

# The Burger Court Opinion Writing Database

*Iowa Beef Packers, Inc. v. Thompson*

405 U.S. 228 (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

February 15, 1972

No. 70-286 -- Iowa Beef Packers v. Thompson

Dear Bill:

Please join me.

Regards,

WRB

Mr. Justice Brennan

Copies to the Conference

86

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

January 31, 1972

MEMORANDUM TO THE CONFERENCE:

In No. 70-286 - Iowa Beef  
Packers v. Thompson, I will in due course  
circulate a dissent.

W. O. D.

*2*  
*PM*  
*you joined WFF*

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-286

*2/9/72*

Iowa Beef Packers, Inc., Petitioner, v. Edward D. Thompson et al.	}	On Writ of Certiorari to the Supreme Court of Iowa.
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[February —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

The arbitration clause in this collective agreement reaches "a grievance pertaining to a violation of the Agreement." The agreement covered both the lunch period<sup>1</sup> and overtime."

The Iowa Supreme Court held that "The present controversy is undoubtedly arbitrable" under the collective agreement. Given the presumption favoring liberal constructions of arbitration clauses, *Steelworkers v. Warrior & Gulf Co.*, 363 U. S. 574, 582-583, we should defer to that ruling. Even under that construction it seems that a suit for overtime allegedly withheld in violation of the Fair Labor Standards Act, 29 U. S. C. § 201 (a)(1) is maintainable. That would mean affirming the Iowa Supreme Court. *U. S. Bulk Carriers v. Arguelles*, 400

<sup>1</sup> Art. XIV, § 1 states:

"A lunch period shall be provided no later than five (5) hours from the start of an employee's shift, except when the shift does not exceed five and one-half (5½) hours."

<sup>2</sup> Art. VII, § 3 states:

"Time and one-half (1½) will be paid for hours worked in excess of eight (8) in any day. Time and one-half (1½) will be paid for all hours worked in excess of forty (40) in any one week."

3  
2

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-286

Iowa Beef Packers, Inc.,  
Petitioner,  
v.  
Edward D. Thompson et al. } On Writ of Certiorari to  
the Supreme Court of  
Iowa.

2/28/72

[February 29, 1972]

MR. JUSTICE DOUGLAS, dissenting.

The arbitration clause in this collective agreement reaches "a grievance pertaining to a violation of the Agreement." The agreement covered both the lunch period<sup>1</sup> and overtime."

The Iowa Supreme Court held that "The present controversy is undoubtedly arbitrable" under the collective agreement. Given the presumption favoring liberal constructions of arbitration clauses, *Steelworkers v. Warrior & Gulf Co.*, 363 U. S. 574, 582-583, we should defer to that ruling. Even under that construction it seems that a suit for overtime allegedly withheld in violation of the Fair Labor Standards Act, 29 U. S. C. § 201 (a)(1) is maintainable. That would mean affirming the Iowa Supreme Court. *U. S. Bulk Carriers v. Arguelles*, 400

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U. S. DEPARTMENT OF JUSTICE

*Please print me*

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Brandeis  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 1/28/72

No. 70-286

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

Iowa Beef Packers, Inc.,  
Petitioner,  
v.  
Edward D. Thompson et al. } On Writ of Certiorari to  
the Supreme Court of  
Iowa.

[February —, 1972]

PER CURIAM.

This suit was brought by respondents under § 16 (b) of the Fair Labor Standards Act, 29 U. S. C. § 216 (b), in an Iowa District Court to recover overtime compensation allegedly withheld by their petitioner employer in violation of the overtime provisions of the Act, 29 U. S. C. § 207 (a)(1). The District Court denied petitioner's motion to dismiss the action for failure of respondents to exhaust the grievance arbitration procedures provided in a collective-bargaining agreement between petitioner and respondents' union, and awarded respondents the overtime claimed plus costs and attorneys' fees. The Supreme Court of Iowa affirmed. 185 N. W. 2d 738 (1971). We granted certiorari, 404 U. S. 820 (1971).

The collective-bargaining agreement required petitioner to provide a lunch period for each employee no later than five hours from the start of an employee's shift. Petitioner provided the lunch period but required the employees to remain on call during the period. Respondents do not claim that the requirement violated the agreement, or that they were not paid if they were called. Nor do they claim that the requirement violated the Hours of Work provision, Art. VII, providing that time and one

To: The Chief Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice  
Mr. Justice

2nd DRAFT

From:

SUPREME COURT OF THE UNITED STATES

Circular  
Recirc

No. 70-286

Iowa Beef Packers, Inc.,  
Petitioner,  
v.  
Edward D. Thompson et al. } On Writ of Certiorari to  
the Supreme Court of  
Iowa.

