

The Burger Court Opinion Writing Database

NLRB v. Operating Engineers

400 U.S. 297 (January 12, 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

December 16, 1970

Re: No. 40 - NLRB v. Local 825, Intl. Union of Operating
Engineers, AFL-CIO
No. 42 - Burns and Roe v. Local 825, International
Union of Operating Engineers, AFL-CIO

Dear Thurgood:

Please join me in your opinion.

Regards,

Mr. Justice Marshall

cc: The Conference

WES

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

December 18, 1970

Dear Thurgood,

Re: Nos. 40 & 42 - NLRB v. Local
825.

I agree.

Sincerely,

H. L. B.
H. L. B.

Mr. Justice Marshall

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

2

SUPREME COURT OF THE UNITED STATES

Nos. 40 AND 42.—OCTOBER TERM, 1970

National Labor Relations
Board, Petitioner,
40 v.
Local 825, International Union
of Operating Engineers,
AFL-CIO.
Burns and Roe, Inc., et al.,
Petitioners,
42 v.
Local 825, International Union
of Operating Engineers,
AFL-CIO.

On Writs of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[January —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

If we take the words of the Act, rather than what the courts have interpolated, and lay them alongside the facts of the case, I do not see how we can fairly say that Local 825 engaged in an "unfair labor practice" within the meaning of § 8 (b). Local 825 did use coercion to get jobs from White for its workers. The Board termed it "causing a disruption of the business relationship among the various employees at the jobsite," which it held was within the ban of § 8 (b)(4)(B) since Local 825's aim, though not "a total cancellation of a business relationship" with White, constituted a "cease doing business" purpose. The Board said: ". . . an object of the Respondent was to force Burns to cease doing business with White, and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White."

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

3

SUPREME COURT OF THE UNITED STATES

Nos. 40 AND 42.—OCTOBER TERM, 1970

National Labor Relations
 Board, Petitioner.
 40 v.
 Local 825, International Union
 of Operating Engineers,
 AFL-CIO.
 Burns and Roe, Inc., et al.,
 Petitioners,
 42 v.
 Local 825, International Union
 of Operating Engineers,
 AFL-CIO.

On Writs of Certiorari
 to the United States
 Court of Appeals for
 the Third Circuit.

12/21/70

[January —, 1971]

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

If we take the words of the Act, rather than what the courts have interpolated, and lay them alongside the facts of the case, I do not see how we can fairly say that Local 825 engaged in an "unfair labor practice" within the meaning of § 8 (b). Local 825 did use coercion to get jobs from White for its workers. The Board termed it "causing a disruption of the business relationship among the various employees at the jobsite," which it held was within the ban of § 8 (b) (4) (B) since Local 825's aim, though not "a total cancellation of a business relationship" with White, constituted a "cease doing business" purpose. The Board said: ". . . an object of the Respondent was to force Burns to cease doing business with White, and to force Chicago Bridge and Poirier to cease doing business with Burns in order to compel Burns to cease doing business with White."

January 5, 1970

Re: No. 40 - NLRB v. Local 825
No. 42 - Burns and Roe v. Local 825

Dear Thurgood:

While I consider the question a close one,
I am satisfied that you have the better of it, and hence I am
glad to join your opinion.

Sincerely,

J. M. H.

Mr. Justice Marshall

CC: The Conference

LP 99

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 18, 1970

RE: Nos. 40 & 42 - N. L. R. B. v. Local 825

Dear Thurgood:

I agree with the opinion you have prepared in the above case.

Sincerely,

Bill

W. J. B. Jr.

Mr. Justice Marshall

cc: The Conference

TM

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 18, 1970

Nos. 40 & 42, NLRB v. Operating Engineers

Dear Bill,

I should appreciate your adding my name
to your dissenting opinion in these cases.

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 18, 1970

Re: Nos. 40 & 42 - NLRB v. Local 825

Dear Thurgood:

Please join me.

Sincerely,


B.R.W.

Mr. Justice Marshall

Copies to Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

SUPREME COURT OF THE UNITED STATES

Justice: Marshall, J.

Nos. 40 AND 42.—OCTOBER TERM, 1970

Circulated: _____

Recirculated: **DEC 14 1970**

National Labor Relations
Board, Petitioner,
40 v.
Local 825, International Union
of Operating Engineers,
AFL-CIO.

Burns and Roe, Inc., et al.,
Petitioners,
42 v.
Local 825, International Union
of Operating Engineers,
AFL-CIO.

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

[December —, 1970]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case we are asked to determine whether strikes by Operating Engineers at the site of the construction of a nuclear power generator plant at Oyster Creek, New Jersey, violated § 8 (b) (4) (B) ¹ of the National Labor

¹ "Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

"(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or

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

3

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated: _____

Nos. 40 AND 42.—OCTOBER TERM, 1970 Recirculated: DEC 23 1970

National Labor Relations
Board, Petitioner,
40 v.
Local 825, International Union
of Operating Engineers,
AFL-CIO.

Burns and Roe, Inc., et al.,
Petitioners,
42 v.
Local 825, International Union
of Operating Engineers,
AFL-CIO.

On Writs of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[December —, 1970]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case we are asked to determine whether strikes by Operating Engineers at the site of the construction of a nuclear power generator plant at Oyster Creek, New Jersey, violated § 8 (b) (4) (B) ¹ of the National Labor

¹ "Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

"(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT
PP. 45, 6.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

Nos. 40 AND 42.—OCTOBER TERM, 1970

National Labor Relations
Board, Petitioner,

40

v.

Local 825, International Union
of Operating Engineers,
AFL-CIO.

Burns and Roe, Inc., et al.,
Petitioners,

42

v.

Local 825, International Union
of Operating Engineers,
AFL-CIO.

On Writs of Certiorari
to the United States
Court of Appeals for
the Third Circuit.

[January 12, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case we are asked to determine whether strikes by Operating Engineers at the site of the construction of a nuclear power generator plant at Oyster Creek, New Jersey, violated § 8 (b) (4) (B) ¹ of the National Labor

¹ "Sec. 8 (b) It shall be an unfair labor practice for a labor organization or its agents—

"(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

December 21, 1970

Re: Nos. 40 & 42 - NLRB v. Local 825, etc.

Dear Thurgood:

I concur in the opinion you have prepared for
these cases.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference