perhaps. Probably --

QUESTION: What federal question would it present?

MR. AXELROD: Section 301 provides jurisdiction under the Commerce Clause and on one interpretation of the section anything a union does affects commerce.

QUESTION: The fact that it affects commerce, doesn't it also have to arise under a federal law under Article III of the Constitution?

MR. AXELROD: If Section 301 is interpreted to the extent you propose, then it will --

QUESTION: Well, all 301 tells us about is the parties. It doesn't tell us anything about the federal law that would govern. I mean, in that kind of a suit --

QUESTION: Well, that is true so far as the statute goes, but that's -- to make that statement is to disregard all the --

QUESTION: There's a lot of law about collective bargaining agreements and there's a lot of federal law about what kind of, you know, what federal rule should apply to them, but there's no federal law that I know of that tells me what should be done when one union sells a building to another.

MR. AXELROD: Section 301 does not distinguish between types of suits and types of contracts. If the contract is

between labor organizations and if the contract is covered by Section 301, there is nothing in the statute itself which would say, apply federal common law in certain disputes and apply state law in others. The Hoosier-Cardinal exception is, as I stated, the only exception that we're aware of.

In the Mason Tenders case, Judge Friendly urged this Court -- urged that Section 301 be interpreted to apply jurisdiction only over contracts between unrelated national labor organizations.

MR. CHIEF JUSTICE BURGER: I think you've answered the pending questions now. Thank you, Mr. Axelrod. You have 4-1/2 minutes left, Mr. Gold.

MR. GOLD: Thank you, Mr. Chief Justice.

ORAL ARGUMENT OF LAURENCE S. GOLD, ESQ.,

ON BEHALF OF THE PETITIONERS -- REBUTTAL

MR. GOLD: In this time I'd like to try to cover four basic points. The central argument that has continuously been made by respondent in this case is that Section 301 does not cover contracts between related organizations. It would read the section to say, contracts between nonrelated organizations, even though that is not the word of the statute.

We think that that position which is based on the policy against regulating internal affairs, stated in the National Labor Relations Act, is wrong in principle. First of all, as Section 301(a)'s first clause shows, the clause on

collective bargaining and other contracts between employers and unions, Congress at the same time passed Section 8(d) of the NLRA which says the Government can't control the substantive terms of bargaining, and passed Section 301 which says that the bargain reached by the employer and union is enforceable. Obviously, Congress was not using the concept of regulation in the sense of enforcing an agreement between parties.

Indeed, we think that respondent overstates the policy against intervening in union affairs. As this Court said in the Boeing case, which is the most recent one in point and cited by respondent, and I'm quoting from 412 U.S. 73, "The reason for this determination not to reach certain fines was that Congress had not intended by enacting Section 8(b)(1)(A) to regulate the internal affairs of the unions to the extent that would be required in order to base unfair labor practice charges on the levying of such fines." In other respects Congress did indeed regulate in any terms.

QUESTION: Mr. Gold, I thought Mr. Axelrod argued that a union international constitution is not a kind of contract with its constituent locals, but it is a contract with the union members, and therefore not a contract between labor organizations, which is the language of 301.

MR. GOLD: Right. That is the second argument that respondent makes. It is made for the first time on oral argument but it's never been contended before. We think it is

contrary to the law. The case respondent cited in its brief fittingly enough is from New Jersey, Harris v. Geier, and the language which we quote in our reply brief, the yellow brief, page 5, is that constitution and bylaws of the International Brotherhood constitute a contract between the members of Local 461 inter se and between them and the general body of membership of the brotherhood, and between the local and the joint council and other agencies of the brotherhood.

This suit is a suit by a local union seeking to keep its work and territorial jurisdiction and its charter from the UA. It's a suit between two organizations about their relationship and in common sense and in the law it's a suit between labor organizations.

Mr. Axelrod is quite right, and we agree, and we said we agreed, in our reply brief, that there are other suits based on union constitutions which concern the contract between the union and the member. If a union member complains about discipline, as the quotation I read indicates, he is suing on his contract with the union and under the plain language of Section 301(a) that suit is not covered any more than a suit by an individual against an employer based on a separate employment contract allowed by a collective agreement is a suit within Section 301.

QUESTION: Why wouldn't he be able to sue on the theory that the constitution is a contract between the

international and the local and one of the provisions in that contract is for the benefit of the individual who might be disciplined?

MR. GOLD: He may be able to sue in a case like this. In other words, individuals might be able to sue on behalf of their local where they're bringing --

QUESTION: No, on their own right but they're saying that if there was a breach of a contractual provision between the international and the local, it was made for his benefit.

MR. GOLD: But the union constitution is two contracts or two types of contracts. Insofar as the member has a right not to be disciplined, that's his contract with the organization, would be a misnomer.

QUESTION: Well, no, supposing the local and the international enter into a side agreement saying, we hereby agree between us that there shall be no discipline of any member of our local except under the following circumstances; if it's that clear?

MR. GOLD: If there were a clear case of that kind then the situation would be equivalent to the situation of Smith v. Evening News, but if it is not that clear, the historic understanding is that you have a series of contracts intermixed. And sometimes you're suing on one and sometimes on the other. This happens to be the kind of suit that is within 301, and normal -- every one of the examples

that Mr. Axelrod gave of member suits is the kind which we think is basically on a contract between a member of the organization and not under 301.

MR. CHIEF JUSTICE BURGER: Your time has expired now.

QUESTION: Mr. Gold, let me ask you a question, if I may; before you sit down. In the unlikely event that the International Brotherhood of Teamsters were to lease a floor of the AFL-CIO Building here in Washington --

MR. GOLD: This is truly a hypothetical.

QUESTION: It is truly a hypothetical. Would a dispute between them over that contract, could that be brought in a federal court under 301?

MR. GOLD: Unless the view of the circuits which have said that there has to to be an effect on labor relations is excepted, the answer to that question would be, yes.

QUESTION: And your position is, it should be yes?

MR. GOLD: Yes. We think that that is the view. Let me just note that in Lincoln Mills the Court said that state law, if compatible with the purposes of Section 301, may be resorted to in order to find the rule that will best effectuate the federal policy. That would seem to be that kind of situation. Alternatively, if there is going to be an effects test, we think it has to be in terms of classes of cases.

Certainly a no-raid agreement, a merger agreement, that determines who the collective bargaining representative is,

is within the class of cases where you have an effect on labor relations. If you don't have a class-based test, then you're going to get into the point you raised originally where you're going to have a side trial, or else you're going to allow the plaintiff by his pleadings to determine whether federal law applies or state law applies. So our basic position is, Congress has told us what it wanted. It has not used any modifiers. The situation is like Harrison v. PPG.

Our second position is that if an effect is necessary, it ought to be in terms of a class of cases and certainly what we have here, which determines who the collective bargaining representative is, who faces the employer, what the territorial and trade jurisdiction is within that effects test, whether or not the dispute is between related organizations or unrelated organizations. Thank you.

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

(Whereupon, at 1:15 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. 80-710

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, AFL-CIO, ET AL.

V.

LOCAL 334, UNITED ASSOCIATION, ETC., ET AL.

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

BY: Bill T. Gibson