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SPEAKERS

Anthony Sanders, Andrew Ward

Anthony Sanders 00:24

"Now if you want higher wages then I'll tell you what to do; you got to talk to the workers in the shop with you, you got to build you a union gotta make it strong. But if you all stick together, boys, it won't be long." Well, those words of Pete Seeger and others are going to be at the peripheral of what we'll talk about today, because we are going to talk about unions. But we also will talk about how that advice really doesn't apply in lot of contexts, even with unionized workers. And we'll do that today, along with some First Amendment and terrorism on Short Circuit, your podcast on the Federal Courts of Appeals. I'm your host, Anthony Sanders, Director of the Center for Judicial Engagements at the Institute for Justice. We're recording this on Friday, April 5, 2024. Today, it's an exciting kind of a homecoming of sorts for me, because we are having a Seventh Circuit special. This is an all Chicago edition of Short Circuit, with a couple of cases coming out of the legendary court. They're on Dearborn Avenue in Chicago. We have a First Amendment case, as I said, and then a case about a area of law I used to work in before I was at IJ: multi-employer bargaining plan -- sounds very exciting. I know. One guy who has told me that this case that I will present later in the program is one of the most exciting things he has ever read is my colleague, Andrew Ward. So Andrew, welcome back.

Andrew Ward 02:03

Hey, thank you very much. Hello, Anthony. And yes, that is a direct quote. It's definitely, for sure, something I said and not something Anthony is making up. The listeners will decide for themselves after they hear all about that case.

Anthony Sanders 02:21

Who doesn't love multi-employer bargained plans? So actually the case itself -- as Andrew politely told me -- and some of the calculations in the case by Frank Easterbrook, maybe, aren't the most exciting thing. But the story behind it and how the antics of both the employers and

the unions in this industry work, I think, make for good listening. But also good listening is a good story of aiding and abetting terrorism. So Andrew is going to tell us about that. Which is also, as I said, a recent Seventh Circuit case about -- I guess it's a story of our modern age: a young man who maybe spent a little bit too much time online.

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Andrew Ward 03:12

That is exactly right, if an understatement. So I am going to talk about United States versus Osadzinski, just out of the Seventh Circuit. This is the sad story of Thomas Osadzinski; the defense calls him Tommy, which I get. I've had clients named Grace and Dignity, so I understand that inclination. I'm not quite sure which one he goes by. But he is a young man. He is a student at DePaul in Chicago.

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Anthony Sanders 03:43

It's a great place to go to school. The neighborhood is amazing. I lived there for a couple of years. I can't recommend it enough.

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Andrew Ward 03:50

At no point in this case did -- well, anything bad -- actually happened in DePaul, like to the college itself. So this guy's a loner; he spends some time on the internet. He's not the most social person. He's maybe having some mental health issues. And you know, he goes deeper and deeper into the dark corners of the internet, which, that story never ends. Well, where does he end up? He ends up -- dramatic pause, which horrible thing am I gonna say: Loving ISIS. That's not great. ISIS, of course, being the Islamic State in Iraq and Syria, the well known terrorist group. So this guy goes down the rabbit hole and becomes very interested in ISIS being right, and the United States of America being wrong. He starts getting more and more interested promoting what they do. And the thing is, the FBI doesn't care for that. He ends up talking to a confidential undercover FBI agent. And then a different undercover FBI agent. And then a third undercover FBI agent. And then a fourth one, and a fifth one. And what he ends up doing, besides doing some minor promotional work, he provides a translation for one of these videos that ISIS puts up and some other small stuff. The main thing he ends up doing is writing some code, because that is something he knows how to do in college. Because ISIS is trying to win hearts and minds as they say, I guess. So you write some code that makes it easier to replicate these terrorist propaganda videos, that if somebody manages to take them down, it's easier to put it back up. He does a bit of torrenting stuff to make it harder to do things. But the main idea is that he writes code at the behest of these FBI agents. Not a great idea. And the resulting prosecution that leads to this case, leads to all sorts of interesting things. So I'm going to talk a little bit about our criminal justice system, about ghost guns, about people who speak for a living; there are all sorts of things that come out of this case, to my mind, that are interesting to talk about.

