

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 84-1644

TITLE GOLDEN STATE TRANSIT CORPORATION, Petitioner v.
CITY OF LOS ANGELES

PLACE Washington, D. C.

DATE December 4, 1985

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IN THE SUPREME COURT OF THE UNITED STATES

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GOLDEN STATE TRANSIT CORPORATION, :
Petitioner, : No. 84-1644
v. :
CITY OF LOS ANGELES :

----- :
Washington, D.C.
Wednesday, December 4, 1985

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 1:00 o'clock p.m.

APPEARANCES:

ZACHARY D. FASMAN, ESQ., Washington, D.C.; on behalf of
the Petitioner.
JOHN HAGGERTY, ESQ., Assistant City Attorney of Los
Angeles, Los Angeles, California; on behalf of
the Respondent.

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1 economic prerogatives of organized labor from local
2 government interference. But the fact that we were the
3 object of the city's coercion rather than our drivers
4 should have made absolutely no difference in either
5 analysis or results.

6 This Court's opinions have always emphasized
7 that both management and labor have the right to
8 disagree and to rely upon their economic strength in the
9 course of a labor dispute. Neither party has a monopoly
10 on economic weapons, and neither has a greater or lesser
11 right to disagree at the collective bargaining table.

12 QUESTION: Mr. Fasman, may I inquire about the
13 present status of your client. Has the franchise period
14 now totally expired?

15 MR. FASMAN: The franchise that we were
16 seeking at the time would have granted us rights to
17 operate through March 31st of 1985.

18 QUESTION: And so, is this case moot as a
19 result?

20 MR. FASMAN: I don't think so, Justice
21 O'Connor. We were put out of business in 1981 and
22 prevented from operating at that time. We're still out
23 of business because we don't have a franchise.

24 QUESTION: Was bankruptcy filed?

25 MR. FASMAN: Bankruptcy was filed.

1 QUESTION: Has that proceeded? What's the
2 status of the bankruptcy?

3 MR. FASMAN: I don't know exactly the status
4 of the bankruptcy. The bankruptcy has proceeded to some
5 extent, but I honestly don't know exactly what the
6 status of it is at this time.

7 QUESTION: So, what saves this case from
8 mootness, then?

9 MR. FASMAN: Well, I think the fact is, first,
10 that we continue to suffer the effects of the denial of
11 the franchise. We are still out of business. We are
12 prepared to go back into business if we can get a
13 franchise, number one.

14 Number two, as we pointed out in our reply
15 brief --

16 QUESTION: Is it a Chapter 11?

17 MR. FASMAN: It's a Chapter 11, yes. Number
18 two, as we pointed out in our reply brief, we believe
19 that we have a viable damage claim for being put out of
20 business over these last five years, and that, we think,
21 saves us from mootness as well.

22 It seems to me, though, that the ultimate
23 answer to mootness is that the city's argument appears
24 to be that, if we have granted you a franchise in 1981
25 as we should have, you might not have lived up to the

1 terms of that franchise. You might not have been
2 qualified for renewal and therefore you might be out of
3 business anyway. I think that type of hypothetical
4 argument is really stretching a long way to get mootness
5 into a case where we're ready to resume our business at
6 this point.

7 The Ninth Circuit in its decision seemed not
8 only confused by the difference between management and
9 labor, but it also seemed confused because the city
10 drove us out of business by refusing to renew our
11 franchise. A decision not to renew a franchise is no
12 more sacrosanct than a decision not to grant a driver's
13 license, or to deny unemployment compensation, or to
14 grant the damage remedy.

15 QUESTION: Excuse me for interrupting you
16 again, but I'm reminded in looking at my notes that I
17 believe the only thing that your client sought below was
18 injunctive relief on the pre-emption claim and not
19 damages and not due process or any other claim.

20 So, what relief of an injunctive nature would
21 possibly help now, with an expired franchise?

22 MR. FASMAN: Well, first of all, it seems to
23 me that a federal court can tell the city to issue the
24 franchise that it improperly denied. The city has
25 authority to issue franchises for up to ten years.

1 There was nothing inherent about the five year
2 franchise. They could have issued us a franchise that
3 would have gone through 1990 in the first place.

4 Secondly, the characterization of the
5 complaint as to deny a damage remedy on the pre-emption
6 claim is not one with which we agree. We think that we
7 do have a viable damage remedy under 1983 for being put
8 out of business.

9 QUESTION: But that wasn't before the Court?

10 MR. FASMAN: Pardon?

11 QUESTION: That was not claimed or sought?

12 MR. FASMAN: Oh, certainly it was, certainly.
13 It's claimed. We pleaded the case under 1983. We think
14 there are three independent counts in each one,
15 supported damage claim, although as the city properly
16 notes, we did not seek certiorari in the due process or
17 equal protection violations themselves. But we think
18 there have always been three claims in the lawsuit.

19 QUESTION: Why not solve that by pointing out
20 the damage claim?

21 MR. FASMAN: Pardon?

22 QUESTION: Pointing out the damage claim to
23 me, so I can see it.

24 Is it in the appendix?

25 MR. FASMAN: Yes, sir. The complaint is. The

1 complaint is in the appendix.

2 QUESTION: So, you just ask damages for
3 violation of federal statute?

4 MR. FASMAN: Exactly. The second cause is
5 damages for violation of civil rights. Page 13 of the
6 joint appendix notes the property rights that we are
7 talking about, and they include its ability or our
8 ability to freely bargain with the union, and its
9 business.

