

# The Burger Court Opinion Writing Database

*NLRB v. Nash-Finch Co.*

405 U.S. 138 (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

November 1, 1971

Re: No. 70-93 - NLRB v. Nash-Finch Co.

Dear Bill:

I concur in the above. See small suggestion  
in pencil at end of page 2.

Regards,

WB

Mr. Justice Douglas

cc: The Conference

labor practices against the company. The General Counsel issued a complaint. A hearing was held and a Trial Examiner sustained the complaint and recommended that the company cease and desist. Shortly thereafter and before the Board had acted, the union picketed the stores. The company thereupon petitioned the Nebraska state court for an injunction. The state court issued a restraining order, limiting the pickets to two at each store, enjoining them from blocking or picketing entrances or exits and from distributing literature pertaining to the dispute which would halt or slow traffic. The injunction also bans anyone other than a bona fide union member from picketing unless he becomes a defendant in the state proceedings, from instigating conversations with customers in any manner relating to the dispute, from mass picketing and acts of physical coercion against persons driving to work, from "loitering about, picketing or patrolling the place of work . . . against the will of such person"; and the injunction also bars anyone, other than pickets and named defendant from picketing, distributing handbills, or otherwise "caus[ing] to be published or broadcast any information pertaining to the dispute . . . between the parties."

Later the Board entered its decision and order accepting in part the Trial Examiner's recommendations and rejecting parts not material to the present controversy.

The Board then filed this suit in the Federal District Court seeking to restrain the state court injunction on the ground that it regulated conduct which was governed exclusively by the National Labor Relations Act. As noted, both the District Court and the Court of Appeals denied the Board relief. The Court of Appeals held that for the purposes of § 2283 the Board is "an administrative agency of the United States, and is not the United States." 434 F. 2d., at 975. Congress from the beginning has restricted the authority

~~company from~~  
~~enforcing~~  
Enforcement  
of the

Pick

Note: As I read the record the NLRB  
directed its aim at the Company rather  
than the State Court alone. The above  
language in margin would  
bracket BOTH, Either way  
I concur (sic)

P/

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-93

National Labor Relations  
Board, Petitioner,      } On Writ of Certiorari to the  
                            v.      United States Court of  
Nash-Finch Company, dba      } Appeals for the Eighth  
                            Jack and Jill Stores.      Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

28 U. S. C. § 2283 provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The question is whether the National Labor Relations Board may, through proceedings in a federal court, enjoin a state court order which regulates peaceful picketing governed by the federal agency. The District Court rejected the Board's contention that it is within the exception to § 2283,<sup>1</sup> recognized in *Leiter Minerals Inc. v. United States*, 352 U. S. 220, as respects suits brought by the United States. The Court of Appeals affirmed. 434 F. 2d 971. The case is here on a petition for a writ of certiorari which we granted, 402 U. S. 928.

When a union began organizing employees of certain stores in Grand Island, Nebraska, the union filed unfair

<sup>1</sup> For the history of present § 2283 see H. R. Rep. No. 208, 80th Cong., 1st Sess., p. A181.

*214.8*

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~~

4th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES:

\_\_\_\_\_  
No. 70-93

Recirculated: *11-5*

National Labor Relations Board, Petitioner.  
v.  
Nash-Finch Company, dba Jack and Jill Stores.

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

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

28 U. S. C. § 2283 provides:

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5P

*p2*

To: The Chief Justice  
Mr. Justice ~~Blair~~  
Mr. Justice ~~Frankfurter~~  
Mr. Justice ~~Harlan~~  
Mr. Justice ~~Harlan~~  
Mr. Justice ~~Stone~~  
Mr. Justice ~~Whitney~~  
Mr. Justice ~~Wright~~

From: Douglas, J.

5th DRAFT

Circulated: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES  
Circulated: 11-12

No. 70-93

National Labor Relations Board, Petitioner, *v.* Nash-Finch Company, dba Jack and Jill Stores. } On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

28 U. S. C. § 2283 provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The question is whether the National Labor Relations Board may, through proceedings in a federal court, enjoin a state court order which regulates peaceful picketing governed by the federal agency. The District Court rejected the Board's contention that it is within the exception to § 2283,<sup>1</sup> recognized in *Leiter Minerals, Inc. v. United States*, 352 U. S. 220, as respects suits brought by the United States. The Court of Appeals affirmed. 434 F. 2d 971. The case is here on a petition for a writ of certiorari which we granted, 402 U. S. 928.

When a union began organizing employees of certain stores in Grand Island, Nebraska, the union filed unfair

<sup>1</sup> For the history of present § 2283 see H. R. Rep. No. 208, 80th Cong., 1st Sess., p. A181.

45  
11/18/71

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-93

National Labor Relations  
Board, Petitioner,  
v.  
Nash-Finch Company, dba  
Jack and Jill Stores. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Eighth  
Circuit.

[November —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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The question is whether the National Labor Relations Board may, through proceedings in a federal court, enjoin a state court order which regulates peaceful picketing governed by the federal agency. The District Court rejected the Board's contention that it is within the exception to § 2283,<sup>1</sup> recognized in *Leiter Minerals, Inc. v. United States*, 352 U. S. 220, as respects suits brought by the United States. The Court of Appeals affirmed. 434 F. 2d 971. The case is here on a petition for a writ of certiorari which we granted, 402 U. S. 928.

When a union began organizing employees of certain stores in Grand Island, Nebraska, the union filed unfair

<sup>1</sup> For the history of present § 2283 see H. R. Rep. No. 208, 80th Cong., 1st Sess., p. A181.

