OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-1860 & 82-1862

TITLE SCHNEIDER MOVING & STORAGE COMPANY, Petitioner v. LORAN W. ROBBINS, ET AL,; and PROSSER'S MOVING AND STORAGE COMPANY, Petitioner v. LORAN W. ROBBINS, ET AL.

PLACE Washington, D. C.

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IN THE SUPREME COURT OF THE UNITED STATES

SCHNEIDER MOVING AND STORAGE COMPANY,
Petitioner,
v. : No. 82-1860
LORAN W. ROBBINS, ET AL.; and
PROSSER'S MOVING AND STORAGE COMPANY,
Petitioner,
v. : No. 82-1862
LORAN W. ROBBINS, ET AL.

Washington, D.C.
Tuesday, February 21, 1984

The above-entitled matters came on for oral argument before the Supreme Court of the United States at 11:04 o'clock a.m.

APPEARANCES:

DAVID F. YATES, ESQ., St. Louis, Missouri; on behalf of Schneider Moving and Storage Co.

CHARLES W. BOBINETTE, ESQ., St. Louis, Missouri; on behalf of Prosser's Moving and Storage Co.

RUSSELL N. LUPLOW, ESQ., Bloomfield Hills, Michigan; on behalf of the respondents.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Schneider against Robbins and Prosser against Robbins.

Mr. Yates, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF DAVID F. YATES, ESQ.,
ON BEHALF OF SCHNEIDER MOVING AND STORAGE COMPANY

MR. YATES: Mr. Chief Justice, and may it please the Court, the cases before the Court today, which are consolidated, arise out of a collective bargaining relationship. Schneider and Prosser are two independent moving companies located in St. Louis, Missouri.

Over a number of years, they entered into a series of collective bargaining agreements with a teamster's local in St. Louis. In accordance with these agreements, they agreed that they would make contributions to the respondent trustee funds on behalf of regular employees.

The labor agreements further provided that contributions would not be made on behalf of non-regular employees, who are variously referred to in the agreements as part-time, extras, casuals, temporary, and seasonals.

I would like to emphasize at the outset that this particular dispute arises out of the terms of the collective bargaining agreements. It does not involve the interpretation or construction of statutory rights. In the collective bargaining agreements, Schneider and Prosser and the unions expressly reserved to themselves the right to resolve differences regarding the meaning or application of the agreements through the grievance and arbitration procedure in the contracts. They did not provide the trustees would have the right to resolve those questions of coverage, as they are referred to, in litigation in federal court. I will address --

QUESTION: What if the collective bargaining agreement says there will be a trust agreement, and uses certain words in describing the coverage, and then there is a trust agreement, and it uses the same words about coverage?

MR. YATES: If there is no question regarding the coverage, then I think that the --

QUESTION: Well, there is a question about what the words mean.

MR. YATES: Oh, if there is a question about what the words mean in the collective bargaining agreement --

QUESTION: Well, and the same words are in the

trust agreement.

MR. YATES: With respect to the collective bargaining agreement, if the employer and the union have reserved to themselves the right to resolve the coverage question under the contract, I believe that is resolving of the contract. Under the trust agreement, I believe the trustees of the funds would have the right to resolve that question.

QUESTION: Well, what is the case in this -- what is the situation in this case?

MR. YATES: In this situation, the collective bargaining agreements provided that the employers would make contributions on behalf of the regular employees --

QUESTION: Right.

MR. YATES: -- and not on behalf of extras, casuals, part-times, seasonal, and temporary.

QUESTION: Yes.

MR. YATES: The trust agreements, on the other hand, conditioned eligibility for benefits on employees for whom contributions were required under the collective bargaining agreement, so it goes back to what the collective bargaining agreement expressly provides.

QUESTION: But it is just as though the trust agreement had used the very same language as the collective bargaining agreement.

MR. YATES: Correct. It is our position that in effect the trustees have said, we will be bound by the terms of the collective bargaining agreement with respect to the employer's obligation to make contributions.

QUESTION: Mr. Yates, in this particular case involving the Schneider company, as I understand it, the union was decertified --

MR. YATES: That's correct.

QUESTION: -- at the time the District Court dismissed. Now, in that situation, the union wouldn't be available for any arbitration, apparently.

MR. YATES: At the point in time when this case arose, which was 1978 and '79, the union was around. It still is around today. And under the decisions of this Court, including Nolde Brothers, which is a fairly recent decision, and Republic versus Maddox, the obligation on the part of the employer and the union to handle this matter through the grievance and arbitration procedure would continue beyond the expiration of the contract. I believe that's fairly clear.

QUESTION: May I ask you another question? If you were correct in your position that there is some duty to arbitrate, does the union have a right if it got

into a dispute with the employer about what employees were covered and what contributions had to be made, does the union have the right to waive the payment of some of those moneys, to enter into an agreement some way during the course of the collective bargaining period, saying, well, we understand there is a dispute, we will just give up the right to the payment of some particular moneys?

MR. YATES: I believe they do, provided they do it openly and not in a sinister fashion, and I would like to take it back to these --

QUESTION: Is there any authority for that? I mean, what do you rely on?

MR. YATES: Okay. I am relying on their status as the statutory exclusive bargaining representative. When the collective bargaining agreement is first negotiated, the union at that time is doing precisely what you are addressing now. The union at that time is deciding with the employer through collective bargaining how to divide the employer's financial pot. In this case, for example, it was agreed that the employer would make contributions to the funds on behalf of only regular employees, and not on behalf of other non-regular employees.

