In the ORIGINAL

Supreme Court of the United States

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS ET AL., Petitioners,	)	
v.	)	NO. 81-61
GRACIE ROBINSON AND JUANITA HAGER, ETC.	)	

Washington, D. C.

January 13, 1982

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Petitioners,

v. No. 81-61

GRACIE ROBINSON AND JUANITA HAGER, ETC.

Washington, D. C.

Wednesday, January 13, 1982

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 2:35 o'clock p.m.

APPEARANCES:

E. CALVIN GOLUMBIC, ESQ., Washington, D. C.; on behalf of the Petitioners.

LARRY FRANKLIN SWORD, ESQ., Somerset, Kentucky; on behalf of the Respondents.

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C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in United Mine Workers against Robinson.

Mr. Golumbic, I think you may proceed when you are ready. Justice White will join us very shortly.

ORAL ARGUMENT OF E. CALVIN GOLUMBIC, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. GOLUMBIC: Mr. Chief Justice, may it please the Court, the court of appeals in this case decided that the substantive terms of the collective bargaining agreement embodied in an employee benefit trust was subject to review by federal courts for reasonableness, under the sole and exclusive benefit provision of Section 302(c)(5) of the Taft-Hartley Act.

This decision, we submit, is inconsistent with the intent of Congress, as revealed by the national labor laws. The national labor laws were based on private bargaining with governmental supervision alone. Congress was not concerned with the substantive terms upon which parties agreed.

Accordingly, this Court has on numerous occasions rejected attempts by federal courts to substitute their own judgment for that of the collective bargaining parties. Of course, collective bargaining agreements and collective bargaining parties are not subject to unqualified

authority. A collective bargaining agreement may be reviewed and revised if it violates the Constitution or federal law, but absent such a violation, the collective bargaining procedure should not be interrupted, so long as that process was conducted in good faith.

The record before the court of appeals in this case clearly reflected that the agreement to exclude the widows and respondent's class was the subject of prolonged, intense, and informed bargaining. In fact, the court below acknowledged that the --

QUESTION: But it was bargaining, wasn't it?

MR. GOLUMBIC: Excuse me?

QUESTION: It was bargaining?

MR. GOLUMBIC: The issue was bargained from the day the bargaining commenced until, indeed, the parties decided to agree in order to agree to a final bargaining agreement in order to avoid a strike.

Given the fact, given the fact that the agreement in this case was the result of good faith collective bargaining, the court should have restrained, or refrained from reviewing it. Instead, the court decided to become a party to the negotiations and impose its own view of a desirable settlement.

The court justifies its intervention in this case by asserting that the eligibility rules of an employee

benefit trust established through collective bargaining are subject to review for reasonableness pursuant to the sole and exclusive benefit provision in Section 302(c)(5) of the Taft-Hartley Act.

The court, in support of that proposition, the court relies on a series of cases decided by the D. C. Circuit which involve acts undertaken by collective bargaining parties -- excuse me, which involve acts undertaken not by collective bargaining parties, but by trustees of employee benefit trusts. These cases do not support the proposition that authority to review eligibility rules for reasonableness emanates from Section 302(c)(5).

QUESTION: Do you think those cases are correctly decided?

MR. GOLUMBIC: I think those cases are correctly decided, Justice Rehnquist, insofar -- insofar as they rest on the jurisdictional basis of a court of equity to review the discretionary acts of trustees, and insofar as they decided that in those particular instances, in those cases the trustees had abused their discretion.

QUESTION: Properly decided under 302(c)(5)?

MR. GOLUMBIC: The cases were decided on the authority of a court of equity to review the discretionary acts of trustees, and in no instance did the cases rest on a jurisdictional basis under the Taft-Hartley Act, such as

Section 302(c) or 302(e).

These cases demonstrate that the authority to review in each of the cases rested on the broad authority of a court of equity to review the discretionary acts of Taft-Hartley trustees. Other courts also decided that they have authority to review the discretionary acts of Taft-Hartley trustees, and these courts based their authority on Section 302(e), which in their view authorized the review of employee benefit trusts for a structural violation of Section 302(c)(5).

The scope for review under the structural violation doctrine remains unsettled. The Third Circuit has adopted a rather broad scope of review under the doctrine. The First Circuit has limited review under the doctrine to ascertaining whether employee benefit trusts conform to the express requirements of Section 302(c)(5).

