Supreme Court of the United States

OCTOBER TERM 1969

In the Matter of:

THE BOYS MARKETS, INC.,

Petitioner;

vs.

RETAIL CLERK'S UNION, LOCAL 770,

Respondent.

Docket No. 768

Pt. 2

Place Washington, D. C.

Date April 22, 1970

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

C O N T E N T S

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1969

THE BOYS MARKETS, INC., Petitioner;	:	
vs.	:	No. 768
RETAIL CLERK'S UNION, LOCAL 770, Respondent.	:	

Washington, D. C.
April 22, 1970

The above-entitled matter came on for further argument, pursuant to recess, at 10:15 a.m.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

(Same as heretofore noted.)

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will now resume No. 768.

ARGUMENT OF KENNETH M. SCHWARTZ

ON BEHALF OF RESPONDENT

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

In yesterday's session of the Court, there was some question propounded to counsel for the petitioner by Mr. Justice White. I would like to address myself, for a couple of moments, to those questions and answers.

One of the questions propounded to counsel was whether or not the remedies afforded the parties, under the present posture of the law, was reciprocal. I can state that, as it stands today, the parties to the collective bargaining agreement do have -- there is no disparity between the parties.

All the Norris-LaGuardia Act does is prevent either of the parties to get a judicial order against the other for conduct that they may find is to be an alleged violation of the Act. The Norris-LaGuardia Act does not prevent either party from getting a judicial order in order to force or require the other party to comply with a provision in their agreement, affording an opportunity for a voluntary adjustment of their proceedings.

Q I am not sure I track you on that.

A The Norris-LaGuardia simply prevents either of

the parties to the collective bargaining agreement to get a judicial order from any court.

Q Prevents them?

A Prevents them to do that, yes. The only exception is it does afford the parties an opportunity to go to a court to compel arbitration, which is a matter set forth between the parties, a voluntary method for them to adjust their disputes.

Q But not to enforce the no-strike clause if it is violated by the union.

A The no-strike clause in the contract ---

Q Does or does not the Norris-LaGuardia Act bar any court from enjoining a strike in violation of the no-strike clause while the arbitration goes on?

A It does bar federal courts from enjoining the action, yes.

Q Why doesn't it bar the order to arbitrate.

A Why does it not? We have a situation ---

Q You are simply enforcing a term in the contract.

A You are enforcing a term in the contract, but the parties have agreed upon a method of adjustment of their disputes in their collective bargaining agreement. If you had an injunction or a temporary restraining order prior to the arbitration, you have taken away from the parties the rights that they have agreed upon and bargained for in their collective

bargaining agreement.

They have bargained for -- and this Court said so in the Steelworkers' trilogy -- they have bargained for the expertise of an arbitrator. Both parties are permitted to go to courts when they have an argument or a dispute under the collective bargaining agreement.

It, in effect, takes away any of the powers the arbitrator may have in settling that dispute.

Q Well, if they have agreed on an arbitrator to settle the dispute, why does the union strike?

A The strike situation is no different than the employer himself violating the contract by, say, discharging some employees or by bringing in, as he did in this case, a crew of non-bargaining unit people into a store to do bargaining unit work. The union at that time, of course, could not get an injunction to restrain them from doing that.

The irreparable injury that was referred to by counsel, in regard to the strike activity of the union, is no different than the irreparable injury, insofar as an individual is discharg , is concerned. That individual, although counsel says he can recover in damages, we say that in regard to a strike. The company can respond in damages in regard to an arbitrator finding it to be so.

The idea being that the parties have bargained for a method of adjustment of their disputes. A strike may be

a violation of the collective bargaining agreement; it may not, depending on what the strike is for. Contrary to that, the employer can take action in regard to demotions, promotions, subcontracting and all issues that the collective bargaining agreement provides for, he can violate it.

Now the union certainly cannot come in -- because of Norris-LaGuardia -- and get an injunction. And I am not saying they should, because the union and employer have agreed upon a method of bargaining. In that bargain they have said that we are going to have our disputes resolved by an impartial arbitrator.

Q And in the contract the union has also said, "We'll not strike."

