OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 86-526

TITLE CATERPILLAR, INC., ET AL., Petitioners V. CECIL WILLIAMS, ET AL.

PLACE Washington, D. C.

DATE April 21, 1987

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ALDERSON REPORTING

IN THE SUPREME COURT OF THE UNITED STATES

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CATERPILLAR, INC., ET AL., :

Petitioners, :

v. : No. 86-526

CECIL WILLIAMS, ET AL. :

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Washington, D.C.

Tuesday, April 21, 1987

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:14 o'clock a.m.

APPEARANCES:

GERALD. D SKONING, ESQ., Chicago, Illinois;

on behalf of the Petitioners.

FRITZ WOLLETT, ESQ., Berkeley, California;

on behalf of the Respondent.

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C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear arguments first this morning in No. 86-526, Caterpillar and others against Cecil Williams and others.

Mr. Skoning, you may proceed whenever you are ready.

ORAL ARGUMENT OF GERALD D. SKONING, ESQ.,
ON BEHALF OF THE PETITIONERS

MR. SKONING: Mr. Chief Justice, and may it please the Court:

This case presents two interrelated issues. First, whether the Ninth Circuit's decision that a state action can be removed to Federal court under the complete preemption doctrine only when a superseding Federal remedy exists can be squared with this Court's decisions in Franchise Tax Board, Avco, and the recent decision in Metropolitan Life v. Taylor.

And second, whether a state contract claims, based upon allegedly independent employment contracts of individuals covered by a union contract, were within the scope of Section 301 of the Labor-Management Relations Act, and therefore propertly removed to Federal court, and dismissed for failure to exhaust contractual grievance procedures.

The facts in this case are really quite simple

and commonplace in the industrial setting. Respondents are former employees of Caterpillar who were laid off from their bargaining unit jobs pursuant with the company's contract with Local 284 of the International Association of Machinists when the company shut down its plant in San Leandro, California.

At the time of their layoff, all respondents were union members whose employment was governed by the collective bargaining agreement entered into with their union.

In fact, although respondents had worked at jobs outside of the bargaining unit for varying periods of time, all except two had returned to the bargaining unit prior to May of 1983, when Caterpillar and the rspondents' union negotiated their most recent master labor union.

And all respondents were working at bargaining unit jobs, covered by their union contract, when the company and the IAM negotiated the package of letters of agreement culminating with the agreement of June 27, 1984, providing each of the respondents expensive additional benefits because of the plant shutdown

Respondent --

QUESTION: Counsel, how long were the respondents management employees?

MR. SKONING: For varying periods of time that are not fully established in the record, but for varying times, Justice Blackmun.

QUESTION: When in respect to the plant closing were they downgraded?

MR. SKONING: The downgrades occurred as the plant began to shut down, and the respondents were offered these positions back in the bargaining unit to protect their employment.

QUESTION: So that Caterpillar knew that the plant would close at the time they were downgraded?

MR. SKONING: I'm not sure that's clear from the record, Justice Blackmun, but leave it at this. Times were not good as far as this plant was concerned, and there was an effort to cut back on the labor force which resulted in the reduction in jobs in the plant.

Whether or not they knew at a given time that the plant would ultimately be shut down I don't think is clear from the record, and I really would respectfully submit that it isn't entirely relevant to the resolution of the issues in this case.

Respondents' 1983 contract covered the usual wages, hours and working conditions, and also expressly covered employee rights in the event of a shut down of the plant.

It covered such matters as exercise of seniority in a downgrade; severance pay; continuation of medical and dental benefit coverage; and even transfer rights to other Caterpillar plants.

These supplemental letters of agreement were the product of legally required effects bargaining required under the National Labor Relations Act between the company and the union.

Now respondents sued Caterpillar and several management employees in state court in December, 1984, claiming that their layoff breached state law contracts, independent of their collective bargaining agreement.

More specifically in their complaint, respondents contended that while they were working in salaried jobs outside their union contract, petitioners promised that they would have lasting permanent employment, and that they would be provided other jobs if the company shut down the plant.

QUESTION: What was the allegation about the promise? Was it that they were promised permanent employment as salaried employees?

