SUPREME COURT OF THE UNITED STATES

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In the Matter of:

PAUL G. LANDERS,

Petitioners

v.

NATIONAL RAILROAD PASSENGER CORPORATION, ET AL.

No. 86-2037

PAGES: 1 through 29

PLACE: Washington, D.C.

DATE: March 29, 1988

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 PAUL G. LANDERS, :

4 Petitioner, :

5 V. : No. 86-2037

6 NATIONAL RAILROAD PASSENGER :

7 CORPORATION, ET AL. :

8 --x

9 Washington, D.C.

10 Tuesday, March 29, 1988

11 The above-entitled matter came on for oral argument

12 before the Supreme Court of the United States at 10:00 a.m.

13 APPEARANCES:

14 CLINTON J. MILLER, III, ESQUIRE, Cleveland, Ohio;

15 on behalf of the Petitioner.

16 HAROLD A. ROSS, ESQUIRE, Cleveland, Ohio;

17 on behalf of the Respondents.

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1 C O N T E N T S

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

2 (10:00 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument first

4 this morning in No. 86-2037, Paul G. Landers versus National

5 Railroad Passenger Corporation.

6 Mr. Miller, you may proceed whenever you're ready.

7 ORAL ARGUMENT OF CLINTON J. MILLER, III, ESQUIRE

8 ON BEHALF OF THE PETITIONER

9 MR. MILLER: Mr. Chief Justice, and may it please the

10 Court.

11 This case involves a subsection in the Union Shop

12 provision in the Railway Labor Act, Section 2 Eleventh (c)

13 passed in 1951 which differs significantly from that in the

14 Labor Management Relations Act as it relates to operating

15 employees only on this nation's railroads comprised of

16 engineers, firemen and hostlers, conductors and trainmen.

17 On its fact, Section 2 Eleventh (c) permits

18 satisfaction of a negotiated union shop agreement with one of

19 the two remaining operating craft unions by membership in the

20 other, the minority union. The two provisos in Section 2

21 Eleventh (c) make the alternate membership choice peculiar to

22 railroad operating employees clear beyond doubt.

23 The provide that an employee not belonging to any

24 union on the effective date of a union shop obligation covering

25 operating employees may be required to belong to the union

1 representing the craft or class, but such an employee in the
2 second proviso or any employee in the operating crafts has the
3 unfettered right to change affiliations to a qualified
4 organization. There are only two left: the Brotherhood of
5 Locomotive Engineers; and, the United Transportation Union.
6 No agreement can change these statutory rights.
7 The petitioner here was an engineer on Amtrak in
8 February 1984, after having been an engineer on the
9 Consolidated Rail Corporation and its predecessor for many
10 years. The Brotherhood of Locomotive Engineers is the
11 certified representative for engineers on Amtrak. But the
12 petitioner belonged to the United Transportation Union and in
13 fact was a local officer, and continues to be, of the United
14 Transportation Union.
15 He performed passenger engineer service for Conrail
16 and its predecessors under an operating agreement with Amtrak
17 until 1981 when the Northeast Rail Service Act mandated direct
18 operation by Amtrak, and Amtrak commenced that direct operation
19 January 1, 1983, as mandated by the Northeast Rail Service Act
20 which does provide in an agreement negotiated pursuant to that
21 Act for flow back rights to Conrail.
22 In February, 1984, while working as a passenger
23 engineer on Amtrak, Mr. Landers was noticed for an
24 investigation on the property of Amtrak relative to his
25 violation, an alleged violation of an operating rule.

