No. 13-1010

IN THE

Supreme Court of the United States

M&G POLYMERS USA, LLC, *et al.*,
Petitioners,
v.
HOBERT FREEL TACKETT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Courts of Appeals for the Sixth Circuit

BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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BRIEF OF THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF *AMICUS CURIAE*

The American Federation of Labor and Congress of Industrial Organizations is a federation of 56 national and international labor organizations with a total membership of 12.5 million working men and women.[1] This case addresses the proper interpretation of provisions in collective bargaining agreements providing health insurance coverage to eligible retirees. Industrial unions affiliated with the AFL-CIO often negotiate collective bargaining agreements containing such provisions.

SUMMARY OF ARGUMENT

This case raises the issue of the interpretative standard that should be applied in determining the effect of a collectively bargained retiree health insurance provision. This issue is governed by the federal common law of contracts under Section 301 of the Labor Management Relations Act, which is developed from both accepted principles of traditional contract law and the basic policy of national labor legislation.

A basic principle of traditional contract law is that

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[1] Counsel for the petitioner and counsel for the respondents have filed letters with the Court consenting generally to the filing of all *amicus* briefs. No counsel for a party authored this brief *amicus curiae* in whole or in part, and no person or entity, other than the *amicus*, made a monetary contribution to the preparation or submission of this brief.

the words of a contract should be interpreted in accord with the parties' mutual understanding of the words' meaning. Accordingly, the common law treats evidence of actions and statements by the parties demonstrating their mutual understanding of their contractual terms as relevant to the task of interpretation.

The basic policy of national labor legislation is to allow the parties to a collective bargaining agreement to define their contractual relationship for themselves. That policy is furthered by interpreting collective bargaining agreements in accord with the parties' mutual understanding of their agreement. Therefore, the common law rules regarding contract interpretation are in complete accord with the basic policy of national labor legislation. The nature of the collective bargaining relationship is such that the parties will frequently have the occasion to make statements and engage in actions that tend to demonstrate their mutual understanding of the terms of their agreement. Evidence of such statements and actions is highly relevant to the proper interpretation of collectively bargained contract terms.

The interpretative rule advocated by the Company is contrary to both traditional contract law and to federal labor policy. The Company's rule would impose a particular result with regard to the duration of a retiree health insurance provision regardless of the parties' demonstrated mutual understanding as to the provision's duration.

ARGUMENT

The legal issue presented by this case is the proper standard to be applied in determining whether a pro-

vision in a collective bargaining agreement creating a retirement benefit of a full employer contribution toward the cost of health insurance coverage – provided to those retirees who have met the contractual age and years of service requirements – continues in effect beyond the general termination date of the agreement.

The proper answer to this legal question must be drawn from the "body of federal common law" developed under Section 301 of the Labor Management Relations Act "to address disputes arising out of labor contracts." *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985). *See* 29 U.S.C. § 185(a). The federal common law of contracts under § 301 is derived from both "accepted principles of traditional contract law" and "the basic policy of national labor legislation." *Teamsters Local v. Lucas Flour Co.*, 369 U.S. 95, 105 (1962).

The accepted principles of traditional contract law and the basic policy of national labor legislation both point in the same direction with regard to the appropriate standard for interpreting the terms of a collective bargaining agreement. When it comes to interpreting the words of a contract, the common law of contracts makes the parties' mutual understanding of the meaning of their chosen contractual words determinative. To achieve that end, the common law treats the parties' statements and actions demonstrating their mutual understanding of the words of their contract as relevant to the interpretation of those words. That approach to contract interpretation advances the federal labor policy of allowing the parties to a collective bargaining agreement to define their contractual relationship for themselves with minimal

government interference. By contrast, the "clear statement rule" advanced by the Company – requiring a clear, express contractual statement that retiree health insurance coverage continues in force after the general expiration date of the collective bargaining agreement – would present an unacceptable risk of defeating the parties' mutual understanding of their agreement and is thus contrary to both the accepted principles of traditional contract law and the basic policy of national labor legislation.