10 That, I think, lies at the heart of it, that
11 we lost our business.

12 QUESTION: You point out, \$10,000.

13 MR. FASMAN: \$10 million.

14 QUESTION: Yes, \$10 million.

15 QUESTION: Profitable company.

16 MR. FASMAN: In any event, we believe that the
17 case is not moot for those reasons. We were -- I mean,
18 realistically we were driven out of business for
19 refusing to settle the strike. We're still out of
20 business.

21 This was the largest taxicab company in the
22 city of Los Angeles. It was operating 400 taxicabs.
23 And I have a client who would go back into business
24 today and who thinks that he's been improperly treated
25 and thinks that the city should compensate him for that,

1 and I don't think that's an extraordinary proposition
2 nor do I see how a mootness count arises in that
3 situation, at least not a viable one.

4 Nothing in the -- as I was saying, the Ninth
5 Circuit seemed also confused because of the franchise
6 issue in this case, but nothing about a franchise.
7 Nothing in the inherent nature of a franchise in the
8 Court's opinions, in logic, indicates that the denial of
9 a franchise or the exercise of local franchising
10 authority should be treated any differently for
11 pre-emption purposes.

12 Franchising, it seems to me -- refusing to
13 renew or extend our franchise in this case was merely
14 the means by which the city imposed its will upon us and
15 drove us out of business for failing to settle the labor
16 disputes within the time allotted.

17 QUESTION: Well, what if, Mr. Fasman, the City
18 of Los Angeles proposed to let a large contract and in
19 reviewing the four final bidders said of three of them,
20 you three have a history of strikes and labor disputes.
21 The fourth doesn't. Otherwise your bids are all equal
22 so we're going to take the person who doesn't have a
23 history of strikes and labor disputes.

24 MR. FASMAN: Well, Justice Rehnquist, it seems
25 to me that when you're talking about letting a contract

1 you're talking about something different than we have
2 here. Remember, this is a franchise where all the city
3 is doing is certifying that we're qualified to do
4 business with the general public of the city of Los
5 Angeles.

6 QUESTION: It would be different if the City
7 said, we're going to only franchise one taxi company and
8 you had four competitors of the kind I've just
9 described, it could then say, well, take the one without
10 the history of union troubles?

11 MR. FASMAN: No, I don't think it could, any
12 more than it could say, we'll take the one that is not
13 organized because when you have a union involved there's
14 the possibility of work stoppages.

15 QUESTION: Well, then why doesn't your
16 reasoning carry over to the letting of a contract?

17 MR. FASMAN: Well, I think the contractual
18 difference is this, that when you let a contract it
19 seems to me that the city's remedy power in a
20 contractual situation does not go to the company's
21 viability.

22 It's one thing to say, I don't have a right to
23 do the city's business, but I still have a right to
24 exist. I still have a right to sell my goods to people
25 down the street. I still have a right to sell -- to put

1 my taxicabs out.

2 It's another thing for the city to say, you
3 have a history of strikes, or you're organized, or you
4 have a strike right now and therefore you're out of
5 business, you no longer are authorized to do business in
6 this city.

7 And it seems to me, that's the critical
8 difference. What they're doing here, it seems to me, is
9 merely defining what I call the naked public interest
10 and saying that the public interest of the City of Los
11 Angeles is that companies that do business with us
12 cannot have strikes. And that is not, that do business
13 with us, that do business within the city, that service
14 our consumers, cannot have strikes.

15 And, that's a decision that I think Congress
16 has foreclosed. Congress has said there shall be
17 strikes and the public shall tolerate the disruption and
18 inconvenience that sometimes flows from strikes.

19 QUESTION: Well, but I would think again,
20 logically your argument carries over the contract
21 situation. Maybe the City of Los Angeles is required by
22 federal labor policy to just tolerate strikes on the
23 part of people it contracts with.

24 MR. FASMAN: Well, no. It seems to me that
25 the City of Los Angeles has remedies, just as the

1 federal government has remedies. If you don't perform
2 your contract they can sue for consequential damages.
3 They can invoke a host of other remedies. But they
4 can't say, you're out of business.

5 QUESTION: By my hypothesis, the City of Los
6 Angeles is turning down three out of four contracts in
7 advance because they have a history of strikes and labor
8 trouble.

9 MR. FASMAN: That's in the contract setting.

10 QUESTION: Yes.

11 MR. FASMAN: Where they're trying to
12 accomplish some finite goal, build a building.

13 QUESTION: Right.

14 MR. FASMAN: By a time certain. I would have
15 more trouble with that, but I don't think that's this
16 case. I honestly don't know how I would come out on
17 that. But I think there's a clear distinction, at least
18 to me, between a situation where they're just saying,
19 you can go out, you're authorized to operate in the
20 marketplace, and where the City has some finite goal,
21 building a building, building a swimming pool before the
22 Olympics where timely performance is an element of what
23 they're doing.

24 That's not what we have here. What we have
25 here is merely a company that was seeking to continue

1 serving the consumers of Los Angeles, and that seems to
2 me a determinative difference in this case.

3 The critical point for us about this case is
4 that the City, at the behest of the Teamsters Union,
5 forced us to choose between our position in collective
6 bargaining and remaining in business, and it's our
7 position that that choice cannot be imposed consistently
8 with the federal labor laws.

9 Our labor laws are premised upon a notion of
10 private industrial dispute settlement, the process of
11 free and voluntary collective bargaining, in which
12 management and labor resolve their disputes free from
13 government interference, is the keystone of the federal
14 scheme to promote industrial peace.

15 QUESTION: Does Los Angeles have a limited
16 number of taxicabs, or do they just give a franchise to
17 any company that comes along that shows it's able to
18 operate taxicabs?

