OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

DKT/CASE NO. 83-1894

TITLE PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, ET AL., Petitioners V. NATIONAL LABOR RELATIONS BOARD, ET AL.

PLACE Washington, D. C.

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IN THE SUPREME COURT OF THE UNITED STATES

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PATTERN MAKERS' LEAGUE OF :
NORTH AMERICA, AFL-CIO, :
ET AL., :
Petitioners :
V. : No. 83-1894
NATIONAL LABOR RELATIONS :
BOARD, ET AL. :

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Washington, D.C.

Monday, April 22, 1985

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:46 o'clock a.m.

APPEARANCES:

LAURENCE STEPHEN GOLD, ESQ., Washington, D.C.; on behalf of the petitioners.

CHARLES FRIED, ESQ., Deputy Solicitor General, Department of Justice, Washington, D.C.; 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 Pattern Makers' League of North America against NLRB.

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

ORAL ARGUMENT OF LAURENCE STEPHEN GOLD, ESQ.,

ON BEHALF OF THE PETITIONERS

MR. GOLD: Thank you, Chief Justice, and may it please the Court, this case was precipitated by the fact that the Pattern Makers' League, a union subject to the jurisdiction of the National Labor Relations Board, enacted through a referendum vote and then enforced a constitutional provision providing "No resignation or withdrawal from an association or from the league shall be accepted during a strike or lockout or at a time when a strike or lockout appears imminent."

The Labor Board in this case and in a companion case involving the machinists union held that rules of this kind violate Section 8(b)(1)(A) of the National Labor Relations Act.

At that time the board was split two to two to one as to the meaning, the precise meaning, I guess it is fair to say, of Section 8(b)(1)(A). Subsequently, however, the board has made its position crystal clear.

In the Newfield Porsche case, 270 NLRB Number 209, cited by both parties, the board held that Section 7 of the National Labor Relations Act "expressly grants employees the right to refrain from any and all protected concerted activities. This statutory right encompasses the" -- I am sorry -- "the right to resign union membership."

And in a subsequent case issued just after this case was argued for the first time, a case called Safe Air, Inc., S-a-f-e, A-i-r, two words, 274 NLRB Number 54, the board added "Nor was our holding in Newfield meant to be limited to restrictions on resignation during a strike or lockout. Rather, we pronounce clearly that any," and the word "any" is underlined, "restrictions on resignations from unions were invalid and that would include all of the periods of restriction set out in the respondent's rule in that case."

There the restriction inter alia dealt with people who attempted to resign while charges were pending, union charges were pending against them. So, it is the board's position here that Section 7 of the National Labor Relations Act creates a right to be a union member at will and makes it an unfair labor practice for a union to limit that right with regard to

the time or manner of resignation in any way, shape, or form.

It is our position that the legislative materials demonstrate that Congress specifically considered whether to create a federal right to be a union member at will, enforceable by the National Labor Relations Board, and determined not to do so.

In the next few moments I wish to go through the legislative history step by step and to emphasize in particular what happened in the conference between the House and Senate, all to demonstrate first of all that Congress in considering the Taft-Hartley amendments to the National Labor Relations Act recognized a basic distinction between regulating union activity which interferes with job rights or which involves the improper use of physical force on the one hand, union activities which Congress decided to regulate through federal law entail, and the union's right to adopt its own rules on who shall be a union member and with regard to the conditions of union membership, a subject which the House wished to regulate in equal detail, and which the Senate was unwilling to regulate at that time on the ground that the National Labor Relations Board should not be given a wide ranging authority to deal with the union member relationship, but rather as the proviso to

Section 8(b)(1)(A) states, that this new federal legislation should not "impair the rights of labor organizations to prescribe their own rules with respect to acquisition or retention of membership."

The House bill was the first one to be passed, and the major points which I wish to draw the Court's attention to are the following.

First of all, the House bill not only retained Section 7 of the original Wagner Act in basically the form of the original language adding a "right to refrain from concerted activities" to that original language, but made that Section 7(a) rather than Section 7, and added a new Section 7(b) that dealt with the rights of members of labor organizations.

And the House Committee report made it plain that this was a new Paragraph (b) and was intended to assure to employees who we subject tc union control scme voice in the union's affairs.

The House bill then contained a Section 8(b) which dealt with union interference with job rights and a Section 8(c) which included Section 8(c)(4), which provided that it should be an unfair labor practice tc deny to any member the right to resign from the organization at any time.

The explanations cf the bill do not contain a

hint that Sections 7(a) and 8(b) are general terms of which Section 7(b) and 8(c) were specifics, but rather treat the regulations stated in 7(a) and 7(b) and in 8(b) and 8(c) as separate regimes.

The House bill as reported out in Committee and as passed on the floor was the same. The Senate on the other hand did change the bill before it from Committee to the floor.

The Senate bill contained -- the Senate Committee bill -- excuse me -- contained no "right to refrain" and contained nothing equivalent to Section 8(b)(1)(A), but rather only dealt with union interference with the employer's right to pick his own collective bargaining agents.

And we know why the Senate Committee bill was so limited in a passage which we did not cite in our brief, but which appears at Page 408 of the two-volume legislative history of the Act.

In the Senate report it is stated, "In the course of its deliberations the Committee considered many other proposals such as restricting alleged monopolistic practices by unions, the formulation of a code of rights for individual members of trade unions, and a clarification of the problem of union welfare funds.

"In excluding these matters from the purview of the bill, the majority of the Committee should not be understood as regarding such proposals as unsound or unworkable, but rather than the problems involved should receive more extended study by a special joint Congressional Committee."

The Committee was saying, we are not yet prepared to regulate the union-member relationship and rules regarding who will be a union member and who will not in the same way we are prepared to regulate matters considered in the Commmittee bill.

Senators Taft and Ball stated that in one -- in four particulars, one of which is relevant here, they wished to add to the Senate bill, and they stated that they wished to add what has become the operative language of Section 8(b)(1)(A), language providing that it is an unfair labor practice to restrain or coerce employees in the exercise of Section 7 rights.

Their supplemental statement did not take issue with the basic exclusions from the Senate bill as I have just read them. They did not claim that they were cutting into that area, but rather they stated that just as 8(a)(1) limits the right of employers to interfere with job rights or to use physical force against employees, so should there be a limit on

unions.

And that matter was made even more plain on the Senate floor because it was called to the attention of the sponsors of 8(b)(1)(A) that their provision could be read to cut into the right of unions to deny someone membership.

If you deny someone membership, you are restricting his Section 7 right to form and join labor organizations, and the sponsors of the legislation said that they had -- I am sorry.

The sponsors of Section 8(b)(1) said that they had no intention of getting into the area of internal union affairs. Senator Ball made the point perfectly plain, and we have quoted his statement in our brief. "The modification of the legislation," he said, "is perfectly agreeable to me. It was never the intention of the sponsors of the pending amendment to interfere with the internal affairs or organization of unions." And he accepted the --

CHIEF JUSTICE BURGER: We will resume there at 1:00 o'clock, Mr. Gold.

(Whereupon, at 12:00 o'clock p.m., the Court was recessed, to reconvene at 1:00 o'clock p.m. of the same day.)

AFTERNOON SESSION

CHIEF JUSTICE BURGER: Mr. Gold, you may resume.

ORAL ARGUMENT OF LAURENCE STEPHEN GOLD, ESQ.,

ON BEHALF OF THE PETITIONERS - RESUMED

MR. GOLD: Thank you, Chief Justice.

When we adjourned for lunch, I had brought the evolution of the Taft-Hartley amendments relative here up to the point of the conference report, and that is the ultimate moment in this story, so I was at least well served in that regard by the recess.

Very briefly to recapitulate, the House bill as we have seen was one which first of all made no claims that the right to refrain and its Section 7(a) had anything to do with the regulation of the union-member relationship, and which did regulate that relationship in detail in a quite different provision of the House bill, namely, Sections 7(b) and 8(c), and which regulated in terms resignation in Section 8(c)(4).

On the other hand, the Senate bill in terms disclaimed any intention to regulate rules concerning the acquisition or retention of union membership, and both the Committee report on the Senate bill and the authoritative floor statement by the floor leaders who

were managing the bill on the Senate side said that the Senate bill does not reach "the requirements and standards of membership in the union itself." That is what Senator Ball said on the floor.

The upshot of the conference was that the House bill was rejected with the following exceptions. The right to refrain language was included in a unitary Section 7, and the Senate bill Section 8(b)(1)(A) which prohibited restraint or coercion with the exercise of Section 7 rights and which contained the limiting proviso I have outlined was included in the bill.

The explanations of what the conferees did break down into two parts. First of all, they did something affirmative relevant here, and secondly they did something negative.

They explained the addition of the right to refrain as followed. That addition "taken in conjunction with the provisions of Section 8(b)(1) of the conference agreement makes many forms and varieties of concerted activity which the board, particularly in the early days, regarded as protected by the Act unprotected."

So, again, as was true throughout the history on the House side, the right to refrain was discussed in terms of placing a limitation on what the board could

require, and as I am making it plain that certain forms of coercive -- physical coercion would be unlawful and not at all explained as having anything to do with union membership.

Secondly, the House conferees said Section 8(c) of the House bill contained detailed provisions dealing with the relations of labor organizations with their members. One of the more important provisions of this section is included in the conference agreement, Section 8(b)(5), and has already been discussed. That was the provision on "extortionate initiation fees."

The other parts of this subsection are omitted from the conference agreement as unfair labor practices, so both the affirmative, namely, the House said we prevailed on one portion of Section 8(c) which became the initiation fee provision of the conference bill, and we did not prevail on any of the others. They are not unfair labor practices in the conference agreement.

In the first argument in this case, the Deputy Solicitor General suggested that the House didn't concede on substance, but only tactically, that the matter was left in general terms for future determination by the Labor Board, that the agreement to include the right to refrain in Section 8(b)(1) left the matter up in the air.

We have again, because I must say that I had never contemplated that explanation of what the conferees had done in light of the conference report and the House conferees' concession reviewed the legislative materials and in the explanation of Section 8(b)(5) by Senator Taft to the Senate we have found the following, which I would like to press on the Court. I would like to quote it.

In the House bill union initiation fees were among ten provisions providing for certain rights and immunities of members of labor organizations against arbitrary action by the officers of a union to which they belonged. This was the so-called bill of rights subsection in the House bill.

The Senate conferees refused to agree to the inclusion of this subsection in the conference agreement since they felt it was unwise to authorize an agency of the government to undertake such elaborate policing of the internal affairs of unions as this section contemplated without further study of the structure of unions.

And I would remind the Court of the language of the Senate Committee report which bears a striking resemblance to this language, namely, the Senate's reluctance at the beginning of this process and the

Senate's reluctance in conference as stated here to acquiesce to the House's desire to give the board the authority to regulate the union member relationship in detail.

And the upshot, we submit, is that there is nothing in this legislative history which supports the assertion that the right to refrain was intended to create a right to become a union member at will.

QUESTION: Well, Mr. Gold, last time I asked you the question that aside from the legislative history the language of the Act would leave room for the board's construction.

MR. GOLD: Justice White --

QUESTION: Or you thought it did.

MR. GOLD: I still do.

QUESTION: But it is so -- you have to look at the legislative history to evidence that bars the board's construction, not that supports it.

MR. GOLD: No, I do believe that the board --

QUESTION: And I understand that your quotation from Senator Taft is directed at that very point.

MR. GOLD: Yes, exactly at the point that we know why the Senate refused to accept the House proposal.

QUESTION: Do you think that legislative history bars what would otherwise be a rational construction of the Act?

MR. GOLD: I believe it bars what would otherwise be a possible construction of the Act if --

QUESTION: I don't mean if it were only, but absent the legislative history, there would be room for the board's construction, which means that at least it is rational.

MR. GOLD: Yes, I will not quarrel with that, Justice White. If all we had was the right to refrain language and the language of Section 8(b)(1), I would argue that the language cuts against what the board is doing, but obviously the art of administration is the art of dealing with matters that the legislature has left open, and I have to say that there are ambiguities in that language, just the way there --

QUESTION: It seems they left an awful lot open for the board to do.