MR. SKONING: Yes, Your Honor.

Respondents further alleged in their complaint that similar promises were made to them after they returned to their bargaining unit jobs prior to the

shutdown of the plant.

The district court ruled that respondents' complaint was properly removed to Federal court, since the complaint stated Federal claims arising under Section 301.

The court then dismissed the complaint because respondents had failed to exhaust the applicable grievance procedures under their union contract.

Respondents elected not to amend their complaint and appeal.

The Ninth Circuit reversed, ruling that the case was not properly removed, and this Court granted a writ of certiorari.

Our argument can be summarized briefly as follows.

First, this Court has clearly ruled that, contrary to the Ninth Circuit, Federal removal jurisdiction cannot be conditioned on the existence of a superseding Federal remedy.

This Court has reaffirmed as recently as its April 6th unanimous decision in Taylor that removal jurisdiction is proper if a purported state claim falls within the broad preemptive reach of Section 301.

Thus, the second and critical issue is whether the state claims asserted here fall within the scope of

Section 301.

Quite simply, these claims fall within the scope of Section 301 since, in the words of Allis-Chalmers v. Lueck, they are inextricably intertwined with the collective bargaining agreement.

The first issue, the removal issue raised by this case, is a question of Federal jurisdiction. It is an issue separate and entirely distinct from the issue of remedy mistakenly identified by the Ninth Circuit as the basis for its decision that this case should be remanded to state court.

This Court's decisions in Franchise Tax Board and Avco and its recent decision in Taylor established the indisputable proposition that the issue of whether or not plaintiffs would obtain a remedy is entirely irrelevant to the courts' removal jurisdiction.

QUESTION: But the complaint here, Mr. Skoning, disavows any reliance on the collective bargaining agreement. That certainly distinguishes it from a case like Avco, don't you think?

MR. SKONING: I would respectfully submit that it doesn't, Your Honor, for the reason that what the plaintiffs have alleged in their complaint is really quite irrelevant to the question of the court's jurisdiction under Section 301 of the Labor-Management

Relations Act.

What they say in their complaint is not the important factor. The important factor is what Congress has said, and what this Court has interpreted.

QUESTION: Well, what about the well-pleaded complaint doctrine?

MR. SKONING: The well-pleaded complaint doctrine is still fully applicable to cases other than Section 301.

We respectfully submit that in light of the Court's line of cases under 301, and the complete preemption doctrine that's been announced by this Court's decision, the well-pleaded complaint doctrine really has no validity with respect to 301 cases because of the intent of Congress.

QUESTION: Has any case of ours said what you just said in so many words?

MR. SKONING: Not precisely.

QUESTION: So that's a new proposition you're urging on us?

MR. SKONING: Correct, Your Honor. But it isn't necessary to reach that proposition for this case. Because in this case, even assuming the well-pleaded complaint doctrine were applied fully in the context of a 301 case, on the face of plaintiffs'

complaint, they have identified the facts that all respondents were union members, that all respondents were in their bargaining unit jobs covered by a collelctive bargaining agreement.

And they've acknowledged the existence of that collective bargaining agreement.

QUESTION: Well, Mr. Skoning, it seems to me that you're contending that this contract claim is preempted because it violates some Federal labor principle of exclusive representation. And if so, that may be raising a *Garmin type preemption argument, not a Section 301 preemption.

And I'm not sure that our cases such as J.I. Case or Belknap indicate that what was pleaded here is necessarily a complaint that falls under Section 301.

Maybe at the end of the day it is preempted by some Federal labor policy. I don't know. But that doesn't maybe answer the jurisdiction question, and I'd like you to address that.

MR. SKONING: Justice O'Connor, we submit that the line of cases involving *Garmin, Machinists, and Belknap, are really irrelevant in the context of a 301 case.

This Court has stated that really 301 cases are not governed by the courts --

QUESTION: Well, I guess you missed the point of my question. I'm not sure that this falls within 301. It seems to me the thrust of your argument is another type of preemption.

MR. SKONING: The thrust of our argument is that the plaintiffs' complaint falls squarely within 301, because it falls squarely within rights and obligations governed by the collective bargaining agreement.