1 According to what had been his experience, particularly on
2 Conrail, and while working for Conrail providing Amtrak
3 Service, petitioner asked for UTU representative to be present.
4 His request was denied by the carrier, Amtrak, because the
5 Brotherhood of Locomotive Engineers, Amtrak's collective
6 bargaining agreement had an exclusive representation clause
7 with regard to on-property investigations and with regard to
8 the handling of time and grievance claims on the property.
9 Whereupon, he filed this action seeking temporary,
10 preliminary and permanent injunctive relief, as well as
11 declaratory relief. And he sought that relief from the
12 qualification on his right to have his representative, the
13 union of membership present at the most critical moment during
14 employment, an investigation on the property leading to
15 discipline.
16 During the pendency of this case, an investigation
17 was held, a suspension was issued, it has been served, and the
18 petitioner is now back to work. After a bench trial on
19 essentially undisputed facts in the District Court, the
20 District Court rejected the jurisdictional challenges of the
21 respondents, finding that the issue was one of statutory
22 construction on the permissibility of an agreement provision.
23 But it entered judgment for the respondents finding
24 that the right to alternate membership, which it did not
25 dispute, and the legitimate interest in representation by the

1 Union of Membership in a disciplinary investigation were
2 subservient to the exclusivity representation principles in the
3 balance of the Railway Labor Act.
4 On rebut, the First Circuit Affirmed, borrowing
5 heavily from what it referred to as the analogous precincts of
6 the LMRA. Although it recognized the absolute right to
7 alternate membership and the legitimate interest of an employee
8 in having the union of membership be present at a disciplinary
9 hearing, it decided that on the basis of exclusivity principles
10 in the Railway Labor Act itself, and flowing over from the
11 National Labor Relations Act, that this right could be reduced
12 to an absurdity that petitioner asked this Court to correct.
13 Before the decision below, the Circuit Court
14 precedent on this issue was uniform in both the Seventh Circuit
15 in the McElroy case and the Fifth Circuit in the recently
16 decided Taylor case decided that Section 2 Eleventh (c) of the
17 Railway Labor Act was key to a resolution of this issue. Both
18 recognized that a determination that one was entitled to
19 alternate membership only without having the assistance of the
20 union of choice at a disciplinary investigation or to handle a
21 time and grievance claim was a naked legal right unaccompanied
22 by any of the ordinary material benefits of membership. In
23 fact, the Taylor court stated that it reduced the statutorily
24 protected right to alternate membership to that of membership
25 in a mere social club.

1 QUESTION: Well, Mr. Miller, Section 153 First (j)
2 provides that in proceedings before the Railroad Adjustment
3 Board, you will have counsel of your choice, doesn't it, or
4 union of your choice?
5 MR. MILLER: That is correct, Mr. Chief Justice.
6 QUESTION: So that the alternate representation
7 certainly means something there.
8 MR. MILLER: That is correct, Mr. Chief Justice.
9 However, I would hasten to add that subsection 3
10 First (j) is applicable to all unions, non-operating crafts as
11 well as operating crafts, which this Court was at pains to
12 point out in Pennsylvania Railroad against Rychlik. This
13 alternate membership provision has no applicability whatever to
14 virtually 70 percent of railroad employees. It only covers
15 operating crafts. Three first (j) is applicable across craft
16 lines.
17 QUESTION: But it does mean, doesn't it, that the
18 right to be represented by the union of your choice is
19 effective at that level?
20 MR. MILLER: Yes, Your Honor.
21 QUESTION: So it's not just a social club.
22 MR. MILLER: That is correct to an extent. However,
23 the record in railroad proceedings leading to discipline, as
24 this Court knows, is fixed by the investigation on the
25 property. The record cannot be changed.

1 Arbitration under Section 3 of the Act, mandatory
2 arbitration, cannot change that existing record. It is
3 basically a de novo review of the record made on the property
4 of the carrier, and in that respect is materially different
5 from arbitration under the NLRA.
6 I would also like to point out that 3 First (j)
7 grants an unqualified right to any representative of choice.
8 Counsel may be present at that point at the NRAB. And while it
9 is true that the union of membership may take over at that
10 point, so many any representative. And that does not give
11 effect to the plain meaning of the later enacted provision,
12 subsection 2 Eleventh (c) because it provides that one may
13 satisfy union shop obligation by being a member and have the
14 assistance of that member in making the record that will serve
15 as the basis for any further proceedings with regard to
16 discipline or a time or grievance claim.
17 QUESTION: Counsel, in the Adjustment Board Hearing,
18 is the employee entitled to introduce new evidence at any time,
19 or is he always confined to the record below?
20 MR. MILLER: Justice Kennedy, the general rule is
21 often stated that one may not raise anything in arbitration
22 that has not been dealt with on the property, that has not been
23 raised on the property.
24 QUESTION: Well, are there ever hearings in which the
25 employee is allowed to introduce evidence at the Adjustment

1 Board level?

2 MR. MILLER: Not that I'm aware of, Justice Kennedy.

3 He is allowed to appear and plead his case but the

4 record is made by the handling on the property.

