

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 86-341

TITLE FORT HALIFAX PACKING COMPANY, INC., Appellant
v. P. DANIEL COYNE, DIRECTOR, BUREAU OF LABOR STANDARDS
OF MAINE, ET AL.

PLACE Washington, D. C.

DATE March 24, 1987

PAGES 1 thru 48

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 FORT HALIFAX PACKING COMPANY, INC., :

4 Appellant :

5 v. : No. 86-341

6 P. DANIEL COYNE, DIRECTOR, BUREAU :

7 OF LABOR STANDARDS OF MAINE, ET AL. :

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9
10 Washington, D.C.

11 March 24, 1987

12
13 The above-entitled matter came on for oral
14 argument before the Supreme Court of the United States at
15 12:03 o'clock p.m.

16
17
18 APPEARANCES:

19 JOHN C. YAVIS, JR., Hartford, Connecticut;

20 on behalf of Appellant

21 THOMAS D. WARREN, Augusta, Maine;

22 on behalf of Appellee

23 JOHN C. YAVIS, JR., Hartford, Connecticut;

24 on behalf of Appellant - Rebuttal

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1 P R O C E E D I N G S

2 CHIEF JUSTICE REHNQUIST: You may proceed
3 whenever you're ready, Mr. Yavis.

4 ORAL ARGUMENT OF
5 JOHN C. YAVIS, JR.

6 ON BEHALF OF APPELLANT

7 MR. YAVIS: Thank you, Mr. Chief Justice, and
8 may it please the Court: This case presents for decision
9 the conflict between ERISA and a Maine statute upheld by
10 the Maine Supreme Judicial Court.

11 ERISA makes employee benefit plans a subject of
12 exclusive federal concern. And expressly preempts any and
13 all state laws that relate to such plans.

14 While the Maine statute requires payment of
15 severance pay benefits included within ERISA coverage. In
16 summary, our position is, first, that ERISA Section 514
17 preempts state mandated or state created plans.

18 And second, that the Section 4(B)(3) exemption
19 does not extend to the Maine severance pay law. We submit
20 that Maine may not impose a severance pay plan any more
21 than it might impose a pension plan.

22 Briefly with respect to the facts of this case,
23 Fort Halifax is part of a larger group of companies headed
24 by Corbett Enterprises, Inc. which in 1981 had operations
25 in approximately 11 states. These were poultry operations

1 and Fort Halifax operated its plant in Maine from 1972
2 until May of 1981 when the plant closed because of adverse
3 market conditions.

4 Fort Halifax had a collective bargaining
5 agreement in force at the time of the plant closing and
6 pursuant to that plan it had provided a retirement plan to
7 its production workers and various employee welfare
8 benefit plans including life insurance, combination life
9 and health, major medical and accident and sickness as
10 well as other employee benefits.

11 The collective bargaining agreement however did
12 not call however, for the payment of severance pay. And
13 in this action, the Maine Department of Labor, sought to
14 enforce that Maine Severance Pay Statute which covers
15 establishments with basically 100 or more employees that
16 relocate or close, that is the establishment relocates or
17 closes, the statute requires payment of severance pay to
18 eligible employees.

19 QUESTION: Mr. Yavis, is the employer's
20 compliance with that statute subject to ERISA? Do ERISA
21 regulations govern anything that occurs in order to comply
22 with that statute.

23 MR. YAVIS: I don't believe that the ERISA
24 regulations would apply because ERISA in our opinion would
25 preempt the application of the statute.

1 QUESTION: Make believe it doesn't. Make
2 believe it doesn't. Would, in implementing that statute,
3 the employer have to comply with ERISA regs?

4 MR. YAVIS: The statute does not call for that.
5 The Maine statute does not call for that.

6 QUESTION: But does ERISA call for it?

7 MR. YAVIS: ERISA does --

8 QUESTION: If it's not preempted by ERISA, --

9 MR. YAVIS: Yes, ERISA then --

10 QUESTION: -- would there have to be compliance
11 with any ERISA regulations?

12 MR. YAVIS: ERISA does cover severance pay plans
13 expressly and that's in 3(1)(A) where some courts have
14 held that ERISA covers severance benefits as benefits as
15 benefits in the event of unemployment.

16 QUESTION: Which means what? What would ERISA
17 require to be done with respect to this plan?

18 MR. YAVIS: There would be, for example,
19 disclosure to employees, reporting, there would be
20 fiduciary standards, there would be access to federal
21 courts, there would be potential intrusion by the Federal
22 Department of Labor. Various protective measures to
23 assure that the benefits were received.

24 QUESTION: I assume it's also true that if there
25 were no state statute, but if a private employer had a

1 plan, a severance pay plan precisely the same as what the
2 statute requires that private employer would also be
3 covered by ERISA.

4 MR. YAVIS: That is correct.

5 QUESTION: (Inaudible) to that plan.

6 MR. YAVIS: I should add, Your Honor, that there
7 are alternative grounds in the statute for including
8 severance pay as an ERISA benefit. In 3(1)(B) there's a
9 severance pay specific reference to severance benefits and
10 in 3(2)(B) which was adopted by Congress in 1980 there's a
11 reference to severance pay arrangements and Congress gave
12 authority to the Department of Labor, to the Secretary to
13 define severance pay arrangements as welfare benefit plans
14 instead of what might have been the case to have them
15 treated as pension plans.

16 The Department of Labor regulations do define
17 severance benefits as welfare plans and therefore for
18 purposes of ERISA, they are employee benefit plans. The
19 Maine statute presents an employer with a choice.

20 Either have a private contract granting,
21 providing is the statutory word, providing severance pay,
22 or pay severance pay according to the statute. The
23 statute defines eligibility, the type of benefit that will
24 be provided, who may obtain that benefit and when, and
25 what procedure one will follow to collect it.

1 The eligibility is basically three years or more
2 of employment. The type of benefit is defined as
3 severance pay. The amount is one weeks pay for each year
4 of employment at the establishment, and in this case that
5 meant that the judgment below covered periods before the
6 date of acquisition of the plant by Fort Halifax.

7 The statute covers when payments are due and it
8 provides a procedure for collecting benefits and strangely
9 provides for suit in state or federal court. The statute
10 has within itself, in other words all the indicia of a
11 plan.

12 The term plan itself is not defined as such in
13 ERISA. Is it referred to as a plan fund or program but
14 there's otherwise no formal requirement for what must
15 constitute a plan.

16 On its face therefore, the Maine plan, the ~~Maine~~
17 law purports to regulate a defined ERISA benefit plan,
18 that is severance pay. And ERISA Section 514 then
19 preempts that law to the extent the law relates to any
20 employee benefit plan. Now the relationship here we
21 contend is apparent on the face of the statute.

22 QUESTION: May I just interrupt you, Mr. Yavis
23 for a second. The definition in the ERISA is it's a plan
24 that's heretofore or hereafter established or maintained
25 by an employer. And you contend that when the statute was

1 passed, well how does that language fit the statute?

2 MR. YAVIS: Well in this case, Your Honor, the
3 plan has been initiated by the statutory action of the
4 state of Maine.

5 QUESTION: Do you think that this language in
6 ERISA covers that plan established or maintained by the
7 state of Maine.

8 MR. YAVIS: If the plan were solely established
9 by the state of Maine and not maintained by the employer
10 then perhaps the answer would be no. But we do maintain
11 that the --

12 QUESTION: Say for, take for the example, say
13 you didn't have a plan at all. You're an employer that
14 just didn't provide for severance or benefits or anything,
15 but you would have to comply with the statute. Would your
16 compliance with the statute in your view fall within this
17 definition (inaudible).

18 MR. YAVIS: Yes, it would because we would be
19 required to maintain that plan. The company would be the
20 one that would have to pay the benefits. The company
21 would be the one that would have to administer the
22 benefits. To find the people to write the checks and so
23 forth; to perhaps defend claims if any were raised. So,
24 our position is yes, it is the employer that is required
25 to maintain the plan --

1 QUESTION: Not to establish it, but to maintain
2 it.

3 MR. YAVIS: That's correct.

4 QUESTION: And you say the act of the writing
5 the checks is enough to be maintaining a plan?

6 MR. YAVIS: Yes, and --

7 QUESTION: If you know who the employees are
8 when you fire them, I'm sure.

9 MR. YAVIS: But there may or may not be
10 eligibility. For example, if someone at a covered
11 established is someone employed for three years or not,
12 are there breaks in service and so forth. So, --

13 QUESTION: But that's not a plan that the
14 employer, that's all a matter of statutory compliance
15 isn't it?

16 MR. YAVIS: Well those are, what we say is that
17 the statute in effect presents the plan to the employer,
18 that the employer must thereby maintain that plan.

19 QUESTION: You say that, in other words, what
20 you're saying is compliance with the statute is equivalent
21 to maintaining a plan.

22 MR. YAVIS: That is correct. And in this case
23 it would, if we had the same plan apart from the statute
24 that would be the maintenance of the plan.

25 QUESTION: Well if you had it voluntarily --

1 MR. YAVIS: Yes, yes.

2 QUESTION: -- there's no problem.

3 QUESTION: This is not something that you
4 voluntarily do. You've got to be hypothetical --

5 MR. YAVIS: That is correct.

6 QUESTION: If you had said --

7 MR. YAVIS: We are compelled to do it by the
8 force of the statute.

9 QUESTION: But here of course, the employer did
10 have some sort of ERISA plan in effect.

11 MR. YAVIS: Yes it did. Yes, it had the
12 retirement plan for production workers. It had a
13 retirement plan for administrative and clerical personnel.
14 And it had the four employee welfare benefit plans that I
15 mentioned.

16 I'll take this opportunity to say that in the
17 state of Maine's brief they say to the contrary that we
18 had no other plans besides the retirement plans. That is
19 not correct. These other plans I referred to in the Joint
20 Appendix in the collective bargaining agreement, pages 27
21 to 29.

22 QUESTION: Tell me what it takes to maintain the
23 plan other than writing checks? Do you have to fund it?

24 MR. YAVIS: No you do not, Your Honor. In the
25 case of a severance pay plan you do not. And --

1 QUESTION: ERISA doesn't require that either?

2 MR. YAVIS: It does not. It does not require a
3 trust. As long as the payment is going to be made out
4 reasonably currently after the severance.

5 QUESTION: So even if a private employer set up
6 the same kind of a plan under his own authority without a
7 statute compelling it, he would be doing no more than what
8 your client does writing a check.

9 MR. YAVIS: Right, Your Honor, a person subject
10 to such a plan should go through the publication and
11 disclosure aspects, but up to the time of payment there is
12 no requirement for funding, no requirement for a trust.
13 The ERISA and the regulations do not require that in the
14 case of the severance pay category of plan.

15 QUESTION: Does the Maine statute require you to
16 do that publication?

17 MR. YAVIS: No, it does not.

18 QUESTION: It does not?

19 MR. YAVIS: Does it require you to do what?

20 QUESTION: To do the same kind of publication
21 and notification that ERISA does.

22 MR. YAVIS: No, it does not.

23 QUESTION: So unless your plan is covered by
24 ERISA those duties of the employer would be eliminated.

25 MR. YAVIS: That is correct and those are, of

1 course, the duties considered important by ERISA.

2 QUESTION: But if it were held, and I am not
3 saying it should be, but if it were held that there is no
4 preemption here then those duties wouldn't apply to
5 compliance with the Maine statute.

6 All you would have to do with regard to
7 severance pay is do what the statute requires if it were
8 held that there was no preemption.

9 MR. YAVIS: I suppose that's right. If ERISA
10 doesn't apply at all.

11 QUESTION: You wouldn't have to give notice or
12 any of that.

13 MR. YAVIS: The structure of ERISA supports the
14 congressional intent to have broad preemption of any and
15 all state laws. That is the phrase, any and all in
16 Section 514 (A) and the relationship here is that one
17 either has to have the statutory plan or the private
18 contract providing for severance pay.

19 I'd like to point out other aspects of the
20 structure of ERISA that bear on that congressional intent.
21 The definition of the term, state, in Section 3(10), ten
22 in parenthesis, applies to the overall statute and
23 basically says a state is a state. But in Section 514
24 there is a second definition of state in 514(C)(2).

25 QUESTION: (Inaudible).

1 MR. YAVIS: Your Honor, 514(C)(2) is at page 66
2 of the jurisdictional statement appendix. And the
3 definition of state for the purposes of preemption is now
4 refined, expanded, clarified in a very significant way.

5 The term state now includes a state which
6 purports to regulate directly or indirectly the terms and
7 conditions of employee benefit plans covered by this
8 subchapter. And as I've indicated a severance pay plan is
9 one such plan.

10 State law on the same page, the preceding
11 subsection 1, is also broadly defined, again to indicate
12 Congress' intent to broadly preempt any and all state
13 laws, and it's defined to include other state action.