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Anthony Sanders 03:50

One question on those facts that I wasn't quite sure. Does he write code for anyone else? Or is it only these FBI agents posing as ISIS?

it only these FBI agents posing as ISIS.

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Andrew Ward 06:16

So that's one of the things I'm gonna get into. It's not clear that he ever actually helped ISIS. The opinion's a little vague about it. It says, at least attempted -- the indictment says attempted and that's what he's ultimately convicted of. So that's not quite clear; that is a thing I'll mention. But that is what he's charged with. He's charged with providing material support to a terrorist organization, which is illegal. I'm sorry, he's charged with attempting. And his main defense is that no, all of this is First Amendment protected stuff. You're allowed to promote terrorism; you're allowed to love terrorists, if it is your opinion that we need a violent overthrow of the US government -- workers of the world unite. If you think the tree of liberty needs to be watered with the blood of patriots, you're allowed to think that; you're allowed to say that. But the one thing you're not allowed to do is actually provide support to these specific organizations that have been there designated as terroristic. But that is what he tried to do, because he was actually attempting to -- via these FBI agents pretending to be ISIS terrorists -- actually provide technical support to a terrorist organization. And that is illegal. Now, you might wonder whether that itself can't stand under the First Amendment. But the answer is that yes, you can be prosecuted for that. And there's a major case in this area called Holder versus Humanitarian Law Project that IJ ends up citing all the time, although we don't do anything around the world -- certainly not for anything to do with with that. And that was a case about warriors who wanted to provide legal advice to specific foreign terrorist organizations, the Tamil Tigers. I think the PRK is the other one; I might have that wrong, someone somewhere in the Middle East. And they basically want to do good things. They're trying to encourage these groups, because

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Anthony Sanders 08:29

They do other stuff than just terrorist stuff. And it was lawyer help for that other stuff.

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Andrew Ward 08:35

Yeah, exactly. They're not trying to promote the terrorism. They're trying to get these groups to resolve their conflicts non-violently through international law. And nevertheless, the Supreme Court says two things: They say, number one, this is speech we're talking about; it's not just the conduct of helping terrorists. But if the conduct that triggers coverage under the statute consists of communicating a message than this is a First Amendment issue. We need to apply the highest burden we have in constitutional law called strict scrutiny. The government better have a damn good reason for saying that this is going to be against the law because it's pure speech. But here the government meets that test. We are deferential to the executive in this realm. Supporting terrorists in one way means they're gonna have more money to blow people up in other ways; you're just freeing up resources. And so this is the rare circumstance where we're going to say the government actually meets its burden under strict scrutiny. And unsurprisingly, then, if the government can prohibit lawyers trying to get terrorists to be non-violent, it can certainly prohibit writing code to replicate videos to encourage more terrorism. And so that's what happens to Tommy here. He goes to trial; he's convicted. And then he is

sentenced to prison because his conviction complies with the First Amendment. He was trying to help terrorists, and that is against the law. But there's so many interesting side issues that come out of that. That actually what I'd like to focus on.

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Anthony Sanders 09:01

By the way, you were right about PKK and the Tigers group.