So, at that point the union is in effect

saying, we are waiving, if you may, our claim that the employer should make contributions on behalf of --

QUESTION: Well, they obviously have the right to enter into the collective bargaining agreement in the first instance.

MR. YATES: Yes.

QUESTION: But really the question is then, is that fixed, so to speak, because of the interplay with ERISA, and so the union can't tinker around with it after that, or waive some portion of the claim, or something like that.

QUESTION: I believe that there are some distinctions that could be made, and the clearest distinction would be between vested pension benefits of employees which cannot be tinkered with. I think ERISA is fairly clear there, that if the union or the employer attempt to tinker with vested pension benefits, then I think they are interfering with ERISA's statutory rights.

But here we are not talking about employee benefits. We are talking about the funding obligation, what is the measure of the employer's obligation to make contributions to the fund? The determination of employee benefits is reserved exclusively to the trustees. That is up to them to decide.

Here, the employer and the union thought they

had a fixed agreement as to what the measure of the funding obligation would be. During the course of their history, the issue never arose as to whether the employer was complying with that until the trustees conducted an audit. They believed that contributions were due on behalf of employees who the employer thought were non-regular employees. That has raised the issue.

It is our position that that goes to the very heart of the bargain between the employer and the union. The employer and the union reserved the right to resolve those differences between themselves. Once those issues are resolved, then the trustees have a right to contribute whatever the fixed obligation is. We are not arguing that.

QUESTION: Mr. Yates, is it not possible that in some situations, at least, that the question of coverage would be identical to the question of contribution? In other words, if the particular temporary employee is covered, it may be in time the trustees would have to decide whether his rights are vested or not.

MR. YATES: I agree with that, yes.

QUESTION: And if they decided there was vesting there, they then would -- you still say they would not have the right to say, well, therefore there

must be contributions made on behalf of -- on account of that employee.

MR. YATES: I believe that once again there is a distinction between the funding obligation and the determination of employee benefits, and I believe it is within the discretion of the trustees to say that they will continue to provide benefits for an employee even if the union and the employer agree that contributions will not be made for that employee, just as in Kaiser the measure of the funding obligation was the number of tons of non-union coal produced.

It is simply a measure of -- upon the plan.

QUESTION: So you could end up with a situation in which the union and the company would agree that we don't have to make contributions on behalf of Employees A, B, and C, but yet the trustees might be convinced they had a duty to pay pensions to those employees.

MR. YATES: That's correct. Now, it's very likely that the pension fund or the health and welfare fund might say, we will not permit participation on that basis, and that is within their right, too. The employer and the union must strike a bargain which the trustees then accept, but once having accepted it, they are bound by that bargain. They are, after all, the

product of the collective bargaining process in the first place.

QUESTION: May I ask just one other question? Does the company have the right to have the issue arbitrated?

MR. YATES: Under this contract, the contract did not expressly provide that the company has the right to submit grievances to arbitration. That's correct.

QUESTION: The procedures I read, it has to be initiated by the employee, and then go through the --

MR. YATES: That's correct. That raises a question which troubled the court below, and that is, can the trustees submit a claim to the grievance and arbitration procedure under this contract? It is submitted that the trustees in this situation raised the issue and are standing in the shoes of exactly the employees who they are claiming contributions are due on behalf of. That is the casuals and extras. And it appears -- it would seem that the trustees, if they are acting at the partial or -- I'm sorry, the part-time employees' behest is -- are in fact standing in their shoes.

I am reserving five minutes for rebuttal, so I will sit down -

QUESTION: Well, would they have to go to the

union to get the arbitration going, I assume?

MR. YATES: Yes. I -- Yes.

QUESTION: And what if the union won't do it?

MR. YATES: I believe that the union has an affirmative duty to review why, and that goes to the heart of the entire issue here. We think it is appropriate for the union to state why it has not made this claim prior to the trustees raising it. We believe that the union has an affirmative duty to raise issues and to police the contract, and if there are questions of coverage, they should have been raising them a long time ago. We believe that we are entitled to our bargain to have the co-author of the agreement involved in this proceeding.

CHIEF JUSTICE BURGER: Mr. Bobinette.

ORAL ARGUMENT OF CHARLES W. BOBINETTE, ESQ.,
ON BEHALF OF PROSSER'S MOVING AND STORAGE COMPANY

MR. BOBINETTE: Mr. Chief Justice, and may it please the Court, the rule of the Eighth Circuit has adopted a position of a presumption against arbitration, and allows the trustees to independently sue the employer and litigation the meaning and the intent of the collective bargaining agreement.

Further, it is to the exclusion of the union, and will not be binding on the union nor its

membership. The effects on the typical labor management relationships as a result of this rule seem obvious. First of all, it violates the intents of the parties to the collective bargaining agreement, the union and the employer.

Secondly, it invades the traditional province of the union and the employer to collectively bargain and settle their disputes as to what the meaning of that collective bargaining agreement is.

Third, it subjects the employer to inconsistent obligations, and possibly very heavy expenses for having to litigate this particular issue in a multiplicity of forums, and last but not least, it serves a disservice to the judiciary by forcing the courts to hear traditional labor disputes which are well suited for an arbitrator to decide, and which additionally are neither binding on the co-signatories to the collective bargaining agreement, the union in this particular case.