MR. GOLD: That is correct.

QUESTION: They didn't specify every kind of unfair labor practice known to man.

MR. GOLD: Absolutely correct, but --

QUESTION: And ordinarily, Mr. Gold, from this lecturn, from counsel for the unions, including yourself

at times, there is a great emphasis placed on deference to the agency that Congress has entrusted with interpreting and applying and fitting these provisions to a very, very difficult, sensitive area.

MR. GOLD: But I think it is also true, and I hope it is true, Chief Justice, that we have always stressed, because it happens to be correct, that the ultimate touchstone is the intention of Congress. Congress's intention can be more clear and less clear.

There comes a point in which Congress has spoken in sufficient clarity that the board may not act.

QUESTION: Do you know of some other Labor Board case where we have differed with the board based solely on the legislative history, even though the statute itself would permit that construction?

MR. GOLD: Well, Curtis Brothers, on which we rely most heavily, is the clearest --

QUESTION: Is that the closest one?

MR. GOLD: I think plainly the closest one because the sequence is the same. I would take it, too, that Bell Aerospace is a case in which if the legislative history hadn't indicated what Congress wanted to bring within the statute, wanted to leave outside the statute, the board might have prevailed.

In other words, Congress's job is to say those areas which it is leaving for administration and those areas which it is closing to administration.

This Court has the ultimate authority in reading the language against the background of the legislative history to say when a subject matter has been denied to the administrative authority, and we believe that however much deference the board is entitled to in this instance the legislative materials are too clearly opposed to what the board did to permit the result that the board reached.

And I wish in that connection to emphasize that the board never even sought to confront these materials. There is not a word about where the right to refrain came from or about Section 7(b) or about the fate of that section and Section 8(c), or about what the conference report said.

These matters were touched on for the first time only by the Deputy Solicitor General, and it seems to us that his answer, namely, that an ambiguity was left, a calculated ambiguity, is sufficiently answered by what Senator Taft said.

The fact of the matter is that the first requisite for deference here, namely, that the agency do what is required of it, namely, to recreate the gamut of

values that Congress had in mind, was not done at all here.

Both on the merits then and for that reason the board is entitled to no deference, and the board's view is plainly opposed to Congress's view.

CHIEF JUSTICE BURGER: Mr. Fried.

ORAL ARGUMENT OF CHARLES FRIED, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. FRIED: Mr. Chief Justice, and may it please the Court, in this case the board has ruled that a union's disciplinary power over a worker ends when that worker unequivocally states that he no longer desires to be joined to the union as a member.

In American Shipbuilding many years ago this Court set out the standard for review of board interpretation of its statute. Is the board's interepretation inconsistent with the fundamental structure of the Act?

Before plunging into the intricacies of the legislative text and its history, as we shall have to do, it is worth pausing for a moment to recall what that fundamental structure of the Act is.

It is a structure of compelled representation under Article 9 and free association on the other. It is a structure which allows court enforceable fines

under Allis Chalmers, but as the Court emphasized in Scofield, only as to those who have chosen to become and remain members.

And it is a structure in which neither this Court nor the board has ever once since Allis Chalmers and Scofield allowed the imposition of such fines on a worker who has sought to sever the bond of membership.

And lest I be accused of engaging in flights of fantasy or picking things from a brooding omnipresence in the sky, I should recall that we have the preamble of the Act itself to indicate what that structure is, for it says that one of the purposes of the Act -- this is Section 1(b) -- is to protect the rights of individual employees in their relations with labor organizations.

Now it is true that this Court in Granite State and Booster Lodge left open for board determination in the first instance the question which the board has now decided and had not decided in those earlier cases.

May a union which is forbidden from enforcing a rule which would punish a worker for going back to work after resigning accomplish substantially the same result by redrafting its constitution, as so many unions did after Granite State, to forbid resignation in order

to go back to work?

Consider the realities of industrial relations, as the board must have done in the exercise of its expert responsibilities when it had to bring to bear the provisions of the Act and the decisions of this Court on those realities. In Granite State the recalcitrant workers participated in a unanimous strike vote.

They then participated in a second vote decreeing punishment for those who engaged in strikebreaking, and then, some time later, after joining the strike, they went back to work, and this Court rejected arguments based on solidarity, based on solemn commitments freely undertaken, based on mutual reliance.

Now the board has got to exercise its expert responsibility to apply the principle of that case in this case, where League Law 13 was added to forbid strike resignations almost a year before the strike which took place actually began.

So, we come back to the question, did the board act in a way which is fundamentally inconsistent with the Act and this Court's decisions when it ruled as it did? The board finds the basis for its action in the statutory text, in Section 7, which proclaims a right to refrain, and 8(b)(1)(A), which says that it is an unfair

labor practice to restrain or coerce in respect to that right.

Now, petitioners are surely wrong if they suggest that the Section 7 right to refrain applies only in organizational settings and does not apply to those who have already acceded to union membership, because if that were true, the Granite State and Booster Lodge cases would have been left without a foundation..

Now, since the right to be free of discipline on resignation is so firmly established in the law, petitioners have got to rely on the hypertechnical distinction, as the Ninth Circuit itself phrased it in the Dalmo Victor case, between restrictions on what a union member may do after resigning and restrictions on resigning in order to do that.

They have to rely on that distinction, because in respect to resignation, at least, petitioners believe they have a statutory peg on which to hang their argument, the proviso to 8(b)(1)(A) which saves to union the right to make rules regarding the acquisition or retention of membership.

However, in context it is perfectly plain that the purpose of the proviso was to balance the principal provision, which says to an individual worker, he has a right to stay in or get out of the union as he wishes,

but the union also has a right.

QUESTION: Well, Mr. Fried, I gather here isn't there a question whether at the time he became a member of the union, if he negotiated as a term of his acquisition of membership that he would not strike.

MR. FRIED: It is our position, Justice --

QUESTION: There is that involved, isn't there?

MR. FRIED: There is indeed.

QUESTION: This is not merely retention. Couldn't there be a suggestion that the union here has simply decided that a condition of membership is an agreement not to resign?

QUESTION: The proviso is, paragraph shall not impair the right of a labor organization to prescribe its own rules with respect not merely to retention but to acquisition. Why isn't that involved here?

MR. FRIED: Justice Brennan, that would amount to making -- giving up the right to resign a waiver which you execute when you join the union.

QUESTION: You don't suggest that an employee may not waive Section 7 rights, do you?

MR. FRIED: An employee may waive certain Section 7 rights as this Court ruled in the Metropolitan Edison case.

QUESTION: What is the distinction between this right and other rights that he may waive?

MR. FRIED: Most important distinction, Your Honor. Just as an employee may not be forced to waive Section 7 rights by an employer as a condition of employment because those are rights which the employee has in a collective capacity vis-a-vis the employer, so he may not be asked to waive rights against the union as a condition of --

QUESTION: What rights may he be asked to waive, what Section 7 rights may he be asked?

MR. FRIED: The most striking example is the no strike clause. That is a very important right which he --

QUESTION: Right. He may waive the right to strike.

MR. FRIED: The union may waive it on his behalf, because that is an economic weapon which the union holds in his behalf vis-a-vis the employer, but the right to refrain is a right which the member has vis-a-vis the union, and the union cannot ask him to waive that right as a condition of membership, just as the employer could not ask the employee to --

QUESTION: You don't suggest that acquisition can't be read as I suggest it might be, do you? That

the union may impose conditions upon membership. Surely it may do that.

MR. FRIED: It may impose conditions of membership, but not conditions which have the effect of holding onto a worker past the point he desires to be a member.

QUESTION: The only question is whether before he acquires membership, the union lays down conditions to his acquisition, and one of them is this, and he agrees to it.

MR. FRIED: If that condition is a condition which means waiving a fundamental right which he has against the union, then indeed the union may not require it. In this respect, the legislative history is not inferential.

It is entirely clear, because Senator Holland, who introduced the proviso, stated that the purpose of the proviso was to save to unions the right to decide whom they may acquire and when they may expell a member.