19 MR. FASMAN: At the time, Justice White, there
20 were 13 companies that held franchises for the City of
21 Los Angeles. When this occurred there was no limit upon
22 the number of cabs that we could put on the street.

23 QUESTION: Did the City say, well, we've got
24 enough cabs now, no one else need to apply?

25 MR. FASMAN: They never did say that at this

1 time. Indeed, a year before this dispute --

2 QUESTION: I suppose the City is certainly
3 entitled to make sure that there are enough cabs in town
4 to do the job.

5 MR. FASMAN: I think they probably are, no
6 question.

7 QUESTION: And if you're the largest taxicab
8 company in town and you're on strike, and they have to
9 replace you if there are going to be enough cabs, and if
10 they have a limit on the number of cabs, it certainly
11 changes the flavor of the case.

12 MR. FASMAN: Well, it may change the flavor of
13 the case but I don't think that they can, because we're
14 on strike say, we've replaced you, you need never come
15 back. It seems to me there are alternative ways to deal
16 with that.

17 And in this case, the other companies that
18 were in business, the 12 other companies and the two
19 independent associations who were operating 400 cabs
20 between them, had complete authority to increase their
21 fleet size as they saw fit. They could put people back
22 on the street, and that apparently is what happened
23 because the evidence before the City Council indicated
24 that there were no complaints because of the strike,
25 that the other operators had picked up the slack, were

1 running their cabs two and three shifts.

2 QUESTION: There is at least one city that the
3 cabs are limited.

4 MR. FASMAN: Pardon me?

5 QUESTION: There is at least one city, New
6 York, where there's a limit.

7 MR. FASMAN: I understand --

8 QUESTION: You have to have a medallion.
9 After about 50 years they decide to --

10 MR. FASMAN: I understand. I understand. And
11 the City did issue seals in this case, but the number of
12 seals at the time of this dispute was not limited.

13 I ought to add that there were maximum fleet
14 size limits in the cab industry in Los Angeles before
15 this dispute, and after this dispute there were maximum
16 fleet size limits imposed. But at the time of the
17 dispute it was open season. In fact, there was a
18 maximum fleet size limit imposed in this case ten days
19 after the preliminary injunction was granted.

20 The legislative history of the Wagner Act, it
21 seems to me, completely supports our position that
22 neither party is required to agree with demands made at
23 the bargaining table. The Wagner Act is based upon,
24 premised upon the notion of freedom of contract. The
25 notion of freedom of contract, voluntary agreement, was

1 made explicit in Section 8-D of Taft-Hartley which
2 itself states that the duty to bargain does not compel
3 either party to agree to a proposal or require the
4 making of a concession.

5 This Court held in *Machinists* that state or
6 local attempts to force the parties to an agreement are
7 as inconsistent with the federal scheme as are such
8 attempts by the Board. This Court's opinions also
9 clearly recognize that management and labor are both
10 entitled to rely upon their economic strength in a labor
11 dispute.

12 In 1935 Congress expressly granted labor the
13 right to strike, implicitly granted management
14 corresponding rights including the right to replace, the
15 right to lock out, and Congress thereby struck a balance
16 between the interests of management, labor, employees
17 and the general public.

18 QUESTION: Ms. Fasman, incidentally, was any
19 unfair labor practice charge filed?

20 MR. FASMAN: No, Justice Blackmun, there was
21 never any unfair labor practice charge filed, although
22 as we've made clear the Teamsters did come before the
23 City Council and complain that we were bargaining in bad
24 faith, but they never took that to the Board.

25 Over the last 50 years Congress has gone back

1 and has revised the economic balance that I've mentioned
2 earlier. It has in 1947, it outlawed secondary
3 boycotts. In 1959 it put limits on recognition of
4 picketing.

5 But, Congress has never varied from the
6 fundamental premise that management and labor are
7 entitled to engage in economic warfare and that the
8 national interest requires that the public tolerate
9 disruption that arises from strikes and labor disputes.

10 Indeed, each time Congress has considered the
11 question it has reaffirmed its original decision that
12 there should be free collective bargaining and free
13 resort to economic weaponry by management and labor.

14 In 1947 Congress defeated proposals to impose
15 a regime of compulsory arbitration upon local utilities
16 including local transportation companies. In 1974 when
17 Congress amended the Act to include hospitals, it
18 rejected attempts to ban strikes in hospitals and to
19 impose instead a regime of compulsory arbitration, and
20 indeed went so far as to preclude attempts by Members of
21 the Senate to exempt their own state compulsory
22 arbitration laws in the hospital setting from the range
23 of federal pre-emption.

24 At each and every juncture over the last 50
25 years Congress has reaffirmed its original judgment that

1 there shall be strikes and that government coercion in
2 the bargaining process is antithetical to our labor
3 system.

4 The City's action here is ultimately
5 inconsistent with that repeated congressional judgment.
6 An employer simply is not free to disagree with the
7 union if it's got to compromise its disagreement in
8 order to avoid legislative extinction. It is not free
9 to conduct economic warfare if it's got to settle a
10 labor dispute by a date certain in order to remain in
11 business.

12 Congress has determined that the resolution of
13 labor disputes is to be resolved by the free play of
14 economic forces, and that just simply did not happen
15 here.

16 The Ninth Circuit created a pre-emption test
17 to avoid this result that is equally inconsistent with
18 the intent of Congress. The court below held that the
19 City's conduct would not be pre-emptive unless the City
20 attempted to dictate the terms of a collective
21 bargaining agreement or attempted to directly alter the
22 substantive outcome of a labor dispute.

