

# The Burger Court Opinion Writing Database

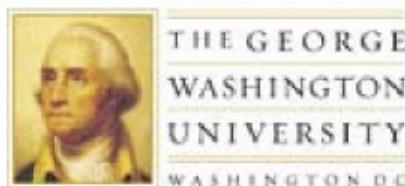
*Boilermakers v. Hardeman*

401 U.S. 233 (1971)

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 8, 1971

Re: No. 123 - Intl. Brotherhood of Boilermakers, etc. v.  
Hardeman

Dear Bill:

Please join me in the above.

Regards,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

January 21, 1971

Dear Bill,

Re: No. 123 - International Brother-  
hood, etc. v. Hardeman.

I agree.

Sincerely,



Hugo

Mr. Justice Brennan

cc: Members of the Conference

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 123.—OCTOBER TERM, 1970

Argued: Douglas, J.

Circulated: 1/20/71

International Brotherhood of  
Boilermakers, Iron Ship-  
builders, Blacksmiths, Forg-  
ers and Helpers, AFL-CIO,  
Petitioner,

Recirculated:  
On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

v.

George W. Hardeman.

[January —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Section 102 of the Landrum-Griffin Act, 73 Stat. 523, 29 U. S. C. § 412, gives a member of a union the right of civil redress in a federal district court against his union for infringement of his rights secured by the Act.<sup>1</sup> At the same time § 103, 29 U. S. C. § 413, reserves to members any remedies they may have "under any State or Federal law or before any court or other tribunal, or under the constitution and by-laws" of their unions. Moreover, § 101 (5), 29 U. S. C. § 411 (5),<sup>2</sup> provides that no member may be expelled or disciplined except for nonpayment of dues after notice and hearing.

<sup>1</sup> Section 102 provides:

"Any person whose rights secured by the provision of this sub-chapter have been infringed by any violation of this sub-chapter may bring a *civil action in a District Court of the United States*, for such relief (including injunctions) as may be appropriate. Any such action against a labor organization *shall be brought in the District Court of the United States* for the district where the alleged violation occurred, or where the principal office of such labor organization is located." (Emphasis added.)

<sup>2</sup> Section 101 (5) provides:

"... No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues, by such organization or by any officer thereof, unless such member has been (a) served with written specific charges; (b) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing."

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J. Circulated:

No. 123.—OCTOBER TERM, 1970

Recirculated: 1-26

International Brotherhood of  
Boilermakers, Iron Ship-  
builders, Blacksmiths, Forg-  
ers and Helpers, AFL-CIO,  
Petitioner,

v.

George W. Hardeman.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[February —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Section 102 of the Landrum-Griffin Act, 73 Stat. 523, 29 U. S. C. § 412, gives a member of a union the right of civil redress in a federal district court against his union for infringement of his rights secured by the Act<sup>1</sup> at the same time § 103, 29 U. S. C. § 413, reserves to members any remedies they may have "under any State or Federal law or before any court or other tribunal, or under the constitution and by-laws" of their unions. Moreover, § 101 (5), 29 U. S. C. § 411 (a)(5),<sup>2</sup> provides

<sup>1</sup> Section 102 provides:

"Any person whose rights secured by the provision of this sub-chapter have been infringed by any violation of this sub-chapter may bring a *civil action in a District Court of the United States*, for such relief (including injunctions) as may be appropriate. Any such action against a labor organization *shall be brought in the District Court of the United States* for the district where the alleged violation occurred, or where the principal office of such labor organization is located." (Emphasis added.)

<sup>2</sup> Section 101 (a)(5) provides:

"... No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues, by such organization or by any officer thereof, unless such member has been (a) served with written specific charges; (b) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing."

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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  
Mr. Justice Blackmun

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 123.—OCTOBER TERM, 1970 *Circulated* 1/16/71

International Brotherhood of  
Boilermakers, Iron Ship-  
builders, Blacksmiths, Forg-  
ers and Helpers, AFL-CIO,  
Petitioner,  
*v.*  
George W. Hardeman.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[February —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Section 102 of the Landrum-Griffin Act, 73 Stat. 523, 29 U. S. C. § 412, gives a member of a union the right of civil redress in a federal district court against his union for infringement of his rights secured by the Act<sup>1</sup> at the same time § 103, 29 U. S. C. § 413, reserves to members any remedies they may have "under any State or Federal law or before any court or other tribunal, or under the constitution and by-laws" of their unions. Moreover, § 101 (5), 29 U. S. C. § 411 (a)(5),<sup>2</sup> provides

<sup>1</sup> Section 102 provides:

"Any person whose rights secured by the provision of this sub-chapter have been infringed by any violation of this sub-chapter may bring a *civil action in a District Court of the United States*, for such relief (including injunctions) as may be appropriate. Any such action against a labor organization *shall be brought in the District Court of the United States* for the district where the alleged violation occurred, or where the principal office of such labor organization is located." (Emphasis added.)