So that suggests it didn't have to do with getting hold of people who don't wish to be members or holding onto people who no longer wish to be members.

QUESTION: Mr. Fried, may I ask in this connection, today your opponent characterized the right

at stake as the right to at will, really, the relationship with the union could be terminated at will.

Would you agree that the union could impose a 30-day notice or a six-month notice requirement on resignation, or do you think it is at will?

MR. FRIED: No, I do not agree, Justice Stephens.

QUESTION: Couldn't even impose, say, two weeks? No notice at all?

MR. FRIED: It could certainly impose notice. It could certainly impose reasonable terms such that the union be able to assure itself that this was a well considered, formally correct resignation.

It may even impose a limitation of a few days so it could process and take account of this, but a 30-day limitation is a very significant limitation during which a worker is barred from keeping his job, during which he may be replaced permanently by a nonunion member.

And that goes further than the board is willing to go and than we believe the statute allows.

QUESTION: So you in effect do agree the issue is whether there is a statutory right to resign at

will.

MR. FRIED: I would not insist on phrasing it again and again as Mr. Gold does, as a statutory right to resign. I prefer this Court's own wording in the Scofield case, and that is the right to be subject tc discipline only so long as one chooses to become or remain a member, and I think that is a more important point.

The crux of the case is not so much the right to resign as the right not to be subject to discipline when you don't any longer wish to be a member, and I would think that if one views it that way, the whole way of looking at it becomes more helpful. That is a better way to view the thing.

Now, the board's --

QUESTION: Either way involves resigning.

MR. FRIED: Certainly. The way you indicate that you no longer wish to, in this Court's words, remain a member is, of course, by resigning. That is correct, Justice Marshall.

QUESTION: Just to refine it a little bit, you wouldn't say a member could write a letter to the union and say "I no longer wish to be subject to your restraints or discipline, but I think I will keep my membership."

MR. FRIED: I think at that point the proviso would surely hold, and at that point the board -- the union would entirely be within its rights to say, look, you want to be a member, you have got to be a member on our terms, and that says you subject yourself to discipline.

You don't want to subject yourself to discipline, then exercise your right to escape the union, to leave the union and escape the rule.

Now, since the language of the statute does not support, I believe, the petitioner's position, their principal reliance is not on what is in the statute, but their whole argumentative structure is based on what is not in the statute, namely, the dropping from the statute of the Hartley bill's Section 8(c)(4), which made it an unfair labor practice to deny the right to resign at any time.

And if I understand the argument, it goes something like this. The Section 7 right to resign on which we rely takes its origin in the Hartley bill, Section 7(a), right to refrain, and the Hartley bill not only had a right to refrain, it also had 8(c)(4), right to resign.

And it would, in petitioners' colorful phrase, accuse the board -- accuse the Congress, the House, the

Hartley bill of legislating belt and suspender style to have done the same thing twice, and since they didn't do the same thing twice, they only did it once, they did it in the specific place, and therefore 7(a) does not mean a right to resign, and therefore 7 doesn't. I think I have got that right.

The trouble with this rather intricate line of reasoning is its premise. The Hartley bill was no model of elegant economic draftsmanship, as this Court in its numerous incursions into the bill must realize. It was a confused jumble of criss-crossing, redundant, and sometimes extravagant provisions.

Provisions dealing with dues and exactions occur at least twice in the bill. Free expression is assured three times. Union security clauses are dealt with in provisions which are sprinkled at least three times throughout the bill.

In respect to the crucial matters of industrywide bargaining and applying the antitrust laws to unions, the definition statute is used to legislate, and then in 12(c) they come back and do the same thing all over again, and in respect to the matter we have before us now, the right to resign, that occurs not twice but three times, first in the 7(a) right to refrain, as we contend, second in 8(b)(1), outlawing

"compulsion by intimidating practices," and I quote here, "to become or remain a member," and then the famous 8(c)(4) again.

So what we have is a statute which legislated not only belt and suspenders style, but belt, suspenders, safety pin, and shoelace style. The real differences between the House bill and the Senate bill were these. The Senate was concerned with three major matters, secondary boycotts, the closed shop, and getting supervisors out from under the Act.

