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OFFICIAL TRANSCRIPT  
PROCEEDINGS BEFORE

THE SUPREME COURT  
OF THE  
UNITED STATES

CAPTION: ARTHUR GROVES, BOBBY J. EVANS AND LOCAL  
771, INTERNATIONAL UNION UAW,  
Petitioners V. RING SCREW WORKS,  
FERNDAL FASTENER DIVISION

CASE NO: 89-1166

PLACE: Washington, D.C.

DATE: October 10, 1990

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 ARTHUR GROVES, BOBBY J. EVANS :

4 AND LOCAL 771, INTERNATIONAL :

5 UNION UAW, :

6 Petitioners :

7 v. : No. 89-1166

8 RING SCREW WORKS, FERNDALE :

9 FASTENER DIVISION :

10 - - - - -X

11 Washington, D.C.

12 Wednesday, October 10, 1990

13 The above-entitled matter came on for oral  
14 argument before the Supreme Court of the United States at  
15 11:02 a.m.

16 APPEARANCES:

17 LAURENCE GOLD, ESQ., Washington, D.C.; on behalf  
18 of the Petitioners.

19 TERENCE V. PAGE, ESQ., Birmingham, Michigan; on behalf  
20 of the Respondent.

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1                                    PROCEEDINGS

2                    CHIEF JUSTICE REHNQUIST: We'll hear next in No.  
3 89-1166, International Union v. Ring Screw Works.

4                    Mr. Gold, you may proceed whenever you're ready.

5                    Let's have order in the Court and no talking in  
6 the courtroom except from counsel at the lectern.

7                    ORAL ARGUMENT OF LAURENCE GOLD

8                    ON BEHALF OF THE PETITIONERS

9                    MR. GOLD: Chief Justice, and may it please the  
10 Court:

11                   This case, like the preceding case, is one in  
12 which the International Union UAW is the petitioner, but  
13 thereafter the similarities cease rather than arising  
14 under title VII. This case arises under section 301  
15 of -- of the Labor Management Relations Act and as -- the  
16 emptying out of the bar section shows -- raises questions  
17 of somewhat less emotional -- proportion.

18                   The parties here entered into a collective  
19 bargaining agreement for a 3-year term. The agreement  
20 which stretches some 35 printed pages in the joint  
21 appendix. Actually, there are two agreements, but  
22 they're --

23                   QUESTION: There are literally 3,500 pages?

24                   MR. GOLD: 35 pages. I apologize.

25                   (Laughter.)



1 MR. GOLD: 35 pages of provisions are enough.  
2 3,500 and our printing bill would have kept us out of this  
3 Court. Stretches some 35 pages and covers the  
4 normal -- particulars of the relationship -- the working  
5 relationship between the employer and his employees.

6 The agreement contains a grievance procedure  
7 which specifies that -- it is the method for treating  
8 disagreements as to the interpretation and application of  
9 the agreement. The grievance procedure provides for 4  
10 steps of conciliation and discussion, provides that the  
11 parties may agree to arbitration for certain matters,  
12 provides that an agreement reached between the employer  
13 and -- the union during the grievance procedure is binding  
14 and is silent on what the status of the situation is in  
15 the event that the parties do not come to an agreement  
16 about what the contract means.

17 In addition, this agreement has an express no-  
18 strike clause. And the express no-strike clause contains  
19 an exception for a strike or a lockout over an unresolved  
20 grievance. The one thing that is absolutely plain is that  
21 the agreement is totally silent on whether there is an  
22 option where no resolution of the matter is reached in the  
23 last stage of the grievance procedure. One party or the  
24 other may sue under section 301 which provides for such  
25 suits for breach of the agreement and for enforcement of

1 the agreement as properly construed and entered into.

2 QUESTION: Mr. Gold, if suit is brought, do you  
3 consider the grievance, by reason of the bringing of the  
4 suit, to still be an unresolved grievance?

5 MR. GOLD: I -- I regard it as being an  
6 unresolved grievance until the Court speaks and determines  
7 whether the grievance is properly grounded in the contract  
8 or whether the employer's action was consistent with the  
9 contract and does not constitute a breach of the contract.

10 QUESTION: When does the no-strike clause allow  
11 a strike to occur?

12 MR. GOLD: The no-strike clause allows a strike  
13 to occur at the completion of the fourth step.

14 QUESTION: Uh-huh.

15 MR. GOLD: So, it does --

16 QUESTION: Where is the no-strike clause in --

17 MR. GOLD: Look at the -- page 34, the no-strike  
18 clause, which is section 7 on page 34 of the joint  
19 appendix, the buff-colored book says, until all  
20 negotiations, there shall be no strikes, et cetera.

21 QUESTION: Where is that on the page, Mr. Gold?

22 MR. GOLD: It is at the bottom of the page,  
23 section 7, the union will not cause or permit its members  
24 to strike. Then you have the negatives and at the end it  
25 says until all negotiations have failed through the

1 grievance procedure set forth herein. Neither will the  
2 company engage in any lockout until the same grievance  
3 procedure has been carried out. So as we would see those  
4 words, there could be a strike or a lockout at the end of  
5 the fourth stage whether or not there was a lawsuit.

6 QUESTION: The purpose of the strike being to  
7 force the company to do what the law may permit it to do,  
8 what it may have a contractual right to do. They are  
9 currently litigating whether -- whether the company has a  
10 contractual right to do that.

11 MR. GOLD: Correct.

12 QUESTION: And you're saying there can be a  
13 strike to prevent the company from doing what the court  
14 will say or is being asked to say it has a contractual  
15 right to do. And it works the opposite where, you know --

16 MR. GOLD: That's right.

17 QUESTION: -- where -- where there's a lockout.  
18 The employer is locking out the union, because the union  
19 is asserting a contractual right which a court is being  
20 asked to affirm. I -- I find something inappropriate  
21 about --

22 MR. GOLD: To the extent that there is anything  
23 inappropriate -- I mean your sense of inappropriate --  
24 this is not in the lawsuit. It is that the parties  
25 created both an option to strike and an option to sue at

1 the same time rather than a system which guarantees that  
2 you will have only one or the other. The company's --

3 QUESTION: Well, what if this suit goes forward  
4 and the ruling is against the union? Can the union  
5 strike?

6 MR. GOLD: I take it that the question there and  
7 the answer that we would suggest as well is the same as  
8 was assumed in Buffalo Forge in --

9 QUESTION: Mr. Gold, you can give a yes or no  
10 answer.

11 MR. GOLD: We think the strike -- we think that  
12 a continuation of a strike or a lock-out after the  
13 judicial decision would be enjoined.

14 QUESTION: And so in effect you think the  
15 contract says, we don't have arbitrators, but we have  
16 agreed that the Court will stand on issues with  
17 arbitrators?

18 MR. GOLD: That's right. And --

19 QUESTION: Well, that isn't what the contract  
20 says.

21 MR. GOLD: Well, the contract says nothing on  
22 that.

23 QUESTION: Well, that's what I say. It didn't  
24 provide that --

25 MR. GOLD: What if it -- what we say in terms



1 of -- first of all there was no strike here, so we're not  
2 dealing with the question in this particular case of the  
3 interplay between the right to get a judicial  
4 determination on the meaning of the contract and whether  
5 the contract is more than a collection of words which have  
6 no purpose when the push comes to the shove and whether a  
7 union or an employer can go down both options at the same  
8 time.

9 The company's position here is that this  
10 silence -- the creation of this grievance procedure which  
11 ends at a certain point whether or not there is a  
12 resolution of the disagreement and the exception to the  
13 no-strike clause which permits the option of going on  
14 strike is sufficient to demonstrate that the parties  
15 negated judicial enforcement of a contract whether or not  
16 the union strikes.

17 QUESTION: Well, what is your position as to  
18 whether or not a lawsuit in a strike could proceed  
19 concurrently? If there's no final judgment in the  
20 lawsuit, can you -- can the union then pursue both avenues  
21 simultaneously?

22 MR. GOLD: Let me treat with the problem, as we  
23 see it, because it explains my answer. My answer is that  
24 we believe that under an agreement of this kind they can  
25 proceed.

1 QUESTION: Can?

2 MR. GOLD: Concur. And let me state why. First  
3 of all, as we've noted in our brief the leading lower  
4 court case here is a Seventh Circuit case, Associated  
5 General Contractors. As that case shows, you can have one  
6 party bringing the lawsuit and the other party using  
7 economic force -- the defendant using economic force.

8 As the Seventh Circuit held in that case,  
9 because of the Norris-LaGuardia Act you can enjoin the  
10 nonsuing party from using economic force. And against  
11 that background, well, we don't think that it's hard and  
12 fast.

13 It seems to us it would be unsymmetrical,  
14 disproportionate, and unsound to say that the suing party  
15 could not use economic force. But you have not only the  
16 contract questions and the contract interpretation  
17 questions here but you also have the Norris-LaGuardia Act  
18 questions, which as the court noted in the Associated  
19 General Contractors case, because that case came up  
20 twice -- first on a status quo injunction pending a  
21 determination by the court and a second time around.

22 So the question of whether the use of force is a  
23 breach of this no-strike clause pending judicial  
24 determination and the question of whether it is enjoined  
25 even if it is a breach of this no-strike clause seems to

1 us to be separate from the question of how do you read the  
2 agreement. Do you read the agreement of permitting the  
3 parties to secure what the Seventh Circuit said was the  
4 salutary effects of the judicial determination of the  
5 meaning of the contract on the basis of the fact that they  
6 permitted this option of economic force?

7 QUESTION: Mr. Gold, is this an unusual form  
8 of -- of collective bargaining agreement provision --

9 MR. GOLD: It is a minority form of collective  
10 bargaining agreement, but it is, seems to me to be a  
11 variation of your risk question. I can't quantify --

12 QUESTION: It doesn't stick out like a sore  
13 thumb.

14 MR. GOLD: It does not become -- 10 percent --  
15 It's a relatively --

16 QUESTION: Uh-huh.

17 MR. GOLD: -- small group --

18 QUESTION: Right.

19 MR. GOLD: -- of contracts, but it is not sui  
20 generis. It's not --

21 QUESTION: Right.

22 MR. GOLD: -- extraordinary. The litigation  
23 shows that there are a fair number of subjects.

24 QUESTION: Well, what is the more  
25 standard -- what is the more common -- how does the more

1 common one read?

2 MR. GOLD: The more common form of agreement is,  
3 or most common form of agreement is one that provides for  
4 final and binding arbitration and the court has set all  
5 the rules on what that means.

6 QUESTION: Explicitly eliminates --

7 MR. GOLD: Right.

8 QUESTION: -- judicial --

9 MR. GOLD: It both eliminates the right for  
10 self-help and judicial determination of the meaning of the  
11 agreement. But it doesn't -- and we'll get back to this  
12 in talking about what the policies are here -- the  
13 important thing is that it doesn't eliminate the peaceful  
14 on the merits determination of what the contract means.  
15 It provides an arbitral determination of what the contract  
16 means in the traditional sense of determining what a group  
17 words that constitute legally enforceable promises mean.

18 QUESTION: Well, isn't there also a right of  
19 judicial review of the arbitrary --

20 MR. GOLD: Right, and in addition, it is fairer  
21 to save than rather than eliminating judicial enforcement.  
22 The Steelworkers Trilogy in such cases set a standard of  
23 review of judicial enforcement, but the judicial  
24 enforcement is the final step in the process that either  
25 party will not accept what the arbitrator has done. The



1 arbitrator's award in that sense is not self --

2 QUESTION: But the grounds for a court to -- not  
3 to accept the arbitral award are very narrow.

4 MR. GOLD: Very narrow. Yes. Well, that's what  
5 I'm saying, but the process is one of enforcement of  
6 contracts in the way that any common law lawyer would  
7 understand the concept.

8 QUESTION: Well, is this case -- is it very  
9 significant because I would suppose that if the parties  
10 are -- do you think the union would ever have agreed to a  
11 provision in this particular contract that economic  
12 weapons are the only way to resolve an unsettled  
13 agreement?

14 MR. GOLD: No, I think that the greatest reason  
15 for doubting the inference that the court of appeals drew  
16 is the one you just stated. I think that there was a  
17 great deal of concentration here on arbitration and  
18 striking, but I think the union certainly presumed that it  
19 was not giving away its right to go to court because it is  
20 extremely difficult given the disproportion to have 300  
21 people lose their sustaining wages --

22 QUESTION: Well, I suppose if you had thought  
23 that the union would have said yes if the employer said,  
24 and by the way you can't sue. You probably wouldn't have  
25 been here --

1 MR. GOLD: Well, I -- I think so and one of  
2 the -- one of the important functions this  
3 determine -- this Court's ruling will have is to give the  
4 ground rules against which the parties will negotiate.

5 QUESTION: The Evans contract in that respect is  
6 I guess somewhat better for the employer's position  
7 because at page 53 of the Appendix it says, unresolved  
8 grievance, except arbitration decisions, shall be handled  
9 as is set forth in the no-strike clause.

10 MR. GOLD: Yeah, and the question there is why  
11 are these two contracts which -- which were entered into  
12 by the same parties at the same time different? What did  
13 that mean? The court of appeals points out that this case  
14 was litigated on the basis that the agreements were  
15 substantially the same. The employer has never relied on  
16 that as showing a studied determination to resolve the  
17 problem and it does have the phrase unresolved grievances.  
18 How you resolve grievances is as -- in the final analysis  
19 is as silent -- is a question which is as -- totally  
20 unaddressed, in the Evans collective bargaining agreement  
21 as in the other collective bargaining agreement.

22 Having taken these detours, let me state what we  
23 believe the right rule is. We believe the right rule is  
24 that collective bargaining agreements should not be  
25 construed to preclude judicial enforcement unless that is

1 clearly and unmistakably the party's intent.

2 We believe that that is the sound rule of law  
3 because of -- of the language policies and purposes of  
4 section 301 which adds a provision making collective  
5 bargaining agreements enforceable in court. As this Court  
6 has explained those purposes and policies -- most  
7 particularly in Lincoln Mills which we set out the basic  
8 holding of at pages 10 and 11 of our brief -- as the Court  
9 said there, Congress' point was that unions as well as  
10 employees should be bound to collective bargaining  
11 contracts. There was also a broader concern, a concern  
12 with a procedure for making such agreements enforceable in  
13 the courts by either party.

14 Congress, having created this system in order to  
15 further industrial peace by making these labor contracts  
16 enforceable in the Federal courts, creating quite a  
17 constitutional ruckus in doing so, as Lincoln Mills  
18 indicates, it seems to us that a determination that the  
19 parties have contracted out of the usual processes of the  
20 law ought to be one that is clear and unmistakable.

21 And we believe for the reasons we also spell out  
22 in the brief that section 203(d) which recognizes a  
23 preference for final adjustment by a method agreed upon by  
24 the parties does not cut back on section 201 at all, that  
25 looking at the totality of title II of the -- of the

1 Taft-Hartley Act the obvious purpose is to further  
2 peaceful methods of settlement of the whole point of both  
3 section 301 and 203(d) and title II more generally was to  
4 create a system in which there are periods of discord when  
5 the parties negotiate agreements and to encourage and  
6 further systems for the peaceful resolution of contract  
7 disputes after the negotiation is concluded.

8 Congress did not prohibit the parties from  
9 saying that they were going to have a system in which the  
10 contract is not enforceable in any sense that one would  
11 understand the contract being enforceable, namely a  
12 contract being a set of promises which attempts to capture  
13 the future and where disagreements on meaning are settled  
14 by referring back to the meeting of the minds as reflected  
15 in the agreement at the time it was entered into --

16 QUESTION: And if there's no meeting of the  
17 minds as some general, Federal common law of the work  
18 place?

19 MR. GOLD: To the extent that the parties  
20 provide for -- arbitration. I --

21 QUESTION: Well, no, no.

22 MR. GOLD: Do you mean as to what --

23 QUESTION: This is at -- at the judicial review  
24 stage?

25 MR. GOLD: But it -- are you asking about the



1 substance or about this question of whether the contract  
2 is enforceable? I'm sorry, Justice --

3 QUESTION: What -- what is the substantive law  
4 to which the Congress -- to which the Court looks in these  
5 cases where the contract isn't clear? I mean you're not  
6 just asking us in this case to determine that the  
7 grievance procedure was proper, but I take it whether or  
8 not there was just cause for the termination.

9 MR. GOLD: Yes. Where the parties don't provide  
10 for arbitration it is well settled that the Court  
11 interprets the contract and Lincoln Mills says that the  
12 courts must fashion the law they apply, the contract law  
13 they apply from the policy of our national labor laws.  
14 Again, we set out the quote at page 9 --

15 QUESTION: Well, of course, those -- that was in  
16 the context of arbitration.

17 MR. GOLD: But -- it is --

18 QUESTION: And -- and in others, fact has been  
19 with the good faith duty of representation. We have  
20 developed no real Federal common law of justice -- just  
21 cause for discharge.

22 MR. GOLD: Well, there would not be a Federal  
23 common law in that regard. Certainly the Court would look  
24 to the evolving arbitral law on what just cause means,  
25 what that provision means. But it is perfectly well

1 settled in Sinclair and other cases that the parties don't  
2 have to provide for arbitration, that 301 makes these  
3 contracts enforceable, and that the contract law, which  
4 after all is a relatively passive law -- the basic rule is  
5 that you apply the contract as the parties intended it.

6 All we're saying here is that on the critical  
7 question of enforceability and justiciability there ought  
8 to be a presumption that 301 means what it says and that  
9 the contract is enforceable in the traditional sense and  
10 that only if the parties expressly negate that, in  
11 essence, contract out of the system which Congress has put  
12 in place and shown a preference for, should the  
13 determination be made that no lawsuit can be brought.  
14 There --

15 QUESTION: Your position, Mr. Gold, would  
16 certainly bring a lot more cases into -- labor contractors  
17 into Federal court.

18 MR. GOLD: It would bring cases of this kind  
19 into Federal court. But I -- I think it is inherent that  
20 these cases will be in the Federal courts. After  
21 all -- unless the Court says that no matter what the true  
22 intent was, if you don't expressly provide for judicial  
23 enforcement where there's no arbitration, then you're  
24 going to decide on a case-by-case basis what this clause  
25 means or what that clause means. But the fact of the

1 matter is that there will be cases of this kind in Federal  
2 court and that --

3 QUESTION: And in the State court.

4 MR. GOLD: -- and in the State courts and that  
5 --

6 QUESTION: 301 cases can go in the State court?

7 MR. GOLD: Yeah, and that Congress made the  
8 determination. In other words, it was a long time ago and  
9 a lot of things have changed, but it was a fighting issue  
10 in 1947 as to whether these contracts ought to be  
11 judicially enforceable or whether there ought to be a  
12 system where there were simply guidelines which the  
13 parties in essence could tear up anytime they wished to do  
14 so if they felt strongly enough.

15 And let me add in that regard that in no sense  
16 does a strike system constitute a method of enforcing a  
17 contract. It is a method of creating a new contract. The  
18 parties can do that as I say, but I don't see how it can  
19 be fitted into Congress' determination to have contracts  
20 enforceable through the usual processes of the law.

21 QUESTION: Mr. Gold, I suppose your case or the  
22 case, really comes down to a battle of presumptions,  
23 doesn't it?

24 MR. GOLD: Yes, absolutely.

25 QUESTION: You -- you take the position that

1 there is access to judicial relief unless the contract  
2 expressly provides otherwise. Your opponents say just the  
3 reverse, that there's no access to judicial relief unless  
4 the contract says there is.

5 MR. GOLD: Right. And we believe --

6 QUESTION: And there we are.

7 MR. GOLD: Yes, and we believe that the lessons  
8 of 301 in particular is that our presumption is the one  
9 grounded in Federal law.

10 QUESTION: Well, the -- I suppose if there  
11 weren't a no-strike clause and no provision for either  
12 grievances or arbitration, it would be perfectly clear  
13 that you sue in 301.

14 MR. GOLD: Absolutely.

15 QUESTION: Not because of some presumption,  
16 because that's what the law says.

17 MR. GOLD: Well, but the law continues to --

18 QUESTION: And the --

19 MR. GOLD: -- to say that.

20 QUESTION: Well, of course it does.

21 MR. GOLD: In --

22 QUESTION: You think, you think this case is  
23 just like the one I just posed?

24 MR. GOLD: Absolutely.

25 QUESTION: Thank you, Mr. Gold.



1 We will hear now from you, Mr. Page.

2 ORAL ARGUMENT OF TERENCE V. PAGE

3 ON BEHALF OF THE RESPONDENT

4 MR. PAGE: Mr. Chief Justice, and may it please  
5 the Court:

6 The issue presented in this case is whether once  
7 there is in existence a collective bargaining agreement in  
8 a dispute resolution process within that agreement and  
9 that a grievance is filed and those grievances run the  
10 route of the dispute resolution process in the agreement,  
11 should the court presume that the end result is final or  
12 not final? I agree it is a battle of presumptions.

13 With respect to the number of contracts in which  
14 this language might be found, I can say to the Court that  
15 the Bureau of National Affairs contains a database of  
16 approximately 400 -- I should say approximately 400  
17 collective bargaining agreements. 36 percent of those  
18 agreements call for resolution by some method other than  
19 arbitration.

20 QUESTION: What -- what is the reason that an  
21 employer or a union would prefer this kind of a contract  
22 to a contract for binding arbitration?

23 MR. PAGE: I would say to the Court the only  
24 comprehensive article on the issue, that of Professor  
25 Feller, who was the successful counsel who argued before

1 this Court the Trilogy in the Vaca case, who was general  
2 counsel to the United Steelworkers, and he said that the  
3 reason the parties --

4 QUESTION: Well, he didn't quite prevail in  
5 Vaca.

6 MR. PAGE: To some extent. But -- but the  
7 reason the parties would do this is because they consider  
8 this issue so important that they do not want third-party  
9 intervention. They treat it on the same level as they do  
10 the formation of the contract in the first place,  
11 that -- that it's so important to them that they want to  
12 decide it themselves.

13 Now, the rule I would suggest --

14 QUESTION: Excuse me, that -- that brings into  
15 question if -- if everything in the contract is not  
16 enforceable in court and all you've agreed to is to go to  
17 arbitration if you agree to go to arbitration, and if you  
18 don't agree to arbitration either side is free not to  
19 comply with the contract, the union to strike and the  
20 employer to lock out. How can you call this a contract?

21 MR. PAGE: Your Honor --

22 QUESTION: It seems to me it's an illusory  
23 contract if it is -- if it is utterly nonbinding in the  
24 court. Now, maybe under 301 illusory contracts are okay,  
25 but I'm reluctant to interpret the provision to, you know,

1 to envision something that is unnoted to common law.  
2 You're telling this agreement says nothing except we agree  
3 that if one party wants to go to arbitration, we'll go to  
4 arbitration. But if the other one doesn't want to, we've  
5 agreed to nothing. That's what the agreement says.

6 MR. PAGE: Your Honor, I submit that the  
7 agreement does call -- call for the resolution of the  
8 grievance and that that should be binding. And it calls  
9 for it in this manner. There's a four-step conciliation  
10 process, if you will, about where the parties meet and  
11 discuss it. If it isn't resolved at that juncture, the  
12 union has an option to present to its membership the  
13 option to strike vote which was presented in this case.

14 Now, if the union --

15 QUESTION: We have agreed then to try to agree.

16 MR. PAGE: That's right.

17 QUESTION: But if we can't agree, we've agreed  
18 to nothing.

19 MR. PAGE: No, Your Honor --

20 QUESTION: I think that's a classic illusory  
21 contract.

22 MR. PAGE: I don't concur with the Court that we  
23 agree to nothing, because if the union chooses to strike  
24 in support of the grievance, that pressures both parties  
25 to come back to the negotiating table and resolve it and

1 that the fact that they choose that kind of method for  
2 compelling negotiation and indeed compelling resolution  
3 indicates the importance with which they attach to  
4 resolution of the -- of the grievance in the first place.

5 So I submit that the process -- the grievance  
6 process is not just the first four conferences, if you  
7 will. It includes the strike lockout, because what  
8 happens is if it isn't resolved in the first four steps  
9 and it's thrown over into that article of a contract, what  
10 occurs then is that pressures both parties to sit down and  
11 resolve the grievance, because, indeed, the union doesn't  
12 want to stay on -- stay on strike over agreements and  
13 indeed the employer doesn't want to stay inoperable  
14 because -- so I think that that is -- that that strike  
15 lockout step is a continuation of the grievance process  
16 which compels a resolution.

17 And what happened in this case was that when the  
18 union membership declined to go on strike in support of  
19 that grievance that that ended consideration of the  
20 grievance and in effect constituted a denial which was  
21 arrived at at the prior step.

22 So, I submit, Your Honor, that this -- this  
23 process does compel --

24 QUESTION: Of course, they made that decision  
25 assuming they had the right to sue. Isn't that right,



1 because they did go ahead and sue? So you don't know; if  
2 they've been told they can't sue, maybe they would have  
3 kept -- they would have struck.

4 MR. PAGE: Well, Your Honor, again we come back  
5 to a presumption that's correct. They might have struck  
6 and, of course, it depends on what took place at that  
7 union hall meeting in terms of what they're told. But I  
8 should say to the Court that it's never been contended in  
9 this lawsuit by the petitioners that there was any kind of  
10 indication either expressly or impliedly by the employer  
11 of a willingness or an acquiescence that any issue should  
12 be resolved pursuant to a 301 lawsuit.

13 QUESTION: But ordinarily when an employer  
14 enters into an agreement that sets forth, you know, 35  
15 pages and signed as a contract, don't both parties intend  
16 -- well, unless they say otherwise there's going to be  
17 some sort of right of judicial enforcement?

18 MR. PAGE: There is -- and I think the principle  
19 of Lincoln Mills here is very important -- I think the  
20 critical starting point in case. In Lincoln Mills the  
21 court said that the substantive law of 301 was to be  
22 fashioned by the Federal courts consistent with the policy  
23 of our national labor laws and which brings in the  
24 question, what is the policy of our national labor laws?

25 And I think this Court, through a number of

1 opinions, has ratified that the policy is expressed in  
2 section 203(d) which states that final adjustment by a  
3 method chosen by the parties is declared to be the  
4 desirable method by which grievances are settled with  
5 respect to the interpretation and collective -- and  
6 application of the collective bargaining agreement.

7 So if the substantive law is to be developed and  
8 consistent with the policy and the policy is final  
9 adjustment by a method chosen by the parties and clearly  
10 that was the legislative history, this Court's  
11 interpretation, the statutory language itself, all speaks  
12 to the fact that that is the policy, final adjustment by a  
13 method agreed to by the parties.

14 QUESTION: So is your answer that when an  
15 employer and a union enter into a contract, they don't  
16 intend that it shall be or that anyone shall have a right  
17 of judicial enforcement?

18 MR. PAGE: Your Honor --

19 QUESTION: You can answer that yes or no and  
20 then explain your answer.

21 MR. PAGE: There is a right of judicial  
22 enforcement, Your Honor. I should indicate that what this  
23 Court has done, you know, and I'll analogize -- to use an  
24 analogy here, what this Court has done is said the parties  
25 agree upon the rules.

1                   Indeed, the concept of industrial  
2 self-government discussed in the Trilogy. The parties  
3 will agree on the rules of the game. They are best  
4 situated. They are the ones who are present in the plain  
5 environment. They determine the rules and what the Court  
6 has done consistently with respect to 301 is step back and  
7 say, we will umpire --

8                   QUESTION: You can say that about lots of  
9 contracts, that it's just the contracting parties agreeing  
10 on the rules of the game, whether it's a construction  
11 contract or the way a particular sports league shall be  
12 run and that sort of thing. But when there is an  
13 agreement, ordinarily people assume that if you're not  
14 able to solve it by -- to settle the dispute, one party  
15 can go to court.

16                  MR. PAGE: Yes, and I think the 301 law is, Your  
17 Honor, that if there is no grievance process, that the  
18 parties can go in court to enforce. But when there is a  
19 grievance process which we contend here is the first four  
20 steps plus then going into the strike out -- strike  
21 lockout to compel the resolution, that when there is a  
22 process, the courts give finality to that process and sit  
23 as long as the rules, to wit the grievance procedure, is  
24 adhered to.

25                  The only time this Court has used 301 authority

1 is it's developed the substantive law consistent with the  
2 policy, the final adjustment by the parties. The only  
3 time this Court has exerted its authority, that the  
4 Federal courts have exerted their authority to enforce  
5 contracts is to make the parties play the game pursuant to  
6 the rules by which they said they would play it in the  
7 agreement.

8 QUESTION: But, Mr. Page, are you in effect  
9 arguing -- I just want to be sure I understand -- that the  
10 no-strike clause really shouldn't have been put where it  
11 is, but it should have been step 5 of the grievance  
12 procedure.

13 MR. PAGE: Yes, Your Honor, I think it --

14 QUESTION: Well, then 1, 2, 3, 4, and 5 we don't  
15 agree will either go on strike or lock you out.

16 MR. PAGE: Yes, Your Honor, and as --

17 QUESTION: Because you certainly admit that if  
18 you had put in a provision that said at the end of the  
19 procedure, the parties can either resort to economic\*  
20 weapons or to litigation. There would be nothing unlawful  
21 about such an agreement.

22 MR. PAGE: That's right.

23 QUESTION: Yeah.

24 MR. PAGE: That's right.

25 QUESTION: But what you're saying in effect the



1 strike is part of the grievance procedure.

2 MR. PAGE: Yes, Your Honor, I think that's  
3 indicated particularly strongly in the Evans case where it  
4 indicates in the grievance procedure that unresolved  
5 grievances shall be resolved pursuant to article 16, I  
6 think paragraph 7. And so the grievance procedure  
7 specifically continues on over into that process.