23 Now, it's true, of course, that attempts to
24 dictate a collective bargaining agreement, to alter the
25 outcome of a labor dispute, if I understand what that

1 means, are antithetical to the labor laws, but in
2 limiting pre-emption to those two circumstances the
3 Ninth Circuit failed to understand that Congress was
4 ultimately interested in the bargaining process itself
5 and that interest in the bargaining process, reflected
6 in this Court's unanimous decision last term in
7 Metropolitan Life Insurance versus Massachusetts, where
8 the Court stresses that the interest of Congress lay not
9 with the substantive terms that the parties might
10 negotiate in a labor agreement but rather with creating
11 a fair and balanced bargaining process by which the
12 parties could resolve their disputes.

13 The States may have some latitude in setting --

14 QUESTION: Mr. Fasman, does your argument
15 really come down to this, that Congress in effect has
16 said that this particular economic weapon shall not be
17 regulable either by the federal government or by the
18 States?

19 MR. FASMAN: Exactly.

20 QUESTION: Is that what it comes down to?

21 MR. FASMAN: Exactly, exactly. It's a classic
22 Machinists case where we have the right, it seems to me,
23 to disagree with the union. We have the right to resist
24 their strike. Those are key elements of the collective
25 bargaining system that we have and they're not regulable

1 by the NLRB or by the state and local governments.

2 This fits right, directly in the middle of the
3 Machinists case. There is absolutely no --

4 QUESTION: Machinists involved a state
5 regulation directed at regulation of labor conduct.
6 This is just a decision of the City of Los Angeles not
7 to renew a franchise. It isn't quite the same thing.

8 MR. FASMAN: Well, it isn't quite the same
9 thing, but again I think the distinction that you're
10 drawing between direct and indirect regulation, while
11 understandable, has not fazed the court before. The
12 courts always looked, it seems to me, to the effect of
13 the city's regulation.

14 QUESTION: If you're right that indirect --
15 direct doesn't mean anything, then the previous
16 contractor's example would surely fall too.

17 MR. FASMAN: No, I don't think so. I don't
18 think so. Because the point that I was making was, the
19 congressional interest is in the bargaining process
20 itself, and it seems to me that when you deny a
21 franchise because of what happens in the bargaining
22 process, you've got a somewhat different case than the
23 contract case that you're talking about.

24 QUESTION: Is there any question in the case
25 that the reason the franchise was denied, was not

1 renewed, was because you were on strike?

2 MR. FASMAN: I don't believe there is. That
3 is, there is a factual dispute that has been raised.

4 QUESTION: Didn't the Ninth Circuit assume
5 that that was the case?

6 MR. FASMAN: The Ninth Circuit -- I don't know
7 if it's an assumption. The Ninth Circuit clearly said
8 it, and twice, and there is ample evidence in the record
9 to support that. It's plainly not clearly erroneous.

10 Indeed, the finding of the district court, the
11 initial district court finding that this is what
12 happened, was affirmed twice by the Ninth Circuit and I
13 think the attempt to inject a factual argument at this
14 point in the case is plainly wrong for the reasons we've
15 outlined in the reply brief.

16 Let me add one final thought.

17 QUESTION: On that point, Mr. Fasman, I didn't
18 really understand what the second Ninth Circuit opinion
19 did adopt. It said something to the effect that nothing
20 in the record indicates the City's decision was not
21 concerned with transportation, kind of a double negative
22 there.

23 I didn't know what they meant, and I didn't
24 know whether that was overturning the earlier district
25 court finding that a city's decision to decline to renew

1 the franchise was based solely on the strike, or what.

2 MR. FASMAN: Well, first of all, Justice
3 O'Connor, that is not what the Ninth Circuit said. What
4 the Ninth Circuit said was, and I quote from page 7-A of
5 the petition, nothing in the record indicates that the
6 City's refusal to renew or extend Golden State's
7 franchise until an agreement was reached and operations
8 resumed was not concerned with transportation, no
9 difficulty in seeing what they're saying.

10 They're saying that the decision not to renew,
11 not to extend until you settle the strike might have
12 been concerned with transportation, and on the next --

13 QUESTION: Well, it was just a bit ambiguous,
14 and might have been intended to suggest that there were
15 too many taxicabs and so their decision was based on
16 trying to improve the transportation situation.

17 MR. FASMAN: Well, that's certainly -- I have
18 to say that I'm sort of puzzled by the Ninth Circuit
19 opinion myself, but I will note that in footnote one of
20 that opinion, on page 4-A of the petition, the appendix
21 to the petition, there's an explicit statement by the
22 Ninth Circuit saying, we uphold -- essentially, we
23 uphold for a second time the finding of the district
24 court in the injunction proceedings, that one effect of
25 this conduct was to change the balance of bargaining

1 power between the parties.

2 QUESTION: Judge Norris took the position that
3 your client simply had not introduced any evidence to
4 support its factual contentions under the NLRA.

5 MR. FASMAN: That, Justice Rehnquist, is the
6 most mysterious aspect of the Ninth Circuit opinion. I
7 truly -- I mean, I can understand a lot of things about
8 the Ninth Circuit opinion but, I mean this is a case
9 where if you admit, as I think Judge Norris does, that
10 the reason for denying the franchise is the strike, it
11 seems to me that at that point it becomes a res ipsa
12 loquitur case.

13 I don't know how you get around the effect of
14 that conduct on the parties.

15 QUESTION: Well, the district court found it
16 as a fact?

17 MR. FASMAN: Yes, it did, on the preliminary
18 injunction, affirmed on appeal, affirmed a second time
19 on appeal over the dissent of Judge Norris who then came
20 up with his theory that we hadn't shown effect. I'm not
21 entitled to show you how I would show effect, outside of
22 what we've shown in the record here.