5 The Court below also made much of the fact that there

6 is no so-called shuttling between a fireman craft and an

7 engineer craft on Amtrak as a new employer. Because in the

8 corridor operation from which these facts arise, there were no

9 firemen. However, the presence of shuttling would be equally

10 applicable to any analysis as to whether alternate membership

11 was permitted.

12 And the Court below did not dispute at all, and in

13 fact held consistent with virtually uniform precedent that the

14 petitioner in this case did have a right to alternate

15 membership. The absence of presence of shuttling is not

16 contained anywhere in section 2 Eleventh (c). The lower court

17 did not think it had any effect with respect to membership. It

18 should not have any effect with respect to the assistance of

19 the union of membership in an on-the-property investigation.

20 Three decisions from this Court are a key to the

21 resolution of the issue present here. The first case is

22 Pennsylvania R.R. v. Rychlik where this Court limited the

23 applicability of the alternate membership choice to those

24 unions having qualified electors on the first division of the

25 National Railroad Adjustment Board in accordance with Section 3

1 First (h) of the Act. That qualification did not appear
2 plainly on the face of the Statute but as this Court noted, it
3 was the established unions which drafted the language into
4 Eleventh (c). Moreover, the purpose of the passage of the
5 Statute was not to open up the field to brand new unions such
6 as existed in the Rychlik case.
7 QUESTION: Mr. Miller, I wonder whether the Court in
8 the Pennsylvania Railroad case didn't take a much more limited
9 view of Section 2 Eleventh (c) than you are advocating here. I
10 thought the Court said it had a very narrow and limited
11 purpose?
12 MR. MILLER: Justice O'Connor, I would agree that
13 there was much discussion about the limited purpose to
14 eliminate the problem of free riders, but I would point out
15 that the issue that was in front of the Court was itself a very
16 limited one at that time. The only holding in the case was
17 that UROC, the brand new union, was not a union that was
18 qualified to be available for alternate membership.
19 QUESTION: Well, it strikes me that you're asking for
20 a much broader interpretation of that section than I thought
21 the Court had given it.
22 MR. MILLER: Justice O'Connor, I guess all I can say
23 in response is that I don't believe that the Court was required
24 to go as far as we are seeking here because of the limited
25 issue that was involved. But I do think that --

1 QUESTION: Well, do you think that Section 3 First
2 would possibly take precedence here in telling us what to do on
3 these specific grievances?
4 MR. MILLER: No, Justice O'Connor, I don't, because I
5 believe you're referring to 3 First (i), the usual manner
6 handling which was passed in 1934. The point here is that we
7 have a very specific statute with very plain language with
8 regard to membership which is the later enactment which is
9 specifically keyed to a problem existing only among operating
10 employees.
11 For that reason, I do not believe that Section 3
12 First (i) could be construed to be an absolute bar to the later
13 enactment of Section 2 Eleventh (c). And in that regard, the
14 usual manner that is referred to and is usually under the
15 control of the carrier and the organizations on the property
16 must be modified by the plain meaning of the membership
17 provisions and the alternate membership provisions of
18 subsection 2 Eleventh (c) if it's to have any real meaning.
19 This Court has before and two years after the Rychlik
20 case invalidated other provisions in collective bargaining
21 agreements which inhibited another right under subsection 2
22 Eleventh (b). That right was the right to revoke a dues
23 checkoff assignment for the benefit of the organization with
24 the carrier. The facts of the case were such that the union
25 holding the agreement, so to speak, the representative, the

1 Brotherhood of Railroad Trainmen, in its collective bargaining
2 agreement with the carrier required that the employee use the
3 union's form only to make the revocation.
4 This Court found no support in either the plain
5 meaning of the statute itself or in the legislative history to
6 support such a view, and therefore invalidated that provision.
7 And I might note that in so invalidating that
8 provision, this Court in Felter specifically recognized that
9 one of the reasons an employee may revoke was to give effect to
10 the second proviso of subsection 2 Eleventh (c) which was left
11 open for solicitation by the remaining two rival unions.
12 The third case from this Court that is important to
13 resolution of the issue in this case is the Elgin, J.& E. Ry.
14 v. Burley case where this Court decided that individual rights
15 under the Railway Labor Act are materially different than they
16 are under the National Labor Relations Act. The union does not
17 control arbitration. Arbitration under the Railway Labor Act
18 is statutory. And an individual does not have to go to the
19 union to exercise his or her right to that arbitration under
20 the Act. And any qualification on that right by means of a
21 settlement between the union and the carrier without the
22 knowledge or consent of the railroad employee was nullified by
23 this Court's decision on the Burley case.
24 In that respect, we would submit that the statutory
25 right to alternate membership under subsection 2 Eleventh (c)

1 cannot be nullified by reducing the right that these operating
2 employees have to an absurdity or to mere membership in a
3 social club, or relegating them to the same rights that all
4 railroad employees have when the Statute is so specific with
5 regard to the rights to alternate membership.
6 In this regard, this Court has before recognized that
7 great care must be taken to import principles under the LMRA
8 over into the Railway Labor Act arena. And we would submit
9 that that is certainly true in this case. This is a very
10 specific right to alternate membership key to a narrow class of
11 operating employees on the railroad. It quite clearly gives
12 them the right to alternate membership. That cannot be
13 qualified by requiring the union not of their choice to handle
14 the claims on the property.
15 The LMRA cases cited by the respondents, those
16 arising before the effective date of subsection 2 Eleventh (c),
17 those not dealing with subsection 2 Eleventh (c) because they
18 deal with nonoperating employees are totally inapplicable to a
19 resolution in this case.
20 What we are dealing with here is a right to alternate
21 membership plain on the face of the statute and with nothing in
22 the legislative history to suggest otherwise. This case is
23 truly devoid of the mischief that is claimed will be worked by
24 the respondents. The petitioner here did exactly what he had
25 done for years while performing service on Conrail. And that

1 carrier was recently successfully sold by the government and no
2 peculiar labor relations problems occurred on that property.
3 If there is to be the full exclusivity that is
4 present in the LMRA and with regard to non-operating employees
5 to be applied in this case, we would submit that that is for
6 the Congress to decide. It is a policy matter.
7 There was no dispute even by the court below that the
8 petitioner in this case had an absolute right to alternate
9 membership. And although the court below recognized his
10 legitimate interest in having his own union establish the
11 record at the most critical moment of employment leading to
12 discipline on the property, it effectively overrode that
13 legitimate interest by applying exclusivity principles from an
14 Act in this case clearly not an analogous.
15 I reserve the remainder of my time for rebuttal.
16 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Miller.
17 We'll hear now from you, Mr. Ross.
18 ORAL ARGUMENT OF HAROLD A. ROSS, ESQUIRE
19 ON BEHALF OF THE RESPONDENTS
20 MR. ROSS: Mr. Chief Justice, and may it please the
21 Court.
22 The respondents, Amtrak and the Brotherhood of
23 Locomotive Engineers cannot agree with the petitioner's
24 position that one may weave out of the fabric of the alternate
25 union membership provisions in Section 2 Eleventh a suit that

1 treats with grievance handling by a rival union.

2 It is generally accepted that management and labor
3 enjoy a wide freedom to develop their own collective bargaining
4 relationship through the process of collective bargaining. As
5 a corollary to that freedom, they have the authority and in
6 fact the responsibility to provide a cost effective and
7 efficient method for the processing and administration of the
8 collective bargaining agreement.

