

The Burger Court Opinion Writing Database

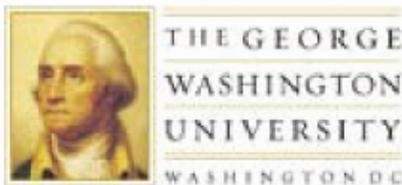
H.K. Porter Co. v. NLRB

397 U.S. 99 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

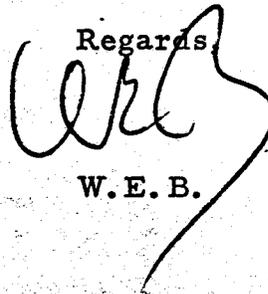
February 24, 1970

Re: No. 230 - H. K. Porter Co. v. NLRB

Dear Hugo:

I join in your very solid and documented opinion
in this case.

Regards,



W. E. B.

Mr. Justice Black

cc: The Conference

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James

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
~~Mr. Justice Brennan~~
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: Black, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: FEB 24 1970

No. 230.—OCTOBER TERM, 1969

Recirculated: _____

<p>H. K. Porter Company, Inc., Etc., Petitioner, v. National Labor Relations Board et al.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Dis- trict of Columbia Circuit.</p>
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[March —, 1970]

MR. JUSTICE BLACK delivered the opinion of the Court.

After an election respondent United Steelworkers Union was, on October 5, 1961, certified by the National Labor Relations Board as the bargaining agent for the employees at the Danville, Virginia, plant of the petitioner, H. K. Porter Co. Thereafter negotiations commenced for a collective bargaining agreement. Since that time the controversy has seesawed between the Board, the Court of Appeals for the District of Columbia Circuit, and this Court. This delay of over eight years is not because the case is exceedingly complex, but appears to have occurred chiefly because of the skill of the company's negotiators in taking advantage of every opportunity for delay in an Act more noticeable for its generality than for its precise prescriptions. The entire lengthy dispute mainly revolves around the union's desire to have the company agree to "check off" the dues owed to the union by its members, that is, to deduct those dues periodically from the company's wage payments to the employees. The record shows, as the Board found, that the company's objection to a checkoff was not due to any general principle or policy against making deductions from employees' wages. The com-

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To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 230.—OCTOBER TERM, 1969

From: Douglas, J.

Circulated: 2-25

Recirculated: _____

H. K. Porter Company, Inc.,
Etc., Petitioner,
v.
National Labor Relations
Board et al.

On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[March —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

The Court correctly describes the general design and main thrust of the Act. It does not encompass compulsory arbitration; the Board does not sit to impose what it deems to be the best conditions for the collective bargaining agreement; the obligation to bargain collectively "does not compel either party to agree to a proposal or require the making of a concession." § 8 (d).

Yet the Board has the power, where one party does not bargain in good faith, "to take such affirmative action . . . as will effectuate the policies" of the Act. § 10 (c).

Here the employer did not refuse the checkoff for any business reason, whether cost, inconvenience, or what-not. Nor did the employer refuse the check off as a factor in its bargaining strategy, hoping that delay and denial might bring it in exchange favorable terms and conditions. Its reason was a resolve to avoid reaching any agreement with the union.

In those narrow and specialized circumstances, I see no answer to the power of the Board in its discretion to impose the checkoff as "affirmative action" necessary to remedy the flagrant refusal of the employer to bargain in good faith.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

Justice Douglas, J.

No. 230.—OCTOBER TERM, 1969

regulated:

H. K. Porter Company, Inc.,
Etc., Petitioner,
v.
National Labor Relations
Board et al.

On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

regulated:

7/25/70

[March —, 1970]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART concurs, dissenting.

The Court correctly describes the general design and main thrust of the Act. It does not encompass compulsory arbitration; the Board does not sit to impose what it deems to be the best conditions for the collective bargaining agreement; the obligation to bargain collectively "does not compel either party to agree to a proposal or require the making of a concession." § 8 (d).

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In those narrow and specialized circumstances, I see no answer to the power of the Board in its discretion to impose the checkoff as "affirmative action" necessary to remedy the flagrant refusal of the employer to bargain in good faith.

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Mr. Justice White
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES:

Harlan J
FEB 27 1970

No. 230.—OCTOBER TERM, 1969

Circulated: _____

Recirculated: _____

H. K. Porter Company, Inc.,
Etc., Petitioner,
v.
National Labor Relations
Board et al.

On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[March —, 1970]

MR. JUSTICE HARLAN, concurring.

I join in the Court's opinion on the understanding that nothing said therein is meant to disturb or question the primary determination made by the Board and sustained by the Court of Appeals, that petitioners did not bargain in "good faith" and thus continues to be subject to a bargaining order enforceable by a citation for contempt if the Board deems such a proceeding appropriate.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

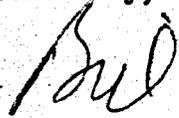
February 25, 1970

RE: No. 230 - Porter Co. v. N.L.R.B.

Dear Hugo:

I agree.

Sincerely,



W.J.B. Jr.

Mr. Justice Black

cc: The Conference

February 25, 1970

Re: No. 230 - H.K. Porter Co. Inc.
Etc. v. NLRB

Dear Hugo:

Please note at the end of
your opinion that I took no part in
the decision in this case.

Sincerely,