Supreme Court denies back pay to 800 US Steel workers

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The Supreme Court on Monday issued yet another pro-business ruling that further chips away at historic labor reforms and the basic rights of workers.

The case of *Sandifer v. U.S. Steel Corp.* involves a lawsuit by hundreds of workers in Gary, Indiana for unpaid overtime and back pay. Specifically, 800 current and former workers sued U.S. Steel Corp for the time they spent putting on and taking off ("donning and doffing") their personal protective gear and working equipment.

The company requires workers to put on and take off this equipment before and after their eight-hour shifts, but only pays for eight hours of work. As the donning and doffing process is time-consuming, workers are basically forced into working for free at the beginning and end of every workday.

Steel plants are hazardous. The personal protective equipment (PPE) that the workers must don and doff includes, according to the Supreme Court opinion, a "a flame-retardant jacket, pair of pants, and hood; a hardhat; a snood [headgear]; wristlets; work gloves; leggings; metatarsal boots; safety glasses; earplugs; and a respirator."

US labor laws have historically prohibited similar management schemes to cheat workers out of pay. Under the federal Portal-to-Portal Act of 1947, management generally must pay wages (as the name implies) for all the time that passes from when a worker walks in the door to when the worker walks out the door.

In 1946, discussing the New Deal-era Fair Labor Standards Act (1938), the Supreme Court wrote that "the statutory workweek includes all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace." The Supreme Court at that time wrote that workers must be paid even for activities such as "putting on aprons and overalls" and "removing shirts." The Supreme Court at that time declared: "These activities are clearly work."

In the case decided by the Supreme Court on Monday, the workers at U.S. Steel demanded that the unpaid donning and doffing time be compensated as overtime. Under existing labor laws, time spent working over 40 hours per week must be compensated by the employer as "time and a half."

Justice Antonin Scalia, who delivered the opinion of a unanimous Supreme Court, acknowledged: "In the aggregate, the amount of time - and thus money - involved is likely to be quite large." In other words, over time, U.S. Steel has profited immensely by not paying wages for donning and doffing time.

U.S. Steel, for its defense, relied on a 1949 labor law that permits unions to bargain away time "spent in changing clothes or washing at the beginning or end of each workday." The workers' union—the United Steel Workers of America (USWA)—had signed an agreement with management purporting to waive wages for donning and doffing time. The workers challenged this union-management agreement as invalid.

The lawsuit focused on the meaning of "changing clothes." If the workers were merely "changing clothes," then the union agreement bargaining away the workers' rights was valid under the 1949 law. If the workers were doing more than just "changing clothes," then the union agreement was invalid.

The case was first heard in federal district court in Hammond, Indiana. There, Judge Robert L. Miller, Jr. ruled that the USWA had bargained away the workers' right to be compensated for time spent "donning and doffing." However, he found that the workers could still recover back pay for time spent walking from the

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building where they had to put on their gear to their work stations and back.

On appeal to the Seventh Circuit, judge Richard Posner delivered a sarcastic and derisive ruling throwing out the workers' entire case. Posner overruled Judge Miller, finding that workers could recover neither for donning and doffing time nor for time spent walking to and from their stations.

Posner is a prominent right-wing judge and "Chicago School" academic, famous for taking extreme "free market" positions and for arriving at legal conclusions by means of "economic" analysis. Posner ruled that most of the equipment that workers at U.S. Steel must don constituted "changing clothes," and as to the gear that workers were required to don that was clearly not clothing, Posner invoked the legal principle of *de minimis non curat lex* (roughly, the law does not take account of trifles).

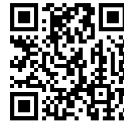
The workers appealed Posner's decision to the Supreme Court. Notably, when the case arrived in the Supreme Court, the Obama administration intervened on the side of U.S. Steel. The Obama administration was not a party to the case and was not required to take a position at all. Nevertheless, the Obama administration went out of its way to argue that the workers were merely "changing clothes" and should not receive back pay. In addition to the Obama administration, a number of other industry groups filed briefs in support of U.S. Steel.

The Supreme Court's unanimous decision Monday features Scalia's trademark ponderings on the dictionary definitions of words after removing them from their historical and legal context.

In fact, the phrase "changing clothes" in the 1949 statute likely referred to the practice of workers changing out of street clothes and putting on company uniforms, which was common in some industries. Activities involving workers' tools and safety equipment were not mentioned or contemplated. Nevertheless, ignoring the historical context, and having consulted the dictionary for the definitions of the words "changing" and "clothes," Scalia determined that the U.S. Steel workers were mostly "changing clothes" when they put on their personal protective equipment. Thus, according to Scalia, the workers were not entitled to back pay.

Many of the items that U.S. Steel workers are required to don, such as earplugs and respirators, are obviously not "clothes." As to those, Scalia ruled that the donning and doffing time "as a whole" pertained to "changing clothes," so the workers' case must dismissed even though some of the activities did not involve "changing clothes."

On the basis of this flimsy non-logic, endorsed by all nine justices on the Supreme Court, yet another basic right of workers dating back to New Deal reforms crumbles away.



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