And that, simply put, is the position we're taking.

QUESTION: You wouldn't really say that -- suppose -- suppose while they were -- before the plant shut down, these people were just let go; they were -- their salaried jobs were terminated, and they were just let go. They were out of work.

And they brought a suit in the state court suing on this alleged contract for permanent employment.

You certainly wouldn't say that their rights as supervisors were governed by the collective bargaining contract?

MR. SKONING: Not at all, Justice White. And in fact, under those hypothetical facts, we would concede that they would in fact have --

QUESTION: Well, how does the fact that they

were demoted to the -- to the bargaining unit, and then terminated, how do those facts change the basis for their claim?

MR. SKONING: These respondents were returned to the bargaining unit well prior to the negotiation of the 1983 collective bargaining agreement?

QUESTION: So? So?

MR. SKONING: And presumably, an arbitrator, if this case were ultimately to reach arbitration, could discover that in fact those very rights that they allege existed when they were salaried employees were part of the package of give and take at the collective bargaining agreement.

Respondent Williams was in the bargaining unit for over four years prior to the action that was taken here. He received full benefits under the collective bargaining agreement. Full --

QUESTION: But he says he's not suing for any of that in his complaint.

MR. SKONING: It's our contention that what he says in his complaint is not the important factor.

QUESTION: Well, then you simply reject the doctrines of this Court that the plaintiff is master of his own complaint.

MR. SKONING: No, we don't reject that. We

suggest that the doctrine of the well-pleaded complaint, and the doctrine that the plaintiff is the master of his complaint has less validity within the scope of 301 cases such as this.

QUESTION: You're arguing that -- you're arguing, I take it, that the -- after they returned to the bargaining unit, there was a new contract negotiated.

And your argument is that -- that their rights that they may have acquired when they were supervisory employees are just merged into the collective bargaining contract; is that it?

MR. SKONING: That's not our contention -- in this case, that is our contention. That's not our contention generally that all --

QUESTION: Well, I know. You say in this case, though, that the rights they obtained as supervisory are governed by a collective bargaining contract executed after they became members of the bargaining unit?

MR. SKONING: That's correct, Justice White. The contention is that these are private consensual agreements that they are relying on, the independent contracts that they rely on.

And as private consensual agreements, they can

be negotiated. Contrary to respondent's contention that somehow you look at these -- these agreements in a vacuum, these --

QUESTION: Well, it does involve a judgment here before this 301 preemption and removability, there does have to be some judgment as to whether or not these claims are independent of the collective bargaining contract or sufficiently involved in it that there is preemption.

MR. SKONING: That is correct, Justice White.

QUESTION: Then that's --

MR. SKONING: That's the judgment that we submit the district court properly made on the basis of the complaint, and the collective bargaining agreement.

QUESTION: It's purely a defensive matter, of course. Your defense to the -- to the individual contract claim is that all of this merged into the collective bargaining agreement, and that is indeed a Federal question.

But I thought our doctrine was quite clear that the mere fact that you have a Federal defense doesn't make the case removable.

Now can you conceive of any situation in which there would be a Section 301 preemption defense in which the suit would not be removable?

If this one is, why is a suit not always removable whenever there is a Section 301 defense?

MR. SKONING: Our contention is that if the respndents, if the plaintiffs in a case brought in state court are covered under the terms and provisions of the collective bargaining agreement, and their claims do not assert nonwaivable state rights -- nonwaivable state rights, as opposed to the private consensual agreements that we have here -- that that case is removable as a matter of law under Section 301 in this Court's decisions.

And it doesn't turn -- this Court in the Taylor case -- respondents have argued that it depends on the clarity of the issue of 301 preemption.

QUESTION: Excuse me, before you go on.

MR. SKONING: Yes, sir?

QUESTION: Their claim does not depend on 301 at all. They are claiming that they have a state ground that's quite separate from 301. It's your defense that hangs on 301.

MR. SKONING: Our -- our position is that 301 governs this case, and therefore --

QUESTION: Well, you may be right, but that's a defense. They're coming in saying, I have a state cause of action. You're saying, no you don't; it's

been preempted by 301.

MR. SKONING: This Court has said that under Section 301 preemption is complete.

