SUPREME COURT
OF THE UNITED STATES

In the Matter of:

JONNA R. LINGLE,

Petitioner,

v.

NORGE DIVISION OF MAGIC CHEF, INC.

No. 87-259

Pages: 1 through 39

Place: Washington, D.C.

Date: March 23, 1988

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Washington, D.C.

Wednesday, March 23, 1988

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:05 a.m.

APPEARANCES:

PAUL ALAN LEVY, ESQ., Washington, D.C.; on behalf of the petitioner.

CHARLES C. JACKSON, ESQ., Chicago, Illinois; on behalf of the respondent.

I N D E X

P R O C E E D I N G S

(10:05 A.M.)

CHIEF JUSTICE REHNQUIST: We will hear arguments first this morning in Number 87-259, Jonna R. Lingle versus Norge Division of Magic Chef.

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

ORAL ARGUMENT OF PAUL ALAN LEVY, ESQUIRE

ON BEHALF OF THE PETITIONER

MR. LEVY: Mr. Chief Justice, and may it please the Court, under Illinois law as in approximately two-thirds of the states an employer may not fire an employee for seeking workers' compensation benefits, and an employee who is thus victimized may seek redress in the state courts.

The reason why Illinois provides this cause of action is that it doesn't want employees to be discouraged from seeking workers' compensation benefits by the risk that they will be discharged from their employment.

Next Illinois had to decide whether an employee loses those rights by going to work in a shop which is covered by a collective bargaining agreement. The Illinois Supreme Court held, no, you don't lose those rights; rather, the right of action is available to union and non-union employees alike, and again Illinois in this respect is in accord with the majority of state courts that have

considered the question, at least as a matter of state law.

The question in this case is whether Congress has deprived the State of Illinois of the right to make this judgment by passing Section 301 of the Taft-Hartley Act, which provides a means for the enforcement of collective bargaining agreements, or by passing Section 203 of that same Act, which enunciates a national policy favoring abitral resolution of disputes about the application or interpretation of collective bargaining agreements.

Although the Court has held that Congress intended to supersede state laws providing for the enforcement of collective bargaining agreements, there is no basis for concluding that Congress also intended these statutes to supersede state substantive regulation of the terms and conditions of employment in work places covered by collective bargaining agreements.

Given the presumption against preemption of state law claims, the burden is on respondent to show that Congress would have wanted to preempt the type of claim at stake here. Now, there is nothing in the text of the statute or in the legislative history suggesting that Congress wanted to preclude state regulation of the substantive terms and conditions of employment.

Indeed, to the extent that the language provides any guidance at all, it is actually helpful to our case

because the statute speaks only of suits for vilations of contracts, and suits or a policy concerning the application and interpretation of collective bargaining agreements.

The court below nevertheless held that Lingle's claim was preempted. The case on which it relied and on which respondents principally relied below was Alice Chalmers versus Lueck. In our view, not only does Alice Chalmers not help respondents, but to the contrary it is strong authority against preemption.

In Alice Chalmers the Court held that Section 301 preempts an employee's tort claim for bad faith denial of contractual rights. In order to rule on that claim, the Court reasoned, it would inevitably be necessary to define the employee's contract rights, to decide whether they had been denied, whether they had been denied in bad faith, and what consequences should show from that denial of contractual rights.

Thus the Court said in order to -- that state law claim is substantially dependent on interpretation of the collective bargaining agreement, and allowing that sort of state claim to proceed would interfere with a policy favoring uniform interpretation of collective bargaining agreements under principles of federal law by arbitrators selected by the parties.

Here, however, the state has conferred a

non-negotiable right on individual employees, the right not to be discharged in retaliation for making a workers' compensation claim. That cause of action is independent of rights which may be enjoyed under the collective bargaining agreement.

QUESTION: But there certainly is a right under the collective bargaining agreement in this case.

MR. LEVY: There is a right under the collective bargaining --

QUESTION: Which was vindicated.

MR. LEVY: Which was vindicated. That is correct.

QUESTION: Namely, there wasn't good cause for discharge.

MR. LEVY: The arbitrator found that there was not just cause for discharge in this case.

QUESTION: And you think both causes of action can just go forward?

MR. LEVY: That is correct. At most the statutory and collectively bargained rights are parallel, but that is not enough to preclude the employee's right to go forward in state court.

QUESTION: And what was the relief that the arbitrator gave?

MR. LEVY: The arbitrator gave reinstatement. The arbitrator gave the amount of back pay which was

allowed by the contract, which was less than Ms. Lingle's actual earnings. Ms. Lingle was not awarded punitive damages to which she might be entitled under state law, depending on the circumstances of the case.

QUESTION: Will the recovery -- if you win, will the recovery -- would the recovery in a state court action include back pay again, or what?

MR. LEVY: I assume that state law would provide for some sort of a setoff for interim income, and presumably interim income includes any back pay that was awarded by the arbitrator.

QUESTION: If the state court --

MR. LEVY: Unemployment compensation as well.

QUESTION: If the state court suit goes first you get a complete recovery so you can't arbitrate.

MR. LEVY: If the state court action went first it would be unnecessary to arbitrate.

QUESTION: Well, it would just be barred, I suppose.

MR. LEVY: I don't know whether the employer --

QUESTION: So the -- but you don't think in the state court action it will ever be necessary to construe the contract or find what --

MR. LEVY: In this state court action it will certainly not be necessary, not only because there has already been an arbitral ruling, but also because the

defense that has been raised by the company to the state law claim is that she filed a false claim, and whether or not it is necessary -- whether or not that is a sufficient defense under a state law, one can decide whether it is a false claim without looking at the collective bargaining agreement. Either she was injured or she wasn't.

QUESTION: What if the arbitrator had found there was just cause for discharge, that this workmen's compensation claim was false? Suppose that had been decided by the arbitrator.

MR. LEVY: Then I would say that -- the Illinois state courts haven't yet decided --

QUESTION: Well, what do you think? Do you think you can relitigate that issue in the state court?

MR. LEVY: I think that just as one can relitiate the cause of action --

QUESTION: Yes or no? Yes, you can --

MR. LEVY: Yes, you can, just as you can relitigate the cause of action with respect to an independent federal claim, for example, under Title VII, as the Court held in Gardner-Denver, just as one can relitigate the Fair Labor Standards Act claim, as the Court --

QUESTION: So in effect you are saying that the -- it is just, what, contrary to federal law or to state law to permit a discharge on a false claim?

MR. LEVY: Let me step back a moment, because in using the word "relitigate" the claim I think I conceded a bit too much. She has a state law claim and she has a contract claim. And there may be some common facts, but the state law claim has not in fact been resolved in the arbitration.

QUESTION: The state law claim, however, I suppose it would be a good defense to a state action if the claim were false.

MR. LEVY: I don't know. Illinois hasn't reached that question. In fact, in the --

QUESTION: Well, what would you think? Would it or not?

MR. LEVY: In Gonzalez v. Prestress --

QUESTION: Assume it was a good defense, and the arbitrator has found that it was a false claim. You still say you can relitigate that in state court.

MR. LEVY: I would say that it would be up to the state courts as a matter of state law to decide whether to adopt the same approach that this Court has adopted in Gardner-Denver.

I would note that the state courts have cited Gardner-Denver, the Illinois courts have cited Gardner-Denver in their reasoning in this line of cases. It may well be that the employer would make an effective argument

that you should give the arbitral determination great weight, assuming that the conditions set forth in Gardner-Denver are met.

QUESTION: But even if there were some sort of of federal principle that required the state court to give collateral estoppel effect to the finding that the claim has been false, that would not affect your basic preemption argument, I take it.

MR. LEVY: I --

QUESTION: I mean, the suit for discriminatory discharge for invoking the workmen's comp could still proceed even though the state court might have to treat a particular finding on that point as binding for factual purporses.

MR. LEVY: Yes, I understand. Then the question would be presented whether that factual determination as a matter of state law determines the outcome of the state law suit.

QUESTION: What about collateral estoppel vice versa? Do you have any view on whether the arbitrator, if the state court litigation had gone ahead first, would be bound on that factual determination by the state court judgment?

MR. LEVY: I don't -- I don't know. I don't know that the question has ever come up in the Gardner-Denver

type of case. Usually --

QUESTION: We usually don't go around trying the same fact twice in two separate proceedings and coming out different ways.

MR. LEVY: If you have two separate -- two different jurisdictions and two separate claims, for example, in the Gardner-Denver type -- Gardner-Denver was a claim which was -- went forward in two different fora. It went forth in arbitration, and Alexander lost in arbitration, and then this Court said he is entitled to go forth in federal court.

The same thing was true in Barrentine. Barrentine had lost in the Teamster version of arbitration and he was permitted to go forward.

QUESTION: But did they speak to whether any common factual issues that had been decided in one proceeding could be -- that determination could be disregarded in the other?

MR. LEVY: They didn't say disregarded, but they also didn't say it was accepted as conclusive. What the court said was that depending on the circumstances it might be appropriate to give the abitral disposition greater or less weight.