9 That system in the railroad industry is well
10 developed. It is a system that is administered by laymen, not
11 lawyers. It is a system in which claims and grievances are
12 handled upon a documentary evidence, evidence which laymen
13 prepare through the exchange of letters. In the event there is
14 discipline or dismissal involved, the railroad may hold an
15 investigative hearing on the property. That hearing is
16 conducted by a lower echelon carrier official. The transcript
17 of that hearing becomes part of the documents or the record
18 before the National Railroad Adjustment Board in disposing of
19 that discipline or dismissal.

20 All parties here, including the petitioner, recognize
21 that the collective bargaining representative has the authority
22 to administer the collective bargaining agreement. They all
23 agree that the individual employee may not insist upon his
24 interpretation of the collective bargaining agreement. He can
25 only insist, under the Railway Labor Act, upon access to the

1 grievance process so that his claim can be fairly resolved.

2 This right of access to the grievant is a personal

3 one. It is a procedural right. Therefore, the parties, that's

4 the collective bargaining parties, may enter into a collective

5 bargaining provision which precludes a minority union, an

6 attorney or any other third party from handling claims and

7 grievances for the individual employee at the company level.

8 The fact that the parties can enter into such a

9 restrictive provision, however, does not mean that the

10 collective bargaining representative may act arbitrarily at the

11 company level, nor does it mean that the carrier may deny the

12 individual a full and fair hearing, or deny him consideration

13 of his grievance.

14 The former would permit an action against the union

15 for a breach of its duty of fair representation. The latter

16 would permit the arbitrator, in this case, the First Division

17 of the National Railroad Adjustment Board.

18 QUESTION: Mr. Ross, you emphasized, the company

19 level?

20 MR. ROSS: Yes, Your Honor.

21 QUESTION: What other levels are there?

22 MR. ROSS: There are two levels: the company level

23 would be where you go through the stages of handling

24 grievances. Under the National Labor Relations Act, those

25 industries for example, they bar everyone except the certified

1 bargaining representative from processing grievances at that
2 level, that is through the foreman on up to the next immediate
3 supervisor and finally with the chief operating officer who has
4 authority to handle claims and grievances.
5 If that chief operating officer denies the claim,
6 refuses to sustain the claim at that point, then the individual
7 has the right to go to arbitration. I'm talking about that
8 stage with the carrier official.
9 QUESTION: And is there any representation at any
10 other level?
11 MR. ROSS: Once it goes beyond that level, then the
12 individual, as Mr. Miller indicated, may represent himself
13 before the arbitrator, the First Division of the National
14 Railroad Adjustment Board, or he may be represented by any
15 union of his choice, or by an attorney.
16 QUESTION: Of his choice.
17 MR. ROSS: But I'm drawing the distinction here that
18 at company level proceedings, the collective bargaining agents
19 may enter into a provision which restricts access to that
20 grievance procedure to the individual himself or to the
21 certified collective bargaining representative, which in this
22 case, would be the Brotherhood of Locomotive Engineers.
23 That system is analogous to the system of grievance
24 handling under the National Labor Relations Act, except
25 contrary to what is done in other industries, the individual

1 may handle his own grievance at these beginning stages on the
2 property handling.
3 And as I was going to say, not only does the
4 individual have a right to bring an action against the union if
5 it breaches its duty of fair representation in arbitrarily
6 acting against him in these beginning stages, but in addition
7 to that, if the employer denies the individual a full and fair
8 hearing or refuses to consider a claim or grievance, the First
9 Division of the National Railroad Adjustment Board may set
10 aside the action that was taken by the carrier.
11 And we submit that there are three basic fundamental
12 premises that uphold the right of the collective bargaining
13 representatives to enter into such restricted access to the
14 grievance process.
15 The first reason is is that judicial interpretations
16 of the National Labor Relations Act, and also the Railway Labor
17 Act, do not sanction minority or rival union representation in
18 the processing of claims and grievances.
19 The second reason is, contrary to what petitioner
20 asserts, the language of the Railway Labor Act does not promote
21 minority union handling of grievances at the company level. As
22 a matter of fact, if I may make an aside here, Congress
23 specifically knew how to use language, as recognized by the
24 lower courts, when it did anticipate that an individual could
25 be represented by more than himself or by the certified

1 collective bargaining representative, when it used the specific
2 language that it did in Section 3 First (j) of the Railway
3 Labor Act.

