The Burger Court Opinion Writing Database

Central Hardware Co. v. NLRB

407 U.S. 539 (1972)

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

June 13, 1972

Re: No. 70-223 - Central Hardware Co. v. NLRB

Dear Lewis:

Please join me.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 9, 1972

Re: No. 70-223 - Central Hardware
v.
NLRB

Dear Thurgood:

Please join me in your dissent.

William O. Douglas

Mr. Justice Marshall

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 1, 1972

RE: No. 70-223 - Central Hardware v. N.L.R.B.

Dear Lewis:

My impression was that we were not going to address the Logan Valley question on the merits in this case, but would limit our holding to saying that the Court of Appeals should not have done so, and should have decided only whether, on the evidence, the Board correctly determined that § 7 justified the Union's conduct under the test of Babcock. Am I wrong? I am concerned because I apprehend that we'll be on different sides of the question in Lloyd on the application of Logan Valley. I might therefore have difficulty joining your opinion here insofar as it reaches the Logan Valley question on the merits.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

(6)

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1972

No. 70-223 - Central Hardware Co. v. NLRB

Dear Lewis,

I am glad to join your opinion for the Court in this case, with one reservation: I hope you will agree that the first complete sentence on page 8, beginning "Even so," is not a necessary part of the opinion in this case. If you do agree, and can delete this sentence, I can join your opinion unreservedly. My difficulty with the sentence is, of course, that it is inconsistent with my understanding of the holding of Logan Valley, and with my present position in the Lloyd case.

Sincerely yours,

P.S.
1.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1972

Re: No. 70-223 - Central Hardware Co. v. NLRB

Dear Lewis:

Please join me in your opinion in this case.

Sincerely,

Byron

Mr. Justice Powell

Copies to Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70–223

Central Hardware Company, Petitioner, *v.* National Labor Relations Board et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1972]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

I agree with the Court that this case should have been considered under *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105 (1956). That case is, as the opinion of the Court suggests, narrower than *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968). It does not purport to interpret the National Labor Relations Act (NLRA) so as to give union members the same comprehensive rights to free expression on the private property of an employer that the First Amendment gives to all citizens on private property that is the functional equivalent of a public business district. But, *Babcock & Wilcox* is, in another sense, even broader than *Logan Valley*. It holds that where a union has no other means at its disposal to communicate with employees other than to use the employer's property or where the union is denied the access to employees that the employer gives antiunion forces, the union may communicate with employees on the property of the employer. Congress gave unions this right in § 8 (a)(1) of the NLRA, 29 U. S. C. § 158 (a)(1). The First Amendment gives no such broad right to use private property to ordinary citizens.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70–223

Central Hardware Company, Petitioner, *v.* National Labor Relations Board et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1972]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

I agree with the Court that this case should have been considered under *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105 (1956). That case is, as the opinion of the Court suggests, narrower than *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968). It does not purport to interpret the National Labor Relations Act (NLRA) so as to give union members the same comprehensive rights to free expression on the private property of an employer that the First Amendment gives to all citizens on private property that is the functional equivalent of a public business district. But, *Babcock & Wilcox* is, in another sense, even broader than *Logan Valley*. It holds that where a union has no other means at its disposal to communicate with employees other than to use the employer's property or where the union is denied the access to employees that the employer gives antiunion forces, the union may communicate with employees on the property of the employer. Congress gave unions this right in Section 7 of the NLRA, 61 Stat. 140, 29 U. S. C. § 157. The First Amendment gives no such broad right to use private property to ordinary citizens.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 70-223

Recirculated: 6/16/72

Central Hardware Company, Petitioner, v. National Labor Relations Board et al. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1972]

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

I agree with the Court that this case should have been considered under *NLRB* v. *Babcock & Wilcox Co.*, 351 U. S. 105 (1956). That case is, as the opinion of the Court suggests, narrower than *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968). It does not purport to interpret the National Labor Relations Act (NLRA) so as to give union members the same comprehensive rights to free expression on the private property of an employer that the First Amendment gives to all citizens on private property that is the functional equivalent of a public business district. But, *Babcock & Wilcox* is, in another sense, even broader than *Logan Valley*. It holds that where a union has no other means at its disposal to communicate with employees other than to use the employer's property or where the union is denied the access to employees that the employer gives antiunion forces, the union may communicate with employees on the property of the employer. Congress gave unions this right in Section 7 of the NLRA, 61 Stat. 140, 29 U. S. C. § 157. The First Amendment gives no such broad right to use private property to ordinary citizens.

W.O.D.
6/16/72

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1972

Re: No. 70-223 - Central Hardware Co.
v. NLRB

Dear Lewis:

Please join me in the opinion you propose for this case.

Sincerely,

H. A. B.

Mr. Justice Powell

cc: The Conference

To: The Chief
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice White
Mr. Justice
Mr. Justice
Mr. Justice Rehnqu

1st DRAFT

From: Powell, J.

Circulated: JUN 1 197-

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 70–223

Central Hardware Company, Petitioner, *v.* National Labor Relations Board et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[June —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

Petitioner, Central Hardware Co. (Central), owns and operates two retail hardware stores in Indianapolis, Indiana. Each store is housed in a large building, containing 70,000 square feet of floor space, and housing no other retail establishments. The stores are surrounded on three sides by ample parking facilities, accommodating approximately 350 automobiles. The parking lots are owned by Central, and are maintained solely for the use of Central's customers and employees. While there are other retail establishments in the vicinity of Central's stores, these establishments are not a part of a shopping center complex, and they maintain their own separate parking lots.

Approximately a week before Central opened its stores, the Retail Clerks Union, Local 725, Retail Clerks International Association, AFL–CIO (the Union), began an organizational campaign at both stores. The campaign consisted primarily of solicitation by nonemployee Union organizers on Central's parking lots. The nonemployee organizers confronted Central's employees in the parking lots and sought to persuade them to sign cards

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1972

Re: No. 70-223 Central Hardware v. NLRB

Dear Bill:

Thank you for your memorandum.

The Court of Appeals rested its decision squarely on Logan Valley. I was at a loss as to how to write an opinion holding that the Court of Appeals should not have relied on Logan Valley without in some measure stating why. I tried to limit the treatment of Logan Valley to a bare minimum, reserving a more extended discussion for No. 71-492, Lloyd Corp. v. Tanner. I will be circulating a draft in Lloyd Corp. today.

As the Court of Appeals believed that Logan Valley controlled, it did not address the § 7 issue in terms of Babcock. Nor did the parties emphasize the Babcock question. It seems to me that on the record before us it is appropriate to remand the case to the Court of Appeals, the normal forum for determining whether the Trial Examiner's conclusion as to Babcock is supported by substantial evidence in the record as a whole.

I am aware that the Conference vote in Lloyd was different from that on Central Hardware. I had thought, however, that a substantial majority agreed that Logan Valley did not apply to a free standing store like Central Hardware.

I would welcome any suggestion.

Sincerely,

Mr. Justice Brennan

cc: The Conference

(P)

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1972

Re: No. 70-223 Central Hardware v. NLRB

Dear Potter:

I agree that the sentence on page 8, beginning "Even so" is not a necessary part of the opinion. Accordingly, I will be glad to comply with your request and will eliminate this sentence in the next draft.

Sincerely,

Mr. Justice Stewart

cc: The Conference

(3)

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1972

Re: No. 70-223 - Central Hardware v. NLRB

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference