

LIBRARY
SUPREME COURT, U.S.
WASHINGTON, D.C. 20543

**OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES**

CAPTION: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION,
ET AL., Petitioners V. EDWARD LYNN

CASE NO: 86-1940

PLACE: WASHINGTON, D.C.

DATE: November 7, 1988

PAGES: 1 - 50

ALDERSON REPORTING COMPANY
20 F Street, N.W.
Washington, D. C. 20001
(202) 628-9300
(800) 367-3376

1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x

3 SHEET METAL WORKERS' INTERNATIONAL :

4 ASSOCIATION, ET AL., :

5 Petitioners :

6 v. : No. 86-1940

7 EDWARD LYNN :

8 -----x

9 Washington, D.C.

10 Monday, November 7, 1988

11 The above-entitled matter came on for oral
12 argument before the Supreme Court of the United States
13 at 2:01 o'clock p.m.

14 APPEARANCES:

15 DONALD W. FISHER, ESQ., Toledo, Ohio; on behalf of the
16 Petitioners.

17 BRUCE M. STARK, ESQ. Long Beach, CA; on behalf of the
18 Respondent.

19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C-O-N-T-E-N-T-S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
DCNALD W. FISHER, ESQ. On behalf of the Petitioners	3
BRUCE M. STARK, ESQ. On behalf of the Respondent	23
<u>REBUTIAL ARGUMENT OF</u>	
DCNALD W. FISHER, ESQ. On behalf of the Petitioners	46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PROCEEDINGS

(2:01 p.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in in No. 86-1940, Sheet Metal Workers' International Association v. Edward Lynn.

Mr. Fisher, you may proceed whenever you're ready.

ORAL ARGUMENT OF DONALD W. FISHER

ON BEHALF OF THE PETITIONERS

MR. FISHER: May it please the Court:

The case at bar is similar to and the International submits a logical, at most a logical extension, of Finnegan v. Leu, which was decided by this Court about five years ago. If anything, the case is a stronger case for the union than Finnegan, because in Finnegan, there were 15 appointed business agents that were working, and who were dismissed because they had in the past supported the political opponent of the incumbent president and campaigned for him.

And in Finnegan, the new president, the newly-elected president, extrapolated from that fact, believing that these people would not be good agents. They would not be loyal to him, they would not carry out his policies, and therefore he dismissed them on a wholesale basis.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

In this case, we have --

QUESTION: (Inaudible)

MR. FISHER: -- In the Finnegan case, it was held that an elected, an appointed agent, such as these business agents, were not denied their rights under sections 101(a)(1) and (a)(2) of the LMRDA, because of this indirect infringement upon their expressive activity, as I read the case, Mr. Justice White.

In this case, we have the same type of confidential policymaking agents. In this case, the agent who was removed from his office during the period of the trusteeship, was originally elected to his position, but at the time the activity involved occurred, the union had been placed under a trusteeship by the International Union, and the trusteeship was administering the affairs of the local union, and had plenary authority under the union constitution to remove and replace any officers or employees of the local union.

Now, this particular business agent, Lynn, not only was likely not to support the rehabilitative policies of the trustee, but he actually did not support them, and in truth, he sabotaged the policies. And it was only after this series of events took place that the trustee decided that he could not continue to operate and administer the affairs of the local union and try to

1 correct the conditions for which the trusteeship was
2 imposed with Lynn on his staff. So Lynn --

3 QUESTION: Can a trustee, Mr. Fisher, make
4 policy for the local the same way as elected officials
5 could, if it weren't in trusteeship?

6 MR. FISHER: Yes, sir. The trusteeship has
7 the authority to administer the affairs completely of
8 the local union during the period of the trusteeship,
9 Mr. Chief Justice.

10 QUESTION: But does it have the authority to
11 raise the dues?

12 MR. FISHER: No, sir. No, sir. It does not
13 the authority to raise the dues.

14 QUESTION: Well, isn't that a legitimate issue
15 for debate within the union, even though it's in
16 trusteeship?

17 MR. FISHER: Well, it is not -- Mr. Justice
18 Stevens, it is not the position of the International
19 Union that it is not a legitimate matter for debate,
20 just as in the Finnegan case, it was a legitimate matter
21 for debate who was to be the next president of the local
22 union.

23 It is of course a right of a member under
24 sections 101(a)(1) and 101(a)(2) as a member to take
25 positions on matters of importance in local union

1 affairs.

2 QUESTION: Well, did this man have the right
3 to take the position he took, or -- why is that
4 sabotaging the trusteeship?

5 MR. FISHER: Well, because --

6 QUESTION: If it's something that is open for
7 fair discussion within the union?

8 MR. FISHER: Well, it is no more open, Justice
9 Stevens, than the issue of who was to be president, as I
10 say, in *Finnegan v. Leu*.

11 Every member has the right to take a position
12 on issues before the local union, and every right, every
13 member of a local union definitely has a right to
14 express those views. Those are rights of membership,
15 and Mr. Lynn, after he was removed from his position as
16 a business manager, continued to have his rights to
17 express himself on issues that came before the local
18 union.

19 There is no --

20 QUESTION: The only question I have now is if
21 I understand your word sabotage.

22 MR. FISHER: The trustee wished to encourage
23 the members to support his program of correcting the
24 conditions in the local union --

25 QUESTION: But specifically you wanted him to

1 support --

2 MR. FISHER: By a dues increase.

3 QUESTION: By the dues increase.

4 MR. FISHER: And he wanted that policy to be
5 supported by the agents, the business manager has the
6 right and the duty and the trustee, who was in control
7 of the union in place of the business manager, has the
8 right and the duty and in fact, he must act through
9 people who become his representatives.

10 Now, when a representative of the trustee --
11 It could just as well have been a representative of the
12 manager, if the local wasn't in trusteeship --

13 QUESTION: Well, it's -- except the difference
14 is that in the other case, the leader of the union has
15 been democratically selected, so presumably, the people
16 that that leader would appoint are those that the
17 majority of the voting membership would want in those
18 positions.

19 But you don't have that situation under
20 trusteeship.

21 MR. FISHER: You do not have this, Mr. Justice
22 Stevens, in this case. But we do have Title 3 of the
23 LMRDA, which recognizes the imperative necessity for
24 putting unions under autocratic control under a
25 condition of trusteeship to operate for a period of at

1 least 18 months, during which the presumption of
2 legitimacy applies, in order to work a union out of
3 these conditions of extremis that caused the
4 International to impose a trusteeship in the first place.

5 And in this case, there was never a question
6 but that the trusteeship was properly imposed. In fact,
7 all of the union officials, all of -- the president, the
8 business manager, all of the business agents, including
9 Mr. Lynn himself, did send a letter to the General
10 President of the International Union asking for relief,
11 including a trusteeship, if he considered it desirable,
12 because the local union needed help.

13 QUESTION: Well, Mr. Fisher, doesn't Title 3
14 also provide that if a trustee is established, that it
15 will be administered for legitimate purposes?

16 MR. FISHER: It does, Justice O'Connor.

17 QUESTION: And how is it legitimate for the
18 trustee to try to stifle dissent on this issue of dues
19 increase?

20 MR. FISHER: Justice O'Connor, it is not, and
21 it seems to me this is one of the lessons from Finnegan
22 -- it is not stifling dissent in the local union for a
23 person in authority, a business manager or an
24 International Union trustee to wish to present the
25 program through agents that will agree with him, and

1 carry out his policy. Just as Mr. Leu wanted --

2 QUESTION: Well, what if the agents don't
3 agree with him? In their honest disagreement, does the
4 trustee have a right to stifle that?

5 MR. FISHER: The trustee, it is our position,
6 has the right to remove them as his agents -- as the
7 persons through whom he must act, and whom he must
8 necessarily rely on, and with whom he is in a
9 confidential position with, relationship with.

10 After that, obviously, as union members, the
11 individuals are free to take any position on any issue
12 that they wish. I mean, their rights, as union members,
13 of speech have not been infringed, and as the Court said
14 in Finnegan, we are dealing with what is at most an
15 indirect infringement of speech when a union employee is
16 removed from his position because of his disagreement on
17 a matter of principle with his superior.

18 Otherwise, a principle certainly must have the
19 right under the Act -- and we think this was recognized
20 in Finnegan -- to have agents who are responsive to him,
21 and who will carry out his wishes.

22 Mr. Lynn did not. Mr. Lynn not only opposed
23 the policies of the dues increase, which was a critical
24 part of the policy, but he spoke against it. He
25 campaigned against it. He belonged to organizations and

1 attempted to induce them to oppose it. He spoke against
2 the issue vigorously at the meeting, and then when the
3 issue was defeated, he publicly crowed about it. He
4 took credit for defeating the very policy of the person
5 who was his principal and the policy he was attempting
6 to espouse.

7 QUESTION: If the union hadn't been in
8 trusteeship, Mr. Fisher, the people in charge of the
9 union under the union bylaws could have removed Mr. Lynn
10 the same way the trustee did?

11 MR. FISHER: Not in -- under the constitution
12 of this union, there is no removal power, arbitrary
13 removal power on the part of, let us say, the business
14 manager, who has the right to direct the business agents.

15 The only way that a business agent can be
16 removed from office is by the process, under the union's
17 constitution, of filing charges. There would have to be
18 a hearing on those charges. It would be tried before
19 probably a local union trial board, and they would
20 decide either that there were grounds for his removal or
21 there weren't.

22 QUESTION: That wasn't done here, though.

23 MR. FISHER: No, sir, because the trustee --
24 once the union is placed under trusteeship, under the
25 constitution of the Sheet Metal Workers, has the

1 authority on his own to remove and replace anyone he
2 wishes. He has plenary power of removal and
3 replacement, not only of Mr. Lynn, but of other
4 employees in the union hierarchy also.

5 Now, in the Leu case, of course, in that
6 particular local union -- it was a Teamsters' Local --
7 in that, in that case, the business, or the president,
8 who was essentially here the same as a business manager
9 in many union hierarchies -- the president did have the
10 right to replace and remove his agents. And I -- we
11 think that this case is no more than an extension of the
12 law of agency, that a principal does have the right to
13 work through agents with whom he has compatibility, with
14 whom he is comfortable.

15 QUESTION: May I ask, Mr. Fisher, would the
16 case be any different if instead of being in
17 trusteeship, you just had a different union
18 constitution, and just gave the head of the union the
19 authority to remove all business agents, even those that
20 had been elected? It would be the same case, wouldn't
21 it?

22 MR. FISHER: If the president of the union had
23 the authority to remove elected business agents, and it
24 was in the -- and he has such authority in the
25 constitution? It would get closer to the same case. It

1 would get closer also to Finnegan v. Leu, Mr. Justice
2 Stevens.

3 QUESTION: But it doesn't seem to me the
4 trusteeship is relevant for anything except the fact, as
5 you suggest, that the trustee has the power of removal,
6 because certainly you would -- I would think you would
7 agree that there would be a violation if they said: take
8 him out in the alley and beat him up because of the
9 speeches, or something of that kind. That would be a
10 violation, wouldn't it?

11 MR. FISHER: That is taking a person's
12 membership rights --

13 QUESTION: No, no, no membership right. He'd
14 still have his right to everything -- the same
15 membership rights he has. He just would have suffered
16 some adverse consequences from his speech. But he'd
17 remain a member of the union, all the job rights, and
18 all that.

19 MR. FISHER: Well, that was suggested in the
20 brief, Mr. Justice Stevens. We don't think that that
21 analogy or that example is applicable.

22 QUESTION: Well, would you think there would
23 be a violation in that instance? Yes or no?

24 MR. FISHER: There would be a violation of his
25 right as a member, because he was assaulted, physically,

1 physically harmed, for speaking out on an issue. That,
2 it seems to me, is quite different from saying that a
3 person has the right to take positions diametrically
4 opposed to those of his principal and remain employed by
5 the union.

6 We concede that he had a right, as a member,
7 to go to a meeting and to speak, and to take any
8 position that he wished to take as a union member. But
9 to say that that person also has the right to be and to
10 remain an agent --

11 QUESTION: What if they just cut his salary in
12 half, but let him continue in his position? That would
13 be forbidden, then, I suppose? We don't like the speech
14 you made, so instead of making \$300 a month in this job,
15 you'll make \$100.

16 MR. FISHER: Justice Stevens, I really don't
17 know the answer to that. All I know is that this is a
18 question of a right to choose the people that you want
19 to work with. You either work with them, on the one
20 hand, or you don't work with them.

21 Now, if you can penalize them, you say, in
22 some way, by cutting their salary, I really don't know
23 what the answer to that question would be. I would
24 think it would be less than the situation we have here,
25 which is a person has the right to select. For

1 instance, I don't think cutting --

2 QUESTION: Well --

3 MR. FISHER: -- the salary in half of an agent
4 would mean that the principal was unwilling to work with
5 him. I mean, the normal --

6 QUESTION: Well, in this case --

7 MR. FISHER: Excuse me, Justice Marshall.

8 QUESTION: Well, in this case, if a business
9 agent makes a speech that the president of the union,
10 the International President, doesn't like, what if
11 anything can he do?

12 MR. FISHER: The International President?

13 QUESTION: Yes, sir.

14 MR. FISHER: He cannot do anything to the --

15 QUESTION: He can -- he can send --

16 MR. FISHER: The International President
17 cannot -- well, do you mean -- if the International
18 President had someone on his staff, who was --

19 QUESTION: A business agent like this business
20 agent here.

21 MR. FISHER: Yes, sir.

22 QUESTION: What can he do on his own? Against
23 that agent.

24 MR. FISHER: Well, the International
25 President, when the local union is operating under

1 conditions of local autonomy, could do nothing more than
2 prefer charges if he felt that what the agent did or
3 what the --

4 QUESTION: Is there any other way he could get
5 to him?

6 MR. FISHER: Not unless there was a violation
7 of --

8 QUESTION: Other than to put the local in a
9 trusteeship?

10 MR. FISHER: Well, the local is not placed
11 into trusteeship for any improper or ulterior motive
12 here. Everyone wanted --

13 QUESTION: Well, couldn't it be done?

14 MR. FISHER: No, sir. I believe under Title 3

15 --

16 QUESTION: well, what would stop it from being
17 done?

18 MR. FISHER: What would stop it from being
19 done is it would not be for a proper purpose under the
20 statute. A suit could be brought.

21 QUESTION: Well, would that stop it? Don't
22 some labor unions do things improperly?

23 MR. FISHER: Well, that's why the Landrum
24 Griffin law was enacted, and there are rights given to
25 members who believe that their rights or their

1 prerogatives under the Bill of Rights have been violated.

2 QUESTION: This man was Incalcitrant. You
3 couldn't get rid of him any way but by trusteeship -- am
4 I right or wrong?

5 MR. FISHER: I -- I can't agree with the
6 proposition you're positing, Mr. Justice Marshall.

7 QUESTION: Yes. But am I right?

8 MR. FISHER: I can't see it, because there is
9 no evidence whatever in this case, and in fact it is not
10 true that the trusteeship was imposed in any way because
11 of the presence on the staff of Mr. Lynn as a business
12 agent.

13 QUESTION: Mine was just a hypothetical, it
14 wasn't this case.

15 MR. FISHER: A trusteeship that was imposed
16 for the purpose of getting rid of a business agent that
17 a union president or a general president didn't like
18 would not be imposed for one of the purposes under the
19 statute, and it would be impermissible if challenged in
20 suit.

21 QUESTION: Thank you.

22 MR. FISHER: Now, it is clear, moreover, in
23 this case, that Mr. Lynn was not really opposed to a
24 dues increase as such, because he was asked by the
25 trustee, Mr. Hawkins, to support the policy and he said

1 he wouldn't support it, and Mr. Hawkins asked Mr. Lynn
2 what it would take to support it, and he said you've got
3 to fire two other people on the staff. You've got to
4 fire the business manager, who was a Mr. Fox, and you've
5 got to fire another business agent -- there were two
6 business agents on the staff. (Inaudible) Mr. Hawkins.

7 After such a statement is made to the
8 principal, who has to work through agents, that I won't
9 support this policy unless you fire these people, and if
10 you do fire these people, I will support the policy, he
11 could not work with that agent. It became a burden and
12 the statute, if it please the Court, does not require
13 union officials with plenary removal authority to work
14 through agents that they cannot -- that are not
15 cooperating with them, and that they cannot deal with,
16 and will not further their objectives.

17 It was found by the Court below, and it is not
18 disputed, that Lynn's suspension from employment as
19 business agent didn't impair his membership rights in
20 the union. He was entitled to and did attend membership
21 meetings; he did express himself on issue that came
22 before the union, and he exercised all rights of
23 membership, just as the dismissed agents in the Finnegan
24 v. Leu case did.

25 QUESTION: Mr. Fisher, is there any evidence

1 that this agent was unsatisfactory for any reason except
2 his opposition to the dues increase?

3 MR. FISHER: Well, it turned out, subsequently
4 -- which is not part of this case -- he, his -- he was
5 not performing his duties overall in a satisfactory
6 manner. But that is not before the Court, and it isn't
7 part of the case, Justice Stevens.

8 There were other complaints, but it is -- it
9 appears on the basis of the evidence -- this case was
10 submitted on a motion for summary judgment. In fact,
11 it was cross-motions for summary judgment, and there
12 were undisputed issues of fact that were submitted
13 before the court. And the court had those controverted
14 issues of fact, and decided this case on the basis of
15 those facts and of no other cases -- no other facts,
16 excuse me.

17 QUESTION: Is it true that the -- as Lynn's
18 brief says, that after he was removed, he was never
19 dispatched for work for the union's hiring hall?

20 MR. FISHER: That is an issue that is being
21 litigated at this time before the National Labor
22 Relations Board, and that has never been resolved.

23 And those are not the issues, again, that were
24 before the Court on this first count. The only issue
25 raised in the count that is before this Court is the

1 question of whether his removal as business agent
2 violated his speech rights under section 101(a)(1) and
3 101(a)(2) of the Act. And that is -- that is the only
4 issue.

5 The other parts of the case were dismissed,
6 and they have not been appealed. They are not before
7 this Court, and therefore the union says no, but it's a
8 question that has never been resolved.

9 QUESTION: But for purposes of our decision,
10 we assume none of that other happened? I think you're --

11 MR. FISHER: That is --

12 QUESTION: -- but on the other hand, we also
13 assume that really the only reason for discharge was his
14 speech?

15 MR. FISHER: Well, his --

16 QUESTION: Even though there may well have
17 been other factors.

18 MR. FISHER: No, his speech, and his statement
19 that you fire these other two people, and then I'll
20 support you. It is his position of opposition, his
21 position of opposition to a very important objective --

22 QUESTION: Well, (inaudible) to whether
23 you're trying, you try and solve the financial problems
24 by cutting expenses on the one hand, or by raising dues
25 on the other? I know it's oversimplifying --

1 MR. FISHER: Certainly.

2 QUESTION: -- and one way to cut expenses is
3 to get rid of some of the, some of these people, and
4 this was consistent with his views on the major
5 authority.

6 MR. FISHER: Well, I'm not saying that there
7 isn't logic to his position, of course. But the
8 principal made a decision, and he wanted his views to be
9 --

10 QUESTION: But the irony of your argument is
11 that if the principal sort of acts as though he has the
12 right to make the decision when, as I understand it, it
13 is a decision that had to be made by the membership?

14 MR. FISHER: Unquestionably. It's the same
15 kind of decision --

16 QUESTION: There's some tension there.

17 MR. FISHER: -- that was made by the members
18 of the local union in *Finnegan v. Leu*. I mean, you have
19 to have an election to elect officers, and you have to
20 have an election, or you have to have a vote in order to
21 raise dues.

22 I will reserve --

23 QUESTION: Please, let me ask you --

24 MR. FISHER: Yes, sir, Mr. Justice Scalia.

25 QUESTION: You referred to the trustee's

1 authority repeatedly as autocratic. It is autocratic
2 for most things, but is there any indication that he is
3 supposed to have some special authority to determine the
4 outcome of elections on that one issue of dues increase
5 which is left to the democratic process?

6 MR. FISHER: Oh, no. When I said autocratic,
7 he does have autocratic authority in terms of who's
8 going to work and who isn't going to work, and what
9 things are done.

10 QUESTION: Well, virtually everything, except
11 with respect to dues increase. That's not his
12 decision. That has to be taken democratically.

13 MR. FISHER: That is correct, and as a member,
14 he had the right to oppose it. But as a person
15 attempting to implement the policy of the trustee, the
16 trustee wished to have his representatives at least not
17 actively oppose his program to solve the union's
18 economic problems by a dues increase. Now, that could
19 be turned down by the members --there is no doubt about
20 it, and in this case it was, Justice Scalia.

21 But it's a question of whether this -- whether
22 after having refused to go along with the team to carry
23 out the policy of the superior official, in those
24 circumstances, the principal could get rid of an
25 unwanted agent.

1 QUESTION: Well, that's the crux of the case,
2 as far as I'm concerned -- whether the authority given
3 to the trustee, the autocratic authority -- I think it's
4 right to refer to them as autocratic authorities --
5 includes the authority to influence by his actions the
6 outcome of that democratic election. That one item --

7 MR. FISHER: Well, I don't know that --
8 Justice Scalia, I'm not saying that it's influence. He
9 wasn't fired because he didn't get up and speak for it.
10 But he totally opposed it, and it was against the
11 program and it was against the policy that the trustee
12 was attempting to input, and --

13 QUESTION: But under your view he could have
14 been fired for refusing to get up and speak for it.

15 MR. FISHER: Oh, no. I'm not -- I really
16 don't say that, Justice Stevens. I'm not saying that at
17 all.

18 QUESTION: But why not, if he has that
19 autocratic power?

20 MR. FISHER: No, if I used the term
21 autocratic, I may have made a problem for myself.

22 I'm not talking about Czarist Russia, or
23 anything like that. I'm simply saying that the union
24 trustee does have the right to administer the affairs
25 and to remove personnel, and it is so stated in the

1 constitution, and it is at least as much authority as
2 Mr. Leu, the new business, or the new president in
3 Finnegan v. Leu, had, when he fired those 15 business
4 agents.

5 QUESTION: Well, are you doubting his power to
6 remove him for refusing to support affirmatively the
7 dues increase?

8 MR. FISHER: Refusing to support affirmatively?

9 QUESTION: Yes. Instead of the facts we have,
10 just say he asked him to get up and make a speech in
11 favor of it, and he said: I won't do it. Could he then
12 have fired him?

13 MR. FISHER: I presume he could have. I
14 presume he could have.

15 QUESTION: Thank you, Mr. Fisher.

16 We'll hear now from you, Mr. Stark.

17 ORAL ARGUMENT OF BRUCE M. STARK

18 ON BEHALF OF THE RESPONDENT

19 MR. STARK: Thank you, Mr. Chief Justice, and
20 may it please the Court:

21 I think what we need some elaboration on the
22 facts as to how this came about, that Lynn ran for
23 office on a platform of economy and fiscal integrity of
24 his union, something that predated the conflict that we
25 have here.

1 A majority of members of the union were
2 concerned with the fiscal well-being of their union and
3 formed a sheet metal club. And that sheet metal club
4 sponsored a group of candidates to run for office on
5 that enunciated platform.

6 And Mr. Lynn prevailed over six or eight other
7 candidates for the position. He was elected by a
8 majority of the members to speak out on the policy that
9 the sheet metal club supported.

10 QUESTION: He was elected their business agent?

11 MR. STARK: Yes.

12 QUESTION: And what are the duties of the
13 business agent?

14 MR. STARK: It appears that in Mr. Lynn's
15 case, the duties of the business agent involved
16 enforcing the collective bargaining agreement, handling
17 grievances, negotiating the terms of the bargaining
18 agreement, in some instances signing the bargaining
19 agreement, and setting policy within the union.

20 QUESTION: (Inaudible)

21 MR. STARK: I believe he had the job a little
22 over -- almost two years. A little over a year.

23 QUESTION: Who were his superior officers in
24 the local, or other officers in the local?

25 MR. STARK: There was another business agent,

1 there was a business manager, there was a president,
2 there was an executive Board, and some other and sundry
3 offices that were all elected.

4 QUESTION: (Inaudible)

5 MR. STARK: Well, Petitioners claim that there
6 was a subordination there. I would suggest that as a
7 duly elected officer, he had the same status as any
8 other duly elected officer, albeit perhaps some
9 different duties.

10 QUESTION: Well, suppose the executive
11 committee and the president, whoever it was that could
12 try to get some help out of him decided on a program,
13 and they wanted to sell it to them. Suppose that they
14 wanted, the old committee wanted to raise dues, and they
15 would have to get the consent of the membership?

16 MR. STARK: Right.

17 QUESTION: And they asked, they ask the
18 business agents, everybody who is an elected member to
19 help, to go out and support it, or at least not oppose
20 it. Would that have been cause for removal of the
21 business agent?

22 MR. STARK: Absolutely not.

23 QUESTION: Because?

24 MR. STARK: Because it's a free speech right,
25 it's a matter of open debate at a membership meeting

1 where reasonable people can agree and disagree as to the
2 wisdom of that course of action.

3 QUESTION: well, I know, but people can agree
4 or disagree on all sorts of -- whether a particular shop
5 rule is, or a particular provision of a collective
6 bargaining agreement is valid. Do you -- would the
7 business agent be violating any duty to his superiors if
8 he refused to support the ratification of a particular
9 collective bargaining agreement that has been negotiated
10 by his superiors?

11 MR. STARK: Mr. Justice, when you say his
12 superiors, perhaps I'm confused. As the duly elected
13 business representative --

14 QUESTION: well, whoever they are. Suppose
15 the president and the executive committee, whoever they
16 are, ask him to support this collective bargaining
17 agreement.

18 MR. STARK: No, no. Because the labor union
19 is a microcosm of our society as a whole, and our
20 elected officials do not follow in locked step with one
21 another. There's room for divergent opinion, and in
22 this case, Mr. Lynn was representing and enunciating a
23 position on which he based his platform for election,
24 and I would suggest that his superiors were the majority
25 of the members who elected him, and the majority of the

1 members that eventually prevailed on four, not just one
2 or two, but four propositions for the membership to
3 raise dues and four which were rejected.

4 QUESTION: Where is the constitution of the
5 local union? Is it in the record?

6 MR. STARK: Portions of it are, Your Honor.

7 QUESTION: Sir?

8 MR. STARK: Portions of it are, Your Honor.

9 QUESTION: Well, is the portion about the man
10 involved here, his duties, is that in the record?

11 MR. STARK: As to his official duties as a
12 business agent, it describes in rather broad fashion
13 what a business agent might do.

14 QUESTION: Well, if I ask you what was his
15 duties, would you mind telling me what his duties were?

16 MR. STARK: Of course, Your Honor.

17 QUESTION: You'd mind? Well, don't do it.

18 [Laughter]

19 MR. STARK: It's at page 50 of the joint
20 appendix, section 8 of the constitution gives some
21 rather general and broad framework of the duties of a
22 business manager and a business representative. However,
23 that's not dispositive of what Mr. Lynn actually did in
24 Local 75.

25 I think we have to bear in mind that the Sheet

1 Metal Workers is a rather large union, that encompasses
2 many different crafts. We have the construction sheet
3 metal works, for example, who put in the duct work for
4 air conditioning and heating in buildings, whereas Mr.
5 Lynn was in a kitchen fabricating shop, where they
6 manufacture the stainless steel and the custom-made
7 kitchenware that goes into a commercial restaurant
8 facility.

9 So the duty as spelled out broadly in the
10 Sheet Metal Workers' constitution does not necessarily
11 apply strictly to Mr. Lynn's duties.

12 QUESTION: Well, among his duties are to
13 assist and cooperate with the officers of local unions
14 and the members thereof in carrying out the provisions
15 of this constitution.

16 MR. STARK: And Mr. Lynn was doing exactly
17 that. He was cooperating with the majority of the
18 membership who felt that reducing expenses was the first
19 step towards fiscal responsibility rather than raising
20 dues.

21 I would say that --

22 QUESTION: Are you sure that this union
23 couldn't have a standard policy on a matter such as
24 whether a particular clause should be included in the
25 next -- in the next labor agreement? The president

1 might want it, and the vice president might not want it,
2 and they could present no common front?

3 MR. STARK: Well, that occurs all the time in
4 negotiating a collective bargaining agreement, and very
5 often there will be a compromise on a clause in a
6 collective bargaining agreement that does not represent
7 a total consensus of the bargainers, and very often it's
8 submitted to the membership, and the membership reject
9 it because they did want a particular clause, and the
10 negotiating team did not get it.

11 The ultimate sovereignty is with the
12 membership.

13 QUESTION: There's no obligation for the
14 officers to go along with the president of the union on
15 matters such as this sort?

16 MR. STARK: Not when they're going to the
17 membership, because the membership represents the
18 sovereignty of the union.

19 QUESTION: Take a parliamentary system of
20 government, Mr. Stark. The parliament represents the
21 sovereignty of the people, and yet you'll have a cabinet
22 and a prime minister. Now, the people in the cabinet
23 are themselves members of parliament. They have every
24 right that a member of parliament has. But you don't
25 stay in the Cabinet unless you go along with the

1 government.

2 You don't say: I'm going to parliament and
3 appealing because you're the sovereign. The prime
4 minister says: Fine. You go back and take your seat as
5 a member, but you're out of the cabinet.

6 Now, why isn't that analogy applicable here?

7 MR. STARK: Because you're not elected to the
8 cabinet. The president appoints a cabinet, and also
9 we're dealing with a party system where we're dealing
10 with such things as party loyalty, and the analogy just
11 is not representative to a union such as the Sheet Metal
12 Workers' Union where you do not have a Party A and a
13 Party B, and you're maintaining party loyalty and party
14 discipline.

15 QUESTION: This case, to your mind, then turns
16 on whether or not Lynn was elected or appointed?

17 MR. STARK: Oh, I think it's very significant,
18 because Mr. Lynn was elected to represent a particular
19 point of view of his constituency, which did comprise
20 the majority of the membership.

21 QUESTION: Well, did the trustee have the
22 power to dismiss him for any reason during the
23 trusteeship?

24 MR. STARK: Absolutely not. The trustee had
25 no greater powers than were available to any other union

1 officer under the LMRDA.

2 The council indicates plenary powers, but
3 there is absolutely nothing to substantiate that
4 discussion of plenary powers. The plenary powers are
5 not to be found in their brief, nor in the law.

6 In fact, Petitioners admit --

7 QUESTION: So it doesn't turn on this
8 particular right to discuss a dues increase? You say
9 there is nothing that would have given the trustees the
10 power to take the action that he did against Mr. Lynn?

11 MR. STARK: Well, when you say that there was
12 nothing --

13 QUESTION: That's my question.

14 MR. STARK: Well, if we want to pose that
15 hypothetical, and assume that they found that Mr. Lynn
16 was embezzling money, well of course there's an action
17 that the trustee could take, and there is a procedural
18 due process for such an exigency, that they could bring
19 charges against him, they could take him away from the
20 funds, and bring charges against him --

21 QUESTION: But for no reason of policy?

22 MR. STARK: Pardon?

23 QUESTION: But for no reason of policy? Just
24 a desire to have someone the trustee can get along with?

25 MR. STARK: In your second hypothetical,

1 Justice O'Connor, no. You could not -- the trustee could
2 not remove him just because he disliked him. He's a
3 duly elected officer, and in this case there's no doubt,
4 in fact the trustee admitted that he terminated him,
5 removed him, kicked him out of office.

6 QUESTION: Is that some right that you find in
7 Title 1, there's some section in Title 1 of the Act that
8 you're relying on?

9 MR. STARK: Yes.

10 QUESTION: And what is it?

11 MR. STARK: The free speech provision, of
12 speaking out on a matter of public concern before a
13 general union meeting, as required by 101(a)(3).

14 QUESTION: (Inaudible)

15 MR. STARK: I have no disagreement with
16 Finnegan.

17 QUESTION: Well, they were exercising their
18 right of speech, their claimed right of speech.

19 MR. STARK: Well, there are many unions such
20 as in Finnegan, which was a Teamsters' case, the
21 Operating Engineers, and the Machinists Union, who elect
22 a business manager who enunciates a platform and a
23 policy that he proposes to carry out. And in Finnegan,
24 this Court correctly ruled that that business manager
25 could select his own staff to carry out that policy

1 which was mandated by his election by the membership.

2 QUESTION: But the staff, however, were
3 appointed.

4 MR. STARK: Pardon?

5 QUESTION: The staff were appointed.

6 MR. STARK: The staff were appointed. In
7 this case, we have Mr. Lynn, who was duly elected on a
8 platform and to represent a constituency just the same
9 as the principal business manager who was duly elected.

10 QUESTION: Well, the business of speaking was
11 -- if that was the, if that's what was being retaliated
12 against, in Finnegan, it is here, too.

13 MR. STARK: Except, except that the business
14 agents in Finnegan were appointed. They did not run for
15 office. They did not have to stand for election by the
16 membership. In this case, Lynn did.

17 QUESTION: All right but in this case, though,
18 they got canned for speaking.

19 MR. STARK: But in this case, Lynn was elected
20 by the membership to speak out and represent a certain
21 philosophy.

22 QUESTION: Your -- your client was the
23 plaintiff in the Federal District Court, Mr. Stark?

24 MR. STARK: Yes, Your Honor.

25 QUESTION: Did he make any claim there or in

1 the Ninth Circuit that apart from Title 1, the trustee
2 had no authority under the bylaws or constitution to
3 remove him?

4 MR. STARK: Yes, Your Honor. It was alleged
5 in the complaint.

6 QUESTION: And did the District Court or the
7 Court of Appeals ever pass on that question?

8 MR. STARK: Well, since it went to the Court
9 -- well, the District Court ruled that Finnegan applied,
10 that somehow or other there was a --

11 QUESTION: Well, but I'm not interested in
12 what the District Court ruled on whether Finnegan
13 applied. I want to know did the District Court ever
14 pass on the question of whether apart from Title 1 the
15 union constitution or bylaws would have prevented the
16 trustee from removing your client?

17 MR. STARK: Not directly, no, Your Honor.

18 QUESTION: And did the Ninth Circuit ever pass
19 on it? They wouldn't have gone to Title 1 if they had,
20 would they?

21 MR. STARK: Well, the Ninth Circuit ruled that
22 a cause of action had been stated, which precluded
23 summary judgement --

24 QUESTION: Under Title 1.

25 MR. STARK: Under Title 1.

1 QUESTION: But, do you make any point here
2 that the union constitution or bylaws, apart from Title
3 1, didn't authorize the trustee to remove? Had it not
4 been for Title 1, do you contend that the trustee
5 nevertheless couldn't have --

6 MR. STARK: Well, under the union's
7 constitution and bylaws, it's purported that the trustee
8 would have that authority.

9 QUESTION: So if Title 1 doesn't prevent it,
10 nothing else does.

11 MR. STARK: That's correct. Title 1 precludes
12 that, because we're dealing with a free speech issue on
13 a matter coming before the membership, and the
14 distinction with Finnegan is that Mr. Lynn was duly
15 elected for that purpose, to represent his constituency
16 on a particular point of view.

17 QUESTION: Mr. Stark, suppose there hadn't
18 been a trustee appointed. Would the president of the
19 union have had the right to dismiss your client, if your
20 client had been caught embezzling funds?

21 MR. STARK: Well, if he was caught embezzling
22 funds, he would have had the right to prefer charges
23 against him, and start removal action against him.

24 QUESTION: Which would -- removal action would
25 what? Go to the membership, like a kind of impeachment,

1 or what?

2 MR. STARK: Well, as counsel indicated, it
3 would go to a trial committee. There would be charges
4 brought against him, he'd be given an opportunity to
5 prepare a defense. There would be a full and fair
6 hearing before a tribunal within the union.

7 QUESTION: Even though he was elected?

8 MR. STARK: Even though he was elected. It's
9 the same as an impeachment or a recall of any other duly
10 elected official.

11 But under these circumstances, no, he would
12 not, and I agree with Justice Stevens, who's saying that
13 the trusteeship is irrelevant. It is irrelevant, because
14 we're dealing with a free speech issue under Title 1,
15 that he chose to speak out in opposition to a dues
16 increase as his constituency elected him to do, and the
17 constituency agreed with him -- not once, but four times
18 they agreed with him.

19 QUESTION: May I just add -- supposing an
20 embezzlement charge had been brought by the trustee.
21 Would the trustee have had to follow the same procedures
22 of preferring charges, and so on, or could he have just
23 sliced him off right away?

24 MR. STARK: No. The trustee would have to
25 follow the same provisions in Title 1 of the LMRDA.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUESTION: Well, does the --

MR. STARK: Title 1 being procedural due process for a given offense, and section 609 being an absolute prohibition of taking any discipline for exercising your rights under the Act.

QUESTION: Well, I must confess I'm a little puzzled. You indicated to the Chief Justice that the trustee did have the power to remove an elected official without following these procedures, as I understood it.

MR. STARK: Oh, no, no, no, no, no. I hope I didn't say that.

QUESTION: Oh. You would have to -- now, did he follow these procedures in this case?

MR. STARK: No, he did not. He did not follow -- he did not follow the procedures under the LMRDA, nor did he follow the procedures under the Sheet Metal Workers' constitution and bylaws.

Because as counsel indicated that if you're going to remove an elected official, absent any trusteeship, which I still agree is immaterial, that he would still be provided a trial, which was not provided Mr. Lynn.

QUESTION: What about there is a trusteeship? You answered me a few minutes ago, I got the impression you're giving a different answer to Justice Stevens.

1 Assume there is a trusteeship -- not that the
2 original elected officials are in. Have you ever
3 contended -- do you contend in this Court that the
4 trustee lacks authority under the union constitution or
5 bylaws to remove Lynn?

6 MR. STARK: No, because --

7 QUESTION: In the manner done here, I think
8 the Chief Justice means, not through the impeachment
9 provisions.

10 MR. STARK: Oh.

11 QUESTION: But to remove him the way he was
12 removed here.

13 MR. STARK: Well, I get a new ingredient.

14 QUESTION: well, yes, just --

15 MR. STARK: One is on embezzlement, and one is
16 on speech.

17 QUESTION: Yes. You'll have to answer -- I
18 think you can let each one of us speak for ourselves,
19 and perhaps all of us will let one another do that.

20 Why don't you try to answer my question?

21 MR. STARK: Your hypothetical, as I understand
22 it, Mr. Chief Justice, is if he was caught embezzling,
23 would the trustee -

24 QUESTION: No. You've been peppered by a
25 number of questions.

1 My question is this: supposing he were caught
2 or doing exactly what he was doing, speaking in
3 opposition to trustee policy at this meeting, do you
4 claim that the trustee, if there had been no Title 1, do
5 you claim that the trustee lacked authority under either
6 the union constitution or bylaws to fire him for doing
7 that?

8 MR. STARK: Oh, absent Title 1, then the
9 trustee could do that, because that would put us back
10 into pre-LMRDA days.

11 QUESTION: And so you agree the trustee could
12 do that, except for Title 1?

13 MR. STARK: That's correct.

14 QUESTION: Okay.

15 MR. STARK: And the LMRDA. In fact, the
16 intent of Congress as stated in the preamble to the
17 LMRDA is to correct those very defects, and to correct
18 the very sins that occurred here.

19 The --

20 QUESTION: (Inaudible) before or after LMRDA
21 could have provided that a trustee, if he wanted to
22 remove somebody, had to have good reason. It could have
23 -- the constitution itself could have provided that he
24 couldn't remove an elected official, for example.

25 MR. STARK: Well --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

QUESTION: Did it? It didn't.

MR. STARK: Well, I think you're driving at one of the sacred principles of labor unions and collective bargaining agreements, and that is no removal except for just cause. And purportedly, the Sheet Metal Workers' constitution enunciates the same thing, but in this case, they did not provide it.

They claimed that by virtue of the trustee, they had plenary powers, as they phrase it, and he could do anything he wanted.

QUESTION: Well, I take it that you suggest that we decide this case on the assumption that absent Title 1, the trustee could have done what he did here.

MR. STARK: Absent Title 1 and prior to the LMRDA, he could have done this. That is correct, and that is what the LMRDA was passed to preclude occurring, that the trustee in this case had no greater authority than any other officer, and the LMRDA -- and in fact, Petitioners admit that they had to go to the membership to get a dues increase under Title 1 of the LMRDA -- and then on the other hand, they turn around and say: well, we don't have to respect Title 1 under the LMRDA, we can just go ahead and remove an official because he spoke out against something that displeased one of the officers. That is not what the LMRDA is.

1 QUESTION: What do you say about -- don't you
2 think there was, in Finnegan, that -- I find a lot in
3 Finnegan that says that Title 1 isn't violated unless
4 you infringe on members' rights as members.

5 MR. STARK: Yes.

6 QUESTION: Rather than as officers.

7 MR. STARK: That's correct. In fact, in
8 Finnegan, they --that phrase is repeated several times.
9 But in this particular case, I would suggest that --

10 QUESTION: They didn't -- they didn't remove
11 this gentleman, your client, as a member, or even
12 attempt to. They just removed him as an official.

13 MR. STARK: But I would suggest, Your Honor,
14 that making that distinction in this case is artificial
15 and strained, because if the membership elects a person
16 to speak out in their behalf on a certain policy issue,
17 and a minority pulls a coup, and boots him out of
18 office, does that not affect the membership right to
19 have a spokesman of their own choosing?

20 And I would point out that Finnegan also
21 states that the Act's primary objective was ensuring
22 that unions would be democratically governed and
23 responsive to the will of the membership. And that
24 being the case, how can you have a union that is
25 democratically governed and responsive to the will of

1 the membership if you have one dictator, either
2 president, trustee, or business manager, who says: I
3 disagree. We're going to get rid of that majority
4 opinion.

5 And I think that this is the very thing that
6 was also pointed out in Finnegan, that where you're
7 dealing with a duly elected representative of the
8 membership, that it tips the balance in Lynn's favor.
9 This is also spelled out in Finnegan, and I would --

10 QUESTION: Mr. Stark, is it critical to your
11 case that the issue involved was, was the question of
12 dues increase? Suppose the issue had been what terms
13 are we going to negotiate for in the next contract?
14 Suppose that had been the issue. Would you still be
15 here?

16 MR. STARK: I'd still be here.

17 QUESTION: So it isn't --

18 MR. STARK: Because that is a matter that the
19 membership --that was brought up at the membership at an
20 open meeting, and saying: here's one proposition, we
21 want to go for wage increases and the other one says:
22 no, we want to go for fringe benefits.

23 The membership takes a vote, people speak pro
24 and con, the membership votes and says we want to go for
25 wage increase, then you don't turn around and boot out

1 of office those who spoke on the other side, just
2 because you don't like them.

3 QUESTION: Even though the trustee, as I
4 understand it, would have the authority to say: we're
5 going to go for better working conditions rather than a
6 wage increase. Isn't he authorized as part of his
7 trusteeship to, to run the union to that extent?

8 MR. STARK: Well, again, the trustee has no
9 greater authority than the other officers of the union.

10 Now, the trustee could in fact say: I don't
11 want to go to the membership with this issue. I want to
12 go for wage increases, and that's it. And that's what
13 we're going to negotiate. He runs the risk of bringing
14 it back to the membership for a vote, and having various
15 people speak out on it, including perhaps some of the
16 negotiating committee, which often happens, and having
17 the membership turn it down, say: no, we want fringe
18 benefits.

19 The officer --

20 QUESTION: But he can't fire them for not
21 supporting him on that point, any more than he can fire
22 them for not supporting him on this point of dues
23 increase?

24 MR. STARK: That is correct. As long as he's
25 a duly elected officer, which is altogether different

1 situation from Finnegan --altogether.

2 I would suggest to the Court that what the
3 Petitioners in this case are seeking is to rewrite Title
4 3 to restore practices that Congress specifically
5 legislated against. And I would also like to emphasize
6 the fact that we live in a representative democracy.
7 And Congress in passing the LMRDA sought to apply that
8 to the labor organizations. And Title 4 would be for
9 nought if minority views could be silenced by immediate
10 reprisals that occurred in this case.

11 And I would like to point out to the Court
12 what those immediate reprisals were. Within a matter of
13 days, not only was Mr. Lynn booted out of office, he was
14 never dispatched for work, notwithstanding his A
15 classification, and to this very day --

16 QUESTION: That's not before us, though, is it?

17 MR. STARK: No, it's not, Your Honor.

18 But I make this point because we are dealing
19 with a summary judgement in the court below, and the
20 Court below, in the Ninth Circuit, emphasized the fact
21 that this was a practice on the part of the defendants
22 to stifle dissent and to stifle debate and the
23 antithesis of democratic operation of the unions, and
24 remanded it back to the District Court to hear evidence
25 on those issues that Mr. Lynn alleged, which is at pages

1 9 and 10. of the record, the joint appendix, in his
2 complaint, that those were viable, genuine issues of
3 material fact to be litigated.

4 And that's the reason that I raise it here now
5 -- is on that basis that the summary judgement was
6 reversed quite properly by the Ninth Circuit and sent
7 back to the District Court to hear evidence on that
8 point, because Mr. Lynn was in effect not only kicked
9 out of office, he was kicked out of the hiring hall, and
10 has never been dispatched for work.

11 And, I think too, that the results were
12 immediately achieved. After Lynn was disciplined, the
13 trustee went back for a fifth vote for a dues increase,
14 and finally got it. And I think that's a very important
15 fact in this case.

16 But I think the most important part is what
17 this Court recognized in Finnegan, that unions must be
18 democratically governed and responsive to the will of
19 the membership, and this is exactly why Congress passed
20 the LMRDA.

21 In their preamble, they pointed out that
22 Congress found that very often, labor union members were
23 not allowed to choose representatives of their own
24 choosing, and that the labor unions were not paying due
25 regard to the rights of the individual employees. And

1 the LMRDA was passed to correct that.

2 And here we have a situation where a majority
3 of the union members elected Lynn on a specific
4 platform, expecting him to speak out on fiscal
5 responsibility. When he did so, a minority in the union
6 --albeit under purported power to disregard Title 1 of
7 the LMRDA --booted him out of office, much to the
8 chagrin of the majority of the members attending that
9 union meeting and voting and saying no dues increase.

10 This is not a trusteeship issue, for indeed,
11 this is -- if it were a trusteeship issue, it would be
12 one of first impression, as far as I can determine,
13 before any federal court. It would be coming to the
14 Supreme Court for the first time for resolution. That's
15 not the case.

16 We're dealing with a free speech issue under
17 Title 1, where a membership right was directly attacked
18 by getting rid of the duly elected representative who
19 was acting as spokesman for the members in that union
20 that elected him. They expected him to.

21 Thank you.

22 QUESTION: Thank you, Mr. Stark.

23 Mr. Fisher, you have five minutes remaining.

24 REBUTTAL ARGUMENT OF DONALD W. FISHER

25 MR. FISHER: Thank you, Mr. Chief Justice.

1 Let me make only the observation that many of
2 the facts that Mr. Stark spoke on are not part of the
3 facts in the record.

4 This again is a case that was submitted on
5 cross motions for summary judgment, and the
6 uncontroverted facts are before the Court in the
7 appendices. An unverified complaint was filed by Mr.
8 Lynn. Those facts are not assumed to be true with
9 respect to a motion for summary judgment. This was not
10 the granting of a motion to dismiss, this was a case
11 decided on the basis of a motion for summary judgment.

12 Now, on the facts of record, to answer the
13 question that some of the Justices asked about, it is
14 clear in the appendix at the joint appendix, at pages 42
15 and 43, that the general president of the International
16 union, when he imposes a trusteeship, has the power to
17 take such action as he deems necessary to protect the
18 interest and welfare of such local union, and this
19 association and the funds and property and membership
20 thereof, including but not limited to the authority to
21 suspend local union or council officers, business
22 managers or business representatives, fill vacancies in
23 such offices with any representatives of this
24 association or members of such local union, or call
25 elections for that purpose, and impound the books,

1 records, funds and property of any such local union.

2 And the District Judge in the appendix to the
3 petition for the writ of certiorari, at page 33A, found
4 as a uncontroverted fact that the general president
5 delegated to Hawkins as trustee the authority in the
6 constitution under article 3, section 2(c), and he
7 quotes from the constitution, "To take such action as he
8 deems necessary to protect the interests and welfare of
9 local 75, its funds, property and membership, and the
10 interest and welfare of the international association,
11 including but not limited to the right to suspend local
12 union officers, the business manager and/or business
13 representatives to fill vacancies in such positions.

14 QUESTION: Well, with all that, was all that
15 you read from that purporting to fine a union member for
16 opposing a dues increase?

17 MR. FISHER: Well, there is no fine --

18 QUESTION: Yes or no?

19 MR. FISHER: No.

20 QUESTION: And suppose this speech that this
21 man made didn't have any connection with his job as a
22 union agent.

23 MR. FISHER: No, I --

24 QUESTION: He just got collective bargaining,
25 administration, and things like that, collective

1 bargaining duties, and the question of a dues increase
2 has nothing to do with his job. His interest then is
3 as a member. Why wasn't he speaking as just a member,
4 and was then disciplined for it by losing his job, that
5 had nothing to do with dues increases?

6 MR. FISHER: Well, he was required to operate
7 and work at the direction of the business manager.

8 QUESTION: Well, that -- as far as I read,
9 what his job was, he was certainly had to do his job as
10 described in the constitution.

11 MR. FISHER: Yes, sir.

12 QUESTION: And to do it the way he was told to
13 do it.

14 MR. FISHER: Yes, sir.

15 QUESTION: But it had nothing to do with dues
16 increases.

17 MR. FISHER: Well, the policy that was
18 formulated by the trustee -- the trustee was sent in by
19 the general president. The trustee was to formulate
20 policies to rehabilitate the affairs of this local
21 union. This was the policy that was decided upon by the
22 trustee. It was correct that this policy could not be
23 self-implemented. This policy had to be submitted to
24 the membership for their approval, because they wanted a
25 dues increase.

1 QUESTION: I don't blame the trustee for
2 trying to get as much support as he could in the
3 membership. And he could campaign for it. But I don't
4 know why he was entitled to insist that the business
5 agent do anything more than an ordinary union member.

6 MR. FISHER: Well, because he was his agent,
7 and his personal representative.

8 QUESTION: Not for that purpose. He was his
9 agent for doing what business agents do.

10 MR. FISHER: Business agents attempt to follow
11 the policies that are set down by the board of -- the
12 executive board of the local union, and when the
13 executive board of the local union is really not
14 operating functionally because of a trusteeship, then
15 the policy of the local union is set by the president.

16 Now, the members have the right to vote to
17 decide the issue. But in terms of taking a firm position
18 as to whether he is going to oppose it, and try to
19 thwart it --

20 CHIEF JUSTICE REHNQUIST: Thank you, Mr.
21 Fisher. Your time has expired.

22 The case is submitted.

23 (Whereupon, at 3:00 o'clock p.m., the case in
24 the above-titled matter was submitted.)

25

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:

No. 86-1940 - SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, ET AL.,
Petitioners V. EDWARD LYNN

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

BY Judy Freilicher
(REPORTER)

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

'88 NOV 14 P3:53