<sup>2</sup> Section 101 (a)(5) provides:

"... No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues, by such organization or by any officer thereof, unless such member has been (a) served with written specific charges; (b) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing."

*long time*

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 123.—OCTOBER TERM, 1970

Circulated:

1/26/71

International Brotherhood of  
Boilermakers, Iron Ship-  
builders, Blacksmiths, Forg-  
ers and Helpers, AFL-CIO,  
Petitioner,  
*v.*  
George W. Hardeman.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[February —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Section 102 of the Landrum-Griffin Act, 73 Stat. 523, 29 U. S. C. § 412, gives a member of a union the right of civil redress in a federal district court against his union for infringement of his rights secured by the Act<sup>1</sup> at the same time § 103, 29 U. S. C. § 413, reserves to members any remedies they may have "under any State or Federal law or before any court or other tribunal, or under the constitution and by-laws" of their unions. Moreover, § 101 (a)(5), 29 U. S. C. § 411 (a)(5),<sup>2</sup> pro-

<sup>1</sup> Section 102 provides:

"Any person whose rights secured by the provision of this sub-chapter have been infringed by any violation of this sub-chapter may bring a *civil action in a District Court of the United States*, for such relief (including injunctions) as may be appropriate. Any such action against a labor organization *shall be brought in the District Court of the United States* for the district where the alleged violation occurred, or where the principal office of such labor organization is located." (Emphasis added.)

<sup>2</sup> Section 101 (a)(5) provides:

"... No member of any labor organization may be fined, suspended, expelled or otherwise disciplined except for nonpayment of dues, by such organization or by any officer thereof, unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

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

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

January 21, 1971

Re: No. 123 - Int'l. Brotherhood v. Hardeman

Dear Bill:

I agree with your opinion, and am glad  
to join.

Sincerely,

  
J. M. H.

Mr. Justice Brennan

## CC: The Conference

*Circulated*

1-20-71

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 123.—OCTOBER TERM, 1970

International Brotherhood of  
Boilermakers, Iron Ship-  
builders, Blacksmiths, Forg-  
ers and Helpers, AFL-CIO,  
Petitioner,  
*v.*

On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

George W. Hardeman.

[January —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Section 102 of the Labor-Management Reporting and Disclosure Act (hereafter LMRDA) provides that a union member who charges that his union violated his rights under Title I of the Act may bring a civil action against the union in a district court of the United States for appropriate relief.<sup>1</sup> Respondent was expelled from membership in petitioner union and brought this action under § 102 in the District Court for the Southern District of Alabama. He alleged that in expelling him the petitioner violated § 101 (a)(5) of the Act, 73 Stat. 519, 29 U. S. C. § 411 (a)(5) which provides: "No member of

<sup>1</sup> Section 102 of the Act, 73 Stat. 523, 29 U. S. C. § 412, provides:

"Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in the district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 21, 1971

123 - Boilermakers v. Hardeman

Dear Bill,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

  
P.S.

Mr. Justice Brennan

Copies to the Conference

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

1st DRAFT

From: White, J.

**SUPREME COURT OF THE UNITED STATES**

No. 123.—OCTOBER TERM, 1970

Recirculated: 1-21-71

International Brotherhood of  
Boilermakers, Iron Ship-  
builders, Blacksmith, Forg-  
ers and Helpers, AFL-CIO,  
Petitioner,

v.

George W. Hardeman.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[January —, 1971]

MR. JUSTICE WHITE, concurring.

The Court accurately states the holdings in *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, and like cases. But since the case before us "implicates none of the principles," *ante*, p. —, announced in those cases, neither is their continuing validity in their full sweep reaffirmed by today's opinion. On this basis, I join the Court's opinion.

I add an additional note. As the Court says, Hardeman's conviction on both charges against him was upheld. Expulsion was warranted on either count. The principle of *Stromberg v. California*, 283 U. S. 359 (1931), has no application in this situation. *Turner v. United States*, 396 U. S. 398, 420 (1970); *Barenblatt v. United States*, 360 U. S. 109, 115 (1959); *Claassen v. United States*, 142 U. S. 140, 146-147 (1891); see also, cases cited in *Street v. New York*, 394 U. S. 576, 613 n. 2 (1969) (dissenting opinion of WHITE, J.).

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 22, 1971

Re: No. 123 - International Brotherhood of  
Boilermakers v. Hardeman

Dear Bill:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 22, 1971

Re: No. 123 - International Brotherhood  
of Boilermakers, etc. v.  
Hardeman

Dear Bill:

In the first line of footnote 4 is the word "Local." This word confused me momentarily for it stands in contrast to the word "Subordinate" in the first line of footnote 3. I take it, however, it is all one and the same Lodge. Would there be any point in replacing "Local" with "Subordinate" in footnote 4?

Sincerely,



Mr. Justice Brennan

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 22, 1971

Re: No. 123 - International Brotherhood of  
Boilermakers, etc. v. Hardeman

Dear Bill:

Please join me in the opinion you have  
proposed for this case.

Sincerely,



Mr. Justice Brennan

cc: The Conference