4 Insofar as company handling, on-the-property
5 handling, it used different language and that language was, the
6 usual manner of handling up to and through the chief operating
7 officer of the railroad designated to resolve or adjust
8 grievances.

9 We submit, and this would be consistent with all the
10 cases that have been cited by the petitioner, that where you
11 have a usual manner here with a railroad that came into
12 existence with its own employees on January 1, 1983, and
13 entered into agreements with all of the unions providing for
14 exclusive handling of their grievances by the certified
15 collective bargaining representative or by the individual, that
16 that becomes the usual manner of handling on that property.

17 And therefore the Court would never have to reach the
18 other issues that have been raised in this case, although we
19 think that the First Circuit was correct when it ruled that
20 operating employees of railroads, just as employees covered by
21 the National Labor Relations Act, and also employees who are
22 considered to be non-operating employees, are no different.
23 That under those circumstances, as I indicated previously and
24 as accepted by leading scholars of the labor law, the
25 collective bargaining representatives enjoy this peculiar

1 relationship in devising a grievance procedure for on-the-
2 property handling.
3 And as a result of that, in this case, Amtrak and the
4 Brotherhood of Locomotive Engineers had a right to enter into
5 such an agreement and they did do so, and they've applied it
6 consistently. And as a matter of fact, the United
7 Transportation Union entered into similar provisions which they
8 have consistently applied in the crafts that they represent,
9 the National Railroad Passenger Corporation.
10 In addition to the specific language of the Railway
11 Labor Act which we assert does not promote minority union
12 handling of claims and grievances, we also submit that both the
13 1934 amendments to the Railway Labor Act, and also the 1951
14 Union Shop Provisions had as their sole purpose the elimination
15 of labor turmoil and the promotion of stability of industrial
16 relations in the railroad industry by the elimination of
17 competition between unions.
18 That proposition was stressed a number of times in
19 the 1934 hearings, both by the draftsman of the legislation,
20 Commissioner Eastman, Joseph Eastman, and also by the chief
21 spokesman for labor, George Harrison, who was the President of
22 the Brotherhood of Railway and Airline Clerks, and also
23 Chairman of the Railway Labor Executives Association.
24 The very purpose of the Section 2 rights and Section
25 3 process was to eliminate degrading the competition between

1 not only various unions in the industry but also company
2 unions. And it was stressed that these grievance procedures
3 and the other procedures in the Act had that as their very
4 purpose.
5 During the questioning at the hearings, both
6 Commissioner Eastman and Mr. Harris were asked questions in
7 regard to handling of grievances by more than just the
8 individual and more than the certified collective bargaining
9 representative. And both those gentlemen said that maybe we
10 should open it up, so that you could have minority unions
11 handle grievances at company level proceedings.
12 And Mr. Harrison specifically said that there is
13 certain language that could be incorporated into Section 2
14 Fourth. And some of that language has been taken out of
15 context by the Courts in McElroy and the Court in Taylor and
16 used as a basis for the decisions in those cases.
17 But if one goes back and looks at the record, the
18 Eastman-Harrison proposal which would have allowed what the
19 United Transportation Union is asking for today was rejected by
20 Congress. That language was never inserted into the Railway
21 Labor Act of 1934.
22 Then we proceed to 1951. And in the hearings on the
23 Union Shop amendments in 1951, one of the purposes was to do
24 away with the freeloader. But Mr. Harrison again spoke in
25 favor of the union shop amendments. He was like Methuselah, I