14 QUESTION: So you would make the same argument
15 if the state just said, we're not going to say anything
16 about what should be in a plan, but you have to have a
17 severance plan.

18 MR. YAVIS: Yes. Our position is that the
19 states may not mandate the award of employee benefit plans
20 or particular levels or types of benefits. That's a
21 decision left to the private parties. That's part of the
22 comprehensive scheme of the ERISA statute.

23 The policy statement in Section 2 of the Act refers
24 to the scope and impact increasingly interstate.

25 There's a phrase about effected with national

1 public interest; another reference to interstate
2 character and so forth. There is a policy statement that
3 conveys Congress' desire to have a broad federal
4 regulation.

5 And Section 4(B)(3) is also another indication
6 of the congressional intent that is at page 63 of our
7 Joint Appendix for the jurisdictional statement. And
8 shows Congress' comprehension that there would be state
9 mandated employee benefit plans of which three are
10 excluded from coverage, and only three.

11 Otherwise, Congress contemplated that state
12 attempts to mandate ERISA benefit plans would be within
13 ERISA's coverage and subject to preemption. Now there
14 have been subsequent proposed amendments to 4(B)(3).

15 None have been adopted. There was an amendment
16 in 1983 that followed this Court's decision, this Court's
17 affirmance in *Agsalud*, but the decision was left in tact.
18 Basically, the statute was amended in minor ways to
19 accommodate the Hawaiian statute in part, not in total.

20 And the basic preemptive scope of 514 was left
21 in place following those amendments. Those amendments
22 then themselves show Congress' desire to have a broad
23 preemptive scope, broad preemption of any and all state
24 laws. Now in this Court, Maine is trying to redefine what
25 its statute means in order to avoid 514(C)(2).

1 QUESTION: May I ask you another question if I
2 may? Supposing Maine amended its statute and now it has
3 an exception from the requirement if you adopt a, have a
4 severance provision in a plan you don't have to comply
5 with the Maine statute and I guess it's pretty hard to get
6 that if the union knows they can get the statutory
7 (inaudible). Suppose instead of that they passed an
8 amendment said the severance obligation shall not apply to
9 any employer who has an ERISA plan of any kind so that the
10 whole scope of the statutory operation was in, for
11 employers who had no plans other than this, would it still
12 be preempted in your view?

13 MR. YAVIS: I believe so. And I believe that
14 that's the congressional intention to leave the type of
15 benefits, the level of benefits to the parties choice
16 basically. Congress left that decision to the private
17 parties. Now, Maine here --

18 QUESTION: Do you conclude that from the
19 preemption clause? Is that what you conclude from?

20 MR. YAVIS: In part. In part, Your Honor. In
21 part.

22 QUESTION: Well would you be arguing the same if
23 the expressed preemption clause wasn't even in ERISA?

24 MR. YAVIS: Well I would think that would be a,
25 certainly a more difficult case but the intent of the

1 statute expressed in the policy in Section 2 and if the
2 same legislative history were there it would be hard to
3 conceive the same legislative history without the
4 expressed preemption provision. But certainly,
5 hypothetically yes.

6 QUESTION: Well couldn't you say in this case
7 that the Maine law is not preempted in the sense that it
8 may require the employer to have a severance pay policy
9 but that once he establishes it, it's subject to ERISA?

10 MR. YAVIS: I don't believe that decision was
11 left to the states. That --

12 QUESTION: Well I know. I know, but if you did
13 establish a severance pay plan as the statute purports to
14 require it would be subject to ERISA then wouldn't it?
15 Because then you have a plan?

16 MR. YAVIS: I believe that if we accepted that
17 plan, yes, it would be a severance pay plan under 3(1)(A)
18 or 3(1)(B) --

19 QUESTION: And, ERISA, Maine doesn't say that it
20 wouldn't, does it? It wouldn't interfere. It doesn't
21 purport to interfere with ERISA coverage once the plan is
22 adopted.

23 MR. YAVIS: Well conceivably --

24 QUESTION: Isn't that right?

25 MR. YAVIS: I'm not sure if that's right.

1 Conceivably the remedies afforded in the state statute
2 could depart from remedies in the federal statute. For
3 example, Maine certainly isn't giving anyone any right to
4 the Secretary of Labor to come in and advance the cause of
5 participants.

6 Maine just is not doing that. What Maine is
7 trying to do in this Court is to tell the Court that the
8 benefit could have been negotiated away completely. They
9 argue at pages 17 and 18, that the Maine statute really
10 doesn't mandate any benefits at all and therefore
11 514(C)(2) wouldn't come into play if the statute doesn't
12 purport to regulate employee benefit plans. Well the
13 express wording of the --

14 QUESTION: What is 514(C)(2)?

15 MR. YAVIS: 514(C)(2)?

16 QUESTION: You have them published in your
17 Appendix with the 29 U.S.C. numbers. Why don't you --

18 MR. YAVIS: I'm sorry, Your Honor, that is at
19 page 65. Excuse me, at Page 66. And it's under (C)
20 definitions, subparagraph (2). I simply want to indicate
21 here that Maine is trying to take a different tack than
22 what the express words of the statute say.

23 The express words of the Statute say you have to
24 have either an express contract providing for severance
25 pay, or you observe the statute. That's the applicable

1 exception of the statute that I'm referring to.

2 An express contract providing severance pay.
3 Here they argue that an employer could have an express
4 contract eliminating severance pay. That was not the
5 finding of the Maine Supreme Court.

6 And I refer you to our Joint Appendix of the
7 jurisdictional statement at A-12 for the words that the
8 Maine Supreme Court used in that regard. In other words,
9 under the statute you either have to have an express
10 contract or face liability under the statute.

11 I very briefly want to turn to the 4(B)(3) issue
12 which is, the claim is made that 4(B)(3) exempts the Maine
13 severance pay law as an unemployment compensation law.
14 4(B)(3) exempts plans for compliance with three types of
15 laws: Workman's Compensation, Unemployment Compensation
16 and Disability Insurance laws.

17 Severance pay is not expressly one of those
18 three categories. The attempt is made here to fit
19 severance pay within the Unemployment Compensation law
20 category.

21 Otherwise Maine would be trying to add a fourth
22 category to that statute. We have five responses to that.
23 That the plain meaning of the term, Unemployment
24 Compensation law is otherwise.

25 That Congress' use of different terms in the

1 statute at different places entitles the statute to the
2 normal presumption that different things were meant when
3 different words were used. The department's regulations
4 do not treat severance pay as unemployment compensation.