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Andrew Ward 10:16

But I think I said PRK, which I think that's actually photorefractive keratectomy, which is a kind of eye surgery. That's neither here nor there. I was close. So thing number one thing with the law on this issue, is that speech is speech. And that actually has all sorts of ramifications for IJ's practice, because we defend people all the time, from other kinds of restrictions. Not on helping terrorists, but on different kinds of licensing restrictions or different kinds of restrictions on their ability to give advice for a living. And Holder versus Humanitarian Law Project is one of the key cases in this area. But it doesn't really decide the issue in this case, which is whether code is speech, which is probably the most important thing that's going on in this case but it doesn't go on. The Seventh Circuit just says: "We're not really going to worry about this. We're going to assume that even if coding is speech, the government still meets its standard; this Humanitarian Law Project case is dispositive. This is punishable. That survives strict scrutiny. You are out of luck. But that question, is code speech, is super interesting and is obviously going to be more and more important as technology develops. Is a bunch of compiled C sharp or JavaScript, is that something happening? Is it conduct? Is it just allowing a computer to do something like post a video in a new place? Create a new seed file for a torrent somewhere? Or is it speech because it's a series of instructions that are communicating a message. Maybe not to a human listener, but it's a step by step you do this, then you do this, and it's one person in some sense, telling someone else how to do something. And that's just going to be a huge issue going forward in ways that are not at all settled. One thing that's been in this realm is ghost guns. If you come up with plans for how to make a gun that's not going to set off metal detectors, that's maybe not federally traceable, but it's just a plan -- it's a blueprint, it's a schematic -- is that speech? Or is distributing that file that goes straight to a 3D printer that then makes an undetectable gun, is that conduct? And if it is speech, can the government still stop it under strict scrutiny? Similarly, with the growth of large language models, something like Chat GPT, is that speech? It certainly looks like speech. But I don't know, maybe it's not. It's a bunch of math where a really big matrix runs a gradient descent algorithm and then spits out some words, but no humans involved. No human is trying to convey a message, except maybe they are so who knows. But the issue here that isn't decided of whether code is speech is going to be super, super important, as the law in this area progresses. The other thing about this case that I thought was particularly interesting is that it reflects a lot of the realities of our criminal justice system that listeners of this podcast might be a little skeptical of the way things work. Now, I, of course, did not go to this trial. I don't know a ton about this. It is possible that everything I'm about to say is wrong. But this does seem like the kind of case where you have to wonder, is this really how it all works? You should get the sense looking at these facts that you have this loner, who's sort of willing away his time on the internet. Whenever he's pressed to actually do something, like meet a person from ISIS, he doesn't do that. And it seems like most of what he does is in response to the five undercover FBI agents who got him to do those things. And again, it's not entirely clear that he ever actually did anything for anyone other

than the FBI agents; that he never actually did anything to help ISIS. And for all of that, he gets prosecuted in federal court. And he gets a recommended sentence under the the sentencing guidelines of 20 years (240 months) for stuff that seems to have happened as a result of the FBI itself. I mean, I'm not saying that that's what happened. Maybe it was; maybe it wasn't. That's a sense you can get while reading the opinion and looking through the docket. And you have to wonder if the government bringing down a 20 year sentence on someone who's doing these things, if that is the best thing the FBI could have been doing.

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Anthony Sanders 15:11

There's no entrapment issue on appeal, right?

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Andrew Ward 15:15

No, that was not part of the opinion. That's that's not a defense that's raised on appeal. I don't know that it was raised below either. I don't think it was. I'm not saying the guy was entrapped under the the legal definitions of that. But it's just the sort of thing that reading this opinion I had to wonder about a little bit. Now, ultimately, he doesn't get 20 years in prison for conduct that doesn't ever actually aid the terrorist group. He gets seven and a half years. He will get to have a wife will get to go back to college eventually. He has since by the way, renounced ISIS having spent three years in federal jail and getting COVID there. He now regrets his actions. And there there you have it, that is the sad story of Thomas Osadzinski. And questions remain open for the future of just how much code is going to be considered speech.

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Anthony Sanders 16:09

Well, as Gabe Malor says -- who's often a resource for us on breaking opinions online -- it was the FBI, it's always the FBI. And it seems like for for Tommy, it was only the FBI. Which I guess we'll never know if there was maybe a little bit more to that story. The thing that really got me thinking here, it doesn't have much to do with terrorism and ISIS, but is the coding issue. And listeners may remember that episode we had recently with Ed Walters, who is a AI guru and works in legal research in that field. And we talked about how the First Amendment intersects with coding. And there's layers to think about if an AI model spits out an answer. Is that protected speech? The coding itself that created the AI is protected speech. One hypothetical we talked about with Ed was, what if you had a AI model that then creates code? And then is that code protected speech? Because someone at the beginning was a human who did the coding. And the AI itself isn't probably an entity protected by the First Amendment? Or is it?