I. ACCEPTED PRINCIPLES OF TRADITIONAL CONTRACT LAW.

The National Labor Relations Act requires "the execution of a written contract incorporating any agreement reached [during collective bargaining] if requested by either party." 29 U.S.C. § 158(d). Thus, collective bargaining agreements generally meet the common law definition of an "integrated agreement" as "a writing . . . constituting a final expression of one or more terms of an agreement." *Restatement (Second) of Contracts* § 209(1) (1979). The common law regarding the interpretation of an integrated agreement is succinctly summarized in § 212 of the *Restatement (Second) of Contracts*. *See*, *e.g.*, *Alabama v. North Carolina*, 560 U.S. 330, 346 (2010) (relying on the *Restatement (Second) of Contracts* as stating the common law interpretative rules); *Mastrobuono v. Shearson Lehman Hutton*, 514 U.S. 52, 59 (1995) (same).

Restatement § 212(1) provides that the "interpretation of an integrated agreement is directed to the meaning of the terms of the writing . . . in the light of the circumstances, in accordance with the rules stated

in this Chapter." The first and most basic of the "rules in aid of interpretation" stated in that Chapter of the *Restatement* is that "[w]ords and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable it is given great weight." *Restatement* § 202(1). This interpretative rule reflects the common law's premise that "[i]nterpretation of contracts deals with the meaning given to language and other conduct by the parties rather than with meanings established by law." *Id.* at § 212, comment a. Thus, "[t]he objective of interpretation in the general law of contracts is to carry out the understanding of the parties rather than to impose obligations on them contrary to their understanding." *Id.* § 201 comment c.

To ensure that "the operative meaning [of the parties' agreement] is found in the[ir] transaction and its context rather than in the law or in the usages of people other than the parties," *Restatement* § 212, comment a, the common law provides that:

> "Any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties. But after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention." *Id.* § 212, comment b (internal citations omitted).

The heart of the matter is that "[w]here the parties have attached the same meaning to a promise or

agreement or a term thereof, it is interpreted in accordance with that meaning." *Restatement* § 201(1). Thus, actions taken and statements made during both the "preliminary negotiations" and the parties' "course of dealing" under the agreement indicating their mutual understanding of the contractual terms are highly relevant to the interpretation of their agreement.

As we show next, the foregoing rules apply fully to the interpretation of collective bargaining agreements under LMRA § 301, not only because they are the "accepted principles of traditional contract law" but also because they further "the basic policy of national labor legislation." *Lucas Flour*, 369 U.S. at 105.

II. THE BASIC POLICY OF NATIONAL LABOR LEGISLATION

A. "The object of th[e National Labor Relations] Act was not to allow governmental regulation of the terms and conditions of employment, but rather to ensure that employers and their employees could work together to establish mutually satisfactory conditions." *H.K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970). Accordingly, "the fundamental premise on which the Act is based [is] private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract." *Id.* at 108.

The National Labor Relations Act "impose[s] a mutual duty upon the parties to confer in good faith with a desire to reach agreement, in the belief that . . . [d]iscussion conducted under that standard of good faith may narrow the issues, making the real demands of the parties clearer to each other, and perhaps to them-

selves, and may encourage an attitude of settlement through give and take." *NLRB v. Insurance Agents*, 361 U.S. 477, 488 (1960). "Interchange of ideas, communication of facts peculiarly within the knowledge of either party, personal persuasion and the opportunity to modify demands in accordance with the total situation thus revealed at the conference is the essence of the bargaining process" mandated by the National Labor Relations Act. *S.L. Allen & Co.*, 1 NLRB 714, 728 (1936).

At the same time, "[t]he presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system." *Insurance Agents*, 361 U.S. at 489. And, it is precisely the fact that labor negotiations can devolve into "a brute contest of economic power," *ibid.*, that motivated Congress to require the parties engage in good faith bargaining with the aim of reaching agreement:

> "When most parties enter into contractual relationship they do so voluntarily, in the sense that there is no real compulsion to deal with one another, as opposed to dealing with other parties. This is not true of the labor agreement. The choice is generally not between entering or refusing to enter into a relationship, for that in all probability preexists the negotiations. Rather, it is between having that relationship governed by an agreed-upon rule of law or leaving each and every matter subject to a temporary resolution dependent solely upon the relative strength, at any given moment, of the contending forces." *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 580 (1960).