23 QUESTION: Mr. Chief Justice, may I come back
24 to the question, what fact did the district court find
25 that justifies your position, what fact or facts? Judge

1 Norris said that you have not proved the basis for the
2 claim that you made.

3 MR. FASMAN: Justice Powell, what the district
4 court found was that at the time it went to the
5 preliminary injunction stage, it was undisputed that our
6 franchise had been denied because of the strike. The
7 City didn't even contest it.

8 QUESTION: The district court found that?

9 MR. FASMAN: Yes, twice in its opinion.

10 QUESTION: Well, you don't need to read it to
11 me.

12 MR. FASMAN: Well, it does say two different
13 times, in Judge Haupt's opinion, and it's cited in our
14 brief --

15 QUESTION: In the findings of fact of the
16 district court, I didn't see any specific findings that
17 support your position that there are inferences that can
18 be drawn from the letter written to the Mayor and
19 members of the Council, from certain statements that
20 were made at the Council hearing, but no factual finding.

21 MR. FASMAN: I think in the preliminary
22 injunction hearing there was in fact a factual finding
23 and indeed the court says twice, in its opinion it is
24 undisputed that the reason this was denied was because
25 of the strike and that changed the balance of bargaining

1 power in the labor dispute.

2 That is what had the effect on the labor
3 dispute, and I think that's clear in the opinion.

4 QUESTION: The case is on summary judgment,
5 isn't it?

6 MR. FASMAN: Yes, it was, cross motions for
7 summary judgment.

8 Mr. Chief Justice, with the Court's permission
9 I'd like to reserve for rebuttal.

10 THE CHIEF JUSTICE: Mr. Haggerty.

11 ORAL ARGUMENT OF JOHN HAGGERTY

12 ON BEHALF OF RESPONDENT

13 MR. HAGGERTY: Mr. Chief Justice, and may it
14 please the Court:

15 This is a situation where the City was acting
16 in response to an application by the Petitioner for a
17 renewal franchise to replace its franchise about to
18 expire. The Court was asking counsel for the Petitioner
19 about the City's franchising process.

20 The City does have a limited number of taxicab
21 franchises. Taxicab franchises are awarded initially
22 through a bidding procedure when they are to be
23 awarded. Once a franchise is awarded, though, the city
24 charter specifically provides that the City Council can
25 in its discretion grant a renewal or replacement

1 franchise to an existing franchisee.

2 QUESTION: Suppose, Mr. Haggerty, the City
3 Council said, the only way to have labor peace in this
4 town is to make a contract with the Teamsters Union.
5 Assume first that Golden State had no union contract at
6 all. The City Council said, the only way you can really
7 have a continuity of service is to join up with the
8 Teamsters Union and if you don't do it, you don't get --
9 we don't renew your license.

10 Could they do that?

11 MR. HAGGERTY: I think there would have to be
12 some kind of substantial evidence to support the City
13 Council's conclusion that that was necessary to have an
14 effective --

15 QUESTION: Let's assume that that is, the
16 record shows that that's probably correct.

17 MR. HAGGERTY: I would say yes, in that case.

18 QUESTION: The City Council can then require
19 them to make a contract with the Teamsters Union?

20 MR. HAGGERTY: I would say that if that is
21 necessary to effectuate a transportation policy that the
22 City Council could arguably make that a condition of the
23 franchise. It's not the situation we have here, Your
24 Honor.

25 It was merely happenstance in this situation

1 that the refranchising process -- proceedings took place
2 in a totally unrelated labor dispute. The City in this
3 situation was acting pursuant to its police powers, and
4 it had to make a decision one way or the other.

5 It had an application for renewal franchise.
6 If it took no action whatsoever the franchise would
7 expire by its own terms, so that consequently if they
8 didn't act, as I said, there would be no franchise
9 renewal. You'd have the same result that we had here.

10 QUESTION: That may be so. It depends on why
11 they took no action. Do you challenge the proposition
12 that the reason the City didn't renew was because of the
13 strike, because of the unsettled strike?

14 MR. HAGGERTY: Your Honor, the record does not
15 reflect that that was a reason of the City Council.
16 That gets into --

17 QUESTION: Do you challenge it or not? My
18 question to you, do you challenge it?

19 MR. HAGGERTY: The City's position was that
20 was irrelevant. The City never attempted to show --

21 QUESTION: My question, do you challenge that
22 the City -- do you challenge the fact that the City
23 cancelled the franchise because of the strike?

24 MR. HAGGERTY: Your Honor, I am saying that I
25 cannot say what the reason for the City Council --

1 QUESTION: Because the record doesn't show,
2 you don't think?

3 MR. HAGGLERTY: The record shows statements
4 made by certain City Council members, but that does not
5 indicate that was the motive of the City Council.

6 QUESTION: Was it true that the City never
7 challenged that that was the reason, in the preliminary
8 injunction hearing?

9 MR. HAGGERTY: What happened at the
10 preliminary injunction hearing was that the City
11 Council, in opposition, argued that the motive of the
12 City Council was irrelevant and it was impossible,
13 consequently, for us to -- for the City to argue that
14 the City Council's motive was something else.

15 Who knows what the City Council's motive is?
16 As this Court has said many times, just because you may
17 have two or three legislators make certain statements,
18 that doesn't reflect that the legislative body as a
19 whole acted for that particular reason.

20 QUESTION: How many people on the Council of
21 Los Angeles?

22 MR. HAGGERTY: There's 15 people.

23 QUESTION: Fifteen?

24 MR. HAGGERTY: Yes, 15.

25 QUESTION: What about the district court's

1 findings? Didn't the district court find it as a fact?

2 MR. HAGGERTY: The district court was somewhat
3 ambiguous, but arguably the district court did make such
4 a finding.

5 I should also point out that the city did, in
6 opposition to the motion for preliminary injunction,
7 contrary to what petitioner has argued in the reply
8 brief, contend that the city did have a rational basis
9 for denying the franchise.

10 QUESTION: Los Angeles issues quite a few
11 licenses, isn't that right, to other businesses?

12 MR. HAGGERTY: Well, they issue business
13 licenses but they don't go through --

14 QUESTION: Could they withhold a business
15 license, if we rule with you here could they withhold a
16 business license from a place that has a strike?

17 MR. HAGGERTY: No, because in this situation I
18 think you have the City acting pursuant to a particular
19 transportation policy, to make sure that there was a
20 healthy taxicab industry, and I --

21 QUESTION: Well, what about a healthy
22 restaurant industry?

23 MR. HAGGERTY: I don't think transportation
24 policy, in other words, to have an effective
25 transportation or taxicab system operating on the

1 streets of the city is the same as a restaurant business.

2 When a person utilizes a taxicab they're not
3 able to pick and choose. They have to rely on, as a
4 practical matter, on the first taxicab they hail, the
5 first taxicab they take when they come out of the
6 airport.

7 They don't know what condition that taxicab is
8 in, whether it has adequate insurance or not, and the
9 courts have said that the regulation of taxicabs is a
10 very unique power of the city insofar as they are using
11 the public streets for a public purpose.

12 In this particular case, I think the key in
13 the analysis of it is, it does not fit into the vast
14 majority of cases that the Supreme Court has decided
15 relating to labor pre-emption. This is not a Garment
16 case, insofar as the City is not attempting to regulate
17 or control activities that are protected or arguably
18 protected or prohibited, or arguably prohibited under
19 the National Labor Relations Act, and neither is it a
20 Machinists case.

21 In this case the court -- I'm sorry, the City,
22 in taking its action, was acting on a franchise
23 renewal. It was not directly regulating contact or
24 activity meant to be immune under the National Labor
25 Relations Act. So, I do not think that this is a

1 Machinists case.

2 I think the proper test is that when
3 exercising a routine governmental power which has an
4 incidental or indirect effect on a party to a labor
5 dispute, the proper test is that based on objective
6 evidence, is the action taken reasonably connected to
7 the effectuation of the legitimate governmental goal,
8 and in this case the facts support that particular test.

9 I think it is the City's business to have a
10 good taxicab system. At the time the City Council acted
11 on this matter, the Petitioner had been on strike for 40
12 days. There was uncontested evidence presented to the
13 City Council at the hearing that there was sufficient
14 taxicab services without the operation of Petitioner's
15 taxicabs.

16 QUESTION: Then why should they grant a
17 license, ever, to anybody?

18 MR. HAGGERTY: Well, if there was no further
19 need for taxicabs, they wouldn't.

20 QUESTION: You mean, they didn't need the 400
21 cabs of Golden State?

22 MR. HAGGERTY: That's what the evidence at the
23 Council showed, and contrary to what the Petitioner
24 said, the record does not show that with the
25 Petitioner's non-operation that additional cabs came

1 onto the streets. In fact, as Petitioner indicated,
2 shortly thereafter, I think Petitioner said ten days
3 after the grant of the preliminary injunction, the City
4 Council imposed a freeze on taxicabs.

5 QUESTION: They just put a limit on the number
6 of cabs each company could have?

7 MR. HAGGERTY: Each company could have, that's
8 correct.

9 QUESTION: But they didn't say that they
10 wouldn't grant any more licenses to others?

11 MR. HAGGERTY: It didn't say that, but before
12 they could they would have to go through a bidding
13 procedure.

14 QUESTION: Yes.

15 MR. HAGGERTY: And the testimony before the
16 City Council, from the president of an independent
17 drivers' association, was that with the non-operation of
18 the Petitioner's taxicabs the doormen at the major
19 hotels stated that the quality of the service had
20 improved, and that drivers for the first time in two and
21 a half years were able to make a decent minimal living.

22 QUESTION: Mr. Haggerty, the case comes on
23 summary judgment. Are you saying to us that we can
24 assume that even if the strike had been settled that the
25 franchise would not have been renewed?

1 MR. HAGGERTY: That's what I'm saying, Your
2 Honor.

3 QUESTION: On summary judgment, we can say the
4 strike had absolutely nothing to do with the decision?

5 MR. HAGGERTY: I think as a matter of law
6 that, based on the tests I have suggested, because I
7 said this does not come, I believe, within the
8 Machinists case as counsel has argued, because here you
9 have the City exercising a legitimate police power,
10 namely acting on the request for the renewal of a
11 franchise.

12 QUESTION: And they would have exercised it in
13 the same way even if there had been no strike?

14 MR. HAGGERTY: Well, again that's asking me to
15 speculate. I don't know, again, what the --

16 QUESTION: Well, but the record -- on summary
17 judgment you take the facts against you, as I understand
18 it.

19 MR. HAGGERTY: That's correct. But I think,
20 based on the facts in this case, there was sufficient
21 evidence in the record to support the Council's action
22 to not renew the franchise insofar as the record shows
23 that there were sufficient cabs operating on the city
24 streets without these particular taxicabs.