QUESTION: Mr. Bobinette, in these particular cases, it appeared that both the collective bargaining agreement and the trust indenture referred to a right of the trustees to file suit for purposes of enforcing the collection proceedings and so forth. That is a little different than if the agreements had provided, perhaps,

that arbitration was required, and they are silent on that. Does that make a difference?

MR. BOBINETTE: Well, it comes down to a question of determining what the intents of the parties are. If you look at the collective bargaining agreement as the wishes and the desires of the settlers to the trust, you look at the intents of the settlers in establishing that particular trust. What were the intents of the union and the employer at the time they entered into the collective bargaining agreement?

It has been some bother, particularly to the Eighth Circuit, that the trustees have no direct access to the arbitration clause. That is, they can not flip it on and then proceed into arbitration. I would suggest the fact that they are specifically not mentioned as parties who can trigger the arbitration provision is an indication that the parties, the union and the employer, never intended to allow them to involve themselves in interpretive disputes.

Given that, and then comparing it to the language contained within the trust indentures, the language in the trust indentures I believe presupposes that the debt or the obligation under the collective bargaining agreement is already established, and that really what is being allowed under the trust indenture

is the right to collect delinquencies, and nothing more than that.

And for that reason, I would suggest that that is reasonable to determine, that it was the intent of the parties to the collective bargaining agreement to resolve all interpretive disputes under the -- or through the grievance and the arbitration provisions.

These risks that I have mentioned are neither mandated nor warranted by the legislative history, nor by the language or the structure of those federal statutes dealing with the regulation of employee benefits.

QUESTION: Could I ask you --

MR. BOBINETTE: Yes, Your Honor.

QUESTION: Perhaps I misunderstood you. Suppose that the trustees lose this coverage issue in litigating with the employer.

MR. BOBINETTE: Yes.

QUESTION: Do you think that finishes the issue? Or will the employer have to litigate it in a possible arbitration procedure, too?

MR. BOBINETTE: It is very well possible. I think that by allowing the trustees to litigate independently of the union -- We had a motion to add the union in on this case, and we never got to that point.

Certainly they never --

QUESTION: What do you mean, you never get to it? Was it denied?

MR. BOBINETTE: No, no, the District Court never ruled on that. It deferred to arbitration before getting to that particular issue that we raised. But to answer your question, it is very, very possible that --

QUESTION: Then you lost in the Court of Appeals?

MR. BOBINETTE: Well, that issue was -- yes, we did --

QUESTION: So what if it goes back now? Can you add the union?

MR. BOBINETTE: Well, if --

QUESTION: Can you bring the union in?

MR. BOBINETTE: It would be our position that they are a necesary party to this action, and that would certainly begin to take care of some of these possibilities of inconsistencies and multiplicity of forums.

QUESTION: So that is down the line. You are back in the District Court now, aren't you, supposedly?

MR. BOBINETTE: Yes.

QUESTION: And doing what? Litigating with the trustees.

MR. BOBINETTE: Well, waiting for the decision first, but ultimately, right.

QUESTION: Excactly, yes, but if you lose here, you are back in District Court litigating with the trustees.

MR. BOBINETTE: Yes.

QUESTION: And then the question is, can ycu bring in the union.

MR. BOBINETTE: That will be the next questicn. But to answer the first question that ycu had, it is very, very conceivable that allowing the unicn -- excuse me, the trustees to independently litigate simply encourages the union to sit back and to wait to see what happens. They will incur no costs. They will incur no risk. All they have to do is see how the action turned out. If they don't like it, then they can arbitrate it, cr maybe they can strike.

QUESTION: I know, but you think -- what do you think would happen if the union sits back, they aren't made a party to this suit, you lose here, gc back to the District Court, and suppcse that ycu win in the District Court and the trustees lose?

MR. BOBINETTE: Yes.

QUESTION: Now, then the unicn wants to arbitrate, and it says, we dcn't agree with the District

Court. Do you think they can arbitrate then?

MR. BOBINETTE: Under the Court's decision in W.R. Grace versus Local 759, I would think that --

QUESTION: What is the arbitrator supposed to do?

MR. BOBINETTE: The arbitrator will take evidence, and listen to it, and attempt to --

QUESTION: And say, I am construing the collective bargaining agreement according to the intent of the parties, and if the federal court decided otherwise, it was just wrong. Is that what it --

MR. BOBINETTE: Well, just as the federal court judge has no right to substitute his judgment for that of the arbitrator, I think that we just get into the flip-flop of that. If the federal court has no right to substitute its judgment for that of the arbitrator, then I think the arbitrator could say, I may make whatever decision I wish to as long as I draw it from the essence of the contract.

QUESTION: Well, they both can't be right, can they?

MR. BOBINETTE: No, Your Honor. A serious question does arise, though, that if the trustees do lose in this particular case, what in fact happens? It is very conceivable that certainly that does not bar the

interest of the union or of the employer in this particular -- excuse me, the union or the employees in this particular case.

Some ten years down the line it may well be that an individual who has determined through that litigation not to be covered will file a claim for benefits. At that point in time, the trustees will be foreclosed from coming back against the employer because that issue would already have been litigated. Any opportunity for recoupment of those benefits will have been lost at that time.

QUESTION: Well, but that would be an argument for making the union a necessary party, I suppose.