QUESTION: So you think the arbitrator might be able to ignore the state court judgment as to what the facts were?

I very much doubt that.

MR. LEVY: I don't know whether the full faith and credit clause, for example, would govern an arbitral determination through Section 301. I really just can't give you a good answer to the question. I'm sorry.

I would say, however, that because of the timeliness in filing a grievance, unless the arbitration drags on for a long time, and I must say sometimes they do as they did in this case, usually the arbitration is going to be held first, if an arbitration is held at all.

I would mention that many of these grievances don't even get to arbitration because they are disposed of somewhere short of that.

QUESTION: Isn't your correct answer suggested by the Chief Justice's question, that what we have is an issue of preemption, not of collateral estoppe? That is a question that would arise when you have that happen.

MR. LEVY: That is certainly not this case.

In any event, in Alice Chalmers the Court tried to distinguish between the contract based claims that were at stake in the Lewis case and state claims that are based on substantive regulation of employment, and what the Court said in Alice Chalmers, equally applicable here, we believe, is that it would be inconsistent with Congressional intent under Section 301 to preempt state rules that proscribe

conduct or establish rights and obligations independent of the labor agreement, and if there is any state employment cause of action which is independent of the labor agreement, Lingle's claim ought to be one of them.

So, consistent with the Court's analysis in Alice Chalmers, which has been reaffirmed in several cases since then, Lingle's claim should not be held to be preempted.

Indeed, although respondent has not pointed to any indication that Congress would want to forbid lawsuits for retaliatory discharge, there is at least some evidence of Congressional intent which cuts against preemption. Congress has enacted numerous substantive regulations of the terms and conditions of employment in the private sector. In our brief we have cited 29 federal statutes governing discharge alone.

Not only do those forms of substantive regulation exist side by side with rights which may be granted by the collective bargaining agreement, but this Court has repeatedly ruled in the Gardner-Denver and Barrentine line of cases that employees may enforce their rights under those statutes, including the right against discharge, independent of collectively bargained grievance procedures.

Evidently Congress doesn't see this form of regulation as inconsistent with collective bargaining or as inconsistent with a national policy favoring arbitration

of disputes about the interpretation or application of the collective bargaining agreement.

Now, it is true those cases involve federal claims while this case involves a state claim, but there is no reason to think that Congress would want to treat state claims differently. Indeed, this Court has treated them similarly. For example, in Metropolitan Life Insurance the Court cited Barrentine and Gardner-Denver as authority for the lack of Congressional intent to preempt state substantive regulation of employment conditions.

And in Alice Chalmers, in Footnote 8 the Court pointed to Gardner-Denver as an example of an independent cause of action.

Now, in this Court respondent has relied for the first time on Teamsters v. Oliver and similar cases which hold according to respondent that the federal labor laws preempt any state cause of action that relates to a mandatory subject of bargaining.

Now, leaving aside whether that argument, essentially based on NLRA preemption as opposed to Section 301 preemption, was properly preserved in the Court of Appeals. For present purposes it suffices to note that the argument has been repeatedly rejected by the Court in recent years, most pointedly in Metropolitan Life Insurance, where the Court said that it would turn the policy that

animated the Wagner Act on its head to understand it to have penalized workers who have chosen to join a union by preventing them from benefitting from state labor regulations imposing minimum standards on non-union employers.

Similarly in Fort Halifax and Caterpillar the Court rejected the same argument.

Indeed, the argument was rejected as long ago as 1943 in the Terminail Railroad Association case. The Court should not accept respondent's invitation to reopen this long settled question, but rather, the decision below should be reversed.

Unless the Court has any further questions.

QUESTION: I have a question. Supposing the labor agreement was much more particular than this one is and said specifically that claims such as this arising out of a discharge because of invoking the workmen's compensation remedy shall be subject to the grievance procedure, and that shall be the only remedy. On behalf of the employees the union agrees that this is the most efficient way to dispose of these claims.

Would you then find preemption or not? I gather from your argument they could not make that agreement.

MR. LEVY: I would say no, that would certainly be a more explicit waiver, but then the question is, can the employer and the union contract themselves out of the

procedures provided by state law, and I would say no.

QUESTION: I know you have these federal precedents, but do you have any case holding that a state law claim like this cannot be waived by -- we had a case under the Federal Arbitration Act a couple of years ago where they held that an employee's claim of some kind, even though California law said it could not be waived, the Court held that the Federal Arbitration Act applied, and the waiver was valid, so why wouldn't the reasoning of that case apply in the labor context as well?

MR. LEVY: The Federal Arbitration Act explicitly excludes contracts of employment --

QUESTION: I understand.

MR. LEVY: -- in interstate commerce.

QUESTION: I understand.

MR. LEVY: And although -- certainly in some of the --

QUESTION: But my point is, it seems to me the policy favoring arbitration in the union context is at least as strong as the policy favoring arbitration implemented by the Federal Arbitration Act.

MR. LEVY: But the waiver in that case at least has been made by the individual employee in an individual contract of employment.

QUESTION: Yes, but you certainly wouldn't say

that a collective bargaining agent doesn't have the same authority to represent the individual employee in bargaining the terms of employment.

MR. LEVY: Not with respect to bargaining away non-negotiable rights that the state has decided should be non-negotiable. If that were true, all state rights could be channeled into arbitration, and although this case may look like a case in which at least you can get some relief in arbitration, many cases, if an employee is left only with the duty of fair representation remedy, when the union either doesn't succeed in getting all the employee wants or in fact the union doesn't get anything for the employee, in a lot of cases there is not even going to be an arbitration. The case may be settled short of arbitration. The union may decide that it is against the collective interest to go forward with this particular claim. Unless the duty of fair representation is going to be vastly expanded, at least in this context of state law rights, what you are doing, the choice of the forum, as the Court said in Gardner-Denver, inevitably affects the scope of the substantive right.

And what the Court would be doing would be requiring the states which have very important policies which they think can't be effectively implemented through the collective bargaining and collective grievance

processing method, requiring those states to give up their right to have those policies enforced. Whether or not it is good policy to do so, this Court has continually allowed the states and held that the states are not preempted from regulation of the substantive terms and conditions of employment, and the effect of the approach that is suggested by your question would be to do that.

QUESTION: Mr. Levy, so I can understand your position, I assume you would say our decision last term in Heckler, which involved a state statute that sought to impose liability for breach of a state -- state-imposed duty arising from the contractual relationship of a union with the employees that it represents through the contract with the employer, you would say that that case would have come out differently if the state law had simply read every union shall have an obligation to provide for the safety of its employees on the job, assuming that that law would pass muster under the National Labor Relations Act.

MR. LEVY: It would certainly not be preempted by Section 301. There might be a question about whether you are imposing additional duties --

QUESTION: That the NLRA doesn't allow.

MR. LEVY: -- beyond those which 8(b)(1)(A) imposes on unions, and whether that is somehow inconsistent with the policy behind (8)(b)(1)(A).

QUESTION: So the key is simply whether the state law springs into operation by reason of the contract or not.

MR. LEVY: Under Section 301, yes.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Levy.

We will hear now from you, Mr. Jackson.

ORAL ARGUMENT OF CHARLES C. JACKSON, ESQUIRE

ON BEHALF OF THE RESPONDENT

MR. JACKSON: Mr. Chief Justice, and may it please the Court, the issue in this case is whether a state court judge or legislature may provide employees a cause of action for wrongful discharge when those employees are covered by the grievance arbitration procedures of a collective bargaining agreement and the employee's claim is unquestionably arbitrable under the terms of that agreement.

Resolution of this question, we feel, calls for an analysis of two central policies informing Section 301 of the Labor Management Relations Act of 1947. First, the policy -- the section -- that if within Section 301 scope Section 301 completely preempts any state law cause of action within its scope.

And second, the settled rule, the contractual grievance arbitration -- excuse me, contractual arbitration procedures are the exclusive and final remedy for labor contract disputes.

At least in her reply brief, petitioner seems to agree that the question presented here has been left open, was left open in the Lueck decision, the Alice Chalmers versus Lueck decision. In that case, this Court reserved judgment on whether an independent non-negotiable state imposed duty could nevertheless be preempted under Section 301.

QUESTION: Incidentally, counsel, you began by saying the question was whether or not a wrongful discharge cause of action can be prosecuted or is preempted, but this is a retaliatory discharge. There is a difference, isn't there?

MR. JACKSON: We think that the retaliatory discharge claim in Illinois as it is so labeled in Illinois is simply another species of wrongful discharge tort, and I use the phrase to illustrate the point that I think -- we think it is destructive of the policies informing Section 301 to allow states to single out a variety of causes of action that were meant to be grist in the mills of the arbitrators under the labor agreements, and that is why I use that term.

QUESTION: And it is improper to single out retaliatory acts for insisting on workmen's compensation rights?

MR. JACKSON: Yes, we say that that claim, that

cause of action deals directly with employment rights. The states historically have had a great deal of leeway with respect to workers' compensation matters, but always in the context of the benefits workers would receive for work-related injuries.

The recent phenomenon of retaliatory discharge claims addresses itself to employment rights. That is something that is squarely governed by the collective bargaining agreement, and even if the state's interest is arguably an important one, it is still preempted under Section 301, because Section 301, unlike the balancing analysis utilized in Metropolitan Life and other cases under the National Labor Relations Act, does not weigh the state's interest with the rights asserted under federal policy.

QUESTION: What if the union and the employer set out to say, you know, we are really going to have a comprehensive agreement here, we are going to provide for benefits in case you are injured on the job. The employer will pay them under the collective bargaining agreement.

Now, does that mean that a state can't even enforce its workmen's compensation law?

MR. JACKSON: No, I think the state in that situation can enforce its workmen's compensation.

QUESTION: Why is one different from the other if each situation is covered by the collective

bargaining agreement?

MR. JACKSON: Because in that situation this Court has recognized, even in the Oliver decision, on which we place a lot of reliance, that state laws dealing with health and safety matters have historically been those that the Court has recognized where the state has a lot of leeway. The state can promulgate laws prohibiting the use of child labor. If the union and the company were to agree to a contract whereby child labor could be used, that type of law could not be enforced for two reasons, not because the contract terms themselves of themselves always prevail over state rights, but because in that situation the contract terms would be promoting no federal interest.

Section 301 does not promote the interest of exploitation of children nor does it promote the interest of depriving employees --

QUESTION: Well, but in a workmen's compensation case you can certainly say it proposed smooth, speedy adjustment of grievances under the contract, and the contract gives the person the same rights they have against the employer as the Illinois law would.

MR. JACKSON: I think it could. My response, Mr. Chief Justice, is simply that that is an area where this Court has said and we have agreed in this case that with respect to health and safety laws the states do have leeway.

QUESTION: But it is only demonstrably health and safety laws, not other important concerns of state public policy.

MR. JACKSON: The states have the most latitude with respect to health and safety laws. This whole area, I think, as the Alice Chalmers case pointed out, is one for resolution on a case by case basis. The right asserted by the petitioner is not a health and safety right. It is an employment right and is classically a right that arises under the collective bargaining agreement.

QUESTION: Is workmen's compensation a health and safety law?

MR. JACKSON: I think it is, and the reason why I am saying that the states have more latitude with respect to workers' compensation, I don't want to say that they have complete latitude. As this Court held in the Alessi versus Raybestos-Manhattan case, one, you have ERISA problems with respect to states promulgating benefit rules, but beyond that, in the Alessi case this Court also noted that because the terms in that particular situation were embodied in a collective bargaining agreement, workers' compensation related benefits, they were also preempted by the Teamsters versus Oliver rule.

So what we are saying is, there is much more latitude for the states in that situation but states don't

necessarily have a carte blanche in that situation, as illustrated by the Alessi case.

Petitioner's position distills two related propositions, one, that any right created by a state court judge or legislature that can be articulated without reference to the labor contract is necessarily independent within the meaning of Alice Chalmers, and two, a basic assumption that all such positive law rights necessarily coexist side by side with the labor agreement and avoid preemption under Section 301.

QUESTION: I assume that would apply to state minimum wage laws. Do you consider that a health and safety law?

MR. JACKSON: That is of the type this Court was referring to, I think, in the Metropolitan Life case. That is of the type that the states historically have had latitude. Under Section 301 we are not saying that employers and unions have the authority to agree to wages below that type of minimum standard. That is just a basic benefit. In Metropolitan Life it was a health insurance, a mental health insurance benefit the State of Massachusetts required for insertion in its contract.

They have latitude in that particular area, but here with respect to --

QUESTION: They don't have latitude with respect

to workmen's compensation? They couldn't contract out of that and say, if you are injured on the job you just have no remedy, I assume.

MR. JACKSON: We would agree with that, Your Honor.

QUESTION: But they do have latitude -- you see, you

MR. JACKSON: The employer and the union don't have latitude to contract out of workers' compensation.

QUESTION: Right. You seemingly don't regard this as a workmen's compensation law. You regard it as a termination law? I regard it as a workmen's compensation law. It is just a means by which the state enforces its workmen's compensation law. If you fire somebody for filing a workmen's compensation claim, you are going to be liable for damages.

Don't you think that is part of the workmen's comp scheme?

MR. JACKSON: I think I would respectfully disagree with that viewpoint. In Illinois, at least, and it may be the case, as Your Honor points out, in other states, but at least in Illinois it is not part of the worker's compensation scheme, and in fact it is a tort. It is not -- the employee does not have a statutory cause of action to go to the workers' compensation committee and say, my employer fired me for these prohibited reasons.

It's a tort recognized by the Illinois Supreme Court. Even if it weren't, even if it were included in the statutory scheme, our position is that it is an employment right. It crosses the line into the concern -- into the scope of 301 and the contractual agreements procedures and it preempted, and I don't think, Justice Scalia, that Jonna Lingle was deprived of anything in this case by that rule. She is not getting fewer rights than other employees are in the State of Illinois. In fact, she has got a 50 some page collective bargaining agreement that provides for a plethora of rights. She has contractual just cause protection from discharge, which doesn't only go to impermissible motives by an employer in letting -- or in firing Mrs. Lingle. It goes to the issue of whether the employer violated some kind of procedural due process, and some arbitrator could say --

QUESTION: But that sort of argument would mean that the state couldn't apply its minimum wage law.

MR. JACKSON: No, I think, Justice White, that --

QUESTION: Well, look at all these other rights you get.

MR. JACKSON: I think that is just simply in a different category, and it is part of the case --

QUESTION: So you can't contract out of the minimum wage law.

MR. JACKSON: We would agree with that.

QUESTION: Well, here is a state --

MR. JACKSON: And we also --

QUESTION: Here is a state law that says, if you commit this tort you are going to get actual damages, punitive damages, whatever it is, and now the union and the employer say, well, if you commit this -- if you commit this act which is a tort under state law, all you are going to get is back pay. You are just going to get much less than what the state law says you are entitled to. Isn't that just like minimum wage laws?

MR. JACKSON: No, I think the minimum wage law is different for two reasons. One, agreeing to wages that are below statutory minimums is not a policy. Protecting that type of agreement is not a policy of Section 301.

Second, equally important, the federal policy under the Barrentine decision, the federal policy says that parties to labor contracts cannot contract for minimum wages below the federal level. That is an indication at least in the minimum wage context that the states -- that is an affirmance that the states have that kind of latitude.

QUESTION: Let me ask you, preemption of state causes of action is -- occurs because of some evil that non-preemption would cause. What is that evil? One of them anyway is to avoid having different constructions of a collective bargaining contract, I suppose.

MR. JACKSON: I think that's right. Another one would be --

QUESTION: How can enforcing the state law in this case have a different construction and meaning to the collective bargaining contract? Because you seem to concede that you can state your state cause of action without any relation to the collective bargaining contract.

MR. JACKSON: I think in a sense --

QUESTION: It is just a fact question.

MR. JACKSON: No, I disagree with that. In a sense you can state the claim because it is a creation of the Illinois Supreme Court.

QUESTION: Yes.

MR. JACKSON: You don't need the contract to know that. But if you are the trier of fact, no matter who you are, an arbitrator, a state court judge, your mission is to determine whether there is impermissible motive. In that type of situation the employer invariably is going to raise its defense of just cause under the contract.

QUESTION: Right.

MR. JACKSON: And to the extent there is contractual just cause, that militates against a finding that there was impermissible motive.

QUESTION: Yes, but it isn't a construction as to what is just cause. It is just a matter of fact. Was this

a false claim or not?

MR. JACKSON: I don't think it's necessarily just whether it is a false claim or not. There may be all kinds of concepts in industrial relations that would -- the arbitrator would consider but a state court would not consider, such as consistent administration of the contract, all kinds of things that might be probative of the employer's intent in letting the particular individual go.

The problem is, as this Court pointed out in the Misco decision just this term, the parties here have bargained for the facts to be found by an arbitrator. Here the -- here I am constrained to say that Mrs. Lingle's claim is exactly what grievance arbitration is all about. This is why parties have collective bargaining agreements. This is why there is just cause. The system was responsive in this situation. She was reinstated with full back pay, and I am reminded of the point that was made earlier about possibly seeking punitive damages on remand.

The petitioner in this case, although technically under Illinois law you can seek punitive damages, the petitioner in this case did not seek punitive damages. The petitioner in this case, the quarrel of the petitioner in this case is a very simple one. The contract makes a distinction for back pay purposes between incentive pay and down time rates.

The arbitrator found that she was fully compensated at down time rates as the contract required. The petitioner's complaint in this case is that she ought to be given the incentive pay rates, contrary to the construction of the agreement.

QUESTION: Which she would get if the action went forward in state court.

MR. JACKSON: Well, if she won.

QUESTION: Let's assume that she won. She would get that.

MR. JACKSON: Well, she could seek that and a state court judge would have the power to award that.