Given the nature of the employment relationship and the federal regulation of the collective bargaining process, the National Labor Relations Board has long understood that any agreement must be understood as emerging from the bargaining process:

> "The final attainment of an understanding and the signing of the contract embodying the fruits of this understanding are part and parcel of the process of collective bargaining. The contract or agreement is part of and the culmination of the successful negotiations, and not a segment separate from the negotiations which have preceded it." *Third Annual Report of the NLRB* 102-03 (1938), quoting *Louisville Refining Co.*, 4 NLRB 844, 860 (1938).

Against that background, it is not "appropriate to interpret collective bargaining agreements in a vacuum," *Local Union 1395, Int'l Broth. of Electrical Workers*, 797 F.2d 1027, 1033 (D.C. Cir. 1986), because "the words of the contract do not stand alone; they do not exist in a vacuum," *Southwest Ornamental Iron Co.*, 38 BNA Lab. Arb. Reports 1025, 1027 (Arb. Murphy, 1962):

> "Behind them stand the industrial practices to which the words of the contract have reference, the bargaining history of the parties over a period of years, and the understanding and intention of the parties when they executed their current contract." *Ibid.*

As we have seen, the common law of contracts treats such manifestations of mutual understanding as relevant to the interpretation of contractual terms, for "[t]he objective of interpretation in the general law

of contracts is to carry out the understanding of the parties rather than to impose obligations on them contrary to their understanding." *Restatement* § 201, comment c. Precisely because the federal labor laws share this objective, it is well-established that "bargaining history," *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 219 (1979), and "the parties' 'practice, usage and custom,'" *Consolidated Rail Corp. v. Railway Labor Executives*, 491 U.S. 299, 311 (1989), are properly considered in determining the parties' mutual understanding of the meaning of the terms in their collective bargaining agreement.

So that we are not misunderstood, we emphasize that extrinsic evidence is relevant *only* if it tends to demonstrate the parties' *mutual* understanding of the words in their agreement. This is so, because "the [*only*] intention of a party that is relevant to the formation of a contract is the intention *manifested* by him rather than any different *undisclosed* intention." *Restatement* § 200, comment b (emphasis added). *See id.* § 212, comment a. Thus, a party should *not* be allowed to "testify to what *he* meant by a phrase in the agreement," unless he can show that "he communicated his interpretation to the other party" or can otherwise "show that the other party ought reasonably to have put the same interpretation on the phrase." Fuller, *Collective Bargaining and the Arbitrator*, Fifteenth Annual Proceedings of the National Academy of Arbitrators 8, 12 (1962) (emphasis in original). By their very nature, however, bargaining history – which will concern what the parties *communicate* to each other during negotiations – and past practice – which will concern what the parties have *said and done* in applying their agreement – will constitute

relevant evidence of how the parties have *manifested* their *mutual* understanding of the contract terms.

B. To make the foregoing legal points more concrete, we end this discussion of the proper approach to interpreting collective bargaining agreements by counterpoising two hypothetical collective bargaining situations that demonstrate how consideration of the negotiations leading to an agreement and the parties' practical construction of the agreed-upon terms can be crucial to the proper interpretation of a collective bargaining agreement.

Both hypotheticals concern a clause that provides: "Employees who retire from active employment with 35 years of continuous service will receive a full Company contribution towards the costs of health insurance for themselves and for their surviving dependents." In both hypotheticals, the clause is included in the parties' initial collective bargaining agreement as a result of a union proposal, which is ultimately accepted by the employer. In both hypotheticals, the clause is later carried over from one collective bargaining agreement to another without any change in its wording.