5 Fourthly, Maine itself does not treat severance
6 pay as unemployment compensation and fifth, the Maine
7 law's real thrust is not at unemployment. Our fundamental
8 position is that the term unemployment compensation law
9 had in 1974, and has today, an accepted meaning.

10 That is a meaning that is pursuant to the Social
11 Security Act and the Federal Unemployment Tax Act. 50
12 states have such laws.

13 It is a strange reading to look for some other
14 interpretation of that term. In the statute itself I've
15 already referred to 3(1)(A), 3(1)(B) AND 3(2)(B).
16 Congress itself is using the words severance pay and
17 severance pay arrangements where at another place in the
18 statute it's using the term benefits in the event of
19 unemployment and at still another place using the term
20 unemployment compensation law.

21 Congress used those terms presumably for the
22 different meanings that each had. Unemployment
23 compensation means something quite different than
24 severance pay.

25 Severance pay doesn't connote necessarily

1 unemployment, although there will be a termination of
2 employment. The regulations of the department cite in our
3 reply brief also do not equate severance pay and
4 unemployment compensation.

5 Those regulations have been in place, I believe,
6 since 1975. There's been a 1980 amendment to the statute
7 authorizing the Secretary's regulations. Those
8 regulations have the force of law and are entitled to
9 great weight.

10 Now fourthly, I said Maine itself doesn't
11 consider it's severance pay law to be an unemployment
12 compensation law. It considers severance pay to be wages,
13 that's the way that severance pay is, that's the way the
14 unemployment compensation law defines severance pay.

15 The severance pay statute is not in the
16 unemployment compensation statute. It's somewhere else in
17 the Maine statutes under a heading severance pay, in a
18 subchapter that starts out, wages.

19 QUESTION: I suppose you get severance pay even
20 though you go right to another job too, don't you?

21 MR. YAVIS: That's right. There's no connection
22 necessarily to unemployment at all. Our fifth response is
23 that real trust is not unemployment at all. And the point
24 that you've just made, Your Honor, is just that.

25 And also, the exceptions that Maine makes to its

1 law shows that its just concerned with unemployment or
2 maybe not concerned with unemployment at all. It exempts
3 coverage from its severance pay statute for a victim of a
4 fire, or a victim of bankruptcy.

5 These people are just as injured and yet they
6 are not protected. As the court stated recently in Guera
7 in determining whether a state statute is preempted our
8 sole task is to ascertain the intent of Congress.

9 In ERISA Congress has spoken in express terms for
10 preemption. Unless the Court has other questions, I will
11 reserve my remaining time for rebuttal.

12 QUESTION: Thank you, Mr. Yavis.

13 We'll hear now from you, Mr. Warren.

14 ORAL ARGUMENT OF

15 THOMAS D. WARREN

16 ON BEHALF OF APPELLEE

17 MR. WRIGHT: Mr. Chief Justice, and may it
18 please the Court: I'm going to concentrate this morning
19 as Mr. Yavis did on the ERISA preemption argument. There
20 is another claim of preemption that has been raised by
21 Fort Halifax.

22 That's the claim of preemption under the
23 National Labor Relations Act and we believe that that
24 claim is adequately treated in our brief and in the brief
25 filed by the Solicitor General and I'll content myself by

1 saying on that that we agree with the National Labor
2 Relations Board that this case is controlled by the
3 Court's decision in Metropolitan Life on that issue.

4 Now on the ERISA issue we agree with Mr. Yavis
5 that the fundamental question turns on the intent of
6 Congress and in this case it turns on the intent of
7 Congress as expressed in the ERISA statute and in the
8 express provision in ERISA Section 514 which calls for
9 preemption.

10 We do not agree, however, that what the state is
11 doing here is requiring an employer to maintain an
12 employee benefit plan within the meaning of ERISA. Mr.
13 Yavis speaks about the broadness of the ERISA preemption
14 provision and I would just like to look directly --

15 QUESTION: (Inaudible) your position is that
16 Maine does require the type of a plan that ERISA would
17 reach?

18 MR. WRIGHT: That's correct.

19 QUESTION: And if an employer on his own
20 established precisely the kind of plan that the Maine law
21 requires you say that would not be covered by ERISA?

22 MR. WRIGHT: It would depend, if --

23 QUESTION: Say the union and the employer
24 negotiated and said anytime somebody leaves he gets a
25 week's pay period.

1 MR. WRIGHT: In that case, Your Honor, I think
2 that there is a difference in that and what the Maine law
3 requires. That would provide for severance pay in every
4 circumstance of an employee termination and what the Maine
5 law does --

6 QUESTION: Well, let's assume that, let's assume
7 in some other state --

8 MR. WRIGHT: Okay.

9 QUESTION: -- a union and an employer negotiates
10 a severance pay plan and it's identical with what the
11 Maine law requires.

12 MR. WRIGHT: If it were, if all you had was a
13 provision in a contract that said in the event of a plant
14 closing we would --

15 QUESTION: Well, I'm just saying if the plan
16 requires precisely what, sets up exactly what the Maine
17 law requires.

18 MR. WRIGHT: Well then that would be a plan
19 which applied only in the event of a plant closing.

20 QUESTION: Uh-huh.

21 MR. WRIGHT: And in that case, we think that it
22 probably would be covered by ERISA.

23 QUESTION: ERISA, yes. But you say the Maine,
24 an employer who establishes a plan in response to the
25 Maine statute is not establishing a plan that is subject

1 to ERISA. Is that right?

2 MR. WRIGHT: Well that's not quite right, Your
3 Honor.

4 QUESTION: Well that's what you said a while
5 ago.

6 MR. WRIGHT: I hope I, what I, let me clarify.
7 An employer who establishes on his own a plan or any kind
8 of arrangement with his employees to pay severance pay
9 either in the event of a plant's closing or to pay
10 severance pay generally is, we believe, exempted from the
11 Maine law by the very terms of the Maine statute.

12 QUESTION: Well that may be so. But now here is
13 an employer who established it because of the Maine law.

14 MR. WRIGHT: Well, if an employer creates a
15 plan, they exempt themselves from the Maine law. I'm not
16 sure, if an employer merely pays what is required by the
17 Maine law we are not suggesting that that creates an ERISA
18 plan.

19 QUESTION: Well, so that isn't a plan at all if
20 he just recognizes his obligation under the law to make a
21 payment.

22 MR. WRIGHT: Well, what we're really suggesting
23 is this. The statutory obligation created by Maine law
24 does not bear any resemblance to the kind of employee
25 benefit plan which Congress was intending to regulate

1 under ERISA.