The reason for this diversity of views on the scope of review under the structural violation doctrine is apparent when the structural violation doctrine is traced to its origin. Virtually every court which has adopted a broad construction of review under the doctrine begins with analysis of Section 302(c), with the cases decided by the D. C. Circuit upon which the court below relied. But as we have shown, these cases do not rest on an analysis of Section 302(c)(5), but rather on the broad authority of a

court of equity to review the discretionary acts of trustees.

In this case, in this case the court of appeals lost sight of the equitable origin of its authority and decided that it may review a collective bargaining provision for reasonableness under the sole and exclusive benefit provision of Section 302(c)(5), but to say that Section 302(c)(5) imposes a standard of reasonableness under which the courts may review and revise the fruits of collective bargaining is to ignore the legislative purpose of Congress in adopting the Taft-Hartley Act.

Congress adopted the Taft-Hartley Act, among other things, to prevent labor unions from using welfare funds for their own purposes, and to make sure that those funds were used for the benefit of employees of contributing employers. It is apparent therefore that the requirement in Section 302(c)(5) that welfare funds must be used for the sole and exclusive benefit of employees was intended only to prevent and prohibit the use of those funds for union officials and other non-employees.

It is equally apparent that Section 302(c)(5) imposes no limitation upon the eligibility standards adopted through collective bargaining for the payment of benefits to employees. So long as those collectively bargained elibigility standards do not permit the payment of benefits to persons other than employees, those standards, we submit,

are not subject to review under Section 302(c)(5) of the Taft-Hartley Act.

Of course, of course those standards and collectively bargained employee benefit plans are subject to review for compliance with ERISA. In ERISA, Congress adopted standards for employee benefit trusts, including standards of vesting participation in funding, standards for reporting and disclosure, and standards of fiduciary conduct, and significantly, Congress provided that any violation of these standards was subject to judicial challenge in federal courts.

Certainly in enacting this comprehensive legislation governing employee benefit trusts, including a provision for the judicial review of a violation thereof, Congress believes that it was filling a regulatory void. And in light of that fact, this -- the existence of this comprehensive legislation undercuts all arguments for permitting the judicial review of collectively bargained employee benefit trusts pursuant to Section 302(c)(5) of the Taft-Hartley Act.

I thank you.

CHIEF JUSTICE BURGER: Mr. Sword?

ORAL ARGUMENT OF LARRY FRANKLIN SWORD, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. SWORD: Mr. Chief Justice, may it please the

Court, it is important at the outset to note the limits of this case. The trustees concede three important points. First, the trustees concede if they, the trustees, had formulated this provision, that it would be reviewable. Indeed, there is no disagreement among the lower courts over the courts' power to review eligibility provisions which have been formulated by trustees, and that Section 302 prohibits the trustees from formulating eligibility provisions which would deny coverage to persons with substantial contributory work histories while granting benefits to persons with lesser contributory work histories, unless there is a rational nexus between the provision and a valid purpose of a 302 trust.

QUESTION: Mr. Sword, even though your opponent concedes that point, and he did in response to Justice Rehnquist's question, this Court has never so held, has it? Assume that discretion was expressly given to the trustees in a collective bargaining agreement to administer the pension. Has this Court ever held that the exercise of discretion by the trustees be subject to review?

MR. SWORD: That issue has never been before this Court. However, in the case of NLRB versus Amax, this Court noted that there are fiduciary duties which are placed on --

QUESTION: It didn't say anything about their duties being reviewable by a court, the performance of their

duties being reviewable by a court?

MR. SWORD: I don't believe that any court has ever said that their duties are not reviewable.

QUESTION: Well, has it ever said that they are reviewable, is my question. Has this Court ever said they are reviewable?

QUESTION: How about AMAX?

MR. SWORD: I believe that the AMAX case talks about the differences between bargaining representatives and the trustees.

QUESTION: But didn't say that there are fiduciary duties on trustees?

MR. SWORD: Yes, it did.

QUESTION: Subject to the supervision of a court of equity?

MR. SWORD: Indeed.

QUESTION: So they are reviewable, their decisions, in terms of 302 standards?

MR. SWORD: We take the position that trustees are -- their duties are reviewable.

QUESTION: Well, AMAX hardly dealt with the question of reviewing discretion. That dealt with the manner in which they are appointed.

MR. SWORD: That's correct. I don't think there is any doubt in any of the cases that the trustee's actions are

reviewable, and I think that the lower federal courts which have dealt with the issue of whether trustee formulated eligibility provisions can be arbitrary or not have consistently held that the provisions cannot exclude persons who have contributory work histories that are substantial unless there is a rational nexus for the provision.

QUESTION: But there are certainly no cases around that say that the courts may modify the eligibility requirements. I mean, that the trustees may modify the eligibility requirements. Except this one, maybe.

MR. SWORD: Except this one, maybe, and the Congress has shown in enacting ERISA, it has provided that trustees are to follow the trust documents only insofar as the trust documents do not cause a breach of any fiduciary duty.

And the trustees concede a second point, which is that if the respondents' husbands had quit work and filed applications for retirements instead of continuing to work in contributory work, that then these widows would be granted this benefit.

The third point which the trustees --

QUESTION: Of course, on that point, they also would have gotten $5,000 instead of $2,000 in severance pay, wouldn't they?

MR. SWORD: Not all persons in the respondents'

class.

QUESTION: Some of them would, wouldn't they?

MR. SWORD: Some of them would, but --

QUESTION: Are you contending that that also violated the agreement, the disparate treatment, $5,000 for some and $2,000 for others?

MR. SWORD: No. The -- what they are referring to there is a death benefit which is provided to the family of an active worker. An active worker, regardless of how long he had worked in the mines, whether it was 20 years or one day, if he passed away while actively employed, there was that payment.

QUESTION: Even if he was eligible for benefits?

MR. SWORD: If he was eligible or not. The trustees in effect concede that this provision is arbitrary. They have tendered no justification for the provision other than it was collectively bargained. In fact, there is no question that this provision is arbitrary. The arbitrariness can be shown by looking at the hypothetical of twin brothers. You could have one brother who could go to work in a non-contributory mine, work 19 years in that non-contributory mine, then work one year in contributory employment, and then have retired and drawn benefits for a number of years, and died.

That brother's widow would receive this permanent

health care coverage. If his twin brother could have worked for 19 years in a contributory mine, or even more, but worked his last year in a non-contributory mine, or you know, died without retiring, that brother who had worked 19 years in contributory employment, his family would receive absolutely nothing, no death benefits, his widow would receive no health benefits whatsoever.

QUESTION: Well, if that distinction is arbitrary, the distinction between the $5,000 and $2,000 death benefits is equally arbitrary, isn't it?

MR. GOLUMBIC: Not necessarily, because the death benefit, this $5,000, $2,000 difference is talking about a death benefit, which is a benefit that is provided to the widow of an active miner, and there could be some considerations for the payment of a larger benefit to the widow of someone who is actively working at death. That is in no way related to the --

QUESTION: Well, I thought it was the other way around, that the one who was the widow of a retired miner got the $5,000, and the widow of a pension-eligible worker who still worked -- Do I have it backwards?

MR. SWORD: Yes. The contract provides that the widow of a pensioner, upon the pensioner's death, received $2,000. The widow of an active miner who at the time of his death happened to be working in a union mine, regardless of

whether or not he was pension-elibigle --

QUESTION: I see.

MR. SWORD: -- would receive $5,000. It is more of a funeral payment.

In fact, the facts of our case show the arbitrariness of this situation. Juanita Hager's husband had worked from the time he was a teenager in the mines. He had worked 39 years in the coal mines. The last 24 years that he worked was for a contributory employer. And yet Juanita Hager is denied this benefit because Mr. Hager was still working in contributory employment at the time he died, and he had not filed an application.

Likewie, Gracie Robinson's husband had worked more than 30 years in the coal mines. The last 21 years of his life he spent working in a contributory coal mine, paying into the funds. And yet these widows are both denied this benefit that is being provided to some widows whose husbands had as little as one year of contributory service.

Throughout this litigation, the trustees have not shown any justification for the provision, any rational nexus between the purpose of a fund and this exclusion. Instead they say that because it was collectively bargained, it is immune from judicial review, and that issue, whether the mere collective bargaining of a provision can immunize it from judicial review is the only issue in this case.