QUESTION: You may be right. But it's still a defense, and it's not their cause of action.

MR. SKONING: They have specifically alleged the facts that these respondents were in the bargaining unit at the time they were laid off.

And their contention is that the layoff was improper as a result of the promises that they had before they returned to the collective bargaining agreement -- to coverage under the collective bargaining agreement.

It's our contention that the question of whether it is clearly pleaded in the plaintiffs' complaint or not clearly pleaded in the plaintiffs' complaint is really entirely irrelevant.

QUESTION: Even if they had said in their complaint, we expressly disavow any Federal cause of action. We are simply suing for -- on these state grounds. There are no Federal grounds in this complaint.

MR. SKONING: They have attempted to say just that in this complaint. They have stated in their complaint that these promises were continually and repeatedly made to plaintiffs while they were management

and weekly salaried employees, and thereby constituted a total agreement, wholly independent of the collective bargaining agreement pertaining to the hourly employees.

It's our contention as I said earlier --

QUESTION: You can't bring the state cause of action. You're just not able to.

MR. SKONING: That you cannot bring it as a state cause of action because these employees were in the bargaining unit; they'd been in the bargaining unit for years; and the bargaining unit expressly covered the matters that they contend were covered independent of the collective bargaining agreement.

QUESTION: Would you make the same argument if they were alleging that the side agreement that was made when they were in management capacity specified that at the time of termination that each of you would receive 500 share of stock, something that would normally not be part of the collective bargaining agreement, and that's all they allege.

And then you had the same collective bargaining agreement and the rest. You say that would also be merged into the --

MR. SKONING: Needless to say, that's not a situation covered by this agreement.

QUESTION: What's the difference, really?

They claim that they had an independent promise, independent agreement.

Is it the nature of what they were promised that makes a difference?

MR. SKONING: I think to the extent the collective bargaining agreement rights and remedies afforded to the plaintiffs are intertwined with the stock issue --

QUESTION: They get something. The collective bargaining agreement gives them something at the time of termination, but they say it's not what they were independently promised.

Why can't they make a side agreement like that when they're in a management capacity?

MR. SKONING: That's a matter that is covered under Federal law, and that is complete preemption under --

QUESTION: You'd say that the stock option agreement would be preempted under Federal law, too?

MR. SKONING: The stock option agreement --

QUESTION: I don't mean stock option; stock promise to give 500 shares when he retired. They just can't do that through a management person and make it binding if the management person later joins a bargaining unit, is your position, as I understand it.

MR. SKONING: Obviously, the answer to that question isn't dispositive in this case.

QUESTION: I think it is.

MR. SKONING: Trying to answer the question directly, it's our position that if that agreement to give them stock at the time of plant shutdown --

QUESTION: Time of severance, right.

MR. SKONING: -- were in some manner intertwined with the provisions of the collective bargaining agreement, it would be preempted under Section 301.

QUESTION: In other words, if the collective bargaining agreement says, this supersedes all side agreements of every kind?

MR. SKONING: If there were language of that sort, of if there were other --

QUESTION: Well, what if there's language in the agreement that says, this does not supersede any side agreements? Then it clearly wouldn't, would it?

MR. SKONING: If they had bargained over and expressly excluded that matter, expressly excluded it under the Court's decision in AT&T, then I think that would be actionable in state courts.

QUESTION: How do we decide this?

QUESTION: Why -- why would the collective

bargaining agent be bargaining about issues they probably didn't even know about? And especially when the breach, if a breach occurred at all, it seems to me is when they were returned to the bargaining unit as nonsalaried employees when they had been promised permanent employment, they claim, as salaried employees?

Why would that be implicated -- why is it even arguably implicated in the collective bargaining agreement?

MR. SKONING: Justice White, the crucial fact is that these suits -- this suit was brought well after the time they returned to the collective bargaining agreement.

And on this record, I'll concede, we don't know what was bargained across the bargaining table in 1983, because that's a matter --

QUESTION: Well, I think we judge the case on the ground that the promise really was made. They were promised permanent employment as salaried employees.

MR. SKONING: And Justice White --

QUESTION: Let's just accept that.