2 QUESTION: Why? You said that if there was a
3 private plan that required severance payments only upon
4 removal of the plant, it would be covered.

5 MR. WRIGHT: I think in that instance it would
6 probably be covered.

7 QUESTION: Okay. So now you're telling us that
8 Maine can, or any state I presume, can take its employers
9 out of the coverage of ERISA, by simply mandating by law
10 what ERISA would cover had the employers done it
11 voluntarily.

12 That's a great out for a lot of employers. Just
13 get the states to enact a law that covers the kind of plan
14 they want to adopt and that plan is out of ERISA.

15 MR. WRIGHT: Well we really think that's only
16 true in this context and --

17 QUESTION: Oh.

18 MR. WRIGHT: -- let me explain me why.

19 QUESTION: Well that's nice.

20 MR. WRIGHT: It's true in this context for one
21 reason. What ERISA is really looking at was private
22 arrangements between employers and employees, where
23 employers create promises to pay certain kind of fringe
24 benefits their employees.

25 And what we would contend under those

1 circumstances is that what Congress was really focusing on
2 were the kinds of problems that had developed with respect
3 to those kinds of private arrangements.

4 QUESTION: I don't care what they were focusing
5 on, I care about the law they wrote. Now why is there
6 anything in the law that would allow me to make this kind
7 of distinction.

8 MR. WRIGHT: What we're suggesting, Justice
9 Scalia, is that the wording of the statute has to be
10 interpreted in light of the underlying policies of the
11 ERISA statute.

12 QUESTION: What word would enable this
13 distinction that you can yank a, what would otherwise be a
14 covered severance plan out of ERISA simply by adopting a
15 state statute that covers it but you can't yank anything
16 else out of ERISA by adopting a state statute that covers
17 it?

18 MR. WRIGHT: What you've got, the definition of
19 an ERISA plan is a plan or fund which provides certain
20 kinds of employee benefits and which is either established
21 or maintained by an employer.

22 So what we're suggesting is that if you don't
23 have something which rises to the level of an ERISA plan,
24 and if you don't have a plan which is created by an
25 employer, or which is maintained by an employer, then we

1 think you're out of the statute just on the wording of the
2 statute.

3 QUESTION: You would draw a distinction, as I
4 take it, to follow up on Justice Scalia's hypothetical,
5 the Maine statute said you must create a fund and pay
6 benefits out of that in certain periodic payments.

7 You would agree that would be a plan created by
8 the employer in compliance with the statute and therefore
9 be an ERISA plan.

10 MR. WRIGHT: I think if you have an ongoing
11 benefit program --

12 QUESTION: So they couldn't.

13 MR. WRIGHT: -- that, payable to employees over
14 time --

15 QUESTION: But your point is that --

16 MR. WRIGHT: But that would be something --

17 QUESTION: This statute doesn't require them to
18 establish or maintain any plan.

19 MR. WRIGHT: It does not. It requires them to
20 make a payment (inaudible).

21 QUESTION: As much of a plan as a severance plan
22 ever is. A severance plan never requires funding as I
23 understand it.

24 MR. WRIGHT: Well I don't think that's correct,
25 Justice Scalia.

1 QUESTION: Oh, okay. Well that would make a big
2 difference.

3 MR. WRIGHT: I think that was what Mr. Yavis --

4 QUESTION: That's right.

5 MR. WRIGHT: -- if it were, if you had an ERISA
6 coverage severance pay plan --

7 QUESTION: It would have to be funded?

8 MR. WRIGHT: -- totally, privately created it
9 would be subject to all of the obligations and all of the
10 terms and conditions of ERISA and that would include the
11 requirement of maintaining the assets in a separate entity
12 under a trust fund with the various disclosure obligations
13 that would be entailed and we don't think that any
14 (inaudible) --

15 QUESTION: Well the big difference, if I
16 understand is, under your position the employer then would
17 have made a promise to pay some benefits on a certain
18 contingency arising.

19 MR. WRIGHT: That's correct.

20 QUESTION: And there's no such promise here.

21 MR. WRIGHT: That's correct. That's correct.

22 QUESTION: Well, say if the employer did set up
23 a plan in response to this statute, but he established it
24 and he wrote out a plan and arranged for funding you would
25 think that wouldn't be an ERISA plan.

1 MR. WRIGHT: Well if an employer --

2 QUESTION: It would be reached by ERISA.

3 MR. WRIGHT: It would be an ERISA plan, or it
4 could be an ERISA plan and in that instance the Maine law
5 --

6 QUESTION: Well I don't understand why Maine is
7 so insistent on saying that an employer's response to this
8 statute, his obedience to the statute does not create an
9 ERISA covered plan.

10 MR. WRIGHT: Your Honor, I think --

11 QUESTION: Because I don't know. Is it
12 necessarily inconsistent to say that Maine's requirement
13 that he establish a plan is not preempted, but that the
14 plan he sets up is an ERISA plan.

15 MR. WRIGHT: Well, I guess if I understand your
16 question, what we are suggesting is that an employer
17 independently, on his own, creates an ERISA plan or
18 reaches a contract with his employees to pay severance
19 pay, that would have two effects. First, if it created a
20 separate ERISA plan, that would be subject to ERISA. And
21 second, it would be by its own terms, it would be taken
22 out of the Maine statute pursuant to the express contract
23 exceptions.

24 QUESTION: But here's an employer who doesn't
25 have a plan, he doesn't want one, but the law requires him

1 to pay severance pay. This Maine statute requires him to
2 pay, to give his employees severance pay.

3 MR. WRIGHT: That's correct.

4 QUESTION: And he thoroughly intends to obey the
5 law, and he does. Now why do you insist that that isn't,
6 doesn't establish an ERISA plan.

7 MR. WRIGHT: If an employer creates an ERISA
8 plan in response to the Maine statute that would be an
9 ERISA plan. I don't think that the question is whether
10 the employer's payment of the benefits called for under
11 the statute constitutes an ERISA plan and that's --

12 QUESTION: Well, the union says to him, do you
13 intend to live up to this Maine statute. Of course I do.
14 And that's all that's said and he does. He just pays
15 severance pay in accordance --

16 MR. WRIGHT: According to the Maine statute.

17 QUESTION: Yes.

18 MR. WRIGHT: We don't think that that bare fact
19 constitutes an ERISA plan.

20 QUESTION: Well why is that important to you?
21 What is it were an ERISA plan?

22 MR. WRIGHT: Well, if it were an ERISA plan I
23 think that an argument could be made that in that point
24 the Maine law was relating to the ERISA plan, or forcing
25 it --

1 QUESTION: So that Maine couldn't -- toward
2 creating an ERISA plan.

3 QUESTION: Maine could no longer then require
4 them to maintain the plan.

5 MR. WRIGHT: Well Maine, if the Maine law were
6 interpreted to relate to an ERISA plan then the Maine law
7 would be preempted.