MR. BOBINETTE: Yes, Your Honor. Making them a necessary party only gets halfway there, though. That protects the questions of multiplicity. The question that comes back to it is when you've got the union and the employer involved, don't the union and employer have a right to have their bargain honored, and could then the union and the employer --

QUESTION: But when the union and the employer have written up these agreements, and there's a trust indenture and it expressly says the trustees can sue, I think it makes your argument much tougher. It is not a case where they said expressly arbitration is required

by the trustees.

MR. BOBINETTE: The question of whether or not they could have specifically provided for the trustees being able to arbitrate I think is a question.

QUESTION: Well, but maybe that is not necessary to answer here, because --

MR. BOBINETTE: I'm sorry?

QUESTION: Maybe we don't have to answer that in this case, because the agreements don't provide for it here.

MR. BOBINETTE: Correct. Correct. I understand what you're saying, but I'm just saying that had they included that opportunity to arbitrate, which would in your mind make it much more clear that they wanted them to arbitrate, I doubt seriously whether or not that would be permissible.

QUESTION: Mr. Bobinette, can I just ask you one question?

MR. BOBINETTE: Yes, Your Honor.

QUESTION: Is there anything in the law that would prevent the companies and the union in future collective bargaining agreements from spelling out what procedure they think would be appropriate in this kind of situation?

MR. BOBINETTE: I know of none. The only

limitation that might be imposed is that which I infer from the court's decision in NIRB versus Amex Coal, and that is whether or not these trustees should be involved at all in the question of settlement of grievances, and in answering the question of Justice O'Connor, what I was attempting to allude to is, I don't think that they should have the right to trigger the arbitration clause, because I think that --

QUESTION: You do not think the trustees could be given the right to seek arbitration of a dispute of this kind?

MR. BOBINETTE: I think there are some serious questions as to whether or not involvement in the settlement of these types of disputes is alien to their fiduciary duties, and the way in which they conduct themselves.

QUESTION: I thought you were arguing that they should have asked for arbitration.

MR. BOBINETTE: Pardon me?

QUESTION: I thought you were arguing in this case that they should have sought arbitration.

MR. BOBINETTE: They should have asked the company to arbitrate the issue, and that the company would trigger the -- excuse me. They should have asked --

QUESTION: The unicn.

QUESTION: The union.

MR. BOBINETTE: -- the union to arbitrate, and the union would go in and arbitrate those particular issues if they felt as though the interpretaticn cf the trustees was meritorious.

The basis cn which the Eighth Circuit has made its decision, this is an interpretation of the intent of Congress to not -- to separate the trustees from the dependents of the union. This is drawn from 302(c)(5). A review of the history, of the legislative history indicates the concerns of Ccngress were with bribery and extortion and illegal activities. To the contrary, the Eighth Circuit was concerned with the idea that the unicn in good faith would not decide tc otherwise arbitrate a meritorious dispute.

I don't think that the concerns of Congress were the same concerns that the Eighth Circuit had. Specfically, I think the construction is supported by looking at the text cf Section 302(c)(5) and indicating that there is nothing in the conditions for setting up these trusts which in any way indicates that Ccngress intended to alter the relationship between the union and the employer in terms of settling its cwn disputes.

Most recently, in 1980, Congress adopted the

Multiemployer Pension Plan Amendments Act specifically under Section 515, and under that section it allows the trustees to institute suit for delinquent contributions. We have submitted that these underlying contract disputes are not the kind of delinquency actions that Congress had in mind, nor are they simple collection actions that was discussed in the legislative history.

Arbitration is integrally related to determining the extent of the promise provided for in the collective bargaining agreement, and therefore they are defenses which are in fact very much related to the question of the obligation of the employer to pay benefits.

Lastly, the question that has to come up in a person's mind is whether or not Congress intended to allow trustees to involve itself in interpretive disputes under Section 515 of ERISA. Given the fact that under this section it is mandatory that a judge impose penalties, damages, double interest payments, as well as attorneys' fees, and given the fact that Congress never addressed the question of whether or not trustees can involve themselves in interpretive disputes, it raises a serious question as to whether or not Congress intended employers to suffer the penalties

provided for under this section if they in good faith involved themselves in interpretive dispute.

Thank you.

CHIEF JUSTICE BURGER: Mr. Luplow.

ORAL ARGUMENT OF RUSSELL N. LUPLOW, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. LUPLOW: Mr. Chief Justice, and may it please the Court, the respondent's Central States Pension Fund is the largest Taft-Hartley multiemployer fund in the United States. It has approximately half a million participants and beneficiaries. It has over 12,000 contributing employers spread out over 40 states, and it distributes hundreds of millions of dollars to retirees and their dependents in the form of benefit payments.

I think it is important for the Court to understand that who the responsibilities are -- what the responsibilities are of the respondents in its relation to -- as compared to the union. The trustees are charged under the statute, under ERISA, to represent in a fiduciary capacity retirees, of which we have approximately 116,000. Also in our constituency we have active union participants and non-active union participants, the state right to workers.

We also have beneficiaries of the retirees and

the participants which includes their spouses and their children. Now, under ERISA, as we perceive the statute, they are our responsibility. We have an unwavering, uncompromising duty to protect their interests within the law.

What the petitioners seek here is the imposition of compulsory arbitration upon the respondent's board of trustees. They seek this notwithstanding the fact that the trustees have not agreed to the imposition of arbitration, notwithstanding the fact that the trustees have no access to nor can they participate in the arbitration process that is submitted by the petitioners, and notwithstanding the fact that ERISA, enacted in 1975, specifically provides, pursuant to MEPA, as it was revised in 1980, that the trustees may sue under a federal specific cause of action, Section 515, which Congress gave us under MEPA, that Congress provided for us a specific forum under ERISA, that they provided for us federal mandatory remedies in delinquent contribution cases where we are successful that are mandatory, including attorney fees and statutory liquidated damages, and nowhere, Your Honors, in the statute or the legislative history is there any mention about Congress intending at any point to insert arbitration as a condition precedent.

QUESTION: Well, it sounds to me as though you would say that this collective bargaining agreement could not have expressly agreed or that the dispute in this case would be submitted to arbitration. Suppose the collective bargaining agreement had said that the trust agreement itself will say that if there are arguments about coverage, that is arbitrable between the employer and the union. Suppose it was just as clear as it could be what the parties intended. Would you say the law would forbid that?

MR. LUPLOW: That, Your Honor -- I am not going to dodge your question. I will answer it very quickly. It's an open question as the Third Circuit said.

QUESTION: Yes?

MR. LUPLOW: But it is not an open question. The Third Circuit indicated in the Seamans case that they doubted that the parties to a collective bargaining agreement could force the trustees to amend their trust agreement.

QUESTION: Your argument, the way you were putting it, sounded as though you agreed with the Third Circuit.

MR. LUPLOW: Yes, I do.

QUESTION: Yes.

QUESTION: Well, let me take it one step farther. Supposing both the collective bargaining agreement and the trust agreement -- say that was properly amended by whatever procedure you amend the trust agreement -- provided that a dispute such as this should be submitted by the trustees to an arbitration in which all three parties might be heard.

MR. LUPLOW: Yes, I would --

QUESTION: Would that violate any federal statute in your opinion?

MR. LUPLOW: No, because it is something that the trustees under 404, which we believe is the heart of ERISA, the prudent man rule, is something that the trustees would be empowered to do, because in the final analysis, as we perceive the statute, we are being held accountable, that the legislative history supports the fact that Congress wanted the buck to stop somewhere, and not to have it passing back between unions, employers, and so on, and that we think that the statute therefore enacting 404 gave us some broad discretion within the confines of the common law fiduciary duties, which ERISA codified.

QUESTION: Mr. Luplow --

MR. LUPLOW: Yes?

QUESTION: -- could the trustees on their own

decide that they want to delegate their responsibility for determining these questions to the union?

MR. LUPLOW: My answer to that, Your Honor, is that we cannot delegate away core fiduciary responsibilities under ERISA, that ERISA has a specific provision that the fiduciary duties, the ultimate accountability, if you will, cannot be delegated to anyone else. There is one exception under asset management, but beyond that we cannot delegate that authority away. We can't pass the buck to someone else.

QUESTION: All right. Well, let me ask you another but somewhat related question. Suppose the union decided regardless of what the trustees thought that there was a question here about coverage, and they initiated on their own an arbitration under the collective bargaining agreement about the coverage question and got a resolution of it.

Is it your position that the trustees could say, well, we don't agree with that, and we don't think the arbitrator was right, and we're going to file suit and get a different result?

MR. LUPLOW: Yes.

QUESTION: You think you can do that?

MR. LUPLOW: We think that if the result of

the arbitration is such that it -- as prudent men we think that the procedure or the process itself is infirm --

QUESTION: Or the result was wrong?

MR. LUPLOW: Or the result was wrong.

QUESTION: You base that on ERISA?

MR. LUPLOW: Yes, we do, Your Honor.

QUESTION: Well, it is really, then, just wholly transformed situation where the trustee's rights are derivative under the collective bargaining agreement and under large parts of that trust agreement to where the trustees are in the driver's seat then. They are no longer bound by the -- they are no longer just third party beneficiaries.

MR. LUPLOW: Your Honor, we think that this is where the tension comes in between ERISA and Taft-Hartley. We have in effect, as we view the statute, an unwavering obligation to do as prudent men what we think is to protect the participants and beneficiaries, and if we see that a situation has arisen that in good faith and as intelligent, prudent men under the federal fiduciary standard we think is wrong, that we think we have a duty to seek to repair that problem.

QUESTION: Of course, you don't need -- to win this case you don't need -- we don't -- you don't need

to prevail on some of these more difficult issues, I take it. I take it if you -- if the collective bargaining agreement really fairly read doesn't preclude your kind of a suit, you win.

MR. LUPLOW: Yes.

QUESTION: And we don't need to hassle about what the result would be if the collective bargaining agreement purported to interfere with your access to court.

MR. LUPLOW: Really, we are talking, Your Honor, about the forum here, and I know that the petitioners have suggested that this is going to open up the floodgates, but the fact of the matter is, Taft-Hartley has been around since 1947, and so have Taft-Hartley trust funds, and so have trustee lawsuits been filed since 1947, and this doctrine, which originated originally under Days Electric, is of recent vintage.

It is 1974. And not until 1974 has the exhaustion doctrine gained any prominence at all in the federal system, and in that case, Days Electric, decide in 1974 in the Middle District of Florida, the judge there characterized the decision of this Court in Louis v. Benedict as one that this Court ruled in that case, the ruling in that case about unions not being able --

or employers not being able to set off against trustees for the transgressions of unions, he said that that was a matter of substantive law, and that to require trustees under a Taft-Hartley collection action to defer to the arbitration process was a rule of procedure, and it did not subver their rights at all to switch them from court into that forum.

That case was picked up -- I'm sorry. That's not correct. That case was followed by a District Court in the Howard Martin case in Indiana Federal Court, and it was affirmed by the Seventh Circuit in Howard Martin, and it is interesting to point out in that case that the Seventh Circuit suggested that the trustees' argument that they didn't have access to the tribunal fell of its own weight. Merely ask the union to file the grievance, the party of primary interest, and that will resolve the problem.

The problem is that we did that, and there was no arbitration. It was not done, and the Howard Martin Company went into bankruptcy. I think that one of the main problems that we see is the fact that in our constituency we represent retirees as well as active union participants. To delegate a basic core fiduciary duty of collecting contributions which is, after all the life's blood of any pension or health and welfare fund,

we have to collect the money, and we think that asking the union to handle that phase of our collection work is -- creates a problem, because we think that the unions, not for sinister reasons, but for legitimate reasons, often have a dilemma or problems of their own. We think that there are basic built-in conflicts of interest.

For example, the retirees that we represent the union owes no duty of fair representation to. Typically what can happen is that the fund will do an audit with its auditors of a company and turn up evidence that employees maybe four or five years ago were not reported properly. The employer asserts that. It's a coverage question. We go to the union and say, would you please -- this dispute, we are trying to collect on employees who are no longer around. They don't belong to the union any more. They don't even work for the employer any more.

A union as a practical matter may have difficulty trying to do that or even wanting to do it. There are cost factors involved, and it is sometimes very difficult, and we can't force them to do it.

QUESTION: Well, suppose the union does do it, and steps in, and it is a dispute, and they reach an agreement with the employer that says no payments were due, there's no coverage, and you don't like that

result, you think it's wrong under the agreement. Are you going to live with it, or can you file suit?

MR. LUPLOW: We think that we could file suit. We also think that the practical effect of it is, first off, the arbitration under Taft-Hartley as it has been developed by this Court and as enunciated by Congress is still, after all, a matter of contract, and the basic -- the bottom line here is that we never agreed to this. As a matter of fact, the petitioners in their collective bargaining agreements agreed in the pension and health and welfare articles which are cited in the appendix to allow the parties who founded the trust to appoint trustees and to be bound by the trust agreement that is put together by the trustees.

In addition to that, they agreed to be bound by all of the provisions of the trust agreement as part of the collective bargaining agreement. In other words, the trust agreement is incorporated by reference into the collective bargaining agreement, and in the trust agreement itself, as is set forth in the appendix, there is a specific provision that the trustees have a right to file suit in court independent of and not to the detriment of the union. The union has its own rights. We think that's fairly clear, and relating to the trilogy and Justice White's opinion in Atkinson versus

Sinclair, it is still a matter of contract.

As to the Congressional intent that petitioners alluded to about Congress and arbitration, Congress is no stranger to arbitration. When it has addressed, it has spoken directly about it, for example, in the Railway Labor Act. In the Railway Labor Act, it is set forth in our brief, in the Northwest Airlines case, arbitration is mandatory. It is mandatory under 302(c)(5)(D), deadlock situations. Congress said arbitration is mandatory.

They said that it is required under the Withdrawal Liability Act of ERISA, but even there Congress said that the arbitrator in that situation is not to act like the typical arbitrator in the collective bargaining sense. He is to serve more of a judge. You are either right or your're wrong. And finally, the desirability of private agreements under 209(d) of Taft-Hartley, which is Congress's expression, says it is the desire, it is the preferred policy, and as this Court has developed through the Steelworkers Trilogy and the Atkinson case, that is the preference, and arbitration is a wonderful thing where the parties have agreed to it and it serves a great purpose in this nation under the labor law.

However, it is still a matter of contract, and

we didn't agree to it.

QUESTION: Mr. Luplow, do you think the union is a necessary party in the lawsuit below?

MR. LUPLOW: If we -- I do not think so. As indicated, I think, in the amicus brief filed by the American Federation of Labor in this case, which, while their point of view was relying principally on contract trust agreements, I don't think that they are. I think that the Ninth Circuit suggested or -- and also the Seamens case in the Third Circuit, that if the employer is concerned that the union is going to get another bite at the -- to get a shot at him later, or to take him into court later, that the employer can join the union in the lawsuit, or if arbitration is proceeding, as the Ninth Circuit said in the Amarc versus Continental Can case, which we expressed to this Court last week, the court may to avoid the double forum and double exposure grant a stay of the proceedings and defer to the arbitrator.

QUESTION: How does the employer get the union in?

MR. LUPLOW: He can join him as a third party defendant, which was done in -- which the counsel here --

QUESTION: Third party defendant? That means that there's a right over, doesn't it?

MR. LUPLCW: I don't know the answer tc that.

QUESTION: Well, if they are not a necessary party, they can't get them in, and you are saying they are not necessary, and I -- you know, I just wonder whether a party shculdn't have a little something tc say about the meaning of their agreement and the coverage questicn. They are the people who wrote the agreement, and your position is so extreme that ycu are just letting the -- you are saying the parties don't have anything to say abcut ccverage.

QUESTION: The trust tail wags the whole dcg in your view.

MR. LUPLCW: Your Honor, the parties -- We don't think it's any different than a situation under 301, for example, where federal courts have interpreted contracts, where the parties haven't agreed to a grievance procedure, and the parties in this case and in other cases have agreed to a bargain, but there are some ambiguities in the bargain.

