

The Burger Court Opinion Writing Database

*Chicago & North Western Railway Co. v.
Transportation Union*

402 U.S. 570 (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

May 26, 1971

CHAMBERS OF
THE CHIEF JUSTICE

No. 189 - Chicago & NW Ry. Co. v.
United Transportation Union

Dear John:

Please join me.

Regards,



Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

May 13, 1971

Dear Bill,

Re: No. 189- Chicago & North Western
Ry. Co. v. United Transportation
Union (dissenting)

Please note that I join in your dissent.

Sincerely,



Hugo
Black

Mr. Justice Brennan

cc: Members of the Conference



WB

May 11, 1971

Dear Bill:

Please join me in your dissent
in No. 189 - Chicago and North Western
Railway v. United Transportation Union.

William O. Douglas

Mr. Justice Brennan

WD Adm
1487

SP
JW
Please for me
JW

2nd DRAFT

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

From: Harlan, J.

MAY 11 1971

Circulated:

SUPREME COURT OF THE UNITED STATES

No. 189.—OCTOBER TERM, 1970

Chicago and North Western
Railway Company,
Petitioner,
v.
United Transportation
Union.

Recirculated:
On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[May —, 1971]

MR. JUSTICE HARLAN delivered the opinion of the Court.

The Chicago and North Western Railway Co., petitioner in this action, brought suit in the United States District Court for the Northern District of Illinois to enjoin a threatened strike by the respondent, the United Transportation Union. The substance of the complaint was that in the negotiations between the parties over work rules, the Union had failed to perform its obligation under § 2 First of the Railway Labor Act, 45 U. S. C. § 152 First, "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions."¹ Jurisdiction was said to rest on 28 U. S. C. § 1331 and 28 U. S. C. § 1337. The Union in its answer contended that §§ 4, 7, and 8 of the Norris-

¹ The subsection provides:

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

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

February 26, 1971

RE: No. 189 - Chicago and Northwestern Railway v. United Transportation Union

Dear Chief:

You assigned this case to me to write an opinion for the Court reversing the Court of Appeals of the Seventh Circuit. The conference vote was 7 to 2 for that result with only Hugo and Bill voting to Affirm. I regret to have to report that I cannot write an opinion to Reverse.

The case presents a narrow question regarding the provision of Section 2 First of the Railway Labor Act -- that carriers and unions "exert every reasonable effort to make and maintain agreements." Our cases seem to hold that this provision creates a legal obligation enforceable by courts to the extent of enjoining a party to sit down at the bargaining table with the properly chosen representative of the other side. What our cases have not decided, and what this case presents, is whether courts may declare forfeit the congressionally granted right of self-help when one party seeks to enjoin resort to self-help by the other on the ground that the other merely went through the motions of bargaining without the spirit to reach agreement required by Section 2 First. I've come to the conclusion that any congressional intent on the question to be gleaned from the muddy legislative history supports the conclusion that Congress contemplated that the National Mediation Board, -- in any event, not the courts -- should police compliance with Section 2 First. I say this, even though the only sanction available to the Board is to prevent self-help by refusing to release jurisdiction of a dispute until the recalcitrant complies with Section 2 First.

- 2 -

My conclusion is a two-way street. The government has a suit pending against Florida East Coast Railway (whose intransigence in dealing with the rail unions has brought four cases here over the last few years) to enjoin self-help by that carrier in the form of a unilateral change of work rules. The basis of that suit is also that the carrier only went through the motions of bargaining. On my view, that action must also fail.

I feel very guilty to have delayed disposition of the case but it's been a long wrestle with the legislative history and the many cases here and in other courts. I must, therefore, ask you to reassign the opinion.

Sincerely,



The Chief Justice

cc: The Conference

Mr. Justice Black
✓ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

Circulated: 3-11-71

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 189.—OCTOBER TERM, 1970

Chicago and North Western
Railway Company,
Petitioner.
v.
United Transportation
Union.

On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[March —, 1971]

MR. JUSTICE BRENNAN, dissenting.

The instant dispute between the Chicago & North Western Railway Company (Railway) and the United Transportation Union (Union) reaches back to the decision of Arbitration Board No. 282, established pursuant to 77 Stat. 132 (1963). That board was established by Congress, after the failure of the dispute settlement machinery of the Railway Labor Act, to arbitrate disputes between various carriers and unions over the number of brakemen required on trains and the necessity of firemen on diesel locomotives. Insofar as is here pertinent, Board 282's award ultimately led to elimination of approximately 8,000 brakemen's jobs across the Nation. By its terms, however, the award expired January 25, 1966. Prior to expiration, the Union served upon the Railway notices under § 6 of the Railway Labor Act, 45 U. S. C. § 156,¹ which called for re-establishing many of the brakemen's positions eliminated by Board 282 by changing the existing agreements to require not less than two brakemen on every freight and yard crew. The Railway reciprocated by serving upon the Union a § 6

¹ Section 6 provides in part:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, . . ."

4,12,13,14

To: The Chief Justice
Mr. Justice Black
✓ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Hugo Black
Mr. Justice Stewart
Mr. Justice White
Mr. Justice William O. Douglas
Mr. Justice William J. Brennan, Jr.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 189.—OCTOBER TERM, 1970

Chicago and North Western
Railway Company,
Petitioner.
v.
United Transportation
Union.

On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[May —, 1971]

MR. JUSTICE BRENNAN, dissenting.

The instant dispute between the Chicago & North Western Railway Company (Railway) and the United Transportation Union (Union) reaches back to the decision of Arbitration Board No. 282, established pursuant to 77 Stat. 132 (1963). That board was established by Congress, after the failure of the dispute settlement machinery of the Railway Labor Act, to arbitrate disputes between various carriers and unions over the number of brakemen required on trains and the necessity of firemen on diesel locomotives. Insofar as is here pertinent, Board 282's award ultimately led to elimination of approximately 8,000 brakemen's jobs across the Nation. By its terms, however, the award expired January 25, 1966. Prior to expiration, the Union served upon the Railway notices under § 6 of the Railway Labor Act, 45 U. S. C. § 156,¹ which called for re-establishing many of the brakemen's positions eliminated by Board 282 by changing the existing agreements to require not less than two brakemen on every freight and yard crew. The Railway reciprocated by serving upon the Union a § 6

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Page 1.

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

3rd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

No. 189.—OCTOBER TERM, 1970

Circulated:

Recirculated: 5-13-71

Chicago and North Western
Railway Company,
Petitioner,
v.
United Transportation
Union.

On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[May —, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE BLACK
and MR. JUSTICE DOUGLAS join, dissenting.

The instant dispute between the Chicago & North Western Railway Company (Railway) and the United Transportation Union (Union) reaches back to the decision of Arbitration Board No. 282, established pursuant to 77 Stat. 132 (1963). That board was established by Congress, after the failure of the dispute settlement machinery of the Railway Labor Act, to arbitrate disputes between various carriers and unions over the number of brakemen required on trains and the necessity of firemen on diesel locomotives. Insofar as is here pertinent, Board 282's award ultimately led to elimination of approximately 8,000 brakemen's jobs across the Nation. By its terms, however, the award expired January 25, 1966. Prior to expiration, the Union served upon the Railway notices under § 6 of the Railway Labor Act, 45 U. S. C. § 156,¹ which called for re-establishing many of the brakemen's positions eliminated by Board 282 by changing the existing agreements to require not less than two brakemen on every freight and yard crew. The

¹ Section 6 provides in part:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, . . ."

BB
JL
You found fault
To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun

4th DRAFT

SUPREME COURT OF THE UNITED STATES From: Brennan, J.

No. 189.—OCTOBER TERM, 1970

Argued:

5/21/71

Chicago and North Western
Railway Company,
Petitioner,
v.
United Transportation
Union. Argued:

On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[May —, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE BLACK, MR. JUSTICE DOUGLAS, and MR. JUSTICE WHITE join, dissenting.

The instant dispute between the Chicago & North Western Railway Company (Railway) and the United Transportation Union (Union) reaches back to the decision of Arbitration Board No. 282, established pursuant to 77 Stat. 132 (1963). That board was established by Congress, after the failure of the dispute settlement machinery of the Railway Labor Act, to arbitrate disputes between various carriers and unions over the number of brakemen required on trains and the necessity of firemen on diesel locomotives. Insofar as is here pertinent, Board 282's award ultimately led to elimination of approximately 8,000 brakemen's jobs across the Nation. By its terms, however, the award expired January 25, 1966. Prior to expiration, the Union served upon the Railway notices under § 6 of the Railway Labor Act, 45 U. S. C. § 156,¹ which called for re-establishing many of the brakemen's positions eliminated by Board 282 by changing the existing agreements to require not less than two brakemen on every freight and yard crew. The

¹ Section 6 provides in part:

"Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, . . ."

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 11, 1971

189 - Chicago & N.W. Ry. Co. v. Transp. Union

Dear John,

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

Sincerely yours,

P.S.

Mr. Justice Harlan

Copies to the Conference

May 20, 1971

Re: No. 189 - Chicago and North
Western Ry Co. v. United
Transportation Union

Dear Bill:

This is a close case for me
but I think you have the best of it.
Please join me in your dissent.

Sincerely,

B.R.W.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 19, 1971

Re: No. 189 - Chicago and North Western v.
United Transportation Union

Dear John:

Please join me.

Sincerely,



T.M.

Mr. Justice Harlan

cc: The Conference

May 17, 1971

Re: No. 189 - Chicago & Northwestern Railway Co.
v. United Transportation Union

Dear John:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Harlan

cc: The Conference