8 QUESTION: I take it a state could not, a state
9 like Maine, can't say to employers within the state, we
10 want you all to set up ERISA plans that meet this minimum
11 standard. Then, of course, they will all be governed by
12 ERISA. A state can't say that.

13 MR. WRIGHT: I think that that would create a
14 preemption problem, Your Honor, yes. What I'm really
15 trying to do is --

16 QUESTION: Well, Mr. Warren, the Solicitor
17 General of the United States has also filed a brief in
18 this case suggesting that this Court's opinion in Shaw v.
19 Delta Airlines indicates that the ERISA preemption
20 provisions also prohibit and preempt state laws which
21 simply require employers to provide certain specific
22 benefits to employees.

23 MR. WRIGHT: That's correct, Your Honor.

24 QUESTION: Regardless of the question of whether
25 it requires, whether Maine's law requires you to set up a

1 plan, or not.

2 MR. WRIGHT: I think that is what the Solicitor,
3 the position taken by the Solicitor General.

4 QUESTION: Right. He would go far beyond this
5 discussion of whether Maine law requires a plan and say
6 that what this Court said in Shaw means that a state can't
7 tell employers what fringe benefits to provide.

8 MR. WRIGHT: He would and let me explain why I
9 think that's wrong. The preemption provision of ERISA,
10 which is the source of the preemption argument in this
11 case relates to the, it contains the following language:
12 It preempts state laws insofar as those laws relate to an
13 ERISA covered plan.

14 And we would suggest that the Solicitor
15 General's argument would essentially re-write the statute
16 to say that it preempts state laws which relate to
17 employee benefits.

18 And if that's correct, then we would concede
19 that the Maine law would be preempted. But we don't think
20 that's correct. We think Congress focused on the word,
21 plan, in the preemption provision as it focused on the
22 word, plan, throughout the ERISA statute with specific
23 intent to subject only ERISA plans to federal regulation.
24 And --

25 QUESTION: It's important to me, this is going

1 back over earlier ground whether a plan adopted by the employ
2 under the statute is the same as a plan that he might
3 adopt under ERISA.

4 That is, you assert that if adopted under ERISA
5 it would have to be funded? Is that so despite the fact
6 that Section 1002(2)(B) says that the Secretary may
7 proscribe rules under which severance pay arrangements
8 shall, for purposes of this chapter be treated as welfare
9 plans rather than pension plans. Does that make any
10 difference in --

11 MR. WRIGHT: I think that's, it might, Your
12 Honor. It might.

13 QUESTION: Do welfare plans have to be funded?

14 MR. WRIGHT: I believe they do. And I think if
15 you look, and I'm not sure if its in the Statutory
16 Appendix. I believe if you look in, I believe it's
17 Section 1101 of 29 U.S.C., it talks about the various
18 funding requirements that assets be held in a trust and
19 so in that sense I think you're talking at least about
20 trust assets.

21 I don't know whether the employer would
22 actually have to set aside monies for those plans, but I
23 think you would at least have to create a separate entity
24 which met the definitions of the trust and the fiduciary
25 requirements under ERISA.

1 To go back to the point I was making in response
2 to Justice O'Connor's question. I think that really
3 that's what the fundamental issue in this case turns on,
4 which is the question of whether ERISA preempts state laws
5 relating to employee benefits, or whether ERISA preempts
6 state laws relating to employee benefit plans.

7 And if I may, what I'd like to do is just point
8 out the specific meaning of plan as I understand it, in
9 light of the congressional intent behind ERISA. And
10 that's --

11 QUESTION: You mean plan as defined in ERISA?

12 MR. WRIGHT: I mean plan as defined in ERISA.
13 The word plan is obviously something that in the, outside
14 the statutory context could be made susceptible to many
15 meanings.

16 QUESTION: And in the statutory context you have
17 both employee welfare benefit plan and employee pension
18 benefit plan, don't you?

19 MR. WRIGHT: That's correct. That's correct.
20 And I'm referring to both. The plans that I think
21 Congress was focusing on were these private arrangements
22 created between employer and employee and what they were
23 specifically worried about were some of the abuses that
24 began to be seen in the context of those plans. And those
25 abuses were --

1 QUESTION: I'm sure of that. But what I'm
2 worried about at least, is that I'm sure that Congress
3 didn't intend to enable one of those private plans that
4 is, the same kind as if it had been adopted in
5 negotiations with a union to be yanked out of ERISA simply
6 by having it required by state law.

7 And so, if this severance plan is in fact no
8 different from what the employer would be doing under
9 ERISA, I'd be very reluctant to find that the state can in
10 effect, yank it out of ERISA by mandating it.

11 MR. WRIGHT: Your Honor --

12 QUESTION: It is not the mandating of it by the
13 state alone that can possibly take it out of ERISA right
14 here.

15 MR. WRIGHT: No. And maybe I can clarify that.
16 We are not suggesting that it's the state mandate that
17 that takes a plan out of ERISA. The question is whether
18 what the state is mandating is an ERISA covered plan.

19 And that is really, I think, the question that's
20 before the Court today. And that's the issue that I think
21 we're interested in arguing about. That's where we really
22 part company with Mr. Yavis.

23 QUESTION: (Inaudible) even though other pension
24 plans, or even though other severance plans are subject to
25 ERISA, this one is not subject to ERISA. That the

1 employer has no ERISA obligation with regard to this.

2 MR. WRIGHT: If all the employer does is comply
3 with the Maine law then we would say that the employer is
4 not subject to any ERISA obligation.

5 QUESTION: Do we know what position the
6 Secretary takes on this?

7 MR. WRIGHT: I think the Secretary's position is
8 that the Maine law itself requires the creation of an
9 ERISA covered plan and following from that premise, it
10 would argue that the Maine law is preempted. I don't
11 think that if the Secretary --

12 QUESTION: Or, put it put differently. The
13 position he takes is that the plan required to be
14 established by the Maine law is an ERISA plan.

15 MR. WRIGHT: That is, I think, the Secretary's
16 position. And, I think that the Secretary --

17 QUESTION: Well, I'm not sure that's accurate
18 because apparently the Solicitor General's speaking for
19 the Secretary would say that states cannot direct specific
20 benefits to be provided if they are the type of benefits
21 covered by ERISA.

