NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BUILDING & CONSTRUCTION TRADES COUNCIL OF THE METROPOLITAN DISTRICT *v.* ASSOCIATED BUILDERS & CONTRACTORS OF MASSACHUSETTS/RHODE ISLAND, INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 91–261. Argued December 9, 1992—Decided March 8, 1993[1]

Following a lawsuit over its failure to prevent the pollution of Boston Harbor, petitioner Massachusetts Water Resources Authority (MWRA)—the state agency that provides, *inter alia,* sewage services for eastern Massachusetts—was ordered to clean up the Harbor. Under state law, MWRA provides the funds for construction, owns the sewage-treatment facilities to be built, establishes all bid conditions, decides all contract awards, pays the contractors, and generally supervises the project. Petitioner Kaiser Engineers, Inc., the project manager selected by MWRA, negotiated an agreement with petitioner Building and Construction Trades Council and affiliated organizations (BCTC) that would assure labor stability over the life of the project, and MWRA directed in Specification 13.1 of its solicitation for project bids that each successful bidder must agree to abide by the labor agreement's terms. Respondent organization, which represents nonunion construction industry employers, filed suit against petitioners, seeking, among other things, to enjoin enforcement of Bid Specification 13.1 on the grounds that it is pre-empted under the National Labor Relations Act (NLRA). The District Court denied the organization's motion for preliminary injunction, but the Court of Appeals reversed, holding that MWRA's intrusion into the

[1]Together with No. 91–274, *Massachusetts Water Resources Authority et al.* v. *Associated Builders & Contractors of Massachusetts/Rhode Island, Inc., et al.,* also on certiorari to the same court.

bargaining process was pervasive and not the sort of peripheral regulation that would be permissible under *San Diego Building Trades Council* v. *Garmon,* 359 U. S. 236, and that Bid Specification 13.1 was pre-empted under *Machinists* v. *Wisconsin Employment Relations Comm'n,* 427 U. S. 132, because MWRA was regulating activities that Congress intended to be unrestricted by governmental power.

BUILDING TRADES COUNCIL *v.* ASSOCIATED BUILDERS

Syllabus

Held: The NLRA does not pre-empt enforcement by a state authority, acting as the owner of a construction project, of an otherwise lawful prehire collective-bargaining agreement negotiated by private parties. This Court has articulated two distinct NLRA pre-emption principles: ``*Garmon* pre-emption'' forbids state and local regulation of activities that are protected by §7 of the NLRA or constitute an unfair labor practice under §8, while ``*Machinists* pre-emption'' prohibits state and municipal regulation of areas that have been left to be controlled by the free play of economic forces. These pre-emption doctrines apply only to state labor *regulation,* see, *e.g., Machinists,* 427 U. S., at 144. A State may act without offending them when it acts as a proprietor and its acts therefore are not tantamount to regulation or policymaking. Permitting States to participate freely in the marketplace is not only consistent with NLRA pre-emption principles generally but also, in this case, promotes the legislative goals that animated the passage of the NLRA's §8(e) and §8(f) exceptions regarding prehire agreements in the construction industry. It is undisputed that the Agreement between Kaiser and BCTC is a valid labor contract under §§ 8(e) and (f). In enacting the exceptions, Congress intended to accommodate conditions specific to the construction industry, and there is no reason to expect the industry's defining features to depend upon the public or private nature of the entity purchasing contracting services. Absent any express or implied indication by Congress that a State may not manage its own property when pursuing a purely proprietary interest such as MWRA's interest here, and where analogous private conduct would be permitted, this Court will not infer such a restriction. Pp. 5–14.

935 F. 2d 345, reversed and remanded.

BLACKMUN, J., delivered the opinion for a unanimous Court.