This case presents a very narrow set of circumstances, and --

QUESTION: Well, isn't the question rather whether it can immunize it from judicial review or whether judicial review is permissible, or authorized?

MR. SWORD: Well, we contend that judicial review is clearly authorized, that without judicial review these beneficiaries of these funds would in no way have protection.

QUESTION: Well, that doesn't answer the question, to say that someone is without protection, I mean, if there is no judicial review. You have to point to some affirmative authority by which the courts review the thing.

MR. SWORD: We contend that that authority is within Section 302 of Taft-Hartley, and within the cases that have interpreted that provision. When Congress enacted Section 302, it was concerned that the earned contributions of workers could be arbitrarily disposed of by the unions unless there was some protection and some control over these funds. Congress in 1947 saw a potential for abuse whenever unions had any control over these trust funds, and provided that there would be review, and that -- so that these funds would not become a union war chest.

Without 302's protections, eligibility decisions could be made solely on terms to further the union's benefit, not in a manner to further the beneficiaries'

benefit. So, Congress intended 302 to be remedial; it provided a private cause of action, so that the rights could be enforced, and so that workers could protect their rights.

Subsequent to Section 302's enactment, numerous federal court cases have ruled that eligibility provisions under a Section 302 trust cannot be arbitrary, that you cannot exclude persons with substantial contributory work histories at the same time you are granting benefits to similarly situated persons with lesser contributory work histories unless the trustees can show a rational nexus between that provision and a valid purpose of the fund, which is to reward workers for their contributory work.

It is important to note that Congress has added a number of amendments to Section 302(c)(5) through the years, and that has been, even though there have been two decades of court decisions which have imposed on these trusts this arbitrary prohibition, this prohibition that you cannot have these arbitrary provisions in the trust --

QUESTION: Mr. Sword, there really isn't anything, is there, in the legislative history that shows a Congressional intent to set a substantive standard for eligibility retirements, is there?

MR. SWORD: There is nothing in the legislative history to show, you know, the substantive requirements as far as how many years of work or anything along those lines,

but the legislative intent does show that Congress couched Section 302 in trust terms so that the workers would be protected.

QUESTION: Well, isn't every indication that the sole and exclusive benefit provision in the legislation was to prevent the union officials from using the trust funds for their own benefit? Isn't that really the thrust of the legislative history?

MR. SWORD: The sole and exclusive benefit language shows that Congress wanted these funds to be used for the benefit of the workers, and not for the benefit of the union.

QUESTION: Right.

MR. SWORD: We contend that the evidence in this case shows one example of, if there is no judicial review, of what the trust -- how the trust could be used to further union benefits, because it is clear in the negotiations in this case that the collective bargainers were not concerned with the merits of any of the classes. They were not concerned with -- As a matter of fact, they did not even consider our class, but instead the union was insisting upon one group's inclusion, because they were concerned that there was a vocal group which wanted benefits for a certain group, and they considered that group a no compromise item because of that vocal group.

For instance, there was one memorandum which was

drawn up during the negotiations in which -- concerning -- I think this is just an example -- benefits for widows of active miners regardless of years of service, and they say, "UMWA sees no compromise possible here, views this as potentially dangerous post-ratification issue, especially in southern West Virginia." And the importance of that is that there were certain groups, the union was concerned that there could be wildcat strikes or other things which would embarrass the union, and so the --

QUESTION: Well, there is another reason for that, too, isn't there? The people involved here were people whose husbands had died before the negotiation took place, so that I think it would be normal for the union to show a greater interest in the current work force. There would be no obligation at all to provide retroactive benefits for people who previously died, would there? The arbitrariness comes in that they provided benefits for some but not all.

MR. SWORD: Yes. We are not challenging the fact that there were benefits provided to the widows of miners who would be working in the future.

QUESTION: But would you not agree that they could have -- if they had denied benefits for all widows of previously deceased miners, you would have no case.

MR. SWORD: We would have a case if they were granting, as they did in this provision, benefits to the

widows of men who had quit work in the past. The benefits are provided under the 1950 benefit plan to the widows of pensioners --

QUESTION: Well, say they denied benefits to all widows of deceased miners and all families of retired miners.

MR. SWORD: And if they were only providing benefits to --

QUESTION: Current workers.