22 MR. WRIGHT: And I think that's both right,
23 Justice O'Connor, and what I'm really suggesting is that
24 the Secretary's position, or at least as reported by the
25 Solicitor General, seems to be that merely requiring a

1 benefit is, that statement alone, that requirement alone
2 is sufficient to create an ERISA covered plan. That's --

3 QUESTION: One of the things that the Solicitor
4 General relies upon is the fact that in ERISA and in the
5 preemption section, Congress specifically carved out
6 Hawaii's law which provided for a specific kind of health
7 benefit.

8 MR. WRIGHT: That's correct.

9 QUESTION: And opted not to protect any other
10 type of state law. That might indeed be an indicator that
11 Congress was trying to be very specific about what states
12 could do or not do, and intended to preclude a law like
13 Maine's.

14 MR. WRIGHT: Well the Hawaii Pre-paid Health
15 Care Act which is the Act that you're referring to is an
16 Act which really goes way beyond what Maine does. It
17 doesn't just require a one-time payment in the event of a
18 plant closing, it required employers to establish a
19 comprehensive, on-going system of providing health
20 benefits.

21 And it included within that, it was, that system
22 was imposed upon existing ERISA plans. It required
23 employers to alter and amend their existing ERISA plans
24 and it also contained certain reporting requirements which
25 went beyond, or conflicted with, what ERISA itself

1 requires.

2 So it seems to me that the issue of the Hawaii
3 Act was a fairly easy case and what Congress then did in
4 response to a court decision was to suggest that certain
5 features of the Hawaiian law, not all of them, not the
6 conflicting reporting provisions, but certain features
7 would not be preempted.

8 And the legislative history on that as the
9 Solicitor General's brief I think itself includes is
10 somewhat conflicting in that the Senate Committee said
11 that it felt that preemption of the Hawaii law was
12 inadvertent.

13 And there is other statements made that the
14 decision in the Hawaii case was exactly correct. And we
15 would suggest that the statements are not necessarily a
16 reliable guide to what Congress meant when it enacted the
17 original preemption provision.

18 But in any event that those statements really
19 don't provide guidance here in view of the fundamental
20 differences between this law and the Hawaii law. And
21 that, I think, gets me back to the issue of why this law
22 does not create an ERISA covered plan.

23 And it seems to me that there's really three
24 reasons for that. The first is the one that I already
25 mentioned, which is it does not create a private

1 arrangement between employer and employee and it is not
2 subject to the kinds of abuses, the kinds of problems that
3 motivated --

4 QUESTION: Mr. Warren, you have fairly
5 complicated definitions of plan and do you think it really
6 lends itself to these kind of generalizations that this was
7 what Congress was getting at or wasn't getting at rather
8 than kind of a parsing of the section?

9 MR. WRIGHT: I think you have to do both, Your
10 Honor, but as Mr. Yavis stated that the term plan itself
11 is not defined in ERISA and I think to gain enlightenment
12 as to what Congress was worrying about you have to look at
13 the congressional findings and declaration of policy --

14 QUESTION: The term employee welfare benefit
15 plan and the term employee pension benefit plans are both
16 defined.

17 MR. WRIGHT: They are indeed. But I'm focusing
18 now on --

19 QUESTION: Why does that definition reach
20 severance plans at all?

21 MR. WRIGHT: Well the argument that that reached
22 the severance plans is based upon the incorporation within
23 the definition of a reference to certain benefits provided
24 under the Taft-Hartley Act.

25 QUESTION: 186(C).

1 MR. WRIGHT: 186(C). And 186(C) refers to
2 severance benefits. So that's how severance benefits come
3 in although I can --

4 QUESTION: So you don't dispute that ERISA does
5 reach severance arrangements.

6 MR. WRIGHT: We don't dispute that ERISA would
7 govern a plan which provided severance benefits and what
8 we're suggesting is that ERISA does not necessarily cover
9 the entire topic of severance benefits.

10 QUESTION: I see.

11 MR. WRIGHT: Going back to the issue of whether
12 this creates a plan, it seems to me that you first got the
13 question of private arrangements. You've second got the
14 question which I think is presented in the unique form by
15 this case of whether a one time statutory assessment
16 constitutes the kind of plan that was contemplated under
17 ERISA.

18 The ordinary ERISA plan involves an ongoing
19 system of paying benefits over time. It's a system that
20 of necessity has to be maintained (inaudible) --

21 QUESTION: Not a severance plan under ERISA. I
22 mean, every severance plan that I'm familiar with, it's a
23 one shot severance plan. That's the normal one.

24 MR. WRIGHT: From the point of view of each
25 employee --

1 QUESTION: Right.

2 MR. WRIGHT: -- it might be a one shot severance
3 pay, but --

4 QUESTION: Well the same with the statute.

5 MR. WRIGHT: Well from the point of view of the
6 employer, the ordinary severance plan is paid to a group
7 of employees as they depart the employment relationship
8 over time. In other words, --

9 QUESTION: I see. I see.

10 MR. WRIGHT: -- they're talking about
11 administering the payment of benefits over --

12 QUESTION: You're talking about a plant closing.

13 MR. WRIGHT: I'm talking about a plant closing
14 and that's exactly what Maine law is talking about.

15 QUESTION: And that is one shot.

16 QUESTION: Well, death benefits are a one time
17 benefit. And yet surely you wouldn't argue that ERISA
18 doesn't reach those.

19 MR. WRIGHT: But for the same reason, we agree that
20 ERISA does and it's the, from the point of view of the
21 beneficiary, Justice O'Connor, the death benefit is
22 probably a one payment.

23 And from the point of view of the employer
24 however, you're talking about death benefits that are
25 going to be paid to a group of employees over time.

1 You're not talking about a one time payment in the event
2 of a single contingency to all the employees who are
3 eligible at once.

4 It's a one time payment and we suggest that
5 there's language in the 9th Circuit Martori Brothers case
6 and in Donovan v. Dillingham which is the 11th Circuit en
7 banc decision which suggests that a one time payment would
8 not be subject necessarily to ERISA because it would not
9 constitute a plan.

10 And a lot of courts have tried to grope with
11 what constitutes a plan. But we would submit that what
12 falls outside of a plan is a one time payment. The other
13 problem with the argument that the Maine law creates an
14 ERISA covered plan in this case is the one averted to by
15 Justice Stevens in one of his earlier questions which is
16 that if this law is deemed to create an ERISA covered plan
17 then it would preempt state law even in a circumstance
18 where an employer had no plan.

