

October 29, 2008 - Preliminary Injunction Hearing

1 2, we have already said that we were.

2 THE COURT: But see, Count 2 is inseparable from Count
3 3. Whether the employer has breached a duty to negotiate in
4 good faith is entirely dependent on whether they make their
5 case that the union has breached its duty of fair
6 representation.

7 So I don't see how you can arbitrate one and not the
8 other. You can't decide one and not the other, whether it's an
9 arbitrator or me.

10 MR. SEHAM: Well, Your Honor, that helps clarify your
11 earlier inquiry, at least to my perception, that certainly to
12 the extent that the neutral arbitrator finds that the
13 adjudication of the contractual claims in Count 2 require
14 evaluation of the claims in Count 3, then yes, we are agreeing
15 that that goes to a neutral arbitrator.

16 THE COURT: All right. Okay. Now, with respect to
17 the motions to dismiss, nobody has to argue. Everyone is free
18 to argue. I will let you present what you want. And I am
19 inclined to give 15 minutes to each side. And that means 15
20 minutes for you -- or seven and-a-half minutes for each of the
21 defendants and 15 minutes for the plaintiff.

22 So I am indifferent as to who goes first.

23 MR. SIEGEL: Your Honor, since we made the Rule
24 12(b)(1) motion for lack of jurisdiction, I would probably go
25 first. And in seven and-a-half minutes I will try to do it --