A Well, the employer has said, for example, that he will not discharge employees without just cause; he has said he will not subcontract work; he has said, as he did in this case, that he will not bring in others not parties to the collective bargaining agreement and perform the work that is supposed to be performed by the bargaining agreement. These are alleged violations of the contract. Here the employer is alleged to have violated the contract, and the employer says the union has violated the contract, by violating the no-strike clause.

Q Aren't both parties better off if, immediately upon that occurring, the arbitration process is invoked?

A Why, yes. The parties ---

Q And the status quo remains as it is; you preserve the status quo and go ahead to arbitrate whatever issue it is, the union's issue or the employer's issue.

A You say, preserve the status quo, Mr. Chief Justice?

Q Stay working and no lockout.

A Let's take a situation of a discharge. Are you saying that the status quo is that the individual stays on the job until the arbitration takes place?

Q The status quo is effectively preserved, is it not, if he is guaranteed back pay?

A Oh no. Not a bit. Not any more so than it would be in regard to the strike situation for the employer. You say he recovers damages when he recovers back pay. That period of time that that individual has to feed his family -- he has to wait until the arbitrator's award comes out. What irreparable injury he has cannot be determined by me. I don't know the status of his economic position. Most of our people today have credit up to their ears, and when they go ahead and don't get paid, why then they have got problems.

What irreparable injury he may have, I don't know. He may lose his house; he may not make his car payments, lose his car. It is very difficult to say any more so than the employer can recover in damages.

They make the allegation that their damages are not sufficient, not adequate. They say the damages cannot be satisfactory to them because there is irreparable injury. I say the argument is the same on the other side of the fence, but both the employer and union have bargained for this.

Both of them have bargained for the fact that they will submit it to arbitration. They have not bargained that they will go to court for it, and they know they couldn't.

The very fact of the matter is this: Both of the parties here rely upon the expertise of the arbitrator. And the reason they do so is because of the federal labor policy, recognizing -- as this Court did in Lincoln Mills and the Steelworkers' trilogy -- that it is a different type of field. It is a type of field that courts do not have the expertise that is required in order to resolve the matter.

Q What is the value of a no-strike clause in the contract, if the no-strike clause permits a strike, on your theory?

A I might point out to Mr. Chief Justice that there may be strikes in a shop or in a store that may not necessarily be a violation of a contract. For example, we have those situations where employees may walk off the job because of unsafe conditions. That would not be a violation of the no-strike clause, and the Court has held so. We have situations where there may be an unfair labor practice ---

Q We don't have that here though, do we?

A No; I am responding to the question you asked about the strike situation. But we do have these things that we have to take into consideration.

There is always an allegation that it is a violation of a contract. If the employer brings in people to do work, to subcontract work, which is to be performed by bargaining unit people, that is an erosion of the contract. And it has the same effect in regard to irreparable injury as we have on the other side of the fence in regard to the employer.

I simply say to this Court that there is a remedy. To say there isn't a remedy isn't so, because in Section 301(b) expressly states -- that Section 301 provides for a lawsuit for damages to be given against the union.

Now, when counsel says he doesn't feel that that is an adequate remedy, I can only say that a union, a labor organization, is no different from any other institution. They have to have a treasury the same way any other institution has. If they run into a situation where the treasury is depleted, they are pretty much out of business.

So that to say that it is not adequate--- It may not be satisfactory; it may not be totally satisfactory to the employers, because the employers may like the idea of having this injunctive relief. But that doesn't answer the question. Because if the employers felt that way and if, based upon

the Sinclair decision, they felt that way strongly, from 1962 to the present time -- when this Court decided that the Sinclair Case and Norris-LaGuardia was not repealed by Section 301, was not intended by Congress to be repealed -- it seems to me it, more or less, was a mandate to the parties believing that the decision was wrong or that the law was wrong, whatever it may be, that the party should have gone to Congress and should have told Congress, "We feel that the Norris-LaGuardia should be repealed."

It makes it very difficult for me to understand this, because in the Sinclair Case and in the legislative history of the Sinclair Case, we have the late Senator Taft -- who certainly was a man skilled in this field -- when he came out of the caucus committee onto the Senate floor, he pointed out that Section 301 did not prohibit all strikes. He pointed out that Section 301 did not repeal the Norris-LaGuardia Act. He specifically said that the only two types of strike activities that would be illegal would be the secondary boycott strike and the jurisdictional strike.

Those two aspects and those two strike activities were put in Section 301 of the Act, giving the National Labor Relations Board, making it a mandatory injunction on the Board to go ahead and take this action, not the private litigants.

If you recall in the legislative history, in the

House bill, there was a provision to make Norris-LaGuardia not applicable to Section 301 cases. It was after he came out of the committee that Congressman Hartley, who also was a co-author of the bill, pointed out, specifically, that this aspect of the Norris-LaGuardia Act was dropped in the conference committee.

Now that, it appears to me -- and it was cited by the majority opinion in this case -- if I were on the other side, I would take that as a mandate to me to get to Congress and have Congress change the law if they didn't feel it was equitable.

Now nothing has happened from 1962 to the present time. There has been no legislation in Congress in regard to this. There is no judicial determination which award any reconsideration to the Sinclair aspect.

I think it is very, very important that we realize -- When counsel was asked yesterday the question as to what the status in regard to the business community was since Sinclair was enacted, counsel pointed out that there has been very little activity. As a matter of fact, in the brief of amicus curiae AFL-CIO, they have a statistic from the U. S. Department of Labor, where they show in 1961 -- which is prior to Sinclair -- there was 10.8 per cent of man idle hours due to strikes during the term of a collective bargaining agreement, 1961.

In 1968, according to the same brief, they show 9.1 per cent of the man hours idle during the term of the collective bargaining agreement.

This is not to say that because of Sinclair there was a reduction, but I simply say that there was no real impact of the Sinclair decision on the business community. Apparently, from reading the briefs of amici and petitioner, it makes it appear that there is some real reason for changing the posture of the law.

So far as we can determine here, there doesn't seem to be that reason. As a matter of fact, the parties in collective bargaining agreements have, apparently, found that this method of voluntary arbitration, picking arbitrators with the expertise, is a desired way, along with the fact that the federal labor law has recognized the fact that arbitration is a matter for the experts in this particular field. Because we run into all sorts of complexities in the contract. We run into aspects of how many people are actually in the bargaining unit; who should have overtime, who shouldn't have overtime; are these breaches of the agreement?

As a matter of fact, even when we talk about a strike or a lockout, the arbitrator may have to determine whether that strike was, in fact, a breach of the collective bargaining agreement. If we have a lockout, is it a question of a partial lockout or a complete lockout? We sometimes think in terms

of a lockout meaning the entire plant is shut and nobody works. Well, that isn't necessarily so.

Q Wouldn't it be helpful to the total of industrial peace if, in case of a lockout in violation of the contract, the union could go into the federal courts and get an injunction against that lockout?

A If we would do that, Your Honor -- when you say lockout, I assume that you are talking about partial lockouts as well as any other type of lockout; and I can mention that to you very simply by pointing out the difference ---

Q All lockouts that are prohibited by the contract, whatever they may be.

A Well, there we have again exactly what I was referring to, just your own comment Mr. Chief Justice where you say in accordance to the contract whatever they are. This Court has said that the person who can best determine whether or not it is a violation of the contract is the arbitrator.

It is because he works in that field day and night. He becomes the expert in the field. The courts have said time and time again that the type of economy and the type of labor-management relations requires some sort of expert.

Admittedly, this Court has said that the courts do not have that expertise. So, it isn't ---

Q As I understand your argument, with respect to damage suits under Section 301, which I understood you to

concede are permissible, so wouldn't any court be faced with exactly the same sort of problems that you are telling us are so impossible and inappropriate for court decisions? In a damage suit you would have exactly the same kind of issue, whether decided by a court and/or a jury, wouldn't you?

A That is true, but in all the cases, from Lincoln Mills on through the Steelworkers' trilogy, this Court has focused on making the distinction in talking about arbitrators and putting the great weight upon the arbitrators' decision as opposed to the courts. And they were talking in terms of injunctive relief, primarily, when we go back to the fact where the individual comes in with an allegation in the form of an affidavit and asking for an ex parte order and making an allegation that this is a breach of the collective bargaining agreement, and that is the end of it.

Whereas, the actual fact of the matter is it may require an arbitrator to decide. And the court doesn't really have the time. If these cases were open to the court, there would be no use for arbitrators anymore, because by the time the parties come into court and get their injunctive relief, there is really nothing for the arbitrator to decide. Because we have found time and time again that where the injunctive relief was issued by a court, there really wasn't any problem for the arbitrator at that particular time.

Insofar as determining damages in a 301 suit, there

is no question that a court has to treat the evidence very much the same as the arbitrator. But we are talking about matters relating to the expertise of the arbitrator and deferring to arbitration as such.

This Court said from Lincoln Mills on down that they defer to the arbitrators, and the Steelworkers' trilogy makes it very clear.

Q What about deferring to the arbitrator disputes over breach of the no-strike clause?

A That is fine.

Q Wouldn't that be covered by the normal arbitration clause.

A Yes, it is. This case has, cidentally, been referred to arbitration.

Q If a union strikes, allegedly, in violation of of a no-strike clause, it goes to the arbitrator.

A That is correct, sir.

Q Then what does the arbitrator do about it.

A The arbitrator can assess damages; he can do anything.

Q So the courts don't get in it at all.

A That is right, except for the confirmation of the order.

It seems to me that when the parties have agreed upon a set scope of conduct, and they have agreed in the collective

bargaining agreement that any dispute, under the collective bargaining agreement, goes to arbitration, that is exactly what it means.

Now, if, in fact, the strike is a violation of the collective bargaining agreement, the parties will, and did in this case, make a motion to compel arbitration. That motion was granted. Now, the fact of the matter is that is what we bargained for. We did not bargain for any type of status quo situation.

The Norris-LaGuardia Act makes it very clear that Section 301, in the matter of collective bargaining in Section 301(b) speaks in terms of that. I am sure ---

Q What if a union strikes, and the issue goes to the arbitrator; assume an arbitrator was available right away ---

A That does happen, by the way, the longshoremen ---

Q But can the arbitrator issue an injunction?

A Arbitrator issue an injunction?

Q Can his award say, "Union go back to work."

A His award can say that, and if the union fails to put his men back to work, the employer can go to the court for confirmation of the order.

Q Do you agree that the Norris-LaGuardia does not bar an injunction in forcing an arbitrator's award?

A I have conceded to that in my brief, sir.

Q What is the difference then?

A Oh, the difference is that in the arbitrator's award the parties have bargained for the arbitration. The parties, normally, in the arbitration clause provide for the fact that the arbitrator's award shall be a final and binding award. If, after they have gone through the procedure ---

Q I wasn't talking about the mechanics of it -- I am familiar with the mechanics -- what is the difference in principle?

A One is before the fact and one is after the fact.

Q Can the union go into district court and get a directive, or whatever you might call it, to arbitrate?

A Certainly.

Q And the employer can do the same thing?

A Yes, sir, they have done it many times.

Q How do you distinguish the power to invoke the authority of the federal court to compel one clause of the contract but not another? It is a specific performance equitable enforcement, isn't it, whenever you invoke it?

A Yes, sir.

Q What is the difference between a mandate for specific performance of the no-strike clause and the mandate for the specific performance of the arbitration clause? In principle now, in legal principle.

A Let me see whether I understand it, Mr. Chief

Justice. What is the difference between the mandate ---

Q What is the difference in the power of a federal court, sitting as a court of equity, to invoke the extraordinary equitable remedy to command one or the other or both of the parties to arbitrate and to command to fulfill some other clause of the contract, specifically, by a specific performance decree?

A In Section 301, of course, the federal courts do have jurisdiction in the disputes between the parties in the collective bargaining agreement. The parties have agreed by contract to go to a forum in the arbitration voluntarily. Parties have refused to do that.

The court actually can, and does, compel arbitration, compel the parties to comply with the provisions of the collective bargaining agreement, which says they have agreed upon a form of adjusment; which is quite different from enjoining the parties from doing something else.

The difference being, and as I thought I mentioned previously, Norris-LaGuardia Act does not prevent the parties from going to federal court to seek compliance with their agreement to arbitrate. What it does prevent is the parties going to federal court to have the federal courts, in effect, require them to take certain conduct under their collective bargaining agreement, comply with the conditions of that.

That is expressly set out in the Norris-LaGuardia Act

where it says that no federal district court can issue an injunction against certain activities. This is not one of those activities expressed in Norris-LaGuardia. So I think there is a difference.

I think the federal court doesn't have the power because of Norris-LaGuardia as opposed to what we find here in Section 301 in regard to motions to compel arbitration. Does that answer your question, Mr. Chief Justice?

Q Well, I have your analysis.

Q I presume you would say that, probably, that is the way Congress intended it?

A This is the way I understand, and the way the law and the way the courts ---

Q And it might be bad, but it was the act of a Congress, which, at least in some fields, ought to be above others.

A That is my position, Mr. Justice Black. That it is just a matter of if there is going to be a change in the statute, where the statute is clear and not ambiguous. It seems to me that that change has to be performed by Congress and not by judicial legislation.

I recognize the fact that this Court can change its opinion in regard to cases. I recognize the fact that they are not necessarily bound by prior decisions. But it is my feeling that Sinclair was an expression by this Court not in regard to

a policy change of a matter left open by Congress. It seemed to me that what the Court said in Sinclair that they are deferring to Congress matters that had been clearly set forth by the intent of Congress; that they are saying to the parties that if -- if this has to be changed, then it may be an inequity and may be changed. The place to get it is not in the courtroom but to get it in Congress.

Congress has failed to act in this matter, and, therefore, it seems there is no other answer but that, without Congress acting, we must take the intent of Congress, apply it to the law and say that is where we stand.

Q Except that this case involves, not Sinclair directly, does it, but rather the situation that the Court dealt with in the Avco Case?

A I don't believe so.

Q I understand that this was originally brought in the state court and then moved to the federal court and that, in the federal court, the order previously of the state court was set aside. Am I mistaken about that?

A No, it was not. The federal court granted its own injunction -- the federal district court -- and on the appeal to the circuit court, the circuit court reversed on the basis of Sinclair.

Q Well, I know the Court of Appeals did on the basis of Sinclair, just as the Court of Appeals of the Sixth Circuit

had decided on the Avco Case on the basis of Sinclair. But in this Court we left the question open with respect to a removed case, did we not?

A That is correct, sir.

Q In, I think, the last footnote of the Court's opinion.

A I think Footnote 4 is the reason we are here.

Q Yes; so it is not as though this had been all decided in Sinclair.

A I think the principle is decided in Sinclair.

Q I know you submitted that it has been, but it is not all that ironed our stare decisis. We, in fact, left the uestion open with respect to removed cases in the Avco opinion, didn't we?

A Well, the way I understand it, Mr. Justice Stewart, in the Avco Case, all the Avco Case decided was a matter of removal. When a case is removed from the state court to a federal court, there is no remand. We had remand before. And at that point it took care of the problem. All that did is establish, in my opinion, a method of federal labor law. It isn't a matter of forum shopping any more. Once you go into state court and it is removed, you apply the federal labor law, which you should have applied in the state as well. But because Norris-LaGuardia did not speak to the states, we had a different situation where the case has filed in the state as opposed to

the federal law.

But the principle can't be any different. If in Sinclair, as this Court found, Congress expressly set forth its intent, unambiguously, then Avco doesn't have anything to do with it. The fact that the remedy may be different, because this Court happened to see fit to find in Avco that there would be no remand, it seems that, under those circumstances, the underlying principle in Sinclair is no different. Because if the intent of Congress is so expressed that Congress must do something to change the law, then I don't see where Avco, as a matter of procedure, affects it at all. I never did quite understand the footnote to Avco.

Q Well, really all Avco was that that was removable, that was a removable case, period. That was the holding in Avco.

A Yes, but I mean I didn't understand the impact that Avco might have in regard to Sinclair other than the fact, as we did here, we removed the case from state court to federal court and ---

Q And it couldn't be remanded back to state court. That is what Avco holds.

A And that is all Avco holds.

Q Beyond that, in the Avco Case, it so happened the federal district court set aside the order previously granted by the state court. It wasn't clear on the record why the

court had done so. The Court of Appeals of the Sixth Circuit, as I remember, in the Avco Case held yes; it not only properly did so but was required to do so by the Norris-LaGuardia Act. And that is the question that the Court left open in deciding the Avco Case here. Am I wrong about that?

