

The Burger Court Opinion Writing Database

NLRB v. Plasterers

404 U.S. 116 (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

November 11, 1971

CHAMBERS OF
THE CHIEF JUSTICE

No. 70-63 - National Labor Relations Board, Petitioner
v. Plasterers' Local Union No. 79, et al.

No. 70-65 - Texas State Tile & Terrazzo Co., Inc., et al.,
v. Plasterers' Local Union No. 79., etc., et al.

MEMORANDUM TO THE CONFERENCE:

In light of the "conversion" of Brothers White and Stewart, it would appear that the former is the leading candidate to write the opinion by putting his name at the head of his excellent memo. All this assumes no "backsliders."

W.E.B.

W. E. B.

5R

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

CHAMBERS OF
THE CHIEF JUSTICE

November 22, 1971

Re: No. 70-63 - NLRB v. Plasterers' Local Union No. 79
No. 70-65 - Texas State Tile & Terrazzo v. Plasterers' Local

Dear Byron:

Please join me.

Regards,

WB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 18, 1971

Dear Chief:

I have your note respecting
No. 70-63 - NLRB v. Plasterers' Local and
No. 70-65- Texas State Tile v. Plasterers'
Local. As I believe I suggested in
Conference, those two cases should be
assigned to Justice White.

As respects No. 70-46 - U. S. v.
Campos-Serrano, it should be assigned to
Justice Stewart.

W.W
William O. Douglas

The Chief Justice

CC: Conference

Douglas Alan File
Oct 11

To: The Chief Justice,
Mr. Justice Black
~~Mr. Justice Douglas~~
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Brennan
Mr. Justice Thurgood Marshall

November 11, 1971

Dear Byron:

In Nos. 70-63 and 70-65, I voted to affirm as you know. And I do not mind taking the "precarious leap" on which you frown at p. 12 of your memo of November 10, 1971. But since you have gone out of your way to cite my Girouard opinion at pp. 13-14 of your memo, my opposed views on the merits of these two cases have melted away and I'll acquiesce in your memo.

In fact, with one or two more quotes from other decisions of mine, my joining of you might become truly enthusiastic.

William O. Douglas

Mr. Justice White

Wm Douglas
a. T.

B *W* *6 Dec'*
November 23, 1971

Dear Byron:

In Nos. 70-63 and 70-65,
would you kindly add:

Mr. Justice Douglas would not
mind taking the "precarious leap" to which
the Court refers and to which the Court
itself is not wholly unaccustomed, although
he finds no necessity to do so in light
of the persuasive reasoning of the Court.

W. O. D.

Mr. Justice White

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 22, 1971

RE: No. 70-63 - N.L.R.B. v. Plasterer's
Local Union
No. 70-65 - Texas State Tile, etc. v.
Plasterer's Local Union

Dear Byron:

This is just formally to confirm that I
am with you in the above. As I understand
it, you are going to convert your memoran-
dum into an opinion.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 11, 1971

Nos. 70-63 and 70-65 --
NLRB v. Plasterers' Union

Dear Byron,

I agree with the memorandum you have circulated in this case.

Sincerely yours,

Q.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 23, 1971

Nos. 70-63 & 70-65 --
NLRB v. Plasterers' Union

Dear Byron,

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

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

Plasterers' v. Plasterers'
November 10, 1971

MEMORANDUM TO THE CONFERENCE

Re: Nos. 70-63 & 70-65 - N.L.R.B. v. Plasterers'
Local Union No. 79, etc., et al.

For the reasons reflected in the attached memorandum, I have changed my mind in these cases and now vote to reverse. Potter Stewart has not yet voted. If the other votes are firm, the case stands 3-3 with Potter in the driver's seat.

Byron R. White
B.R.W.

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

From: White, J.

1st DRAFT

Circulated: 11-10-7

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Nos. 70-63 & 70-65

National Labor Relations
Board, Petitioner,

70-63 *v.*

Plasterers' Local Union
No. 79, Etc., et al.

Texas State Tile & Ter-
razzo Co., Inc., et al.
Petitioners,

70-65 *v.*

Plasterers' Local Union
No. 79, Etc., et al.

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

[November —, 1971]

Memorandum to the Conference by MR. JUSTICE
WHITE.

When a charge is filed under § 8 (b)(4)(D), the provision of the Labor Management Relations Act¹ banning so-called jurisdictional disputes, the Board must "hear and determine the dispute out of which [the] unfair labor practice has arisen" unless "the parties to such dispute" adjust or agree upon a method for the voluntary adjustment of the dispute.² The issue here is whether

¹ 29 U. S. C. § 141 *et seq.*

² Section 8 (b)(4)(D) provides that it shall be an unfair labor practice for a labor organization or its agents "(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;

GP
pp 1, 7, 21

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

2nd DRAFT

From: White, J.

Circulated: _____

Recirculated: 11-23-7

SUPREME COURT OF THE UNITED STATES

Nos. 70-63 & 70-65

National Labor Relations
Board, Petitioner,

70-63 v.

Plasterers' Local Union
No. 79, Etc., et al.

Texas State Tile & Ter-
razzo Co., Inc., et al.,
Petitioners,

70-65 v.

Plasterers' Local Union
No. 79, Etc., et al.

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

[December —, 1971]

MR. JUSTICE WHITE delivered the opinion of the
Court.

When a charge is filed under § 8 (b)(4)(D), the provision of the Labor Management Relations Act¹ banning so-called jurisdictional disputes, the Board must "hear and determine the dispute out of which [the] unfair labor practice has arisen" unless "the parties to such dispute" adjust or agree upon a method for the voluntary adjustment of the dispute.² The issue here is whether

¹ 29 U. S. C. § 141 *et seq.*

² Section 8 (b)(4)(D) provides that it shall be an unfair labor practice for a labor organization or its agents "(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;

B
STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5, 12, 18

*Plasterers Local Union
Petitioners
11/26/71*

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated:

Nos. 70-63 & 70-65

Recirculated: 11/26/71

National Labor Relations
Board, Petitioner.

70-63 v.

Plasterers' Local Union
No. 79, Etc., et al.

Texas State Tile & Ter-
razzo Co., Inc., et al.,
Petitioners.

70-65 v.

Plasterers' Local Union
No. 79, Etc., et al.

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

{December —, 1971]

MR. JUSTICE WHITE delivered the opinion of the
Court.

When a charge is filed under § 8 (b)(4)(D), the pro-
vision of the Labor Management Relations Act¹ banning
so-called jurisdictional disputes, the Board must under
§ 10 (k) "hear and determine the dispute out of which
[the] unfair labor practice shall have arisen unless . . .
the parties to such dispute" adjust or agree upon a
method for the voluntary adjustment of the dispute.²

¹ 29 U. S. C. § 141 *et seq.*

² Section 8 (b)(4)(D) provides that it shall be an unfair labor
practice for a labor organization or its agents "(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:

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 22, 1971

Re: Nos. 70-63 and 70-65 - NLRB v.
Plasterers' Local No. 79, etc.

Dear Byron:

Please join me.

Sincerely,


T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 22, 1971

Re: No. 70-63 - NLRB v. Plasterers' Local Union
No. 70-65 - Texas State Tile & Terrazzo Co.
v. Plasterers' Local Union

Dear Byron:

This, for me, is a very close and difficult case.
Your circulation of November 10, however, is persuasive,
and I would like to join you.

Sincerely,

Har.

Mr. Justice White

cc: The Conference