25 QUESTION: What if the surplusage was the

1 motivating background here? Then, we wouldn't have any
2 pre-emption issue at all, would we? If they said, we've
3 got enough taxicabs and the boys aren't making a good
4 living and they're cluttering up the streets so we're
5 not going to give you a franchise for your 400 cabs,
6 then there wouldn't be any labor question at all, would
7 there, Labor Act question?

8 MR. HAGGERTY: If they had made a specific
9 finding that is correct, but there was no specific
10 fining.

11 QUESTION: You are suggesting that was the
12 reason?

13 MR. HAGGERTY: No, I'm just saying -- I'm not
14 suggesting that was the reason. I'm saying there's
15 evidence -- first of all, I should say that I'm not
16 arguing what the motive of the Council was or was not.
17 What I'm arguing --

18 QUESTION: Therefore you're saying that
19 whatever the motive was, it was right?

20 MR. HAGGERTY: That based on the record in
21 this case, the evidence before the City Council
22 indicating there were sufficient cabs on the street,
23 that the Council acted properly in not renewing the
24 franchise.

25 And the debate before the Council shows that

1 the Council members were very concerned about the effect
2 of their action. There is discussion by the Council
3 members, lengthy discussions, about the desire to act in
4 the public interest, and the Council members even state
5 in their the Council members never even stated in their
6 remarks --

7 QUESTION: That certainly is asking for
8 affirmance on a completely different ground, and that
9 would have been an awfully easy way for the City to
10 dispose of the whole case, from the time of the
11 preliminary injunction hearing on up to any of the
12 courts.

13 But you never took that position before, did
14 you?

15 MR. HAGGERTY: Oh, yes. The City most
16 certainly has -- I took the position --

17 QUESTION: Well, certainly the courts below
18 didn't find that.

19 MR. HAGGERTY: The district court did not find
20 that, but in the first court of appeals decision
21 reversing or vacating the granting of the preliminary
22 injunction, the court pointed out that the motive for
23 the City Council was irrelevant.

24 Petitioner argued that the motive of the
25 Council was to assist the Teamsters, and it was the

1 City's position that that was irrelevant. Who knows
2 what the motive was, and since the City was in no
3 position to claim that the Council's motive was
4 something different, the City wasn't in a position to
5 contradict that and say the motive was such and such as
6 opposed to what the Petitioner has urged.

7 QUESTION: Well, do you see a difference, Mr.
8 Haggerty, between saying that the reason the City
9 cancelled the franchise or refused to renew the
10 franchise was because Golden State was in a labor
11 dispute, that's point one, and to say that the City
12 cancelled or refused to renew the franchise because it
13 wanted to help the Teamsters in that labor dispute?

14 MR. HAGGERTY: Yes, Your Honor, because I
15 think the record -- based on what the Council did, there
16 was no assistance to the Teamsters because the drivers
17 were put out of work as well.

18 QUESTION: Let me just go back to this other
19 point a moment. Isn't it correct that the court of
20 appeals, as the basis for its decision, assumed that the
21 City insisted upon a renewal -- I mean, insisted upon a
22 resolution of the labor dispute as a condition of
23 renewing the franchise?

24 MR. HAGGERTY: The court of appeals made that
25 statement but I believe that was a gratuitous

1 statement. I do not believe it was necessary for the
2 court of appeals' decision. The court of appeals also
3 said the city was pursuing --

4 QUESTION: What you are saying is, they could
5 have decided the case in some other way?

6 MR. HAGGERTY: That's right, that the City was
7 pursuing a legitimate transportation policy.

8 QUESTION: Yes, but on summary judgment, and
9 if there's some evidence supporting the proposition that
10 if they went to trial they contend they could prove that
11 the only reason for the non-renewal was the labor
12 dispute, don't we have to assume they can prove that?

13 This is a summary judgment case.

14 MR. HAGGERTY: But again, in the test I
15 suggested to the Court I think it's a question whether
16 or not there was substantial evidence in the record to
17 support the conclusion that the City was acting to
18 further a legitimate governmental purpose, namely
19 transportation purpose, because based on the evidence --

20 QUESTION: Is that just a long way of saying
21 the question is whether, not doing business with a
22 company that has a labor dispute is a legitimate
23 governmental purpose?

24 MR. HAGGERTY: No, that is not a long way of
25 saying it because it would be up to the Petitioner

1 through objective evidence in opposition to the motion
2 for summary judgment to show that there was not
3 substantial evidence supporting the proposition --

4 QUESTION: Well, they have offered some such
5 evidence and it seems to me on summary judgment, we have
6 to assume that everything they offer is true and
7 everything you offer is not true. I mean, we just have
8 to resolve all factual disputes against you, don't we?

9 MR. HAGGERTY: All factual disputes, but I
10 believe as a matter of law, if the evidence is such in
11 the record to show -- and I'm repeating myself, I
12 realize that there was a legitimate transportation
13 purpose, then that is sufficient.

14 As to the argument made by the Petitioners as
15 to the effect test, and the question as to whether or
16 not the granting of this franchise was any different
17 than the granting of a contract, that arguably the
18 granting of a major contract could bring pressure upon
19 an employer just as the granting of a franchise.

20 Since we're talking about congressional intent
21 here, the argument made by the petitioners as to the
22 effect test, and as to the question as to whether or not
23 the granting of this franchise was any different than
24 the granting of a contract, that arguably the granting
25 of a major contract could bring pressure upon an

1 employer just as the granting of a franchise.

2 Since we're talking about congressional intent
3 here, I don't think there is any distinction made by the
4 Congress as far as the granting of a franchise and the
5 granting of a contract.