First Hypothetical. The employer responds to the union's proposal by asking whether the proposal is intended to create a retirement benefit that would continue to cover retired employees throughout their retirement or to merely extend to retired employees whatever insurance coverage is currently available under an existing contract to active employees. When the union explains that the proposal is intended to be a retirement benefit that would continue in effect for

the life of the retiree and his or her surviving dependents, the employer responds by proposing the addition of an express limitation to the effect that "the promise of a full Company contribution does not extend beyond the termination date of this agreement." The difference over the duration of the retiree health insurance benefit results in a strike, which concludes when the employer agrees to the union's original proposal without the employer's proposed limitation.

After the expiration of the initial agreement, negotiations for a successor collective bargaining agreement come to an impasse over the employer's proposal to eliminate health insurance coverage generally. The employer implements that proposal by refusing to pay for the health insurance coverage of active employees but continues to pay for retiree health insurance coverage, explaining to the retirees that they have a contractual right to the continued payments. Thereafter, the parties reach an agreement containing the same health insurance provisions as the first agreement, including the provision for retiree health insurance coverage. In subsequent agreements, the insurance provisions are included without further dispute or discussion.

Second Hypothetical. The employer responds to the union's proposal by asking whether the proposal is intended to create a retirement benefit that would continue to cover retired employees throughout their retirement or to merely extend to retired employees whatever insurance coverage is currently available under an existing contract to active employees. When the union explains that the proposal would merely ex-

tend to retired employees whatever insurance coverage is currently available under an existing contract to active employees, the employer agrees to the proposal on the express understanding that the commitment to pay for retiree health insurance coverage will expire with the collective bargaining agreement.

After the expiration of the initial agreement, negotiations for a successor collective bargaining agreement come to an impasse over the employer's proposal to eliminate health insurance coverage generally. The employer implements that proposal by refusing to pay for health insurance coverage for either active employees or retirees. The union accedes to the employer's action, explaining to the employees that the employer's contractual obligation to pay for health insurance coverage for both active employees and retirees had expired with the collective bargaining agreement. Thereafter, the parties reach an agreement containing the same health insurance provisions as the first agreement, including the provision for retiree health insurance coverage. In subsequent agreements, the insurance provisions are included without further dispute or discussion.

Both hypotheticals involve precisely the same retiree health insurance provision. But in the first hypothetical the parties' initial negotiations and subsequent interpretation of that provision conclusively demonstrate that it was intended to remain in effect beyond the expiration date of the collective bargaining agreement. While in the second hypothetical the parties' initial negotiations and subsequent interpretation of that provision conclusively demonstrate that it was intended to expire with the rest of the collective bargaining agreement.

The point of these hypotheticals is simply that reading a collectively bargained provision without regard to the relevant evidence of the parties' actions and statements indicating a mutual understanding of its meaning creates an unacceptable risk of "substitut[ing] a different resolution," *Carbon Fuel*, 444 U.S. at 219, for that reached by the parties.

* * *

In sum, the basic policy of national labor legislation is best served by applying the accepted principles of traditional contract law, which require that "[a]ny determination of [a term's] meaning . . . should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, . . . and the course of dealing between the parties." *Restatement* § 212, comment b. Of course, "*after* the transaction has been shown *in all its length and breadth*, the words of [the collective bargaining] agreement [will] remain the most important evidence of intention." *Ibid.* (emphasis added).[2] But to interpret "the words" without considering "the transaction . . . in all its length and breadth" risks imposing on the parties a very different agreement than the one they negotiated.

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[2] Whether the words of the agreement are susceptible to an asserted reading is a question of law to be decided by the trial court and is subject to plenary review by an appellate court. *Id.* § 212, comment d.

III. THE CLEAR STATEMENT RULE ADVOCATED BY THE COMPANY WOULD DEFEAT THE MANIFEST INTENTION OF THE PARTIES AND IS THUS CONTRARY TO FEDERAL LABOR POLICY.