4/5

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

7th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 70-93

Recirculated: 11-23

National Labor Relations Board, Petitioner,  
v.  
Nash-Finch Company, dba Jack and Jill Stores.

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

[December —, 1971]

Mr. JUSTICE DOUGLAS delivered the opinion of the Court.

28 U. S. C. § 2283 provides:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The question is whether the National Labor Relations Board may, through proceedings in a federal court, enjoin a state court order which regulates peaceful picketing governed by the federal agency. The District Court rejected the Board's contention that it is within the exception to § 2283.<sup>1</sup> recognized in *Leiter Minerals, Inc. v. United States*, 352 U. S. 220, as respects suits brought by the United States. The Court of Appeals affirmed. 434 F. 2d 971. The case is here on a petition for a writ of certiorari which we granted. 402 U. S. 928.

When a union began organizing employees of certain stores in Grand Island, Nebraska, the union filed unfair

<sup>1</sup> For the history of present § 2283 see H. R. Rep. No. 208, 80th Cong., 1st Sess., p. A181.

November 18, 1971

**RE: No. 70-93 - N. L. R. B. v. Nash Finch**

Dear Byron:

Please add the following at the foot of your opinion at the appropriate time. I am not circulating this note to the Conference.

"Mr. Justice Brennan would affirm the judgment of the Court of Appeals for the reasons stated in Part I of the dissenting opinion of Mr. Justice White."

Sincerely,

WJB

Mr. Justice White

@ Wm. Brennan  
Oct 7

SP

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

*Handwriting from  
W J B - B PW*

CHAMBERS OF  
JUSTICE POTTER STEWART

November 4, 1971

Re: No. 70-93 -- NLRB v. Nash-Finch Co.

Dear Bill,

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

Sincerely yours,

*P.S.*

Mr. Justice Douglas

Copies to the Conference

37  
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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 11-17-7

No. 70-93

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

National Labor Relations  
Board, Petitioner,  
v.  
Nash-Finch Company, dba  
Jack and Jill Stores. } On Writ of Certiorari to the  
United States Court of  
Appeals for the Eighth  
Circuit.

[November —, 1971]

MR. JUSTICE WHITE, dissenting.

I

The National Labor Relations Board here sues in federal court to enjoin the enforcement of a state court injunction against picketing. Section 2283 bars such injunctions except in specified situations. One exception permits injunctions by a federal court which are "necessary in aid of its jurisdiction." The majority rightfully concedes that this exception is inapplicable here. A state court injunction ~~is~~ no way interferes with the Board's admitted power to prevent unfair labor practices or to secure federal injunctions in those situations specifically identified by Congress. *Capital Service, Inc. v. Board*, 347 U. S. 501 (1954), amply protects the Board power to enjoin state court proceedings where an unfair labor practice is in progress and the jurisdiction of a federal court might later be invoked, but no such Board adjudication was occurring here concerning the picketing. *Capital Service* is not controlling.

*Leiter Minerals v. United States*, 352 U. S. 220 (1957), held that the restrictions of § 2283 do not apply to the Federal Government. The Board identifies itself with the United States and therefore asserts that § 2283 is applicable to it. I cannot agree. The juridical status

*SP/M*

*pp 1-3 9*

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

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: \_\_\_\_\_

No. 70-93

Recirculated: 11-22-

National Labor Relations Board, Petitioner,  
v.  
Nash-Finch Company, dba Jack and Jill Stores.

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

[November —, 1971]

MR. JUSTICE WHITE, dissenting.

I

The National Labor Relations Board here sues in federal court to enjoin the enforcement of a state court injunction against picketing.<sup>1</sup> Section 2283 bars such in-

<sup>1</sup> Although the Board had held an unfair labor practice hearing and had found the employer guilty of certain unfair labor practices while exonerating it of others, this proceeding is not relevant to the issues in the present case because it did not concern the union's picketing. The union had originally filed a complaint and an election petition with the Board, charging the employer with a refusal to bargain and with interfering with the employees' rights to organize. A complaint was issued, and a hearing held. The trial examiner on April 28, 1969, found the employer guilty of certain § 8 (a)(1) and § 8 (a)(5) unfair labor practices and entered a cease and desist order against certain activities of the employer. A month after the trial examiner's decision, the union began its picketing, and the employer then secured the state court injunction limiting the picketing which is at issue in this case. On August 27, 1969, the Board filed a complaint in federal district court seeking to restrain the employer from enforcing the state court injunction. On Sept. 17, 1969, the Board reversed the decision of the trial examiner and held that the employer was not guilty of a § 8 (a)(5) refusal to bargain nor of certain of the § 8 (a)(1) violations the trial examiner had found, but it found the employer guilty of certain

*TM*  
CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

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

*Noting from  
T.M. B. 10/10/71*

November 10, 1971

Re: No. 70-93 - NLRB v. Nash-Finch Company

Dear Bill:

Please join me.

Sincerely,

*T.M.*

T.M.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 5, 1971

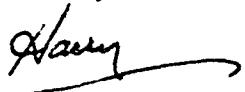
Re: No. 70-93 - NLRB v. Nash-Finch Co.

Dear Bill:

Subject to any dissent which may be forthcoming and circulated, please join me in your proposed opinion for this case.

I have one comment which is more of an inquiry than a suggestion. I believe that the Government does not claim here that the state court injunction is invalid in its entirety. See Appendix, pages 33-34, and page 2 of the Board's reply brief. If I am correct as to this, would there be any merit in remanding the case rather than reversing it outright? The effect would be that the lower courts would then have to consider on the merits the injunctive relief claimed by the NLRB.

Sincerely,



Mr. Justice Douglas

cc: The Conference