So I think that -- I think that the claim here is inextricably intertwined with the terms of the labor agreement. But even if it's not, even if we can cast aside, which I don't think the Court should do, but even if the Court were to say, yes, we can look at this claim and we can view it in isolation without respect, without regard to the collective bargaining agreement, I still think the claim is -- a preempted claim under the rule of Teamsters versus Oliver and cases like the Alessi case and the California versus Taylor case. Each of those cases, as we read them, held that where independent state rights existed, and they flew in the teeth of a labor contract, they were preempted.

We don't think the rule should be any different here where this particular petitioner is protected by contractual grievance arbitration procedures, and also we feel this is the teaching of the Republic Steel case and the U.S. Bulk Carriers versus Arguelles case, where this Court said, at least in Arguelles, that the contractual exclusivity principle of resolution of claims extends to even those claims that are arguably extracontractual in nature.

And I think that point holds up. Justice Harlan was the author of the Republic Steel case. He was also the author of the concurring opinion in the Arguelles decision, and several other members of the Court joined in that, that the exclusivity principle did extend beyond the terms of the agreement.

Now, were these principles applied we'd feel this claim was preempted. Petitioner has several other arguments, and we admit that some of these arguments are close arguments. Nevertheless, we think she is wrong, and we think that on reflection the Metropolitan Life decision does not help her position.

Her proposition is that any time as we understand it, and I didn't hear anything different today, any time a state promulgates a minimum labor standard that can be articulated without reference to a collective bargaining

agreement, that standard necessarily --

QUESTION: What do you mean by a minimum labor standard, Mr. Jackson? This I would say was a retaliatory discharge claim.

MR. JACKSON: Right. That is part of the trouble in this case, Your Honor. Throughout the petitioner's brief, as we see it, and of their amicus there is no real definition given --

QUESTION: Well, but you used the term. You used the term minimum labor standards. I am asking you what it means.

MR. JACKSON: What I mean are those types of laws that this Court has picked over on a case-by-case basis such as those promoting public health and safety, child labor again --

QUESTION: Picked over on a case-by-case basis in what sort of cases?

MR. JACKSON: In the Metropolitan Life case, for example, the Court stated that laws protecting public health and safety would be preserved, child labor, minimum wages, those types of laws, occupational safety and health perhaps, and this, we would say, is consistent with our reading of Oliver, because even Oliver, which was a broad statement of Section 301 preemption, we would maintain, not National Labor Relations Act preemption, even Oliver said

that perhaps those types of laws, health and safety laws, would be exempt from Section 301 preemption or federal labor preemption.

QUESTION: Certainly Metropolitan Life said so in really no uncertain terms.

MR. JACKSON: Metropolitan Life said so, but I think this raises another point. It is not nearly the description of the federal law that is at stake. We described those. Or, excuse me, the state law that is at stake. It is also the purpose of the federal law. Metropolitan Life permitted the state law to be -- or the state action to be maintained because a law requiring mental health benefits in an insurance policy was not deemed to be inconsistent with a duty to bargain, a duty of collective bargaining under the National Labor Relations Act.

We agree with that. I mean, it has nothing to do with the duty to bargain under the National Labor Relations Act. In this case, under that balancing analysis, that type of cause of action was permitted to go ahead. In this case the discharge claim of Jonna Lingle is right at the heart of Section 301 and the federal policies that directed these parties, the IAM and the company, to agree to contractual grievance procedures.

So the second half of the equation is, one, the

type of state law, and two, whether the state law conflicts with the federal purpose. And as I stated a little while ago, part of the difficulty is the definition of minimum standards and petitioner's lack of definition of minimum standards.

Under their analysis as we read it even a state could promulgate a general just cause for discharge statute just as the State of Montana, for example, has already enacted and under that Montana law, with exceptions for collective bargaining, all employees of the State of Montana have a right not to be fired except for just cause, and presumably there is going to be a common law developed as to what is just cause in Montana.

Were the exclusion in that situation for collective bargaining not there, it would be no different from this case. States could enact general just cause for discharge statutes which set their independent standards. You would not need to look at a labor agreement. And the claim could proceed under petitione's theory.

QUESTION: But isn't that a rather unlikely possibility? My impresion has been that the just cause statutes are generally designed to give that right to people who don't have it under a collective bargaining agreement.

MR. JACKSON: That is one of the ironies in this

case, because the reason why those exclusions are there, and in the cases we cite in our brief where they don't recognize the state cause of action that the petitioner asserts, the irony is, is because those states feel that such a claim would be preempted, so it is sort of a circular thing.