QUESTION: Well, the employer is going tc have plenty tc say in this lawsuit about --

MR. LUPLOW: Yes, he is.

QUESTION: -- if ycu win, and ycu wouldn't -- what if the union -- What if you win this lawsuit and then the unicn mcves tc intervene, just tc have its say

so in the District Court at trial? Would you oppose the intervention of the union?

MR. LUPLOW: No.

QUESTION: So you think it's a proper party, at least.

MR. LUPLOW: Sure.

QUESTION: But not a third party in the technical sense, where one of the parties is claiming a right over against the third party.

QUESTION: No.

MR. LUPLOW: Okay --

QUESTION: They just interevene. They just interevene on one side or the other.

MR. LUPLOW: The union could intervene --

QUESTION: Probably they are going to intervene on your side.

MR. LUPLOW: Also, of course, the --

QUESTION: Which I wouldn't suppose you would oppose.

MR. LUPLOW: No. No, I would not.

QUESTION: I suppose there would be cases in which the employees might want to intervene by parity of reasoning, and I take it they are not necessarily represented by the union insofar as they are making claims against the fund, are they?

MR. LUPLOW: I am sorry, Your Honor.

QUESTION: Would the individual employees necessarily be represented by the union insofar as they might assert a claim to vested rights in the fund? You can have non-member employees --

MR. LUPLOW: Yes, they can file.

QUESTION: -- or employees of -- defunct employers, and all sorts of --

MR. LUPLOW: Sure. I mean, anyone that we mentioned at the top of our argument would have status to sue us under 502.

As we said before, the unions do not have a duty of fair representation to the retirees. They don't have any duty to the beneficiaries, and they don't have a duty to the trustees, and it is the retirees and the beneficiaries who rely on the trustees. I mean, we are their representatives. We are the ones designated by Congress to protect the funding of that fund and their assets and their financial future.

QUESTION: Well, what kind of a suit -- what is the tenor of your suit in the District -- You are taking a position on the meaning there, aren't you?

MR. LUPLOW: Yes, the --

QUESTION: You are not just saying like the executor of a will bringing an action to construe a

will, are you?

MR. LUPLOW: No.

QUESTION: Well, why -- why shouldn't your suit be more of that kind, where you say, here, we want you to tell us what this language means, judge, and then you take all the evidence and the judge decides?

MR. LUPLOW: Well, in some of the cases --

QUESTION: Why should you be taking a position on it, if you are such fiduciaries?

MR. LUPLOW: Well, if -- our position is that if there is -- if it is not clear, and we have potential liability, which we do under ERISA to anybody, a determination has to be made and it has to be done in good faith.

QUESTION: Well, that's right, but why should you have -- why should you take one side or the other?

QUESTION: A decision of the court would relieve you of the responsibility, would it not?

MR. LUPLOW: Yes.

QUESTION: Just as a trustee would normally ask for instructions on the construction of a trust, as Justice White suggested.

MR. LUPLOW: Yes, Your Honor. That is very correct. That is very true.

QUESTION: I thought you said that ERISA gave

you that responsibility. Is that true?

MR. LUPLOW: To get an instruction.

QUESTION: Can I get an answer to my question?

MR. LUPLOW: Yes. ERISA gives us the authority to bring an action in federal court, yes.

QUESTION: And does it give you the responsibility to take care and dispose of that money and be responsible for it?

MR. LUPLOW: Yes, it does.

QUESTION: You also have a duty to collect it, don't you?

MR. LUPLOW: Yes.

QUESTION: When you think of it -- you've got a duty to collect.

MR. LUPLOW: In order -- we have, as one reviews the Congressional purposes, 1029(a), (b), and (c), the responsibilities of trustees under the statute are enormous, and as it should be. We view it almost as a -- we don't know of any higher responsibility that the Congress could place on other citizens than to safeguard the assets of people for their retirement years.

QUESTION: But the discharge of that responsibility doesn't always require that you come down on the side of aggrandisement of the trust, does it? I mean, just getting an instruction from a court one way

or the other would discharge the responsibility.

MR. LUPLOW: Yes. Another aspect of the case, and there are really two issues, in a sense, although they are interrelated, and that is in the Prosser case, where Prosser has indicated that audits, the scope of an audit is also subject to arbitration. Our trust agreement -- in other words, when we went in to perform an audit on Prosser, they said, wait a minute, you know, you can't audit, because the scope of your audit is also arbitrable, and that -- and I wanted to bring that to the Court's attention, that in the trust agreement we have two provisions that address that. One is production of pertinent records, and also the trustees' power to construe the trust agreement.

Basically, the Central States' funds with half a million people, 12,000 employers over 40 states, some people are surprised when we say this, but the fact of the matter is that we have an honor system of reporting. There is no other practical way for us to do it. Monthly the employers fill out a report form and send us a check, and so it is based on an honor system, and the only checks and balances we have, we perform random audits, and we do that through our audit department.

We also know that, under ERISA and also under

Department of Labor advisory opinions that have been issued, that the funds must provide coverage and grant pension credits regardless of whether or not the employer makes contributions if he was obligated in the first instance.