19 And under those circumstances we really think
20 that Congress could not have intended ERISA preemption to
21 apply.

22 QUESTION: Say that again. You lost me.

23 MR. WRIGHT: If this --

24 QUESTION: Beginning with the, if.

25 MR. WRIGHT: Right. If this law were

1 interpreted to require an ERISA covered plan and were
2 therefore preempted on the basis that it relates to an
3 ERISA covered plan --

4 QUESTION: Right.

5 MR. WRIGHT: -- which it, itself creates then
6 that law would be preempted even in the case of an
7 employer who had no absolutely no existing ERISA plan at
8 the time. And we suggest that that goes way beyond what
9 Congress intended to preempt in the ERISA preemption
10 section.

11 QUESTION: Why would that be any stranger than
12 any other state law that proscribes or specifies, let's
13 say a standard retirement plan? A state enacts a law that
14 requires a specific retirement plan. Will you come before
15 us and say, well it can't possibly be preempted in the
16 case where the employer has no retirement plan of his own
17 anyway.

18 MR. WRIGHT: It seems to me that if a state
19 requires something and it doesn't relate to a plan within
20 the meaning of Section 514, then the state's proscription
21 is not preempted. In other words, as I think this Court
22 ruled in Shaw v. Delta Airlines, the state law is only
23 preempted insofar as it relates to the ERISA covered plan.

24 So if you don't have any relationship with an
25 ERISA covered plan, the state law remains in effect. And

1 what we're suggesting here is where an employer has no
2 plan it would in our view stretch congressional intent
3 beyond what it's proper bounds to suggest (inaudible).

4 What I really want to, in focusing on this
5 there's this one principal I'd like to get back to and
6 that is this, that the issue of preemption and the
7 interpretation of the preemption provision it seems to me
8 has to be interpreted in light of the fundamental
9 principle that preemption is not a favorite doctrine and
10 that has been stated by this court in, I think, as early
11 as the Florida Lime and Avocado case is saying that
12 preemption should not be found unless Congress
13 unmistakably intended to displace state law. That follows
14 from principles of preemption which we believe this court
15 is fully familiar with.

16 It follows from respect for state law. It
17 follows from a respect for the states as sovereign
18 entitles and a respect for state's authority to meet the
19 problems of its residents through its police power and we
20 submit that that's exactly what Maine has done here.

21 The problem of plant closings is not unique to
22 Maine, but it's a particular problem in Maine because of
23 the number of Maine towns where one major plant is a
24 dominant employer. So Maine has adopted a statute which no
25 other state has adopted to meet this problem.

1 It's designed to deal with the specific
2 unemployment problem created by a plant closing and we
3 submit that Maine is entitled to devise its own response
4 to this particular problem absent a clear expression by
5 Congress that the Maine law is preempted on this subject.

6 And this brings me back to where I began, I
7 think, which is that we do not think that the arrangement,
8 or whatever you want to call it, created by Maine law, the
9 statutory obligation which is a bare statutory obligation
10 to pay severance benefits.

11 We do not believe that that resembles the kind
12 of employee benefit plan which Congress was intending to
13 regulate when it enacted ERISA. I see my time has almost
14 expired.

15 Let me just say about the other argument that we
16 have raised, the unemployment compensation law argument,
17 that I would like to direct the Court's attention to, not
18 only to our arguments on that subject, but to those
19 submitted by the AFL-CIO in its amicus brief. And
20 specifically the point that they make which is that the
21 average, traditional unemployment compensation law is not
22 a law which resembles an ERISA covered plan.

23 Therefore the exemption from ERISA for plans
24 maintained solely to comply with unemployment compensation
25 laws really doesn't make much sense when applied to a

1 traditional law.

2 QUESTION: Thank you, Mr. Warren.

3 Mr. Yavis, you have four minutes remaining.

4 REBUTTAL ARGUMENT OF

5 JOHN C. YAVIS, JR.

6 ON BEHALF OF APPELLANT

7 MR. YAVIS: Your Honor, I'd very briefly like to
8 clarify the pension plan aspect versus the welfare benefit
9 plan aspect as they relate to severance pay. A severance
10 pay plan under the statute which at page A-61 of our
11 jurisdictional statement appendix, 1002(2)(A), defines the
12 term pension benefit plan and pension plan.

13 And part of the definition is that it will be a
14 pension plan where the plan fund or program results in a
15 deferral of income by employees for periods extending to
16 the termination of covered employment or beyond.
17 Typically a severance pay payment is made after the close
18 of, after the termination of employment.

19 QUESTION: But doesn't that mean that the
20 employee contributes to it.

21 MR. YAVIS: No, no. In the severance pay case,
22 no. The statute was passed in '74. In '75, regulations
23 were adopted that despite the statute defined severance
24 pay plans as welfare benefit plans.

25 Those statutes remain in force. In 1980,

1 Congress added (B) on that same page, A-51 to in effect
2 ratify what the department had done treating severance pay
3 plans as welfare benefit plans.

4 And the significance of that is that no funding
5 is required. One may pay out of general assets and I
6 refer the Court to the Burlington Industry cases which are
7 cited in our briefs.

8 One in the Second Circuit, one in the Fourth
9 Circuit. At 7721144, the Court refers to the structure of
10 the statute and says that both pension benefit plans and
11 welfare benefit plans must comply with ERISA's reporting
12 and disclosure requirements and it's fiduciary standards.

13 But only the pension plans are subject to the
14 more stringent requirements of vesting and funding. And
15 that's in accordance with the regulations that the
16 department has adopted treating the severance pay plan not
17 as a pension plan, but as a welfare benefit plan.

18 Although there may be circumstances where even a
19 severance pay plan can become a pension plan where the
20 payment strings out long enough. But basically, funding
21 does not apply to that.

22 No separate trust is required. Payments may be
23 made in both these Burlington cases say payments may be
24 made out of general assets.

25 QUESTION: No separate entity either as Mr.

1 Warren referred to (inaudible).

2 MR. YAVIS: No separate entities required, Your
3 Honor. Payments may be made out of general assets. Thank
4 you.

5 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Yavis.
6 The case is submitted.

7 (Whereupon, at 12:59 p.m., oral argument in the
8 above-entitled case was submitted).

9
10 (REPORTER)

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:

#86-341 - FORT HALIFAX PACKING COMPANY, INC., Appellant V. P. DANIEL

COYNE, DIRECTOR, BUREAU OF LABOR STANDARDS OF MAINE, ET AL.

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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