ORIGINAL

In the

Supreme Court of the United States

CARBON FUEL COMPANY,

PETITIONER

V.

UNITED MINE WORKERS OF AMERICA ET AL.,

No. 78-1183

Washington, D. C.
November 5, 1979

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CARBON FUEL COMPANY, Petitioner	:	
v.	:	No. 78-1183
UNITED MINE WORKERS OF AMERICA ET AL.	:	

Washington, D. C.,

Monday, November 5, 1979.

The above-entitled matter came on for oral argument at 10:00 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON H. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

DAVID D. JOHNSON, ESQ.
Charleston, West Virginia
On behalf of the Petitioner

HARRISON COOMBS, ESQ.
Washington, D.C.
On behalf of United Mine Workers of America, et al.

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C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in Carbon Fuel Company against United Mine Workers.

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

ORAL ARGUMENT OF DAVID D. JOHNSON, ESQ.,

ON BEHALF OF THE PETITIONER.

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

The petitioner Carbon like all the other employer members of the Bituminous Coal Operators Association is required by law to bargain collectively with the United Mine Workers of America. The International Union UMWA is the exclusive union bargaining representative of the employees of all the operators including Carbon. All the employees are members of the International as distinguished from separately its subordinate branches.

The International bargains and negotiates the contracts. It comes to the bargaining table holding itself out as able to speak for all of its members in support of the branches and to commit them to the promises that it makes in the bargaining

The International by its constitution has supreme Legislative, Executive and Judicial authority over all of its members and its subordinate branches. However, the UMW has

structured itself into a three-tiered organization with the International Union at the top, the districts in the middle with jurisdiction in particula l geographic areas, and the locals at the bottom with jurisdiction in particular mines or companies. The union has also unilaterally structured itself in such a way that the local unions at the bottom of the tier are at Carbon and generally elsewhere judgment proof against the satisfaction of substantial judgments for damages for breach of contract.

QUESTION: Mr. Johnson, did you say the union has unilaterally structured itself. Is that any different than say Mobil Oil Company decideding instead of operating a particular business as a subsidiary of Mobil as a corporation it would spin off and have another corporation?

MR. JOHNSON: No, I think that when I say unilaterally I mean the union has control over its internal structure and that is very similar to many corporations who are parties to the contractor. This International Union makes, signs and enters into the contract, it is the bargaining representative party of the Bituminous Coal Operators Association members are parties to the contract on the employers' side of the table.

QUESTION: Neither the district nor the locals are parties to the contract?

MR. JOHNSON: The districts I believe sign the contract

as well as the Interional. They have a organization which is established by the International Union to bargain the contract and the district and the locals participate to the extent that the International permits them to do so. And I believe that the districts sign the contract as well as the International.

QUESTION: As parties to the agreement?

MR. JOHNSON: Yes, I think they are parties. I would the position that they are parties to the contract in the sense that that is the locals, the districts and the International are all parties to the contract in the sense that they all benefit from it, accept the benefits of it, and I would say they are bound by it.

QUESTION: You wouldn't say a shareholder in a corporation is a party to a contract which only the corporation has signed it just because a shareholder will ultimately benefit?

MR. JOHNSON: That is right. Strictly speaking in that sense, I don't think that the district and the locals are parties to the contract. The International is the party to the contract and they are all bound by the contract. The district is a subdivision of the International, acts as its agent with respect to certain functions under the contract. And the locals also have jurisdiction based upon particular mines and locals and they are bound by the contract but they are not parties to the contract.

QUESTION: Don't the locals have to approve the contract?

MR. JOHNSON: Yes, the contract is ratified by the membership.

QUESTION: It is binding upon them?

MR. JOHNSON: Sir?

QUESTION: It is binding upon them?

MR. JOHNSON: It is binding upon them and they ratify it.

QUESTION: Are the International, district and local all bound for example by the arbitration clause?

MR. JOHNSON: Yes, I think certainly they are.

QUESTION: And they could enforce it.

MR. JOHNSON: They could enforce it by suit, they can -- they are bound by it, they have the benefits of it, they are obligated to comply with it.

