# SUPREME COURT OF THE UNITED STATES

Syllabus

## MOREAU ET AL. *v.* KLEVENHAGEN, SHERIFF OF HARRIS COUNTY, TEXAS

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

No. 92–1. Argued March 1, 1993—Decided May 3, 1993

Under subsection 7(o)(2)(A) of the Fair Labor Standards Act (FLSA or Act), a state or local government agency may provide its employees compensatory time off, or ``comp time,'' instead of the generally mandated overtime pay, so long as, *inter alia,* it is done pursuant to ``(i) applicable provisions of a collective bargaining agreement or any other agreement . . . between the . . . agency and representatives of such employees . . . '' or ``(ii) in the case of employees not covered by subclause (i), an agreement . . . arrived at between the employer and the employee before the performance of the work . . . .'' Department of Labor (DOL) regulations provide that, where employees have designated a representative, a comp time agreement must be between that representative and the agency, 29 CFR §553.23(b); according to the Secretary of Labor, the question whether employees have a ``representative'' is governed by state or local law and practices, 52 Fed. Reg. 2014–2015. Petitioners are a group of deputy sheriffs in a Texas County who sought, unsuccessfully, to negotiate a collective FLSA comp time agreement by way of their designated union representative. Petitioners' employment terms and conditions are set forth in individual form agreements, which incorporate by reference the County's regulations providing that deputies shall receive comp time for overtime work. Petitioners filed this suit alleging, among other things, that they were ``covered'' by subclause (i) of subsection 7(o)(2)(A) by virtue of their union representation, and that the County therefore was precluded from providing comp time pursuant to individual agreements under subclause (ii). The District Court disagreed, relying on its conclusion that Texas law prohibits collective bargaining in the public sector, and entered summary judgment for the County.

The Court of Appeals affirmed.

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*Held:* Because petitioners are ``employees not covered by subclause (i),'' subclause (ii) authorized the individual comp time agreements challenged in this litigation. The phrase ``employees . . . covered by subclause (i)'' is most sensibly read as referring to employees who have designated a representative with the authority to negotiate and agree with their employer on ``applicable provisions of a collective bargaining agreement'' authorizing comp time. This reading accords significance to both the focus on the word ``agreement'' in subclause (i) and the focus on ``employees'' in subclause (ii); is true to subsection 7(o)'s hierarchy, which favors subclause (i) agreements over individual agreements by limiting use of the latter to cases in which the former are unavailable; and is consistent with the DOL regulations, interpreted most reasonably. Although 29 CFR §553.23(b), read in isolation, would support petitioners' view that selection of a representative—even one without lawful authority to bargain—is sufficient to bring the employees within subclause (i)'s scope, that interpretation would prohibit entirely the use of comp time in a substantial portion of the public sector and would be inconsistent with the Secretary's statement that the ``representative'' determination is a local matter. The latter clarification establishes that when the regulations identify representative selection as the condition necessary for subclause (i) coverage, they refer only to those representatives with lawful authority to negotiate agreements. In this case, both lower courts found that Texas law prohibits petitioners' representative from entering into an agreement with their employer. Accordingly, petitioners did not have a representative with such authority. Pp. 9–13.

956 F. 2d 516, affirmed.

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