[February —, 1972]

PER CURIAM.

Respondents brought this suit in an Iowa District Court under § 16 (b) of the Fair Labor Standards Act, 29 U. S. C. § 216 (b), to recover overtime compensation allegedly not paid by their petitioner employer in violation of the overtime provisions of the Act, 29 U. S. C. § 207 (a)(1). The District Court denied petitioner's motion to dismiss the action for failure of respondents to exhaust the grievance arbitration procedures provided in a collective-bargaining agreement between petitioner and respondents' union, and awarded respondents the overtime claimed plus costs and attorneys' fees. The Supreme Court of Iowa affirmed. 185 N. W. 2d 738 (1971). We granted certiorari, 404 U. S. 820 (1971).

The collective-bargaining agreement required petitioner to provide a lunch period for each employee no later than five hours from the start of an employee's shift. Petitioner provided the lunch period but required the employees to remain on call during the period. Respondents did not choose, as perhaps under the contract was open to them, to make the requirement the basis of a grievance for alleged violation either of the lunch period provision, or of the Hours of Work provision, Art. VII, providing

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U. S. SUPREME COURT

February 4, 1972

RE: No. 70-286 - Iowa Beef Packers, Inc. v. Thompson

Dear Lewis:

Thank you very much for your return in the above.

The construction of the Per Curiam reflects the way this case was tried in the Iowa courts and argued here. The company could have made two arguments: (1) that the contract arbitration provision covered the FLSA claim, and (2) that even if it did not the "on call" requirement was arbitrable as a contract grievance and that this foreclosed pursuit of the FLSA remedy in court. For some reason (perhaps counsel was not surefooted in this area) only the first argument was made in defense in the Iowa courts and on review here. Respondent's counsel, therefore, met only that argument. See respondent's brief pages 7 - 8. His brief, doubtless out of an abundance of caution, recognized the possible availability of the other argument but said as to it, "Since petitioner neither argued this provision below nor raised it as an independent ground for arbitrable jurisdiction in its petition for certiorari . . . petitioner should be precluded from raising it here." Brief page 8. If the question were here I would hold with you that the "on call" requirement was arbitrable as a contract grievance but that this would not preclude pursuit of the FLSA court remedy. Since it wasn't pressed, however, I thought we should leave the question open, as I did at page 2 of the Per Curiam.

Sincerely,

WJB

Mr. Justice Powell

WJB  
2/10/72  
Not in book  
Sincerely,  
WJB



3  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 31, 1972

70-286, Iowa Beef Packers, Inc. v. Thompson

Dear Bill,

I am glad to join the Per Curiam you  
have circulated in this case.

Sincerely yours,

P.S.  
/

Mr. Justice Brennan

Copies to the Conference

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LIBRARY OF CONGRESS

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# AN ILLUSTRATION OF CONCEPTS

**Please join me.**

Sincerely,

# **ELLY**

Mr. William Steiner

THE UNIVERSITY OF CHICAGO

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 1, 1972

Re: No. 70-286 - Iowa Beef Packers v. Thompson

Dear Bill:

Please join me in your per curiam.

Sincerely,

  
T.M.

Mr. Justice Brennan

cc: The Conference

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ORDERED BY ADVISORY

B

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 9, 1972

Re: No. 70-286 - Iowa Beef Packers, Inc.  
v. Thompson

Dear Bill:

Subject to anything that may yet be forthcoming  
from other chambers, I join your proposed Per Curiam  
as recirculated January 31.

Sincerely,

*H.A.B.*

Mr. Justice Brennan

cc: The Conference

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U.S. DEPARTMENT OF JUSTICE

2

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 3, 1972

Re: No. 70-286 - Iowa Beef Packers, Inc.  
v. Thompson

Dear Bill:

I am quite willing to join in your Per Curiam, circulated January 31.

My recollection, however, is that Thompson claimed the right to proceed directly under the FLSA regardless of whether he had a right to initiate grievance proceedings under the contract. I had thought that the contract could be construed as authorizing a grievance proceeding on the question of this overtime work. My view was that Thompson still had the option of asserting his statutory rights under FLSA.

Sincerely,

*L. Powell*

Mr. Justice Brennan

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U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 22, 1972

Re: No. 70-286 - Iowa Beef Packers v. Thompson

Dear Bill:

Please join me.

Sincerely,

*WHR*

Mr. Justice Brennan

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U.S. DEPARTMENT OF JUSTICE