Out of this collective bargaining arrangement the employer Carbon and other operators have obtained a commitment from the International Union to settle all disputes and differences that arise between the employer and the employees and the union during the life of the agreement through a grievance and arbitration procedure rather than by strikes and work stoppages. That commitment consists of two elements. One of them is the agreed procedure itself leading to binding arbitrration. The other is a specific commitment that the parties agree and affirm that they will maintain the integrity of the contract and that all disputes and claims which are not settled by

agreement shall be settled by the grievance and arbitration machinery provided. And this Court in Gateway Coal Company v. United Mine Workers held that that constituted a binding implied no-strike clause. It is of course the policy of our national labor policy as expressed in the Federal labor laws that aollective bargaining agreements and particularly commitments of this sort to settle disputes during the life of the contract by binding arbitration shall be enforceable and shall not be permitted to become or to be illusory.

Section 301 of the Taft-Hartley law expressesion a Federal policy that the Court should enforce these agreements on behalf of or against labor organizations in order to bring about industrial peace and stability during the life of colletive bargaining agreements.

Other provisions of the Act evidence such same policy. Section 204(a) states that employers and employees shall exert every reasonable effort not only to make but to maintain agreements made in the collective bargaining process. Despite that binding no-strike commitment in the coal contracts there were during the period of time covered by this case 31 strikes at the mines of Carbon alone over issues that were arbitrable under the contract. The record shows that in the area of the Coal Operators Association in southern West Virginia of which Carbon is a member, during the same period of time there were literally hundreds of such strikes and more than a thousand mine-days of work were lost

over these disputes that it had been agreed would be settled peacefully through the grievance and arbitration procedure.. These strikes were not authorized by the International or district unions. In each case the district acting as an agent of the International sent representatives to the local unions who informed meetings of the local that the strike was disavowed and not authorized and instructed the men to return to work. Although they repeated --

QUESTION: Did they dispute the representation of the district representatives in doing that?

MR. JOHNSON: I think there is no evidence whatsoever that they acted in anything but good faith. That is to say they wanted the men to return to work, and there was nod nor wink nor anything of that sort indicating the contrary. But repeatedly they stuck to the same routine without any results and although they threatened repeatedly to use the other means that they had available to them to stop the strikes, none of those mans that they referred to or that they threatened to use were ever utilized by them.

Their position was and has been that they had no obligation to do anything more than they did and of course the Fourth Circuit Court of Appeals in this case held that they had no obligation and have no obligation to do anything.

QUESTION: Do you think your case is stronger or weaker against the district, the International or the locals

respectively, or is it the same against all of them legally?

MR. JOHNSON: Well, it gets different. I think that our case against the International is stronger let us say in the sense because the district is in the context of this case acting as an agent acting for the International. The vacant commitment is by the International Union but the liability of the locals in this case, which is not an issue in here, was predicated on the mass action theory that all of the members of the local went on strike when the mines went on strike, including the officers; and that therefore it represented the action of the union. In that sense it is different.

QUESTION: Was the district in trusteeship?

MR. JOHNSON: The district was in trusteeship throughout most but not all of the period of time that we are involved with here. That is to say the International had take it over in trusteeship and appointed the officers of the district during most of the period.

QUESTION: It is agreed no disciplinary measures were ever taken?

MR. JOHNSON: No disciplinary measures were taken at Carbon's mine nor so far as the record indicates any mines in the Coal Operators Association. Nor -- it is just a matter of discipline. The record shows that the union has a vareity of means that it can use to attempt induce or coerce compliance with the no-strike clause including disciplinary action not

only against members but against the local as such -- finds against the local -- removal of the officers of a local, improvision of a provisional government for the local, and many things which are not spelled out in the constitution but I think are inherent in it such as giving the members instructions that a picket line is not authorized, that they should cross the picket line or that they should remain at work despite the picket line because the picket line is contrary to union policy.

None of these things were ever done, including any disciplinary action.

Our proposition basically is that the situation that exists here as shown in this case under the coal contract is wholly incompatible with and in conflict with the national labor policy enunciated by this Court to give meaning and effect to no-strike commitments in contracts during the life of collective bargaining contracts. And not to permit them to become illusory and meaningless.

QUESTION: Is it in effect an action for a specific performance?

MR. JOHNSON: It is an action for damages, Your Honor.

QUESTION: Failing --

MR. JOHNSON: It is an action for damages against the International district unions as well as the locals, but that issue is not here, for their failure to use the reasonable

means available to them to prevent breaches of the contract by their members and subordinate branches, specifically breaches of the no-strike clause of the contract. And it is our position --

QUESTION: How about the arbitration clause?

MR. JOHNSON: Well, the arbitration clause -- of course when I speak of the no-strike clause I am speaking of the commitment in the contract that all disputes will be settled through our grievance and arbitration procedures rather than by strikes.

The language which this Court held in the Gateway case would constitute a binding, no-strike clause.

Now, our proposition simply is that both the policy of the national labor law, the national labor policy is to make such agreements effective and prevent them from becoming illusory and common, ordinary principles of traditional contract law require that their be implied in the no-strike clause an obligation upon the part of the International and district unions to use reasonable means available to them to stop and prevent strikes by their members and subordinate branches.

QUESTION: Wasn't there during the period from around 1950 a specific clause in the agreement to that effect which was later dropped?

MR. JOHNSON: Yes, Your Honor. The decision of the Fourth Circuit is based upon the fact that in 1950 there was

written into the contract a specific provision. In addition to the maintain the integrity clause of the contract on which we really,we say that even if assuming for purposes of argument that national labor policy and ordinary principles of contract law don't require the imposition or the implication of all reasonable means obligation, that in this particular contract with its particular language, specifically the obligation of the parties expressly stated to maintain the integrity of the contract and that all disputes and differences shall be settled through the grievance procedure during the life of the contract

QUESTION: You are relying on the Gateway language about the quid pro quo induces the employer to make the contract?

MR. JOHNSON: Yes, Your Honor.

QUESTION: Well, how do you refute the argument that there was once a specific provision in the contract that would have probably required the result that you sought, and that was dropped by consent of the parties?

MR. JOHNSON: The language -- the specific language referred to was in addition to the maintain the integrity clause language. The 1950 agreement used the words "and exercise their best efforts to the available disciplinary measures to prevent work stoppages." That was deleted from the contract in 1952 and the Fourth Circuit relied upon that deletion as meaning that there was no remaining obligation

to -- or no intended obligation on the part of the International Union' reasonable means to stop strikes. We think that that was error, it was error for several reasons. One of them is that it gives no meaning or significance, doesn't explain why the maintain the integrity language was retained in the contract and has remained in it to the present time.

And secondly, the bargaining history the Court relied on which was that stated by the District of Columbia Circuit Court of Appeals in the International Union v. UMW is incompletely and inaccurately stated by the District of Columbia Circuit in that case. The full and accurate bargaining history is set forth in the NLRB case which was a subject of the Court of Appeals decision known as the Boone County case in 117 NLRB and it appears in the bargaining history set forth fully in that case but the language that we are referring to was deleted in 1952 not because the International Union objected to doing something about strikes or attempting to take some action to stop strikes by its subordinate branches but because it objected to being required to use discipline in every case whether it was reasonable in a specific case or not. And the Fourth Circuit's decision also like the District of Columbia Court on which it relied fails utterly to take note of the fact that in 1947 when Taft-Hartley was passed the union did several things with a contract to protect against financial liability. One of them was it

deleted the expressed no-strike clause. This Court in Gateway said that that deletion was not sufficient to destroy the no-strike commitment but the important thing was what language remained, as in this case the maintain the integrity language. But they deleted the no-strike clause in 1947 and they also wrote into the contract and the bargaining history in the Boone County case recites that it was for the purpose of relieving them of financial responsibility for a strike.

They wrote into the contract the "willing and able" clause which said in effect the miners would work when they were willing and abls to do so, they would have no obligation to work otherwise and that the union would have no obligation to try to make them work or to get them to work.

The bargaining history in the Boone County case further shows that after two years with that language the operators came back into the negotiations in 1952 and -- or in 1950 after -- it was 1947 that language went in and in 1950 they came into the negotiations and negotiated out the "willing and able" clause for the purpose, for the stated avowed purpose in negotiations of reestablishing the union's financial responsibility for wildcat because it had a wave of such strikes under the "willing and able" clause.

All of this language is overlooked, not referred to at ãllall of its bargaining history in the Fourth Circuit's decision because that court relied upon the

District of Columbia Circuit's decision which incorrectly and incompletely stated what appears in the findings of fact which were not rejected by the District of Columbia Circuit in the Boone County case.

But the fact remains that the "maintain the integry" clause remains in the contract to this day, committing the International Union to maintain the integrity of the contract. Our position is that that is a commitment to an affirmative action, it is a commitment to take all reasonable means to try to prevent breaches of the no-strike clause and that no other meaning, no other reasonable meaning can be attributed to it but exactly that.

MR. CHIEF JUSTICE BURGER: Mr. Combs.

ORAL ARGUMENT OF HARRISON COMBS, ESQ.,

ON BEHALF OF RESPONDENT

MR. COMBS: Mr. Chief Justice, if it please the Court:

Mr. Chief Justice, the position of the Union is that the bargaining history of the contractual clause is in issue here, that if the contentions of the operators are accepted by this Court that it in effect would rewrite the contract on which the parties agreed.

The 1950 contract, the union and the operators agreed to maintain the integrity of this contract, to exercise their best efforts to available disciplinary measures to prevent

strikes or no accounts pending the processes of grievances. Besides their use of available disciplinary measures of the 1952 contract eliminated the best efforts and use of disciplinary measures.

Since 1952 and not to the date of the contractual provisions that are the subject of this suit phrases to use the best efforts to available disciplinary measures had been deleted from these contracts.

It is the position of the union that there is no contractual obligation on the part of the union with reference to unauthorized wildcat strikes.

QUESTION: You are not arguing for any Norris-LaGuardia Act type of limitation independent. On the contrary you are simply for proper construction of a voluntary reached agreement?

MR. COMBS: Mr. Justice Rehnquist, that is correct. Of course we cite that there be some reflection on the policy announced by Norris-LaGuardia with reference to encouraging collective bargaining to arrive at these contracts.

QUESTION: But then Norris-LaGuardia just deals with injunctions.

The Norris-LaGuardia policy though was to settle -- it does have some impact on this case, to some extent.

QUESTION: You feel you must rely in part on Norris-LaGuardia and not just on an interpretation of the voluntarily

reached agreement between the Parties?

MR. COMBS: No, we do not rely on Norris-LaGuardia for that purpose; no. The answer would be "No," Mr. Justice.

The contractual provisions that are in dispute here were the subject of interpretations by the Court from 1955 in the the Haislip case on which the Fourth Circuit relied here from 1958 and the decision of this Court admitted that the contracts were neogitated by the parties with with the interpretation of those provisions in those contracts.

The union was aware of those Court interpretations at the time that these contracts were negotiated. The national labor policy of free collective bargaining sustains our arguments that forbids government dictation on the terms of the agreement as set forth in this Court's case of H. K. Porter to Mr. Justice Black.

The union has a general policy against wildcat strikes as shown in this record. It tried actively to terminate them but it is their judgment, the internal judgment on the best means of doing this.

QUESTION: Mr. Coombs, would you have a different position of the contract had a no-strike clause?

MR. COMBS: I think not, Your Honor, because none of this was authorized.

QUESTION: And you would say that just a bare no-strike clause would not carry with it an obligation

to take affirmative efforts to stop wildcat strikes?

MR. COMBS: I would say just a bare showing that the union had authorized that strike would not be sufficient.

QUESTION: And an integrity clause wouldn't add anything to that, I take it you argue.

MR. COMBS: That would be my argument; that is true.

QUESTION: There is nothing in the last that would permit the operators from demanding a clause in the contract to require the International or the district to do everything in their power in every single situation subject only to the impossibility to prevent wildcat strikes.

MR. COMBS: That would be a subject of permissive bargaining to decide on what steps the union would take in its internal structure to bring about these strikes. That would be permissive bargaining. That would be our position on that.

QUESTION: Mr. Coombs, the judgment here against the local union as I understand it. And it is it correct -- I want to ask you: Does the judgment against the local rest at all on this provision of the contract?

MR. COMBS: It does to this extent: The judgment was based upon the mass action of the local union as an entity. They did violate the contract by refusing to arbitrate an arbitrable grievance, that was the judgment.

QUESTION: I see. So in effect there was a direct violation of the implied no-strike commitment.

MR. COMBS: Yes, Mr. Justice Stevens, that is our position.

QUESTION: Mr. Coombs, my Brother White I suppose means that you accept the proposition that the contract at issue here did have the equivalent of an explicit, simple no-strike clause, i.e. by inviting the parties to settle their controversies otherwise than by strikes.

MR. COMBS: We do not have an explicit agreement to that effect.

QUESTION: No, but in your answer to Justice White when you said that your argument would be no different if there were an explicit simple no-strike clause implied to me at least that you think this contract had the equivalent of it.

MR. COMBS: To the extent that if the contract -- if the strikes in question here were authorized by the union --

QUESTION: Yes, yes; to that extent.

QUESTION: Mr. Coombs, you are not asking us to reconsider our cases that say that a no-strike clause is implied --

MR. COMBS: No, your Honor, we are not.

QUESTION: Lucas, Mower and -- whatever they were. You accept that?

MR. COMBS: Yes.

QUESTION: That this was the equivalent of a no-strike clause?

MR. COMBS: The arbitration provisions of grievance procedure was equivalent to an implied agreement that those disputes would be settled --

QUESTION: Well, it was equivalent to an explicit agreement.

MR. COMBS: I guess --

QUESTION: It was an implied agreement.

MR. COMBS: Implied or explicit, there is very little difference in those two terms.

QUESTION: But you say that doesn't carry with it any promise to take any affirmative steps.

MR. COMBS: That is correct.

QUESTION: And that the integrity clause can't add another promise.

MR. COMBS: That is correct and it is our position that the bargaining history and of course the Court decisions bear that out.

I would like to go just to some extent into the bargaining history. In 1968 and 1971 these contract provided a grievance settline machinery. It provided for a miscellaneous clause. These are the contracts here. And I siagree with counsel to the extent in his answer that this was ratified by the membership. It was not at that time.

I would like to go just briefly into the methods by which these contracts were bargained in 1968 and 1971 and in

the times past on that. The International Union referred to here has to do with the International Convention. That convention was represented by delegates from of the local unions from the members. That convention sets up a policy committee that includes representation from each of the districts. It involves some 21 at this time. That the members vote in this policy committee is given the authority under the convention to negotiate these contracts. The districts are not parties to the contract, neither the local union per se. They represent on the policy committee the membership of that policy committee and once the policy committee which consisted at that time of 175 or 200 members, that policy committee made the contracts and executed and authorized them. They were not ratified by the membership at that time.

In 1941 the contract provided specifically in the settlement of disputes, the arbitration clause, that pending the settlement of those disputes that there should be no cessation of work. That was in the 1941 contract and, in addition, the 1941 contract contained a miscellaneous provision that was bargained side by side to the effect that an illegal stoppage of work was a violation of the contract. Two provisions. Those contracts were carried forward through negotiations up until 1947 at which time the Taft-Hartley Act became effective. The union negotiated in collective bargaining with the operators did delete from the arbitration

machinery the cessation of work clause in the arbitration. They also negotiated in a miscellaneous clause that all the no-strike penalty and work stoppage clauses would be canceled, made nul and void by reason of the fact that the union argued that it would not be responsible and couldn't be responsible for the spontaneous, unauthorized walk out strikes. That was in 1947.

There were contracts negotiated between 1950 and in the 1950 contract again by negotiating parties -- by the parties -- the 1950 contract contained clauses to the effect that the parties -- both of them -- would maintain the integrity of the clause in the contract through disciplinary measures to see that the grievance machinery was carried out and that there be no strikes.

Because of criticism, which is stated in the record, the difficulty the union had of internal discipline of its members, that was eliminated in 1942, deleted from the integrity clause, and only the integrity clause was left.

Now, from 1952 up until the present day that term has been deleted specifically and the miscellaneous clause is carried on through.

QUESTION: But I take it from your argument -- and correct me if I have a misconception of it -- that your position would be the same prior to 1952 under that old contract.

MR. COMBS: Our position would be the same insofar as

authorizing the strikes because because of the International Union.

QUESTION: So that puts you in disagreement, does it, with the basis of the Fourth Circuit's holding?

MR. COMBS: No; no, your Honor, the Fourth Circuit held that with reference to --

QUESTION: I am not quarreling with the opinion -- the basis of their opinion.

MR. COMBS: Their opinion was based upon the contract in which they said that the bargaining history of the clause and the construction of it was such that there was no contractual obligation on the part of the union to do anything. They didn't say that the union could authorize, specifically instruct, and there is no evidence as counsel said here, whatsoever that the union had anything to do with authorizing those strikes or participating in them or condoning them.

Now, if the Court please, in 1955 the Fourth Circuit in the Haislip case construing the same type of provision in the contract, held through Judge Parker that there was no obligation on the part of the union to do anything with reference to these unauthorized wildcat strikes and that the record showed that the union had -- that the operators had called the union in, the union representatives to help them settle the strikes and that the union had done so. That occurred in this case. This Court upheld the opinion of the Sixth Circuit Benedict Coal

Company case Mr. Justice Stewart speaking for the Sixth Circuit at that time as a Judge of that Court, stated that the language of the 1952 contract relieved the union -- the national union from any obligation for spontaneous, unauthorized strikes.

QUESTION: Was that the Benedict Coal case?

MR. COMBS: Yes, Your Honor.

The Court of Appeals for the District of Columbia held basically the same thing.

Now, in the light of those court opinions these contracts were negotiated by the parties in 1952, 1954, 1956, 58, '64, '68 and '71. All those contracts were negotiated in the light of those court decisions including the provisions that they are claiming here.

QUESTION: That was before the contrary authority developed creating the conflict among the Courts of Appeals?

MR. COMBS: Yes, Your Honor, the Court pointed out -- yes, Mr. Justice Black, and that is correct -- the Court pointed out, the Fourth Circuit did that the cases in the Third Circuit, U.S. Steel, Republic, that it was their opinion that the effect of those cases were to rewrite the contract and that they disagreed with them.

Now, the Fourth Circuit pointed out that the Seventh Circuit and the Sixth Circuit and the Fourth Circuit are in agreement on the interpretation of these various provisions we

are talking about here and in of course the Benedit Coal Company case.

It is the position of the union here that is a matter of collective bargaining. This question of discipline is a question of judgment and with all due respect to opposing counsel in their brief they point out the difficulties in the company trying to exercise discipline themselves. They point out if a fireman might have got the whole crowd on their hands or sometimes their old route and it raises ill feeling among the members, their employees simply it is not ufficient for disciplinary action.

Now, we on the other hand, the union at the bargaining table and in this record say approximately the same thing, that these employees of these companies are hired by the company, they are fired by the company, they are directed by the company and if the company says it will cause too much hard feeling and be too harsh to fire these people, the union says on the other hand that we take the charter away from this local union and probably spread to other local unions, and certainly they don't want that.

In union procedure, the union, its constitution and law, it is very strict on the trusteeships. It takes an extended period of hearings, it takes extended reports and it requires a long time to take a charter away from a local union.

In addition to that, they talk about disciplining a

member. That member has a right under the Landrum-Griffin Act and under the Taft-Hartley Act. He has a right of notice to what he is charged with. He has a right to prepare his case to be heard. He would be tried in his own local union. That would be where the trial would be held. He has the protection of going through appeals in the union in 6 or 8 months perhaps after the strike. Maybe the discipline might be finished and maybe it wouldn't be.

And it is the judgment of the union that disciplinary action is not something that would protect either the union or the operators in stopping these strikes, that their judgment has been negotiated on since 1941 up to date. And I might say that the reason for the 111-day strike, the top thing on the agenda of the negotiators was the question about these unauthorized strikes.

If the Court please, it has long been the policy of the national labor laws to encourage collective bargaining as a means of lessening industrial strife and promoting industrial peace. We think this applies to all unions and all employers in this country; that is the policy enunciated by the Congress.

Justice Black stated in the Porter Company v. NLRB that the basic theme of the Labor Act was that through collective bargaining the passions, the arguments and struggles of prior years would be channeled into constructive, open discussions leading it was hoped to mutual agreement.

But, it was recognized from the beginning that some cases would be impossible and it was never intended that the Government would in such cases step in and become a party to the negotiations and impose its own views. That is this Court speaking in 1970.

We feel strongly that for this International Union to be held liable for work stoppage which it neither authorized, condoned or ratified, that this would be in conflict with the labor policy of promoting collective bargaining and would seriously undermine the collective bargaining rights and industrial strife between the parties may be increased.

QUESTION: What do you say the clause means when the International Union took on an obligation to guarantee the integrity of the contract?

MR. BOMBS: If the court please, we read that on page 19 and 20 of the brief and it cites -- the United States District Court of Appeals for D.C. stated it well, recites that the thrust of the whole thing is this: Admit constantly since 1941 they negotiated this, they wanted to settle with us by collective bargaining. That is what the integrity laws mean, that they would exercise the best collective bargaining that could bring about this settlement. But at no time were they arguing at that time that the union would be liable for unauthorized spontaneous strikes.

QUESTION: You mean the integrity clause has no

consequence or meaning after the contract is signed but only beforehand in the negotiations?

MR. COMBS: Well, it is clearly established -- it was clearly established that the elimination of the disciplinary and the best efforts clauses were for the purpose of preventing the union from being held liable for something that could admit trouble. That was understood. And to say that the integrity clause had the same meaning we think stretches the imagination and we don't think it conforms to common, ordinary reasoning.

QUESTION: Tell me, just what do you think it does mean. You have told us not what it does not mean. What does it mean?

MR. COMBS: Well, what it says specifically is that they will maintain both sides, will maintain the integrity of this agreement and it is to be -- these matters are to be settled by collective bargaining without recourse to the courts. That is what it says. And I think that a lot of times in the courts that it is forgotten. It states the purpose in there itself. It says that this is to be settled -- these matters by collective bargaining without recourse to the courts. That is what the clause says.

QUESTION: Arguably it could mean if you just read the words that neither party will attempt to add any provisions to the contract.

MR. COMBS: That is right.

QUESTION: Would it mean that the company would not be -- would not have any obligation under the integrity clause if the company refused to engage in arbitration?

MR. COMBS: Well, to answer your question I think when you talk about arbitration both sides agree we will do our obligation to arbitration. But I think the company would say that that doesn't mean they could not bring out if they wanted to whatever matter they wanted to. We are talking about strikes and knock outs when we are talking about the liability of the union in there, we are talking about strikes and knock outs; we are not talking about arbitration. We accept the fact that if the local union refuses to go through arbitration and the International and it is authorized, that that is the implied agreement held by this Court that it would arbitrate it. But certainly don't think that the integrity clause is equivalent.

QUESTION: Isn't there a general principle of contracts law that neither party will do anything to frustrate the legitimate expectations of the other arising out of the contract?

MR. COMBS: Yes, Your Honor. They would take affirmative steps. I think this would be a different case if the union under the implied agreement had authorized these strikes and said, you guys go ahead, we can't settle it under arbitration, so go ahead, strike. That was Sixth Circuit in Rhode Island.

QUESTION: Mr. Combs, let me ask you a question

about the litigation in the Third Circuit Republic Steel litigation: Do I correctly understand that Judge Aldersert's opinion in that case really relied kind of on public policy rather than strict interpretation of the contract?

MR. COMBS: That is correct; that is the way I read it.

QUESTION: And then the case went back. Did the jury hold the International liable for damages?

MR. COMBS: Your Honor, that case is still on remand. No, we haven't paid any damages on that I recall.

QUESTION: I see.

It has not been tried yet; is that right?

MR. COMBS: It is not tried to my memory. We have got so many of them I am sure it hasn't.

QUESTION: I see. Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Johnson.

REBUTTAL ARGUMENT OF DAVID D. JOHNSON,

ON BEHALF OF THE PETITIONERS

MR. JOHNSON: May it please the Court, I want to say a little bit furthermore about the meeting of the integrity clause which Your Honors have raised. Of course the Third Circuit has held that the commitment to maintain the integrity of the contract that all disputes shall be settled in the grievance and arbitration procedure in the words of the court necessarily embraces an obligation to use all reasonable means

to enforce or uphold.

QUESTION: It really means to prevent the strike in the first place, they mixed the local and the district and the International on the same litigation, didn't they?

MR. JOHNSON: You are referring to the Eazor Express case or --

QUESTION: No, the second one

MR. JOHNSON: The United States Steel case?

QUESTION: [illegible]

MR. JOHNSON: Well, my recollection is that in that case they said the maintaining integrity clause necessarily embraces an all reasonable means obligation and we think that that is the only means that can reasonably be attributed to it.

QUESTION: Is it all reasonable means to prevent a strike from starting or to end one once it started? There is a little difference between the theory of the mass action theory which I guess makes the union liable for -- in effect for the strike itself. And then your theory here is that there is sort of a second obligation to get the strike over as fast as you can if it starts without authorization of the union itself.

MR. JOHNSON: Yes, Your Honor, our position is that the all reasonable means obligation embraces both an obligation to try to prevent strikes when there is reason to believe that strikes will occur and an obligation to stop them or to try to

stop them when they do occur, and that it is twofold. Of course the --

QUESTION: The manner half we have got involved here, of course.