A No, you are correct. As a matter of fact, when counsel for the petitioner was arguing this case, it sounded as if he was not concerned with Sinclair, but he is unhappy with Avco. As a matter of fact, in his reply brief, it seems to me that he is unhappy with the entire arbitration proceedings, because, in citing this one case where we have talked about the quickie arbitration, counsel points out that, while the contract called for 72 hours and then a 12 hour decision, he said, "Well, my God, it took 4 days for a hearing." Well, how long would it take if he went to court? And then the fact that there was a decision in December and the only way they could have a decision in December was if the parties agreed.

So I simply say, by pointing to that particular case and saying that quickie arbitrations are not the answer, I don't agree. Because in the long shot -- when you have a dispute on the dock, you have a provision in that contract where the arbitrator comes down to the dock right there and he says, "Go back to work," and that is the end of it. So there is an answer to these things. And people

with the expertise in labor and management can bargain for that.

I fail to see where the situation has changed from 1962 until today. As I mentioned previously, I can find no legislative history, no legislative act -- incidentally, the legislative history in 1962 is the same legislative history we have today -- so under those circumstances it seems to me that the Sinclair Case should not be reversible.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Schwartz.

Mr. McLaughlin, you have about 3 minutes left.

REBUTTAL ARGUMENT OF JOSEPH M. MCLAUGHLIN

ON BEHALF OF PETITIONER

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

In the very brief time remaining to me, I would like to make 2 or 3 points. First of all, with reference to the statements and the contentions that have been made on account of the failure of Congress to act following the decision of this Court in Sinclair and, also, with respect to the idea that Sinclair has some kind of a stare decisis impact.

I would like to direct the Court's attention to a decision of this Court, which is not cited in any of the briefs -- we didn't cover this point -- Halgreen vs. Heller (?). This case is to be found in 309 U. S. 106. The decision in the case was offered by Mr. Justice Frankfurter joined in by Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Stone, Mr.

Justice Reed and Mr. Justice Murphy.

On page 118 of the Official Reporter, if the Court will indulge me, I would just like to read 3 or 4 sentences. This case involved a situation where there had been 3 different decisions of this Court with respect to a tax matter. The Court was faced with the question as to whether it should further proliferate these decisions or whether it should just take the 3 decisions that had come on before and, in effect, overturn them:

"Our real problem, therefore, is to determine whether we are to adhere to a harmonizing principle in the construction of 302(c) or whether we are to multiply gossamer distinctions between the present cases and the 3 earlier cases."

Now skipping, Your Honor: "We recognize that stare decisis embodies an important social policy; it represents an element in continuity in law and is rooted in psychologic need to satisfy reasonable expectations. But stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent, in question, where such adherence involves collision with a prior doctrine more embracing in its scope and principally sounder and verified by experience."

Skipping now for one more sentence to what would be page 121 of the Official Reporter: "This Court, unlike the House of Lords, has from the beginning rejected the doctrine

of disability and self-correction. Whatever else may be said about want of congressional action to modify by legislation the result in the St. Louis Trust cases (inaudible) ... reasons upon congressional approval of these distinctions," and then the Court goes on.

Q What is the full citation? Could you give it to us?

A Yes, Your Honor. It is to be found in the Official Reporter at 309 U. S. 106.

Also, I would like to direct the Court's attention to the decision of Girauard (?) vs. the United States 328 U. S. 61. The first case I cited, I believe, was a 1940 case. This is a 1946 case. This involved a matter arising under the Immigration Nationality Act. The opinion in that case was written by Mr. Justice Douglas joined in by Mr. Justice Black, Mr. Justice Hartley, Mr. Justice Rutledge and Mr. Justice Burton.

One sentence from that case, if I might please: "It is at best treacherous to find in congressional silence alone the adoption of a law." Now I see that my time is up and I can't make some of the other points I would like to make.

Suffice it to say that the only remedy that is going to effectuate the policy of Section 301 is going to be the availability of the injunction against the strike in breach of contract. Thank you, Your Honors.

Oh, one thing, Your Honors, if I might; I apologize. I would direct your attention with respect to this idea about equality to section 2 on page 3 of our reply brief, We have covered this so-called "imbalance" situation, and I would ask you to read it with some care.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. McLaughlin.

We thank you, Mr. Schwartz. The case is submitted.

(Whereupon, at 10:49 o'clock a.m. the argument in the above-entitled matter was concluded.)