MR. SKONING: I accept that.

QUESTION: And you say -- and I suppose then that when they were returned to the bargaining unit, and -- the breach occurred then.

MR. SKONING: We don't contend that those promises are no longer valid. Our contention is that those promises must be reconciled with the express provisions of the collective bargaining agreement and the side letters of agreement which dealt with plant shutdown.

Because those contractual terms deal -- deal precisely with the same issues that they allege their independent value.

QUESTION: Well, then you're saying that they haven't pleaded the full contract that's in existence between the parties?

MR. SKONING: Well, that in fact is the case.

QUESTION: But that isn't something that you --- that you can raise to remove a case. That's clearly a matter of defense. You set forth the contract you think is in existence. The defendant comes in and says, well, no, that's not the contract; there were a lot of other things here.

But that's a matter of defense, which isn't considerable on removal.

MR. SKONING: Our contention is that the issues raised in a 301 removal situation are, whether or not those plaintiffs were covered under the terms of a collective bargaining agreement, first of all.

And secondly, whether or not those claims asserted by those plaintiffs were private consensual agreements, or whether they were under the provisions of this Court's decisions in Lueck, nonwaivable state rights.

QUESTION: But how do we know that on the face of it? I mean, what we're talking about here is the well-pleaded complaint doctrine.

What troubles me about your response to Justice Stevens, is that you really -- we really can't tell until the trial proceeds or there's something further than the complaint at least, whether or not the stock agreement was superseded by the bargaining agreement; whether the bargaining agreement had terms; or if the terms weren't expressed, whether it was understood that it would supersede everything.

In many cases, you have to get into the trial to figure out that. And you have to determine removal on the basis of the complaint.

How can we tell on the basis of the complaint whether these factors are met or not?

MR. SKONING: Justice Scalia, I think that this Court's decision in the Taylor case really bears directly on the question that you've raised.

The Court there dealt with preemption under

ERISA, of course. But under ERISA, the ERISA provisions were closely tailored to the complete preemption notion of preemption announced in 301.

The Court said, the touchstone of a Federal district court's removal jurisdiction is not the obviousness of the preemption defense, but the intent of Congress.

We must honor that intent, whether preemption was obvious or not, at the time this suit was filed. So the contention made by respondents that this Court may look nowhere beyond the face of its complaint, in a 301 context, we submit, is not a proper construction of this Court's decision.

I'd like to reserve the balance of my time.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Skoning.

We'll hear now from you, Mr. Wollett.

ORAL ARGUMENT OF FRITZ WOLLETT, ESQ.,

ON BEHALF OF THE RESPONDENTS

MR. WOLLETT: Mr. Chief Justice and may it please the Court:

I wanted to respond to Justice Blackmun's question at the start of the questioning of the Petitioners' attorney. The answer to the question as to how long the Respondents were employed in management positions or positions outside the bargaining unit is set forth in note 3 of Respondents' brief, and that is varying periods of time ranging from three to 15 years.

QUESTION: Is that in the record?

MR. WOLLETT: That is in the record, yes, Your Honor.

The issue in this case is whether Respondents' claims, which are based solely on contracts entered into by the parties while the Respondents were employed in positions outside the collective bargaining unit, are removable under the doctrine of complete preemption, solely because after the Respondents entered into these contracts of employment they were downgraded into positions covered by the collective bargaining unit.

This case is not about the merits of any substantive preemption defense, but it is about the form in which those questions should be decided. This is not

a case which raises a question of whether we are right or wrong in our view that our claims are not preempted by federal labor law, but rather a basic question as to whether or not this complaint is removable.

Our contention is that the unusual facts of the well-pleaded complaint in this case do not fall within the doctrine of complete preemption, because the cause of action we have alleged is not covered by section 301 and the collective bargaining agreement and the cause of action that we are claiming does not require the resolution of any question of federal law.

The facts in this case, which have alread been discussed, show that our contract claims were entered into while the Respondents were solely -- were employed solely in positions outside the collective bargaining unit, and that thereafter they were downgraded into the bargaining unit and then terminated.

However, one of the plaintiffs, Fred Chambers, was -- let me start again.