We look upon audits as a matter of pure trust administration, and subject only to a federal court's review as to whether or not the scope of our audit was arbitrary and capricious. Since we have literally thousands of employers and thousands of collective bargaining agreements that range in grievance resolving mechanisms from one arbitrator to a panel of three to joint committees, that it would be absolutely chaotic for a centralized fund of our size to be bound by an arbitrator's decision in Iowa that you have a right to audit for three years, someone in Indiana for one year, the joint committee says five years.

We think that that is particularly a matter of pure trust administration, and that the scope of our audits are really something that should be subject to a court's review as to arbitrary and capricious scope of conduct of it.

In concluding -- I see the light is on -- I would say this, that the entire statutory scheme of ERISA is to, Number One, to safeguard the assets for

retirees and their dependents, and it is to make sure that there is accountability. We think that the petitioner's position allows for a dilution of the fixing of that responsibility by requiring us to rely on the union who is not our agent under Amex Coal, whom we cannot tell what to do, who itself may have for legitimate reasons a conflict of interest as to the constitutents that we represent as opposed to the ones that they represent.

We think that that together with the statutory history makes it clear that the responsibility to collect money that we are entitled to under a collective bargaining agreement is strictly with the trustees, and that any dilution or any rule of law that starts to split that responsibility is not in the best interest of the participants and beneficiaries, and contrary to Congressional intent.

Thank you very much.

CHIEF JUSTICE BURGER: Do you have anything further, Mr. Yates?

ORAL ARGUMENT OF DAVID F. YATES, ESQ.,
ON BEHALF OF SCHNEIDER MOVING AND STORAGE COMPANY

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MR. YATES: Yes, I do.

Mr. Chief Justice, and may it please the

Court, with respect to the alluding to the statutory rights here, I think that we are ahead of ourselves in terms of the collective bargaining agreement. When the union and the employer sit down in collective bargaining negotiations, they at that time in this case negotiated the funding obligation of the employer to the trustees. They limited that funding obligation to less than all employees covered by the collective bargaining agreement.

At that time they were in fact acting to a certain exent as agent of the trustees. They were negotiating what the obligation would be. What the respondents are suggesting here would result in the, as Justice Rehnquist suggested, the trust becoming the tail that wags the dog here. They would have the right to come in during the term of the contract, state that they don't think that that bargain that was reached in collective bargaining is agreeable to them, is reasonable, and they are going to attempt to upset it.

The same principles --

QUESTION: I don't think that's a fair statement of their position. They are saying that they don't read the agreement the way -- they don't say they have a right to amend the collective bargaining agreement, or ask a court to do that, as I understood

the argument.

MR. YATES: By taking an adversary position as to how the contract should be construed --

QUESTION: They can take the position that this particular employee is in fact covered even though the union has said otherwise, but that is based on how they read the agreement, not a right to amend the agreement, isn't it?

MR. YATES: Well, yes, that's correct. I don't think they're saying to amend the words, but that operates as a de facto amendment to the contract if they take the contract and interpret it differently than the employer and the union understood the contract to mean when they negotiated. After all, this Court has recognized that collective bargaining contracts are based on a history of practices between the employer and the union. They are not negotiated in a vacuum. They are based on what the practices have been between the parties.

It seems to me that what is happening here is that the trustees are taking the position that they have the right to come in and question the interpretation given to the collective bargaining agreement by the employer and the union, and if that happens, I think you are going to be removing the entire question of the

funding cbligation --

QUESTION: How do you know in this case that the unicn disagrees with the pcsition taken by the trustees?

MR. YATES: We don't. I wish we knew what the positicn --

QUESTION: Well, then you shouldn't say that the trustees are attempting to take a position contrary to the understanding of both parties. After all, what their suit is going to end up, if ycu lcse this case, there is going to be a trial, and the question is going to turn about what did the parties intend by the collective bargaining agreement.

MR. YATES: That is correct.

QUESTION: So you are going to really find out just in a different forum what your client and the union meant.

MR. YATES: Our position is, the union has never raised the issue, and that, we think, is important.

QUESTION: I understand that.

MR. YATES: With respect to the inconsistent results, I think there is a legitimate concern of the trustees that there not be inconsistent results. We believe that using the arbitration process tc interpret

the contract, and that is what we are talking about, we are just talking about an interpretation problem, that will go further in preventing inconsistent results. If the trustees lose in the District Court, there is nothing to prevent the union from filing a grievance and proceeding to arbitration or to prevent the union from striking and attempting to obtain something the trustees could not obtain in federal court. There is nothing to prevent the union and the employer from negotiating an amendment to their agreement.

QUESTION: Mr. Yates, is there anything to prevent you from calling up the union and saying, do you agree with the trustees' reading of this contract?

MR. YATES: Nothing at all.

QUESTION: And if you did that, you told the judge you both agreed, that might be a pretty good defense.

MR. YATES: The respondents have just stated that if they disagree with that interpretation --

QUESTION: I understand. They would litigate it, but you would then let the judge know how the union felt.

MR. YATES: Absolutely. Most certainly.

CHIEF JUSTICE BURGER: We will resume at 1:00 o'clock.

Thank you, gentlemen. The case is submitted.

(Whereupon, at 11:59 o'clock a.m., the cases in the above-entitled matter were 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:

#82-1860-SCHNEIDER MOVING & STORAGE COMPANY, Petitioner v. LORAN W. ROBBINS., ET AL.,; AND 82-1862-PROSSER'S MOVING AND STORAGE COMPANY, Petitioner v. LORAN W. ROBBINS, ET AL.

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