The Company argues that a special interpretative rule should apply to contracts regarding employer payment of retiree health insurance premiums. The Company articulates two – admittedly "similar" – variations of the special interpretative rule it would apply to retiree health insurance agreements, which it denominates as "[t]he clear statement rule" or "the affirmative-textual-indication rule." Pet. Br. 33. The first variant would require "a clear, express statement that the parties intended for health-care benefits to vest" if the benefits are "to extend beyond the term of the agreement." *Id.* at 25. The second variant would require contractual "language that affirmatively operates to create the promise of vesting." *Id.* at 30 (citation and quotation marks omitted).

The sum and substance of the Company's argument is that the common law of collective bargaining agreements under § 301 should include an interpretative rule to the effect that retiree health insurance provisions expire at the general expiration date of the agreement unless the parties expressly provide that the provision continues in force beyond that date. In other words, regardless of any manifested mutual understanding of the parties regarding the duration of a retiree health insurance provision, the provision must be conclusively presumed to expire on the expiration date of the general agreement.

"[F]ederal labor policy [would be] threatened by

the interposition of [such] artificial rules of construction upon the parties' mutual intent." *Local Union 1395*, 797 F.2d at 1031. This is so, because "[a] grudging or stilted interpretation of collective bargaining agreements tends to encroach upon the fundamental national policy favoring the ordering of the employer-employee relationship by voluntary bargaining rather than governmental fiat." *Id.* at 1031-32. The adoption of a special interpretative rule under § 301 that "would subject to especially strict scrutiny . . . contractual claims" regarding the duration of retiree health insurance benefits "would be to limit the enforceability of such contract terms" and thus would "impermissibly . . . 'pass upon the desirability of the substantive terms of labor agreements,' by affording [such] terms a less favored status." *Consolidated Rail*, 491 U.S. at 309, quoting *NLRB v. American National Insurance Co.*, 343 U.S. 395, 408-09 (1952).

Consideration of the first hypothetical discussed in the prior section of this brief demonstrates how the Company's "clear statement rule" – under which a retiree health insurance provision terminates with the general agreement unless there is an express statement that the provision continues in effect beyond the general expiration date of the agreement – could substitute a different resolution of the duration issue than that reached by the parties. The Company's rule would require that the retiree health insurance provision in the hypothetical expire with the rest of the collective bargaining agreement, regardless of the employer having acceded to the union's demand that the provision continue in force beyond the agreement's expiration and regardless of the employer's statements and actions demonstrating its understand-

ing that the provision from the expired collective bargaining agreement continued in force even though there was no current collective bargaining agreement. In those circumstances, application of the "clear statement rule" would frustrate the parties' mutual understanding of the retiree health insurance provision they had negotiated.

It would be particularly perverse to conclusively presume that retiree health insurance terminates with the expiration of the collective bargaining agreement, since a retirement benefit of that sort is most naturally "understood as a form of deferred compensation." *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 210 (1991). *See Restatement* § 212, comment b ("subject matter of the transaction" is relevant to interpretation). As the Financial Accounting Standards Board has explained, where, "[i]n exchange for services provided by the employee, the employer promises to provide, in addition to current wages and other current and deferred benefits (such as a pension), health care and other welfare benefits during the employee's retirement period," those "[p]ostretirement benefits are not gratuities but instead are part of an employee's compensation for services rendered." FASB Statement No. 106, ¶ 146, p. 47 (Dec. 1990). Benefits of this sort that are "in the nature of 'accrued' or 'vested' rights, earned by employees during the term of the contract," *Litton Financial Printing*, 501 U.S. at 203 (quotation marks and citation omitted), "will, as a general rule, survive termination of the agreement," *id.* at 207. The contrary reading, which would allow the employer to unilaterally decide not to pay the agreed upon deferred compensation for the services rendered under the agreement would not "honor[] the

reasonable expectations created by the autonomous expression of the contracting parties." *Tymshare, Inc. v. Covell*, 727 F.2d 1145, 1152 (D.C. Cir. 1984).

In short, the special interpretative rule advocated by the Company is contrary to "the fundamental premise on which the [National Labor Relations] Act is based – private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract." *H.K. Porter*, 397 U.S. at 108.

CONCLUSION

The decision of the court of appeals should be affirmed.

Respectfully submitted,

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