1 guess. He was around for along period of time. And he brought
2 forward a lot of amendments to the Railway Labor Act.
3 But again he stressed the fact that there should be
4 an elimination of this competition between unions. And he
5 indicated on several occasions during his testimony in response
6 to the conflict that existed between the operating employees as
7 to the application of Section 2 Eleventh (a). See, Section 2
8 Eleventh (a) would have required the individual, even though he
9 was involved in this very narrow problem that existed of
10 temporary transfers, and as Justice O'Connor's question of my
11 brother, Miller, indicated, this Court in Rychlik did state, at
12 least on three occasions, that the purpose of Section 2
13 Eleventh (c) was to handle a very narrow problem, a very
14 specific problem and that was solely for the temporary transfer
15 of firemen to engineers and back, because they would only work
16 a few days in the craft, and then they would flow back into the
17 firemen's rank, or the other way, trainmen going in as
18 conductors, and then back.
19 The idea was for that two week period, it was
20 testified to by Mr. Sea, he didn't have to change into the
21 other union. But there was no indication in any of the
22 opinions of this Court that the individual could hang out the
23 rest of his life and belong to the Brotherhood of Railroad
24 Trainmen or the Brotherhood of Locomotive Firemen and
25 Enginemen.

1 And Mr. Harrison said that in his testimony. He said
2 that on several occasions that it is expected that an
3 individual, once he is regularly assigned as a locomotive
4 engineer, will join the Brotherhood of Locomotive Engineers.
5 The United Transportation Union is now attempting to change
6 that reading of the Statute, now broadening it --
7 QUESTION: You're not asserting that that's required
8 by the Statute, are you?
9 MR. ROSS: Your Honor, I believe that that was the
10 intent of the draftsman that yes, that the Brotherhood of
11 Locomotive --
12 QUESTION: Well, that may have been what they
13 expected, but you mean that we have to read this section so
14 that if you're permanently assigned to one of the crafts, you
15 have to join the union for that?
16 MR. ROSS: For the purposes of deciding this case,
17 Justice Scalia, I don't believe that the Court has to go that
18 far. I'm saying in response to Mr. Miller's comments that I
19 believe that when one sits down and reads the legislative
20 history of the 1951 Union Shop Amendments and knows anything
21 about the railroad industry, it was never intended that that
22 language was to go beyond the temporary transfer.
23 But this Court in ruling in this case doesn't even
24 have to deal with that because Section 2 Eleventh (c) has
25 nothing to do whatsoever with grievance handling.

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1 And as I've indicated, Mr. Harrison, the chief
2 spokesman on Union Shop indicated that. As a matter of fact,
3 neither of the respondents, no one has ever cited to a
4 statement that Mr. Harrison made in the Senate Committee
5 Hearings on the Union Shop Amendments, but he stated at page 16
6 of those 1951 hearings that if the Union Shop Amendments were
7 passed, the grievance procedure will cease to be a battleground
8 for rival unions; his language, not mine.
9 And I suggest that actually that was the intent and
10 purpose of 2 Eleventh, and it had nothing whatsoever to do with
11 grievance handling.
12 Unless the Court has any questions, I think that all
13 I have to say is that the cornerstone of the Federal labor
14 policy has been majority rule. This Court as early as 1937 in
15 the Railway Labor Act case of Virginia RR v. System Federation
16 stated that a carrier had the duty to meet and treat with the
17 collective bargaining representative of the craft, and no
18 other.
19 That concept in the negotiation of agreements has
20 been extended to the enforcement of those agreements. It was
21 extended to the enforcement of those agreements in Hughes Tool
22 v. National Labor Relations Board, which has been cited with
23 approval by this Court on a number of occasions.
24 In Black-Clawson Co. v. International Ass'n of
25 Machinists, another case that seems to be cited by the Court

1 frequently, that Court went so far to accept an argument of
2 Professor Cox of Harvard Law School, and stated that the
3 collective bargaining representatives covered by the National
4 Labor Relations Act could, by collective bargaining, eliminate
5 not only a minority union handling grievances and arbitrations
6 of employees' claims under that Act, but they could go so far
7 as to eliminate an employee having the individual right to
8 confer with the employer concerning the claim or grievance.

9 There's a very complex scheme of Federal labor policy
10 that has evolved over the years. There are rights that the
11 individual employees have. I've indicated two of those rights
12 previously.