The reason why it is not there is that the state feels it is preempted. If this Court were to rule in this case that states have that authority to frame such claims, it would open it up for states to be able to enact precisely that type of --

QUESTION: Are state causes of action for libel preempted? When an employee sues an employer, or an employer sues an employee?

MR. JACKSON: I think generally not. I think that is an historical state interest. I don't think libel is something that the Section 301 federal labor interest has sought to protect historically.

QUESTION: But it is hardly either health or safety under your rather narrow definition of those terms.

MR. JACKSON: I think you are right, Chief Justice. It doesn't strike me as something that states historically have been precluded from reaching under federal labor analysis. That is why again we hold it in a two-part analysis. One, what is the type of law, and two what is the policy that is sought to be served, and is that

a federal policy under 301?

With respect to this Gardner-Denver point of the petitioners, Gardner-Denver and the Buell case decided last year are said to provide a basis for recognizing this independent wrongful discharge tort. We don't agree with that, and what that argument does is, it is essentially a shorthand way of saying there is no such thing as preemption, because the distinction under Gardner-Denver between what is a federal right and a state right makes a world of difference, as Justice Stevens pointed out.

There was that arbitration case last year that came out of California that this Court decided, Perry versus Thomas.

So the question is whether the states have the opportunity to act. Gardner-Denver doesn't provide any indication at all. It doesn't say anything about whether states have authority to act. In fact, under Gardner-Denver in Titlte VII Congress has said explicitly that unions and employers are bound by the anti-discrimination provisions of Title VII and explicitly under that statute the states are authorized to set up Title VII deferral agencies and regulate anti-discrimination concerns.

The same is true of the Fair Labor Standards Act and the Barrentine case.

So, again, I don't think those decisions provide

any support for the argument that petitioner's claim isn't preempted.

Congress can say in a uniform manner what exceptions to collective bargaining are acceptable. It is not for the states to do that.

Finally, it is our position that the result sought by the petitioners is a threat to arbitration, and I say that because it has been settled for quite some time, but through Section 301 the labor law envisions a system of industrial self-government. This contractual grievance procedure here that gave Jonna Lingle full relief, put her back to work, gave her back pay, this type of agreement is exactly what takes place between countless other employers and unions every day.

We believe that permitting the Illinois wrongful discharge tort to vindicate employment rights that have been vindicated by the collective bargaining agreement would be a threat to arbitration.

Petitioner's response basically is, well, employers always say this. Employers always say that lots of horrible things are going to happen if you give people rights to bring lawsuits against companies. But we maintain that it is precisely because the courts have not embraced petitioner's theory of non-preemption that arbitration has been preserved.

Alice Chalmers in a very careful case-by-case way is a manifestation of a desire to prevent proliferation of state law causes of action that could undermine arbitration. In other words, the floodgates, if that is the right term, haven't opened because --

QUESTION: Arbitration is a matter of agreement, and I suppose your client may resist agreeing to arbitration in the future if all these causes of action are going to go on to state court.

MR. JACKSON: I think that's precisely correct, and the problem with that is that in terms of national labor policy, it is going to depend upon the strength of the parties in any given bargaining situation. But this is different from Title VII, which has been around since 1965, and unions and employers have gotten used to that.

It's different from other federal laws which have imposed statutory obligations on employers they have long accepted.

This would be authorization for states to articulate and define causes of action that would give remedies to employees irrespective of what is provided under the collective bargaining agreement, and I think it would create an unacceptable incentive to undermine arbitration and -- which is an institution of enormous importance in American labor law that I don't have to

emphasize, I don't think, any longer to the Court.

In sum, we feel that the claim is inextricably intertwined with analysis of the contract. If it is not inextricably intertwined, it is nonetheless, we feel, preempted under the rule of Teamsters versus Oliver.

And third, we feel that the exceptions that -- the reasons that petitioner gives for avoiding preemption don't hold up on the narrow facts of this case. Metropolitan Life does not control. The NLRA balancing case does not control because the objectives here are different from those in Metropolitan Life, and the type of right asserted is much different from the one in Metropolitan Life.

And finally, we don't think that the Alexander, Gardner-Denver line has any teaching on the question now before the Court.

For the foregoing reasons respondent respectfully submits that the judgment of the Court of Appeals should be affirmed.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Jackson.

Mr. Levy, you have ten minutes remaining.

MR. LEVY: Unless the Court has any questions, I have nothing else to say.

CHIEF JUSTICE REHNQUIST: Very well. The case is submitted.

(Whereupon, at 11:05 o'clock a.m., the case

REPORTERS' CERTIFICATE

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I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Supreme Court of the United States.

Date: 3/29/88

Margaret Daly
Official Reporter

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