MR. JOHNSON: That is right.

It means that there are reasonable of course is a question of fact which was submitted to the jury and resolved by the jury in this case. But the means that are reasonable, what constitutes all reasonable means in any given case is of course going to depend upon the particular facts and circumstances of each strike. And one of those factors is, when did the union get notice of it. When did they have an opportunity to act. And in this case the jury awards damages I think leads you inevitably to the conclusion that the jury didn't find the International Union liable from the commencement of each strike but from such point as the jury determined they should have acted and had notice and an opportunity to act.

With respect to the meaning of integrity, some light may be cast upon it by the fact that one of the several directives that the International Union issued to its members in locals between 1951 and 1966 telling them that these strikes were unauthorized, that they were a problem for the union and calling upon the locals and their officers to act against them, in one of those it refers specifically to the fact that the strikes -- wildcat strikes that were occurring in the locals

threatened the integrity of the joint bargaining relationship -- contractual relationship between the operators and the union. I don't -- I submit respectfully that there could be little doubt that the integrity clause is directly related to the immediately following commitment to settle all disputes through contract grievance and arbitration procedure.

QUESTION: I take it you wouldn't argue without the integrity clause the International would be liable.

MR. JOHNSON: Our position is that the International is liable because there is inherent in the -- well, I may have misunderstood you, Your Honor.

QUESTION: Let's assume that there is no integrity clause but there was an expressed no strike clause -- just a simple no strike clause.

MR. JOHNSON: My position would be Your Honor, that whether there is an expressness strike clause or whether there is an implied no strike clause, whether the specific maintain the integrity language is used or not, that there is inherent in the no strike promise under our national labor policy and the implied commitment that the union that makes that promise will use the reasonable means available to it to prevent its subordinate branches and its member --

QUESTION: So in effect then you say the integrity clause doesn't add a thing.

MR. JOHNSON: I say that --

QUESTION: It is just a --

MR. JOHNSON: You --

QUESTION: -- it just expresses what is already there.

MR. JOHNSON: I think that that is essentially true. I think that the parties were concerned as to whether or not there would be any obligation unless they wrote it in there. They wrote it in there. Of course you had on the books at that time a number of decisions which certainly made it doubtful whether or not they would have such an implied commitment unless they expressly set it forth.

And I believe, Your Honor, that they wrote the integrity clause in there for the purpose and with the intent of making sure that the International Union would act affirmatively and diligently to try to stop and prevent the wildcat strike from going on.

QUESTION: Even though at the same time they eliminated an express undertaking.

MR. JOHNSON: That is correct.

The union argued in Gateway you know that the deletion of the no-strike clause had relieved them from any no-strike obligation.

This Court has stated, Your Honor, that the important thing, the significant thing was not the language that had been deleted but the language that had been retained, a commitment

to settle all disputes through the grievance procedure.

QUESTION: Well, was this the Third Circuit's position, was the Third Circuit's position the same as yours that the case would be the same without the integrity clause?

MR. JOHNSON: It is my reading of the Third Circuit's decision that that they say the national labor policy and the fundamental principles of contract law require a reasonable effort by the International Union and that the maintain the integrity clause vitiates the union's argument that the parties did not intend any such obligation.

QUESTION: Why don't you go further and say that the union guarantees in effect that there will be no strikes?

MR. JOHNSON: I think that it is not consistent with national labor policy to go that far.

QUESTION: Where would you pull this national labor policy from; from out of the air?

MR. JOHNSON: No, Your Honor, the Court of course long ago said that it is the function of the Federal courts in developing substantive law under Section 301 of the Taft-Hartley law to develop law to give effect to the national labor policy expressed in those laws.

QUESTION: But it didn't say that you rewrite the contracts that people enter into in collective bargaining.

MR. JOHNSON: No, but it says very clearly, Your Honor, that the labor policy is to make collective bargaining agreements

enforceable and particularly commitments to settle disputes peacefully during the last contract and grievance procedure. And therefore when the parties agree on a no-strike clause and say this is the way we will settle prior disputes during the life of the agreement, the party that makes that agreement is under an obligation to prevent its breach.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

Whereupon, at 11:01 o'clock p.m., the case was submitted.)

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