

# The Burger Court Opinion Writing Database

*NLRB v. Clark's Gamble Corp.*

400 U.S. 868 (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

October 15, 1970

*cert denied*

Dear Bill:

*-265:*  
Re: NLRB v. Clark's Gamble Corporation

On reflection I conclude I will join in your dissent in the  
above.

*Reyes*  
*WSB*

Mr. Justice Douglas

cc: The Conference

October 21, 1970

Dear Chief:

Re: No. 265 - National Labor Relations Board v.  
Clark's Gamble Corp., etc., et al.

Please note in re denial of certiorari in the above case that  
"MR. JUSTICE BLACK dissents in this case and believes certiorari  
should be granted and the judgment of the Court of Appeals should  
be reversed on the authority of the Court's judgment and opinion in  
National Labor Relations Board v. Gissel Packing Co., 395 U. S.  
575 (1969). "

Sincerely,

H. L. B.

The Chief Justice

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

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From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Filed: 10/8/70

October Term, 1970

Recirculated: \_\_\_\_\_

NATIONAL LABOR RELATIONS BOARD v.  
CLARK'S GAMBLE CORPORATION  
ETC., ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 265. Decided October —, 1970

MR. JUSTICE DOUGLAS, dissenting.

When this case was here last Term, we granted certiorari and vacated and remanded it for further consideration in light of *NLRB v. Gissel Packing Co.*, 395 U. S. 575. 396 U. S. 23. The NLRB in its petition for certiorari had suggested that *Gissel* demonstrated the decision below was in error because the court below had ruled authorization cards were "a notoriously unreliable method of determining majority status," a position which *Gissel* had rejected. If the decision below had rested on authorization cards then clearly *Gissel* was dispositive because we had specifically refused to find authorization cards were an inherently unreliable method of determining majority status. The main question, however, in *Gissel* related to the power of the Board to make a bargaining order under circumstances where the refusal to bargain by the employer was not motivated by a good-faith doubt of the union's majority status but by the desire of the employer to gain time to dissipate that status.

On remand the court below reaffirmed its original decision. It stated the authorization card issue was only a

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

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From: Douglas, J.

Circulated: 10/9/70  
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**SUPREME COURT OF THE UNITED STATES**

October Term, 1970

**NATIONAL LABOR RELATIONS BOARD v.  
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JS

Chief Justice  
Mr. Justice Black  
Mr. Justice Harlan ✓  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

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SUPREME COURT OF THE UNITED STATES

October Term, 1970

Circulated: 10/9/70

NATIONAL LABOR RELATIONS BOARD  
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MR. JUSTICE DOUGLAS, with whom MR. JUSTICE  
HARLAN and MR. JUSTICE STEWART concur, dissenting.

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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

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From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

October Term, 1970

Circulated: \_\_\_\_\_  
Recirculated: 10-16

NATIONAL LABOR RELATIONS BOARD v.  
CLARK'S GAMBLE CORPORATION  
ETC., ET AL.

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October 9, 1970

Re: No. 265 - Labor Board v. Clark's  
Gamble Corp.

Dear Bill:

Please join me in your dissent. At the same time, may I make the following suggestions:

1. Although you state on page 2 that "The complaint was issued on December 30, 1966," I believe that that was the date of the Trial Examiner's decision. The complaint was issued on September 23, 1965.
2. Also on page 2, I would point out that the Court of Appeals did not flatly refuse to enforce, but instead remanded the case for the Board to re-determine the appropriateness of a bargaining order in light of employee turnover.
3. On page 3, n. 2, although you state that "no injured employees are beneficiaries of the presently delayed order," the case was remanded for the Board to find out how many such employees were still with the firm.

Sincerely,

JMH

Mr. Justice Douglas

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 9, 1970

265 - NLRB v. Clark's Gamble Corp.

Dear Bill,

I should appreciate your adding my  
name to your dissenting opinion in this case.

Sincerely yours,

PS,  
✓

Mr. Justice Douglas

Copies to the Conference