The complaint was removed to the federal court after -- we sued in state court alleging a violation of the contract claims which were entered into while my clients were outside the bargaining unit. The case was removed to federal court.

It was thereafter dismissed on the grounds

that it was preempted by section 301. The claims of one of the plaintiffs, Fred Chambers, were remanded to state court. The reason that his claims were remanded, unlike the claims of any of the other Respondents who are here today, was that Mr. Chambers never was downgraded into a collective bargaining unit position after he entered into the same contracts that the Respondents here today allegedly entered into.

We believe that the test for removability in this case should be determined by looking to the source or the basis of the rights which have been claimed to be violated. In the Avco case, the source of the alleged state cause of action was a no-strike provision in a collective bargaining agreement.

In the Lueck case, the source of the preemption defense in the finding that section 301 preempted that state action was a collective bargaining provision providing for the payment of disability benefits.

In the Taylor case, the source of the contract right was a federally covered ERISA plan.

QUESTION: Mr. Wollett, do you defend the Ninth Circuit's view or test of removability as being kind of a two-step inquiry, and you look to see whether there is a federal remedy which supplants?

MR. WOLLETT: No, Your Honor, we specifically stated in footnote 13 of our brief that we did not believe the Court would have to adopt that test in order to affirm this result. We do not defend that portion of the Ninth Circuit's opinion, which seems to suggest that removal should rely on the question of whether a remedy is available.

We do believe that the Ninth Circuit's decision is defensible insofar as it bases its test of removability on the question of whether or not the plaintiff's claims fall within a federal cause of action. And our position is, of course, that there is no federal cause of action into which the plaintiffs' claims fall here.

QUESTION: What if there had been no attempt to remove, but the company had just moved to dismiss the case in the state court on the same ground that it moved to dismiss in the federal court, saying that this is governed by the collective bargaining contract, or at least it's arguably covered by it, and it should be decided by an arbitrator, and you really haven't satisfied the time requirements?

What would have been your response?

MR. WOLLETT: Well, our response would be that our claims were based upon contracts which were outside

the bargaining agreement and therefore --

QUESTION: Well, but would you concede that if your contract arguably was covered by the bargaining agreement, that your claim was arguably covered by the bargaining agreement, that it should be decided by the arbitrator, whose job it is to construe a contract?

MR. WOLLETT: We would only make that concession, Justice White, if two facts were present: number one, an agreement by both the parties to the original contract, the employer and the employes, that the original contract could be merged into the collective bargaining agreement; and secondly, an agreement by the union, as the party to the collective bargaining agreement, that the contracts should be merged into the collective bargaining agreement.

Absent that evidence, we would not agree with that, no, Your Honor.

QUESTION: Well, so your answer to my question is no, is plain no.

MR. WOLLETT: That is correct, Your Honor.

QUESTION: You sort of say that the court itself should construe the contract, should construe the collective bargaining contract?

MR. WOLLETT: Are you talking about the state court, Your Honor?

QUESTION: In the state court in my example, because if the state court construed the contract to cover this kind of a claim, you would be out of court.

MR. WOLLETT: I think the state --

QUESTION: Because then it would be completely governed by federal law, and the provisions of the contract would be enforced in accordance with its terms.

MR. WOLLETT: Certainly, Justice White, I think that the state court would have the obligation, if the federal preemption defense was raised in the state court, to examine that defense.

QUESTION: Not federal preemption. It just says that, say -- well, they would make the claim that this is governed by federal law, and they say the collective bargaining contract governs this claim. And if the state court agreed with them, you would be out of court, I suppose.

MR. WOLLETT: I would agree with that, Justice White. I still think it's all defensive, but I agree that a state court would have the right to make that judgment.

QUESTION: All right.

MR. WOLLETT: In support of its argument that section 301 accomplishes complete preemption,

Caterpillar rejects the applicability of what it characterizes as national Labor Relations Act defensive preemption. That is irrelevant, Caterpillar says, in complete preemption cases arising under section 301.

However, the principle Caterpillar relies upon to establish the preemptive impact of section 301 is derived from a case involving National Labor Relations Act preemption, the J.I. Case case. Petitioners argue that J.I. Case means that whether the employees antecedently created contracts of employment survived the subsequently negotiated collective bargaining agreements or were surperseded and extinguished thereby is a question of federal law.