13 In addition to the two that I mentioned, the duty of
14 fair representation, and also the ability of the arbitrator to
15 set aside the carrier's failure to allow an individual a full
16 hearing, we also know that Section 2 Ninth of the Railway Labor
17 Act was inserted so that if a group of employees was
18 dissatisfied with the majority representative, they had a way
19 under the procedures before the mediation board to do away with
20 that union.

21 We also know, as this Court emphasized in several
22 cases including NLRB v. Allis Chalmers, that there have been
23 other statutory limitations or provisions for the protection of
24 individuals and among those would be the Lander and Griffin Act
25 which allows certain bill of rights to those individuals and

1 that would be applicable in this case.

2 On the basis of all of this, the respondents,

3 National Railroad Passenger Corporation and Brotherhood of

4 Locomotive Engineers would request that the Court affirm the

5 judgment of the United States Court of Appeals for the First

6 Circuit.

7 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Ross.

8 Mr. Miller, you have eleven minutes remaining.

9 ORAL ARGUMENT OF CLINTON J. MILLER, III, ESQUIRE

10 ON BEHALF OF THE PETITIONER - REBUTTAL

11 MR. MILLER: Mr. Chief Justice and may it please the

12 Court.

13 Mr. Ross continues to not give effect to Section 2

14 Eleventh (c) of the Railway Labor Act. It is not enough to say

15 what Professor Cox or other legal scholars think about

16 exclusivity principles. It is not enough to cavil with regard

17 to the legislative history. In fact, the legislative history

18 is supportive of the position here. We're not talking about

19 the 1934 amendments, we're talking about 1951 insertion of

20 subsection 2 Eleventh (c) into the Railway Labor Act.

21 The point of the McElroy and Taylor Courts'

22 discussion of the Eastman and Harrison testimony and its

23 relationship to other sections of the Railway LAbor Act such as

24 2 Second, 2 Third and 2 Sixth is that all of those sections are

25 keyed to the designation of representatives.

1 There is only one class of employees in the entire
2 country that have a right to designate a representative other
3 than the representative certified by either the NLRB or the
4 National Mediation Board and those are operating employees.
5 They designate that representative by opting for the alternate
6 membership provisions of subsection 2 Eleventh (c). They are
7 the only ones that have that right.
8 If they have that right to alternate membership, it
9 must come with something other than a mere defense to a union
10 shop charge that could be brought by the contract holder. It
11 is, as both the McElroy and Taylor courts point out, something
12 that must come with more attributes than one would get by
13 belonging to a social club.
14 With regard to the 1951 Amendments, it was not Mr.
15 Harrison's testimony that was critical at all. In fact, Mr.
16 Harrison was a non-operating craft president. The statute was
17 left in a state of disarray until January 1, 1951, when all of
18 the operating craft unions except the Brotherhood of Locomotive
19 Engineers agreed on the language in Section 2 Eleventh (c).
20 It is no answer to say that an employee choosing the
21 alternate membership has a right to sue the contract holder for
22 breach of the duty of fair representation where bad faith has
23 to be shown. The right to alternate membership must carry with
24 it the attribute of representing on the property in minor
25 disputes, only.

1 This works no intrusion whatever into the general
2 exclusivity with regard to the negotiation and administration
3 of agreements, and all of the courts have recognized that,
4 McElroy and Taylor included.
5 In sum, Your Honors, when in doubt as to the
6 legislative history, we consult the statute, and on that basis,
7 the petitioner seeks reversal of the judgment below.
8 Thank you.
9 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Miller.
10 The case is submitted.
11 (Whereupon, at 10:40 a.m., the case in the above-
12 identified matter was submitted.)
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REPORTER'S CERTIFICATE

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2
3 DOCKET NUMBER: 86-2037
4 CASE TITLE: PAUL G. LANDERS v. NATIONAL RAILROAD CORPORATION
5 HEARING DATE: March 29, 1988
6 LOCATION: Washington, D.C.
7
I hereby certify that the proceedings and evidence
8
are contained fully and accurately on the tapes and notes
9
reported by me at the hearing in the above case before the
10
SUPREME COURT OF THE UNITED STATES.
11
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13 Date: March 29, 1988
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16 Margaret Daly
Official Reporter
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