8 It does the same thing in the Groves contract.  
9 It just doesn't do it quite as explicitly.

10 QUESTION: It doesn't do it explicitly at all.

11 MR. PAGE: No, but article 16 in the Groves  
12 contract again says that -- that the grievance procedure  
13 will fulfilled by both parties before the strike lockout  
14 method comes into play.

15 QUESTION: Mr. Page, here -- here the issue has  
16 been raised by the unions filing suit. But I assume your  
17 position would be the same if the issue were raised not by  
18 the unions filing suit, but by the unions striking. That  
19 is to say you would take the position that if you have a  
20 contract which provides for wages of \$25 an hour and the  
21 union says we think that -- we want \$30 an hour, you would  
22 then go through the -- even though it says 25, they say,  
23 well, 25 means 30 -- you would go through the grievance  
24 procedure. When you failed to agree, you say the union  
25 would be free to strike and you would not be able to

1 enjoin that strike on the basis that it was in violation  
2 of the contract?

3 MR. PAGE: That's correct.

4 QUESTION: So the contract is really worthless.

5 MR. PAGE: Well, --

6 QUESTION: What's the use of having the  
7 contract?

8 MR. PAGE: The contract isn't worthless, because  
9 the -- the method does achieve a result to that issue. It  
10 doesn't leave the subject open --

11 QUESTION: It's the same result that would exist  
12 without a contract. When you feel like striking for more  
13 money, you strike for more money.

14 MR. PAGE: Well, yes but, I mean, does a union  
15 strike for that purpose when the contract clearly  
16 delineates what the wage rate is?

17 If the policy of the legislation, of the  
18 Taft-Hartley legislation, is to be effectuated I submit  
19 and the courts have recognized 203(d) as the policy that  
20 the American Manufacturing -- that the language in the  
21 American Manufacturing is particular helpful. The Court  
22 states in conjunction with 203(d) that that policy, a  
23 final adjustment by means chosen by the parties, can be  
24 effectuated only if the means chosen by the parties for  
25 settlement of their differences on their collective

1 bargaining agreement is given full play.

2 QUESTION: What if the company refuses to go  
3 through the grievance steps that are outlined? Could the  
4 union bring an action in court to force it to?

5 MR. PAGE: Yes, because those -- as this Court  
6 has developed the law of section 301 and what the Court  
7 has said that in the Vaca case that if the employer  
8 repudiates the agreement -- in other words, doesn't play  
9 the rules it agreed to play by -- if the union doesn't  
10 render unfair -- renders unfair representation, in fact,  
11 doesn't live up to its duty to represent its employees, a  
12 301 claim will lie despite finality.

13 So that -- in the third case where this Court  
14 has said a 301 lawsuit will lie is where the parties have  
15 indicated, expressly indicated a willingness that -- that  
16 the parties could go to court to settle a dispute.

17 QUESTION: Of course, there's nothing in this  
18 contract that expressly says you will have the right to go  
19 to court to enforce the grievance procedure. So it must  
20 just be by implication that when you enter into that sort  
21 of agreement and it's breached, you have a right to go to  
22 court.

23 MR. PAGE: Your Honor, this Court has developed  
24 301. This Court has said that this is what 301 means.  
25 You can go to court when there's repudiation, the employer

1 doesn't live up to the rules that he agreed to live up  
2 by -- live up to, when the union doesn't fairly represent  
3 the employees or when the parties expressly indicate a  
4 willingness to go to court.

5 QUESTION: Why can't you say here that when the  
6 employer discharges for cause, and it isn't a correct  
7 interpretation of cause, he's not playing by the rules  
8 that he agreed to live up to?

9 MR. PAGE: Because, Your Honor, between --  
10 because the contract has established a dispute resolution  
11 process and inherent -- when the employer said -- gave up  
12 his -- his right to discharge at will and said, I'll only  
13 discharge for cause. Part of that commitment by him was  
14 that the dispute would be -- if a dispute arose as to what  
15 constituted just cause, it would be resolved through the  
16 mechanism that's provided for in the collective bargaining  
17 agreement.

18 And that's -- and I think that's really the main  
19 point I want to make here is that this legislation, the  
20 Taft-Hartley legislation, if there was one -- if there was  
21 a policy that -- that was enunciated and clearly there was  
22 and the statutory language and what this Court has said  
23 about it in the legislative history, it was final  
24 adjustment by the method chosen by the parties. And I  
25 submit that the parties have chosen a method.



1 QUESTION: But isn't it true that they're  
2 generally speaking there in terms of final adjustment by  
3 the methods set forth in the contract, rather than a  
4 strike? Isn't the basic policy of that to try to avoid  
5 industrial warfare by peaceful means when they're  
6 available?

7 MR. PAGE: No, Your Honor, what Lincoln Mills  
8 said and I think it's -- I should say I think it's been  
9 repeated subsequently by this Court -- what Lincoln Mills  
10 says is that industrial peace is achieved when the parties  
11 live up to the agreement that they bargained. And that's  
12 where industrial peace comes from.

13 QUESTION: And to decide where they've lived up  
14 to the substantive terms of the agreement, it's more  
15 peaceful to go out on strike than it is to have a judge  
16 decide whether the contract was broken? Seems to me  
17 somewhat inconsistent with my recollection of the debates  
18 back in 1947.

19 MR. PAGE: The strike certainly I would concur  
20 that the perception of being resolved by an arbitrator is  
21 more peaceful than -- than a strike. However,  
22 there -- the preemptive policy of title VII and I think  
23 it's clearly expressed in 201 and 203(d) -- the preemptive  
24 policy of Taft-Hartley is that the method -- final  
25 adjustment by the method chosen by the parties is the

1 desirable method to resolve differences.

2 QUESTION: But the real point here is the  
3 parties did not choose a method of final -- final  
4 adjustment. They -- they opted for mediation and strikes  
5 which are not methods of final adjustment.

6 MR. PAGE: Your Honor --

7 QUESTION: They're methods of arguing and  
8 negotiating and fighting it out by -- without having a  
9 finality to any of it.

10 MR. PAGE: I would first say that strikes are  
11 recognized by this Court as legitimate means to resolve  
12 differences.

13 QUESTION: Yes, but they're not legitimate means  
14 of getting final adjustment of a dispute. I mean  
15 maybe -- I mean what the right answer is in the dispute --

16 MR. PAGE: In -- in a footnote in the Trilogy,  
17 the Court recognized the existence of contracts  
18 where -- where grievances -- that aren't resolved at  
19 through the conciliatory steps --

20 QUESTION: Sure.

21 MR. PAGE: -- can result in strike. And if  
22 that's the method that the parties chose and that's the  
23 policy that industrial peace is best achieved by --

24 QUESTION: By going on strike.

25 MR. PAGE: Yes. If that's what they feel -- if

1 that's what the parties feel works best for them, and I  
2 think that what the courts have -- what the Court has done  
3 over the years is it's given deference to the collective  
4 bargaining agreement that the parties agree to. It  
5 recognizes that they're best situated to --

6 QUESTION: Let me ask you just another question.  
7 Isn't -- couldn't you solve this problem very simply by  
8 saying, adding a sentence saying -- instead of just saying  
9 there should be no strikes in nor shall there be any  
10 litigation. Will you waive our right to sue?

11 MR. PAGE: That's correct, Your Honor.

12 QUESTION: Because you could do that in the  
13 future if you're unhappy -- say we decide against you.  
14 I'm not saying -- I don't know what the Court will  
15 do -- but if the Court should decide against you, you  
16 could protect yourself in the future by negotiating.

17 MR. PAGE: Yes, Your Honor. And on the other  
18 side of the coin is the other party to the agreement could  
19 have said, we reserve the right to go court.

20 QUESTION: Sure. Both -- you could have done  
21 that expressly either way.

22 MR. PAGE: So we come down to what is the  
23 presumption when silence exists.

24 QUESTION: Right.

25 MR. PAGE: And I submit that if the rule of this

1 Court in Lincoln Mills that we're going to develop the law  
2 of 301 consistent with the policy of the statute, then the  
3 policy -- the preemptive policy of the statute is that  
4 final adjustment by means chosen by the parties that, that  
5 to the -- as this Court decides this case to the -- if the  
6 substantive rule to be consistent with the policy of  
7 Taft-Hartley is that the presumption of finality should  
8 attach.

9 I should indicate this Court has never gone so  
10 far as to allow a -- for example, a grievance to run the  
11 gamut of the grievance procedure contained in the  
12 collective bargaining agreement and if dissatisfied with  
13 the result, then go to court for a second bite of the  
14 apple. This Court has always confined 301 to compelling  
15 the parties to living up to the dispute resolution process  
16 they agreed to.

17 QUESTION: Well, you don't really think that,  
18 that the -- a strike or a lockout is going to settle what  
19 the contract means? You just say it will be a trial of  
20 strengths.

21 MR. PAGE: But, Your Honor, well, it's --

22 QUESTION: Right or wrong?

23 MR. PAGE: I don't agree, Your Honor. I think

24 --

25 QUESTION: You think a strike or a



1 lockout -- whoever wins is going -- that is going to  
2 decide what the contract meant?

3 MR. PAGE: I think, Your Honor, that it --

4 QUESTION: Does it or not?

5 MR. PAGE: What it means, Your Honor, is  
6 that -- is that the parties have -- that a strike -- that  
7 these parties, as they sit in the workplace and decide  
8 upon the common law of what works best for them, that they  
9 have decided that this method best resolves their --

10 QUESTION: This method for settling -- for doing  
11 what? For interpreting the contract?

12 MR. PAGE: Yes.

13 QUESTION: Or just trying who -- finding out  
14 who's the strongest?

15 MR. PAGE: This method for interpreting the  
16 contract and the way the strike and the lockout plays into  
17 that is that perhaps these parties over the bargaining  
18 history realize that if they put that kind of element as  
19 their last step in the procedure, that neither party will  
20 ever get to it and will put pressure on the parties to  
21 resolve it at a lesser step.

22 The court has never taken the position that  
23 strike -- that a strike or lockout to resolve -- to  
24 resolve a grievance is impermissible.

25 QUESTION: Mr. Page, the court of appeals wasn't

1 very enthusiastic about the result of breach, was it?

2 MR. PAGE: No, it wasn't, Your Honor. I mean  
3 there was -- there was --

4 QUESTION: It goes back to the Fortune case as  
5 precedent --

6 MR. PAGE: Yes.

7 QUESTION: -- which was written by Judge George  
8 Edwards --

9 MR. PAGE: I believe --

10 QUESTION: -- who I would have assumed would be  
11 sensitive to union and employer problems.

12 MR. PAGE: Given a his history in Detroit, that  
13 would be correct, Your Honor.

14 QUESTION: But clearly the Sixth Circuit said  
15 that were we writing on a clean slate we would have  
16 decided otherwise.

17 MR. PAGE: We might have decided otherwise, I  
18 believe.

19 QUESTION: Any explanation for that?

20 MR. PAGE: Well, there it's -- no, except -- I  
21 mean they certainly were indicating that perhaps a  
22 preference, a preference to write the other way. But I  
23 would say this, that if this Court is going to continue to  
24 give substantive law to 301 consistent with the policy of  
25 the legislation and the policy of the legislation is that

1 the parties resolved the grievance themselves, that this  
2 Court should do what it has always done and that is say  
3 that we're going to stand on the sidelines, let you play  
4 the game according to the rules that you decided to play  
5 them by provided, of course, they don't violate public law  
6 and if either of you then deviate from the rules you  
7 agreed upon, we're going to compel you to live up to the  
8 rules as you agreed. We are not going to develop a new  
9 set of rules for you to play the game.

10 And I think that -- I think that the Court has  
11 never done the petitioner's request here. The Court has  
12 never said, run the gamut of your grievance procedure and  
13 if you don't like the result, then we're going to give you  
14 another bite of the apple in a 301 lawsuit. I think that  
15 what 301 has been will enforce the game as you have  
16 created it. We will not give you a second chance before a  
17 Federal district court jury to achieve what you couldn't  
18 achieve pursuant to your dispute resolution process that  
19 you agreed upon.