Petitioners are right. This is a question of federal law. But the principle of exclusivity and the primacy of the collective bargaining agreement derive not from section 301 and not from the collective bargaining agreement itself, but rather from the National Labor Relations Act.

As the AFL-CIO's amicus brief points out, the substantive rule upon which Petitioners rely for their argument that the state cause of action has been eradicated, like any other federal labor law preemption defense, is derived from the National Labor Relations Act.

And thus, in response to a question that Justice O'Connor asked earlier, we believe that if a federal preemption defense based upon labor law is applicable at all to this case, it is a Garmon balancing test, it is not a section 301 test.

Not only is the question of federal preemption clearly defensive, it is a question for courts, not for arbitrators. Arbitrators deal with questions of interpretation and application of provisions in collective bargaining agreements where claim is made that the collective bargaining agreement has been violated. Arbitrators do not deal with defenses raised by defendants in response to claims being made of violation of some other kind of agreement.

QUESTION: Well, the argument is here that the collective bargaining agreement did cover this kind of a claim, even a claim that a promise to a supervisory employee had been breached.

MR. WOLLETT: That is the argument, Your Honor.

QUESTION: Well, that's an argument about the meaning and reach of the collective bargaining contract.

MR. WOLLETT: It is that, Your Honor, but I believe it's a defensive argument. The question of the

impact of the collective bargaining agreement upon the individual contracts of employment can only be a defensive claim.

The only way that this cause of action is removable is if it falls within the complete doctrine of -- complete preemption doctrine of section 301. That can only occur if our claims are based upon the collective bargaining agreement.

QUESTION: Well, it can only occur if it's plain enough that it does.

MR. WOLLETT: If it's plain enough or there is some basis for the court to characterize our claims as falling within the scope of the collective bargaining agreement.

Caterpillar urges the Court to hold that arising under jurisdiction exists because the individual contracts in question were automatically merged into and superseded by the bargaining agreement. Petitioners' unique and unprecedented request should be rejected for two reasons:

First of all, it is defensive;

And secondly, it is far from clear that any merger of the individual contracts into the collective bargaining agreement actually occurred.

For literally a full century, this Court,

consistent with the express intent of Congress, has held that claims of federal preemption raised in a defensive manner do not provide removal jurisdiction. As illustrated before, the situation with Fred Chambers, the plaintiff who was not in the bargaining unit at the time he was terminated, he was permitted to take his case back to the state court.

The remaining Respondents were dismissed. The only difference between Chambers and the remaining Respondents is the collective bargaining agreement. Thus, the collective bargaining agreement is defensive.

In addition to the defensive nature of the Petitioners' preemption claim, it is of course far from clear that the Respondents' claims are preempted. We know of no proposition of federal law that requires merger per se of the individual contracts with the collective bargaining agreement, unless there can be a showing that the parties to the first contract, the employee and the employer, agreed to such a merger and that the collective bargaining agent for the employees, the union, agreed to that merger.

This Court specifically acknowledged in J.I. Case the possibility that individual contracts of employment could coexist simultaneously with a collective bargaining agreement. Moreover, J.I. Case

specifically stated that any discontinuance of the individual contracts as a result of a collective bargaining agreement was without prejudice to the right of any employee to pursue damages under that contract or any defense by the employer thereto.

We believe also, as previously noted, that the Belknap case supports our notion that, if this case -- if preemption is involved at all in this case, it is defensive preemption.

In that particular case, collective bargaining -- employees were hired during a strike and were allegedly promised permanent employment. The strike was settled and those employees were terminated. The settlement, the provisions of the collective bargained strike settlement, required the employer to rehire the strikers. Pursuant to that, the employer laid off the employees hired during the strike.

This Court held on the merits of the preemption claim in that case that the claims were not preempted, even though the collective bargaining agreement required the reinstatement of the strikers to collective bargaining unit positions which had previously been occupied by the strikers.

How, given the Belknap decision on the merits of the preemption claim, can Petitioners seriously

contend that this case is removable under the doctrine of complete preemption?