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Andrew Ward 17:51

And even if it's not speech, is it still something protected by the First Amendment? The First Amendment doesn't just protect speech. It protects all sorts of things that are integral to the creation of speech, like reading -- or, to quote a Supreme Court case called Sorrell -- "the creation and dissemination of information." Which sounds even more like what what a large language model might be doing.

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Anthony Sanders 18:17

Freedom of association: I'm associating with this AI thing.

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Andrew Ward 18:23

That might be pushing it. I have a right to hang out with my AI girlfriend. I don't know what the answer to these questions is going to be in the courts. My gut instincts are that it is good for the government to protect more information rather than less, as a general idea. I cannot tell you what the courts are going to do. I can tell you with absolute certainty that these issues are going to come up and they will be resolved. It is absolutely going to happen. And at some point the Supreme Court is probably going to weigh in on this.

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Anthony Sanders 18:56

Yeah, I am not too hopeful with the Supreme Court sorting out our latest round, which is has to do with social media. This is like the social media term at the Supreme Court. Although we'll see, some of those opinions are pending, and some we already. The one about Twitter blocking, that came out. And we'll talk about that, I'm sure, at some time. But in the future when it comes to coding, we could have similar -- maybe good, maybe not so good -- developments. But you're right, it absolutely is going to come up.

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Andrew Ward 19:33

Yeah Justice Kagan once admitted that the Justices are not the nine greatest experts on the internet. And I don't want to make any assumptions, but they might feel that holds true to the underlying techniques of how AI generates large large language responses. And I guess they'll have a lot of learning to do, and we'll see what happens.

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Anthony Sanders 19:58

The big underlying issue is judges aren't experts in all kinds of areas? And does that mean you defer to what the government wants to do? Or does that mean you defer to liberty? And it increasingly seems misty which side liberty is on. Although, I think usually it's pretty clear. Leave that to another day. Now, to the exciting part of the show. I know, I know, I can just tell. So are all the listeners -- multi-employer bargaining? So this is a recent case by Judge Easterbrook on the Seventh Circuit called Bulk Transport Corporation versus Teamsters Union Number 142 Pension Fund and its Trustees. A little bit of background is in order here before we get into the what the actual case itself is about. And what the case itself is about is this thing called withdrawal liability. And that is what some unionized employers have to pay when they no longer have to pay into a pension fund. And it can be a lot of money. So this can be a big deal to even kind of small companies, quite small companies. And it sounds kind of crazy when it's explained, and I'll explain it in a moment. The Supreme Court found that it does not violate the takings clause back in 1986, which was a unanimous opinion at that time. Now, this doesn't come up in this case at all but it got me thinking. I wonder if that would be true today? And if

perhaps there's a future where withdrawal liability and the takings issue will come up again. But anyway, we're not talking about the takings constitutional issue in this case. So background: unions, of course, in the private sector are not as big a deal today as they were at one time. But essentially, most people's view of unionization in the private sector is you have a big company and then you have some disgruntled line workers, non management people, and they get together and they want to unionize and force the employer to bargain with them -- to give them higher wages or whatever. And maybe they have an election. Maybe the employer just says, "Okay, fine, I'll let you guys unionize; it looks like you'd win the election anyway." And then they go and bargain and have their collective bargaining agreement. That is the classic union shop floor thing that Pete Seeger is talking about in his lyrics that we started with. That is actually not how lots and lots -- maybe half, depending on what numbers you look at -- of unionized workers in the private sector operate. A lot of unionization, especially in the construction industry, is done through small employers who participate in what's called a multi-employer bargaining association. So here, there's lots of little employers in an industry; say they all do carpentry work. And so you might have an employer of just three carpenters or 25, or 50, or whatever. And all the workers belong to the same union. And then the employers, in order to better organize themselves, essentially they all get into an association. And then that data association bargains with the union for a collective bargaining agreement. So what that means is that all the different little mom and pop employers, and maybe a little bit bigger employers in this industry, end up like paying the same wage because they all have the same collective bargaining association or agreement with their workers. You might think that sounds kind of like a cartel, and it is it is a legalized cartel that is exempt from the antitrust laws. Some football fans may remember from a few years ago there was a dispute with the NFL Players Association and the NFL. And what the Players Association did was disband their union and then immediately sue the NFL for antitrust violations, which most people were probably like, what is that about? That was because the -- and the reason, essentially, we have unions these days in professional sports which are awash with money -- is to get around antitrust laws. So the NFL itself or in some way has an entity that's a multi-employer bargaining association for all the clubs. They bargain with the NFL Players Association, and they work out whatever they work out. Same is true with these carpenters. Okay, so that's the framework. So if you are an employer in this area and for whatever reason you choose to be unionized, because often they do just kind of opt in to unionize: you get better jobs, sometimes you get better workers, you get the union wages and all that. Or you just think, the union will hound me; I won't be able to just do non-union work; I'll just sign the contract. So then you participate in that. You got to pay union wages to your workers, but also, you pay into a pension fund or a health care fund. Now, the Health Care Fund is just like health insurance; that's fairly simple to understand. The pension fund, sometimes unions have a 401 K: so you pay in the money -- everyone knows a 401k, it's like a bank account -- or your employer matches it. It grows over time. If you leave, you get to keep your money with you, as long as it's more than almost nothing. But some unions, a lot of unions and multi-employer associations, still have the old fashioned defined benefit plan. That means money gets paid in over time. And if you stay in long enough, you get credits. And usually it's about five years, if you get five years in the industry, then you vest. And then whenever you retire, you get some kind of pension, and the longer you stay in the bigger the pension is. But if you only stay in two or three years, and then you leave, you don't get anything. And that money then goes to the fund to be able to pay higher benefits to the people who actually do stay in and retire. That's defined benefit. So that's the background. Now let's look at what Judge Easterbrook said. So this is a bit of a bookend for Judge Easterbrook for people in the this area. And this is the kind of stuff I used to do before I was at IJ. So long time ago, 1989, Judge Easterbrook wrote an opinion called Gerber truck. He tried to make it a little bit more interesting than this opinion, I have to say. But in Gerber Truck -- it was an en banc case -- it was about the following facts, which sound totally unfair to most people. So there's a

company that had an old company, and it had three unionized drivers. And they were about to retire. So they didn't really care about being in the Union much longer, but they wanted to have a couple more years of pension payments to get a better pension and then they would retire. This new owner buys the company. He doesn't want to be unionized, the union realized they probably can't keep them in the union, because he's going to hire all these people that don't really care about the Union. But they want to protect these three workers. And the guy says, "Fine, these guys are near retirement, that's okay. How about we do this: How about we just pay pension on these guys -- I don't even pay him union wages, or maybe they got wages, I can't remember -- I'm going to hire these other people, they won't get union wages, they won't get union pension, but then I'll sign the collective bargaining agreement that all the other employers sign." And the union rep who wants to keep them in says, "Fine, we'll do this. So sign this, but between you and me, you don't have to pay into the pension fund for anyone else." So they get the deal, few years go by these guys retire or leave and they get their pension. And then he stops making payments.

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Andrew Ward 20:26

I'm so hyped. Chekhov's Gun there going on. I for one would not have trusted the non-written agreement.

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Anthony Sanders 28:58

Well, the funny thing -- and maybe I'm spoiling -- is sometimes you have this and a union rep will say, "Oh, just sign this." And it's just for this one job, maybe it's like a week job that this non-unionized employer has and that guy signs it. And then three years later, they get a bill for all three years of work that these non-union people have done to pay into the pension and welfare funds. And the guy's like, "but he said it was for one job." And as I'm gonna get to in a moment, that is not a defense in contract formation in this area, because of cases like this old one that Judge Easterbrook did. So in the Gerber truck case I was just talking about, they actually do formally withdraw from the union, and then they don't re-bargain and they get out of it. But for those about six years, the court says you have to pay for all the hours worked by all your bargaining unit employees, not just those three guys under the terms of the written agreement. And basically, Gerber Truck (the company) says that was the fraud, I wouldn't have signed that if the guy hadn't said it. Now, usually -- or maybe not usually -- that would be a defense in a lot of situations in contract formation, including with the union. But the pension plan is not the same as the union, the pension plan is a third party beneficiary of the contract. And under the law that Congress passed that governs this area, which is part of ERISA -- the Employee Retirement Income Security Act -- and its amendments from 1980, that is not a defense. So that is why these contracts, from the point of view of the Benefit Plan which depends on these payments, even if it's not for the benefit of the people getting paid because they're not going to vest for a pension. Under that system, you can't get out of the contract. And once a management lawyer told me -- a really good management employer, "This is the hardest contract in the world to get out of." And he's absolutely right. There's all this other stuff about renewal that you have to send your notice at exactly the right time, even if you have no unionized employees. So that's the kind of background that I'm sure a lot of people think, "Well, that sounds really unfair." All right, fast forward to this case. So we have this this company, Bulk Transport Corporation, another transportation case, another case with a teamsters union. And they were unionized, but they got into this other area that had to do with so called steel

mill operation work; I think they did trucking from a steel mill basically. And they did various kinds of work. So they weren't participating in this one other pension plans, I think. But this one area of work the union threatened to strike if they didn't make payments on one of these trucking areas -- it doesn't really matter what it was. And they didn't sign the contract to get into this -- the written contract -- but they did start making payments into the pension fund and paying those wages. And this was just for a year, so only about a year. They said, "Yeah, fine, we'll make the payments." And then they got out of it. And properly under labor law, they got out of it. There's no allegation, although maybe the union would have succeeded if they tried, that this is an unfair labor practice or something. They just got out of that obligation. Okay, so they made a year payments into the pension fund. Okay, and now they don't. So they permanently are not -- unless something weird changes -- going to make payments. But that means withdrawal liability. So now we're back to withdrawal liability. So, withdrawal liability is another kind of way to protect these defined benefit plans. If you make payments into the pension fund as an employer, and then you stop making payments -- and it's legal, you're not violating the collective bargaining agreement or anything else by stopping the payments; you just get out of that area, or maybe you just go out of business, you retire, whatever. The Pension Fund, especially if it's not doing that well -- which sounds really unfair, because it's no fault of the employer; it's like you invested everything in some condos in Hawaii that turns out the plumbing was wrong, and you lose all your money -- because the pension fund is underfunded, the employer has to pay basically its share of what the future contributions are going to be. And this can be impossible to figure out. It's like all this math that I don't know. But the bottom line is you can be a relatively small company get out and owe a huge amount of money, and this company owed \$2 million for the one year they were participating in this pension fund by just trying to avoid a strike and throwing some money into there. Then they stop and then they get a bill for \$2 million. Understandably, they think this is pretty unfair. So they go to arbitration, they lose, that's how the process works. Then they go to District Court, they lose. And then they go to the Seventh Circuit. And Judge Easterbrook says this is the mirror image of this Gerber truck case that he had from 1989. Because here --although there was a behavior and maybe some oral side agreements about what was actually going on and they had an obligation to pay into the pension fund -- if you read the contract that they actually signed for they were not obligated to make those pension payments. And because they were not obligated under a written agreement, they do not. They aren't, basically, under the purview of ERISA. And therefore, they don't know this withdrawal liability. So it's kind of the flip side, you need a written agreement. And if you have a written agreement, you are totally up the creek. But if you don't have a written agreement, and your through your behavior -- which under contract law in other circumstances might be enough to enter into the contract -- here you don't. So written agreement is everything in this area.

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Andrew Ward 36:05

I now understand what happened. So that's great. Now that I know what's going on, this is actually just very Easterbrookian, right? Like, it is the written thing that matters; the party's intent doesn't matter. We can't figure out the intent of legislators in passing a law; there is a written text and the text controls and that's how this is going to work. I get it. If I had understood the facts, I could have told you exactly what he would have wrote.