20 The Court has consistently held that there is no  
21 right to arbitration with respect to the -- while the  
22 Court has favored arbitration, it has explicitly said that  
23 we are not going to coerce or compel an employer to put  
24 arbitration in a collective bargaining agreement. The  
25 date and the method they choose is the method that we're

1 going to respect.

2 QUESTION: What is the -- what is the contract  
3 in the -- provide for grievances and there was no strike  
4 clause and I suppose you would say that then you could sue  
5 under 301?

6 MR. PAGE: Yes, Your Honor, that's -- I believe  
7 that's Smith v. --

8 QUESTION: Even though they could also strike.

9 MR. PAGE: Yes, they could also strike.

10 QUESTION: So you can't say that just because  
11 they can strike there's no contract?

12 MR. PAGE: No, Your Honor. But I can say that  
13 they have agreed upon the method by which they're going to  
14 resolve it.

15 QUESTION: All right.

16 MR. PAGE: And that's the policy that they  
17 should live up to.

18 QUESTION: Suppose all they mean, Mr. Page, by  
19 the provision that after conclusion of the grievance  
20 procedure they may strike or resort to lockout -- perhaps  
21 all they mean is it will not be -- it will not be an  
22 unfair labor practice for them to do it even if they're  
23 striking for an issue that is really covered by the  
24 contract. I mean normally if -- if you strike -- you  
25 know, the contract says \$15 and you say it means 18. If



1 you strike, that would be an unfair labor practice if it's  
2 already covered. Maybe this provision just means you're  
3 free to strike and you won't be liable.

4 However, the other side can go to court to see  
5 if it can be legally resolved. Isn't that a conceivable  
6 interpretation of it?

7 MR. PAGE: Your Honor, I think the parties are  
8 committed to the process they agreed on and that's the one  
9 they have to live by. I don't think either of them can go  
10 to court unless they fail to live up -- live up to the  
11 rules that they agreed on.

12 QUESTION: But I can give that provision meaning  
13 without leading to these -- what seems to me extraordinary  
14 results that you end up agreeing on nothing to all.

15 MR. PAGE: Well, Your Honor --

16 QUESTION: Just agreeing to your promise to  
17 negotiate.

18 MR. PAGE: Well, I think that's -- if they  
19 don't -- the alternative to promising to negotiate is to  
20 call for arbitration and, again, the courts, while  
21 favoring arbitration -- I think the Carbon Fuel case said  
22 it best is -- while arbitration might color the  
23 interpretation of a contract, it will never result in the  
24 court imposing it on the parties.

25 QUESTION: Well, they could have agreed to

1 something less here. Instead of a four-step mediation  
2 proceeding, I suppose they could have agreed that before  
3 discipline is imposed on the employee you'll give notice  
4 to the shop steward and he'll have 48 hours in which to  
5 talk to the informant of the particular plant and once  
6 that's done, you can go ahead and strike. That would be  
7 the method agreed upon under your view, wouldn't it?

8 QUESTION: It doesn't have to be four-step  
9 agreements.

10 MR. PAGE: No, Your Honor.

11 QUESTION: It could be a very simple notice  
12 provision.

13 MR. PAGE: It could be a shorter step. But what  
14 Lincoln Mills said is, we best effectuate the policy by  
15 adhering to the means chosen by the parties.

16 MR. PAGE: I suppose the ultimate issue here is  
17 whether the parties agreed that the court would be  
18 available or it wouldn't be available. The issue really  
19 is what did you agree upon. You've got this conflicting  
20 battle of presumption.

21 MR. PAGE: We did not agree in terms of whether  
22 to go to court or not clearly, Your Honor. So what -- so  
23 then --

24 QUESTION: We didn't expressly agree, but maybe  
25 implicit -- you know, it's a question of which way you run

1 the presumption.

2 MR. PAGE: Well, yeah, the one contract  
3 indicates that unresolved grievances will be processed  
4 through article 16. But the point -- the rule we asked  
5 for is that the presumption is finality, because that is  
6 consistent with the policy of the legislation and this  
7 Court has never gone beyond saying which can go to in  
8 three instances, repudiation by the employer and for  
9 representation by the union or if the parties indicate a  
10 willingness -- express a willingness to go to court.

11 This Court, as its developed the substantive law  
12 of 301 has always said, we are going to use it to make you  
13 agree to the process that was arrived at through the  
14 collective bargaining process, your industrial  
15 self-government. It's given deference to that contract  
16 and because the legislation clearly expresses its policy  
17 of final adjustment by a means chosen by the parties, that  
18 this Court has never taken 301 beyond enforcing the  
19 methods chosen by the parties. And I ask the Court not to  
20 do it in this case.

21 Thank you.

22 QUESTION: Thank you, Mr. Page.

23 Mr. Gold, do you have rebuttal?

24 REBUTTAL ARGUMENT OF LAURENCE GOLD

25 ON BEHALF OF THE PETITIONERS

1 MR. GOLD: Just two very brief points if I  
2 could.

3 First of all, I want to emphasize as Justice  
4 Stevens just indicated that this is a question of  
5 interpretation. The whole argument on the other side is,  
6 and I quote, "the parties are committed to the process  
7 they agreed on." The problem is that it isn't plain what  
8 the parties agreed on and against that background, we're  
9 suggesting what we believe is the better interpretive  
10 rule.

11 Secondly, the policies of the Labor Management  
12 Relations Act are far more complex than simply that the  
13 parties can do whatever they want. That was an argument  
14 that the unions made in 1947 and it might have been a  
15 better world if we prevailed, but we did not. And  
16 Congress provided that one of the policies was stability  
17 during the term of collective bargaining agreements.

18 Thank you very much.

19 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Gold.

20 The case is submitted.

21 (Whereupon, at 11:59 a.m., the case in the  
22 above-entitled matter was submitted.)

23

24

25



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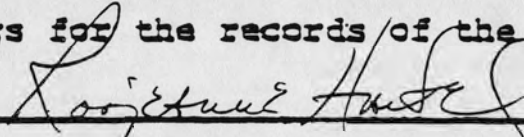
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