6 You could have a situation where the City was
7 going to grant a franchise for the collection of
8 garbage. If there was a strike and it was in evidence
9 that the collection would not occur, certainly the City
10 would be justified in not granting that franchise if
11 they realized that the garbage collection would not
12 result.

13 The City was in a situation here that no
14 matter what it did the argument could be made that the
15 City was pre-emptive. If it had not renewed the
16 franchise the union -- I'm sorry, if it had renewed the
17 franchise the union could come back and argue that by
18 renewing the franchise, using the argument of petitioner
19 that the City was actually assisting the employer in its
20 labor dispute, and consequently the city would be
21 pre-empted under those circumstances as well.

22 In fact, if the City had taken no action
23 whatsoever, using petitioner's argument, the City would
24 have been pre-emptive. But again, I don't believe that
25 the pre-emption doctrine mandates that the City grant

1 the franchise, and yet the non-granting of the franchise
2 -- or, I'm sorry, not taking any action on the franchise
3 would have had the same effect as the action that the
4 Council took.

5 QUESTION: I think the petitioner can see that
6 if the City Council had said, look, we are either going
7 to renew your franchise because we think you've been
8 doing a fine job, or we're not going to renew your
9 franchise because we think you've been doing a very poor
10 job. That would be permissible even in the middle of a
11 labor dispute.

12 MR. HAGGERTY: I don't believe that petitioner
13 does concede that, at least in the petition. That is
14 not petitioner's argument.

15 Petitioner is arguing based on the Machinists
16 test that an action that the City would take, affecting
17 a party to a labor dispute, is pre-emptive. So, in the
18 hypothetical you gave, Justice Rehnquist, I believe
19 based on petitioner's argument that the City would be
20 pre-empted in that situation as well because it would
21 have the same effect.

22 QUESTION: Well, in that case once someone
23 gets in a labor dispute, they're prohibited from having
24 any dealings, I take it, with a public body, if what you
25 say is petitioner's position is right. I didn't think

1 it went that far.

2 MR. HAGGERTY: Well, if you use an effects
3 test as petitioner does, I believe that is petitioner's
4 argument.

5 Getting to the issue of mootness, I should
6 point out that in the record -- it's not in the joint
7 appendix but in 103 of the record, the issues of law as
8 raised by the petitioner on page 16, they indicate that
9 there's two issues of law and the first issue is whether
10 or not the defendant's denial of the plaintiff's
11 franchise renewal was contrary to a compelling
12 Congressional direction to deprive local governments of
13 the power to interfere with public utilities engaged in
14 collective bargaining disputes, and therefore in
15 violation of the supremacy clause of the Constitution.

16 Petitioner does not argue in -- at least as
17 far as what they claim are the issues in this case, that
18 the violation or the non-granting of the tax-exempt
19 franchise and the alleged violation of the supremacy
20 clause was also a violation of the Civil Rights Act.

21 So, in conclusion, I believe it's a situation
22 that no matter what the City did in this case, it would
23 have had an incidental effect on the labor dispute and
24 the City was within its regulatory power to take the
25 action that it did insofar as there was sufficient

1 evidence, I believe, in the record to show that the
2 Council was acting for an appropriate transportation
3 purpose.

4 QUESTION: Do you have anything further, Mr.
5 Fasman? You have three minutes remaining.

6 ORAL ARGUMENT OF ZACHARY D. FASMAN, ESQ.

7 ON BEHALF OF THE PETITIONER - REBUTTAL

8 MR. FASMAN: Mr. Chief Justice, just two or
9 three quick points. Justice Rehnquist, I certainly do
10 concede, and we've conceded in the reply brief the point
11 that you brought up, we don't contend that any action
12 the City takes that affects the substantive outcome of a
13 labor dispute is forbidden.

14 We've got an action here that affects the
15 labor process, the bargaining process itself. If the
16 question were, are the teamster drivers at Golden State
17 making \$400 instead of \$500, we wouldn't be here.

18 The point is, my client was prevented from
19 bargaining in good faith and from using the economic
20 weapons that Congress put at its disposal, and that's
21 the key issue from our point of view.

22 QUESTION: And if the Los Angeles City Council
23 had said, we know that Golden State is in a labor
24 dispute but nonetheless we've been dissatisfied with
25 their performance for a couple of years and we're going

1 to terminate them right now, that would be okay if
2 that's their real motive?

3 MR. FASMAN: Sure, no problem. We don't have
4 any trouble with that. And it relates to the
5 hypothetical that you mentioned earlier. I mean, the
6 marketplace continues to operate whether there's a labor
7 dispute or not.

8 In the action, what happens in the marketplace
9 has an impact, of course, on the substantive outcome but
10 it doesn't have any impact upon the bargaining process
11 itself.

12 Our point is simply this. If one party to a
13 labor dispute can go to the state or local government
14 and have its opponent legislated out of existence, which
15 is what happened here, there's no impetus for
16 compromise, settlement. There's no impetus for
17 bargaining at all. Bargaining doesn't exist in those
18 situations.

19 Congress understood that. Congress closed the
20 doors to the City Council chamber for just this reason
21 and said to management and labor, you folks have to look
22 for solutions to your problems at the bargaining table
23 from each other and not from government, and that is
24 what happened here.

25 THE CHIEF JUSTICE: Thank you, gentlemen. The

1 case is submitted.

2 (Whereupon, at 1:47 o'clock p.m., the case in
3 the above-entitled matter was submitted.)
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CERTIFICATION

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#84-1644 - GOLDEN STATE TRANSIT CORPORATION, Petitioner v.

CITY OF LOS ANGELES

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

BY Paul A. Richardson

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