The House, although it was concerned with those things, too, had other fish to fry. It was very interested in doing things like subjecting unions to the antitrust law, in enacting a detailed bill of rights for clearly internal matters, such as union elections and free speech and dues and union pension benefits and so on.

And I must say I think it begs the question entirely to treat this matter of the right to resign as if it were a purely internal matter.

Now, true enough, the House receded on some of these extravagant provisions they wished to enact, but it is striking that the Senate did yield on two points. First, the Senate accepted what it never had in its original bill.

It accepted the Section 7 right to refrain, and it accepted it for the purpose of establishing what Senator Taft describes as the right of a man to go back to work if he wants to go back to work, and moreover it accepted the House Section 8(b)(1) which spoke of coercion by intimidating practices in respect to certain specific rights, and it expanded and broadened it, as the House report said, to the present 8(b)(1)(A), which speaks of outlawing such coercion as would prevent -- which speaks in general terms with restraint and coercion with Section 7 rights in general.

So, what we propose is that the Senate moved beyond the House's overly specific, often duplicative, sometimes extravagant language to more appropriate, more general, almost constitutional language as befits a statute which was intended to set the structure of union management individual relations for years to come, and in this spirit we must approach the board's ruling.

Is it inconsistent with that fundamental structure and with the decisions of this Court? There was some mention of the one other case in which an argument based on what isn't in the statute somehow should conclude that what is in the statute doesn't mean what it naturally seems to mean, and that was the Curtis Brothers case.

I should simply like to say that in the Curtis Brothers case which dealt with recognition of picketing it was not only a negative inference from the legislative history that we worked with there but the fact that there was a specific and narrow elaborate treatment of that same issue in the final act as it was enacted, and that is a very different matter from negative inferences, from matters which were excluded or changed in the course of a very confused set of legislative history.

If the Court has no further questions, I thank the Court for its attention. Thank you.

CHIEF JUSTICE BURGER: Very well.

Do you have anything further, Mr. Gold?

ORAL ARGUMENT OF LAURENCE STEPHEN GOLD, ESQ.,
ON BEHALF OF THE PETITIONERS - REBUTTAL

MR. GOLD: Thank you, Mr. --

CHIEF JUSTICE BURGER: You have three minutes remaining.

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

First of all, we do not rely on the fact that there is an unexplained right to refrain which was in House Section 7(b) originally. We note and we emphasize that in this extravagant House bill no one ever claimed that the right to refrain dealt with anything other than

the right not to participate in union activity in the first place, exactly what it connotes.

Secondly, the conferees did not, as my brother Fried said, accept the House bill's Section 8(b)(1). The confereees, as the conference report squarely said, accepted the Senate's Section 8(b)(1)(A) complete with its provisio, which again was not a provision which was never explained, but which was explained, explained against the background of what the Senate Committee said and explained on the floor.

And while the Deputy Solicitor General quotes one statement made by Senator Holling which indicates that a focus of the bill, of the proviso to Section 8(b)(1)(A) was on permitting unions to explel, there were four explanations of the provision, the other three far broader than that, and the confusion here is the confusion between a core example and the limits of the bill.

And finally, we would suggest to you that there is no overall principle of the statute which creates a concept of free association of the kind that is being discussed here.

The bill incorporates the normal concept of free association which this Court far later articulated in Democratic Party of the United States, namely that

association is a consentual relationship.

The parties come together on what they are willing to agree. Everybody has a right to proffer his application for membership, but membership is conjoined unless there is an overriding public law only on what the parties agree, and Congress in this Act said, as has always been true, that unions could determine who would become a member and what the terms of that membership would be subject as the unions have always been to the limits of the normal rules of private assication which is, if you have nothing in your constitution, there is no limitation, and on the other normal rule of association that the public law is to be created at the state level as it always had been prior to 1947.

Thank you.

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

(Whereupon, at 1:36 o'clock p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

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

83-1894 - PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, ET AL., Petitioners

V. NATIONAL LABOR RELATIONS BOARD, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)