MR. SWORD: Then we would not have the situation that we have in this case.

QUESTION: You wouldn't have any case at all, would you?

MR. SWORD: Then we would not have a case. But the facts of this case are different. They did grant this coverage to similarly situated widows, some of whose husbands had this insignificant years of contributory work history. They granted it to widows of retirees who had passed away prior to the negotiations.

QUESTION: What if they found a situation in which they didn't think they had enough money to provide all the benefits that they wanted, and they just arbitrarily said, we will provide benefits for the people in Pennsylvania, but not in Ohio, and if we tried to do it equally the benefits would be so small they are not worth anything, so we would

rather have substantial benefits for one group and none for the others. I take it that would be illegal under your theory.

MR. SWORD: The trustees contend that that would not even be reviewable. We contend that that would not be lawful, that the distinctions between the persons who receive benefits and the persons who are denied benefits must be drawn on a rational basis. If benefits are going to be denied persons with massive contributory work histories, with many years of working in contributory employment, while at the same time they are granting it to persons with lesser work histories, there must be a rational nexus shown. There must be a purpose of the trust fund that would be furthered by such a provision.

QUESTION: Well, the purpose always will be, I suppose, whenever you deny a class benefit, you save a little money.

MR. SWORD: Well, the cases have shown that the mere saving of money is not a justification. If so, any restriction, regardless of how arbitrary, would be justified.

It is also interesting to note that after the various court cases which have held that there is judicial review of eligibility provisions, Congress did enact ERISA, and ERISA was enacted at a time when it was well established that there was judicial review of eligibility provisions

which were formulated by trustees, and yet ERISA left Section 302(c)(5) in effect and ERISA in effect codified and strengthened sole and exclusive benefit standard which the courts have interpreted under 302(c)(5) to prohibit this type of arbitrary and capricious provisions.

The Congress was concerned in enacting 302(c)(5) with the fact that workers' contributions could be subject to union manipulations, and the evidence in this case shows that that indeed is a possibility whenever the negotiators are involved in this area, and the protection is the judicial review. The trustees' position that these rules are unreviewable and do not have to bear a rational nexus to a valid purpose of a 302 fund, their position would open the door to union manipulations of these funds, would allow the unions to accomplish at the bargaining table what would be unlawful for them to accomplish as trustees, and it would leave retirees and widows totally unprotected for under the trustees' argument these eligibility provisions could be drawn not for the benefit of the workers, but to further the benefit of the union.

The collective bargaining of a provision does not afford any of the protections to an active worker which is required under Section 302(c)(5).

The trustees' argument concerning Allied Chemical Workers is not correct, because this case does not involve a

situation where the parties were being forced to bargain to impasse. The collective bargainers in this case freely undertook to create a Section 302 trust. We contend that when they created that 302 trust, they created a creature of federal law, and that trust must comply with federal law.

QUESTION: Why do you sue the trustees, though?

MR. SWORD: Under ERISA, suit can be brought against the trustees, and also under the very trust --

QUESTION: Well, I know that solves your case for you very easily, but the people who are at fault are the settlors. The union and the management. Now, you may have a right under 302 to have the fairness of the collective bargaining agreement adjudicated, but I don't know why you sue the trustees. What authority do they have to say they won't enforce the -- or maybe the trustees could even have sued the settlors.

MR. SWORD: That's correct, Justice White. We feel that the trustees in this situation could have sued to ask for a declaratory judgment.

QUESTION: Why didn't you sue the union and the management to have their agreement declared illegal under federal law?

MR. SWORD: The very wage agreement in this case and the trust documents themselves, Justice White, both provide that the trustees are to reform these trusts to

comply with federal law, that the trustees are to reform this trust to comply with any court decisions. We contend that --

QUESTION: Against whom?

MR. SWORD: Against --

QUESTION: Against court decisions -- maybe court decisions against the union and the management.

MR. SWORD: Even the District Judge Gesell --

QUESTION: You mean, the trustees -- you suggest that the trustees may look at the trust agreement and say, gee, we think this violates federal law, this collective bargaining agreement and the terms of the trust, so we just aren't going to pay out the benefits. We are just going to pay them out as we see fit. Is that what you think they can do?