Finally, application of the well-pleaded complaint rule will permit the state court to take evidence on the question of the preemption defense and to determine what, if any, impact the collective bargaining agreement had on the individual preexisting contracts of employment which are alleged to exist by our complaint.

Allowing this case to be remanded to the state court will permit the case to possibly be resolved without reference to any federal defense.

The result that Petitioners seek here is essentially a ruling that any time an employee is in a collective bargaining unit covered by a collective bargaining agreement his claims are preempted, regardless if he attempts to allege a claim under state law and regardless of the source of those claims.

That argument would take the scope of section 301 and its preemptive impact far beyond the scope of the National Labor Relations Act.

QUESTION: I don't think they argue quite that broadly, do they? Don't they say that, in view of the fact that the alleged state law contracts dealt with the same subject matter as the collective bargaining

agreement, namely what happens on severance and whether you have a right to stay on?

I don't think they would say if you had rented a house from them or something like that during the collective bargaining agreement, that that would be preempted.

MR. WOLLETT: I didn't hear the last?

QUESTION: I just thought you stated their position much more broadly than they did. That's all I was suggesting.

MR. WOLLETT: Okay. Well, that's fair. I think that they are looking for a very broad result from the complete preemption doctrine.

My point is merely, Justice Stevens, that that would take -- the result they seek would take the notion of preemption under section 301 far beyond preemption that's found in the underlying statute, the National Labor Relations Act. Surely Congress did not intend such a result.

Unless there are questions, Mr. Chief Justice, I have completed my argument. Thank you.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Wollett.

Mr. Skoning, you have five minutes remaining.

REBUTTAL ARGUMENT OF

GERALD D. SKONING, ESQ.

ON BEHALF OF PETITIONERS

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

First of all, I would like to deal with the Respondents' argument that Garmon Machinists and Belknap balancing type of preemption governs this case. I think this Court's decision in the Lueck case, the unanimous decision in that case, has rejected the use of balancing preemption in the context of a case arising under section 301.

The Court stated: "The balancing of federal and state interests required by Garmon preemption is irrelevant, since Congress, acting within its power under the commerce clause, has provided that federal law must prevail."

And it's our contention that that is precisely the scope of the district court's examination of the case upon removal to federal court: Does it fall within the scope of section 301.

Finally, national labor policy is founded on the Congressional mandate that claims relating to collective bargaining agreements are to be resolved under uniform principles of federal law. Respondents urge this Court to retreat from those principles and allow plaintiffs to define the scope of 301 and state

courts, based on their own notions of the importance of state interests --

QUESTION: Not necessarily. All we're arguing about at this stage is where these questions are going to be decided, not how they're going to be decided, but simply whether the state court will get the first shot at it.

MR. SKONING: That's correct. But in any event, their contention is that the state court would then balance the interests, the state interest against the federal interest.

And under the circumstances we have before this Court, it's our contention that that's a proper role for the federal court to decide. Why? Because the Petitioner here --

QUESTION: That's always the case where you have a federal defense. You always have the state court passing on a question which it is appropriate for a federal court to decide.

MR. SKONING: That's correct. And we don't contend that the state court does not have the power to evaluate those federal issues. Our contention is in fact that there is concurrent jurisdiction between the state and the federal courts under 301, and the fact of concurrent jurisdiction reveals that it is a federal

claim in nature under 301. It is recharacterized as a 301 claim and therefore properly removed to federal court under the circumstances of this case.

Such a retreat, we submit, would generate conflicting results in interpreting collective bargaining agreements based on the variety of state laws of implied contract, covenants of good faith and fair dealing, employment at will, and the like.

Conflicts such as these are inconsistent with our basic labor law principles. We urge this Court to reconfirm these basic principles and reverse the judgment of the Ninth Circuit.

Thank you.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Skoning.

The case is submitted.

(Whereupon, at 11:00 a.m., the above-entitled case was submitted.)

CERTIFICATION

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

#86-526 - CATERPILLAR, INC., ET AL., Petitioners V.

CECIL WILLIAMS, ET AL.

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

BY Paul A. Richardson

(REPORTER)