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Anthony Sanders 36:35

Well, I think in that way, this is a is a good bookend to this older case, Gerber Truck. Gerber

truck is the foundational layer. When I started working in this area, one of the other lawyers at the firm said, "here read this case and you will understand the Alice in Wonderland world that we work in."

A Andrew Ward 36:58

Are you worried that your continued criticisms of the unions are going to end up with a scabby the rat outside your house?

A Anthony Sanders 37:05

I actually worked on some scabby the rat stuff; that was a big deal when I was there. I don't think so. So for the uninformed, scabby the rat is in Union lingo, a non-union employee who replaces a union employee while they're on strike is called the scab. And so the unions over the years have gotten this thing, calling the employer the rat. And he's like feasting at the trough of the workers. And so when they when they have a labor dispute, and they'll be standing outside picketing -- which is not necessarily the same thing as a strike, by the way -- outside of job site with pickets, they'll then get this huge inflatable rat. And I think the thought is if you have a rat that makes it even harder for other people or third parties to cross the picket line. And that has gone to the labor board numerous times about whether scabby is First Amendment protected or not. And usually, the Labor Board when it's under a Republican administration has said that there's a problem here. But usually, The Courts of Appeals have said, "Hey, come on First Amendment. You can have scabby the rat."

A Andrew Ward 38:23

Yeah, obviously, as long as you're not using it for the benefit of a foreign terrorist organization.

A Anthony Sanders 38:28

Exactly. Or maybe scabby is held together with computer code.

A Andrew Ward 38:32

Can I tell you my I an anecdote that is 100% of my experience with ERISA?

A Anthony Sanders 38:38

Yes, let's let's close with Andrew and ERISA.

A Andrew Ward 38:41

I used to volunteer when I worked in big law in New York, one of my favorite things to do was to

go and do office hours at EDNY -- the Federal District Court in Brooklyn. They had this very nice program, where pro se litigants could come in and talk to a real lawyer for free for an hour. And they would bring in the documents and just get a little bit of advice about how to proceed. And I remember this guy coming in and saying, "I've got this dispute about my pension; I've got this problem; I've got that problem." And I explained to him, I understand that you feel you were wrong. The thing you have to do as you're working on this complaint that you're drafting is you have to connect that wrong to a legal violation showing you're entitled to a remedy. You can't just write down a bunch of stuff about why you've been wronged. You have to show why you're entitled to relief about this pension dispute. And he says how do I do that? And I said -- there's like two minutes left in our session -- you're gonna have to google something called ERISA, but I have no idea.

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Anthony Sanders 39:53

Wow, he got his money's worth.

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Andrew Ward 39:57

Yeah I agree with that. Zero dollars, he got what he paid for.

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Anthony Sanders 40:04

ERISA is very complicated. But it can be interesting when you get into some of it. I had some good times with ERISA, but those times were long ago. So I hope those of you listening know a little bit more now about multi- employer bargaining and also coding and the First Amendment. Hopefully not too much more about ISIS and terrorism. But I thank you for listening. I want to end on a couple announcements of things that are coming up. We'll say more about this in future episodes, but we have a conference at the Institute for Justice at our headquarters in Arlington, Virginia about the open fields doctrine, which is turning 100 years old this year. It was made up out of whole cloth by Justice Holmes in a decision in 1924, and we're going to have some Fourth Amendment scholars there to talk about that. And that's going to be as I said, Friday, May 10. I'll put a link in the show notes. If you're in the area, we'd love to see you. And also, I will be speaking at a DC area thing that I believe will be live streamed -- a conference on the future of economic liberty, the right to earn a living. And that will be Thursday, April 18th at the Cato Institute and it's open to the public. But again, it will be live streamed. So feel free to watch me say a few things about state constitutions, and a bunch of other smart folks are going to give their opinions on the future of the right to earn a living. So maybe you can tune in for either of those events. I hope you've enjoyed listening to Andrew's wisdom and my yakking. And until next time, I hope that all of you get engaged.