MR. SWORD: We contend that when it was apparent to the trustees that this provision was arbitrary and unlawful, they could have gone back to the settlors and said, this is arbitrary, or they could have asked for a declaratory judgment.

QUESTION: I know, but you wouldn't say they could act on their own, would you?

MR. SWORD: Under the trust documents, because the provision was unlawful --

QUESTION: You mean, you suggest --

MR. SWORD: -- they had the ability to change the trust.

QUESTION: Well, how do they know it was unlawful?

MR. SWORD: When it was brought to their attention, they could see it, or --

QUESTION: Well, by whom?

MR. SWORD: When it was brought to their attention by --

QUESTION: By whom?

MR. SWORD: -- Gracie Robinson and Juanita Hager --

QUESTION: Well, I know, but why do they have to take their word for the fact that it is illegal?

MR. SWORD: They don't have to take their word. They can go --

QUESTION: Well, whose word do they take?

MR. SWORD: They could go to court, ask for a court's determination --

QUESTION: Well, wouldn't they at least have to go to court?

MR. SWORD: They could go to court, and they could go back to collective bargaining.

QUESTION: Well, wouldn't they have to before they could vary -- disregard the trust instrument?

MR. SWORD: They would not have to. The trust documents themselves empower the trustees to reform these

trusts.

QUESTION: If it is illegal.

MR. SWORD: If it is --

QUESTION: If it is illegal.

MR. SWORD: If it is unlawful.

QUESTION: Well, how do you know it is unlawful until somebody decides it?

MR. SWORD: If -- they could go to court and have the court determine that.

QUESTION: They would have to, wouldn't they?

MR. SWORD: They could, or they could have gone back to the collective bargainers and asked for --

QUESTION: I know. The collective bargainers would say, sorry, but that is what we agreed to, and we think it is perfectly fair, and then the trustees would, if they wanted to vary from the trust document, would have to sue.

MR. SWORD: Then the trustees should have asked for a judgment.

QUESTION: Well, I suggest you sued the wrong people.

MR. SWORD: We did not, because the trust documents themselves provide, and also under ERISA there is a provision that the plan itself can be sued.

QUESTION: I don't think the trustees can give you relief by themselves.

MR. SWORD: The district court found that the provision in the contract and a provision in the trust document both provided that the trustees were empowered to change this trust document if it was shown that the exclusion of this class was arbitrary and capricious.

QUESTION: Shown where?

MR. SWORD: If a court determined that the exclusion was arbitrary and capricious, the trustees were to change the documents.

QUESTION: But the district judge thought otherwise, didn't he?

MR. SWORD: The district judge concluded that based on the fact that it was collectively bargained, that therefore we were not entitled to relief.

QUESTION: He said, bad bargain or not, it is a bargain, didn't he?

MR. SWORD: He said that this provision was the result of collective bargaining, and so therefore it was --

QUESTION: Yes, and good or bad, it was a contract.

MR. SWORD: That is what the district court found, and that is the incorrect standard to apply to a Section 302 trust. The judicial review which is normally applied to collectively bargained contracts is a limited judicial review. The review is normally applicable to cases in which you are dealing with issues which are relevant to active

employees. Now, the active employee has many remedies and many protections. The active employee has NLRB protections, is afforded a duty to fair representation, has a voice in the union, has a vote in the contract, and yet the retiree or their survivor has none of these protections.

For the respondents' class, the only protection is the requirement in Section 302, and the requirement in the case law that these eligibility provisions not be drawn in an arbitrary and capricious manner. The testimony shows that the collective bargainers did not even consider the fact that there were men who were age eligible and years of service eligible to retire, but who had not retired and filed applications for pensions because they had continued working past retirement age in contributory employment, and had died while still actively employed. There was no good faith, active, intense bargaining as to our group. There was no consideration of the cost of our group or of their merits.

The union negotiator, one of the union negotiators, Mr. Pearce, noted that there was no tradeoff, and that the respondents' class was omitted not on the merits. As we mentioned, the reason that our class was omitted was because they were not considered. The union only considered the vocal class that the union thought would embarrass the union after ratification of the contract, and when the bargaining

stopped, our class was left out for no reason whatsoever.

The trustees' position, if adopted, would mean that any provision, regardless of how arbitrary, could be readopted by the collective bargainers, and then there would be judicial immunity. For instance, the signatory last employment requirement, which the defendant funds had, and which was invalidated in Roark v. Boyle and Roark v. Lewis, if the trustees in those cases had simply gone to the collective bargainers and said, the court says this provision is arbitrary, under their theory, the collective bargainers could say, we, the collective bargainers, think this is a good provision, and therefore the courts would have no review whatsoever.

We contend that that position is not supported in the case law, that that total abdication of their fiduciary duties was not envisioned by Congress when it enacted 302(c)(5), was not envisioned by Congress when it enacted ERISA, and that there is absolutely no support for that position.

The trustees' argument that the cases holding that 302 places restrictions on trust funds have mistakenly relied on general equity law is not supported from a reading of the numerous cases from all of the circuits. It is clear that the courts have held that Section 302, because of the fact that Congress was concerned that those persons who have

worked in contributory employment receive benefits, the courts have held that 302 does supply substantive restrictions on the plans themselves.

The trustees, of course, do not argue that collective bargaining imposed any protections on this class, and they have not shown any way in which judicial review would harm collective bargaining.

CHIEF JUSTICE BURGER: Your time has expired, Mr. Sword.

Do you have anything further, counsel?

QUESTION: Could I ask you a question?

ORAL ARGUMENT OF E. CALVIN GOLUMBIC, ESQ.,
ON BEHALF OF THE PETITIONERS - REBUTTAL

MR. GOLUMBIC: Yes, sir.

QUESTION: Suppose the union and management in the collective bargaining agreement had some racial discrimination, limited the benefits to all blacks or all whites. Would that be reviewable anywhere in the federal law?

MR. GOLUMBIC: It would, Justice White, pursuant to this Court's decision in Steel and in Howard, as a violation of possibly statutory basis upon which the collective bargaining was undertaken, such as the Railway Labor Act, or it might be in violation or Title VII, or it may very well be a constitutional violation.

QUESTION: You mean as a violation of their fair representation?

MR. GOLUMBIC: The right to fair representation under Title VII and --

QUESTION: But you say 302 would have no relevance to it?

MR. GOLUMBIC: Section 302 of the Taft-Hartley Act would merely require that benefits be paid to contributing employees, or to employees of contributing employers.

QUESTION: All of them?

MR. GOLUMBIC: Not at all. Not at all. In fact, let me address my response --

QUESTION: So your answer is, there is no 302 remedy for a situation like that? That is your submission?

MR. GOLUMBIC: That's correct. In fact, if the Court will permit me in a few words to expand upon my response to your question, in this instance the exclusion of the widows from lifetime health care was undertaken in good faith collective bargaining, and the economic wisdom and judgment of the collective bargaining parties in making that exclusion is not normally subject to review.

Absent a violation of federal law, as you pointed out, Justice White, in this instance, there was no such violation of federal law, although the court, the trial court decided it was a violation of Section 302(c)(5) of the

Taft-Hartley Act, and Section 302(c)(5) of the Taft-Hartley Act merely requires that benefits not be paid to individuals who are not employees of contributing employers. It does not impose a duty upon the collective bargaining parties to pay a benefit to any particular group of employees of contributing employers.

Interestingly enough, the respondents argue that notwithstanding the fact that the agreement was established in good faith collective bargaining, the trustees have a duty to modify that agreement to make it more equitable. And may I point out to this Court that the trustees have no authority under Section 8 of the National Labor Relations Act to negotiate, and indeed, under Section 406 of ERISA, they are prohibited from acting on behalf of the collective bargaining parties, and to that extent the trustees may not negotiate benefit modifications that were raised in collective bargaining, and they may not negotiate those benefit modifications to the collective bargaining agreement, and try to give effect to benefit proposals that were advanced and rejected during the collective bargaining procedures.

To the contrary, to the contrary, the trustees under Section 404(a)(1) of D of ERISA must comply and administer the wage agreement consistent with its terms, and solely for the benefit of the beneficiaries designated

thereunder.

Thank you.

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

(Whereupon, at 3:16 o'clock p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

UNITED MINE WORKERS OF AMERICA HEALTH AND RETIREMENT FUNDS, ET AL v. GRACIE ROBINSON AND JUANITA HAGER, ETC. No. 81-61

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

BY Sharon Bigger Connelly