

The Burger Court Opinion Writing Database

NLRB v. Burns International Security Services, Inc.

406 U.S. 272 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



3/11
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1972

Re: No. 71-123 - NLRB v. Burns International Security Services
No. 71-198 - Burns International Security Services v. NLRB

Dear Bill:

Your opinion clearly demonstrates that this is not a true "successorship case" at all but merely a factual situation with a superficial resemblance to "successor" cases.

I therefore join in a vote to reverse in No. 71-198 and affirm in No. 71-123.

Regards,

WRB

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

April 14, 1972

No. 71-123 -- NLRB v. Burns International
Security Services, Inc., et al.

No. 71-198 -- Burns International Security
Services, Inc., v. NLRB

Dear Bill:

I remain of the view that your analysis
of this case is the correct one.

Regards,
WRB

Mr. Justice Rehnquist

Copies to the Conference

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U.S. SUPREME COURT
MANUSCRIPT DIVISION

30
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 12, 1972

No. 71-123 --) N. L. R. B. v. Burns Int'l Security
71-198) Services, Inc.

Dear Bill:

Please join me in your concurring and
dissenting opinion.

Regards,

WB D

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March tenth
1972

Dear Byron:

Please join me in your
opinion in Nos. 71-123 and 71-198 --
NLRB v. Burns and Burns v. NLRB.

~~William O. Douglas~~

Mr. Justice White

CC: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 14, 1972

Dear Byron:

In the Burns cases -- Nos. 71-123
and 71-198 -- I am still with you.

W
William O. Douglas

Mr. Justice White

CC: The Conference

W

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 6, 1972

RE: Nos. 71-123 & 71-198 - N. L. R. B.
v. Burns International Security Serv.

Dear Bill:

I agree.

Sincerely,

Paul

Mr. Justice Rehnquist

cc: The Conference

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U.S. LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR

April 26, 1972

RE: Nos. 71-123 & 71-198 N.L.R.B. v.
Burns Intern'l Security Services, Inc.

Dear Bill:

Please join me in your concurring and
dissenting opinion in this case.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 2, 1972

RE: Nos. 71-123 & 71-198 - N.L.R.B. v.
Burns International Security Services

Dear Bill:

Please join me in your dissent in the
above.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 6, 1972

Nos. 71-123 and 71-198
NLRB v. Burns Intl Sec. Services

Dear Bill,

While I expressed differing views at the Conference, I do not plan to write separately in this case. If nobody else writes separately, I shall acquiesce in your opinion for the Court.

Sincerely yours,

P.S.
✓

Mr. Justice Rehnquist

Copies to the Conference

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U.S. SUPREME COURT MANUSCRIPTS

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 14, 1972

Nos. 71-123 & 71-198
NLRB v. Burns Intl Sec. Services

Dear Byron,

I am glad to join the opinion you have
written in this case.

Sincerely yours,

P.S.
✓

Mr. Justice White

Copies to the Conference

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 14, 1972

Nos. 71-123 & 71-198
NLRB v. Burns Intl Sec. Services

Dear Bill,

The opinion that Byron has now written reflects my basic views in this essentially factual case. I am constrained, therefore, to withdraw my tentative acquiescence in your opinion and to join his.

Sincerely yours,

P.S.
✓

Mr. Justice Rehnquist

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3

*You first
joined Blev
dissent*

CHAMBERS OF
JUSTICE POTTER STEWART

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

April 13, 1972

Nos. 71-123 and 71-198 --
NLRB v. Burns Intl Sec. Serv.

Dear Byron,

I am glad to join your opinion for the
Court in these cases.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

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U.S. SUPREME COURT

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 3-9-72

Nos. 71-123 AND 71-198

Recirculated: _____

National Labor Relations Board,
Petitioner,

71-123 v.

Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,

71-198 v.

National Labor Relations Board
et al.

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

[March —, 1972]

MR. JUSTICE WHITE, dissenting in No. 71-198 and concurring in

the result in
No. 71-123.
However valid the Court's treatment of "successorship" may be for the purpose of determining whether Burns was bound to the substantive terms of the collective bargaining contract between the United Plant Guard Workers (the union) and Wackenhut, I find it confusing and for the most part irrelevant on the issue of whether Burns has an obligation to bargain with the union as the representative of the employees in the Lockheed unit. I would put aside the amorphous concept of "successorship" as an independent inquiry and return to the words of § 8 (a) (5) of the NLRA, 29 U. S. C. § 158 (a) (5), which make it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title." Section 159 (a) provides that "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes,

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U.S. SUPREME COURT MANUSCRIPTS

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Nos. 71-123 AND 71-198

Circulated: _____

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Recirculated: _____

National Labor Relations Board,
Petitioner,

71-123 v.

Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,

71-198 v.

National Labor Relations Board
et al.

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

[March —, 1972]

MR. JUSTICE WHITE, with whom MR. JUSTICE MARSHALL joins, dissenting in No. 71-198, and concurring in the result in No. 71-123.

However valid the Court's treatment of "successorship" may be for the purpose of determining whether Burns was bound to the substantive terms of the collective bargaining contract between the United Plant Guard Workers (UPG) and Wackenhut, I find it confusing and for the most part irrelevant on the issue of whether Burns has an obligation to bargain with the union as the representative of the employees in the Lockheed unit. I would put aside the amorphous concept of "successorship" as an independent inquiry and return to the words of § 8 (a) (5) of the NLRA, 29 U. S. C. § 158 (a) (5), which make it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title." Section 159 (a) provides that "Representatives designated or selected for

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: _____

Nos. 71-123 AND 71-198

Recirculated: 3-13-72

National Labor Relations Board,
Petitioner,

71-123 v.

Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,

71-198 v.

National Labor Relations Board
et al.

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

[March —, 1972]

MR. JUSTICE WHITE, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN join, dissenting in No. 71-198, and concurring in the result in No. 71-123.

However valid the Court's treatment of "successorship" may be for the purpose of determining whether Burns was bound to the substantive terms of the collective bargaining contract between the United Plant Guard Workers (UPG) and Wackenhut, I find it confusing and for the most part irrelevant on the issue of whether Burns has an obligation to bargain with the union as the representative of the employees in the Lockheed unit. I would put aside the amorphous concept of "successorship" as an independent inquiry and return to the words of § 8 (a) (5) of the NLRA, 29 U. S. C. § 158 (a) (5), which make it an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title." Section 159 (a) provides that "Representatives designated or selected for

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U. S. DEPARTMENT OF COMMERCE

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 13, 1972

Re: Nos. 71-123 & 71-198 - N.L.R.B. v. Burns
International Security Services

Dear Bill:

I wrote a partial dissent to Bill Rehnquist's opinion in these cases and ended up with five votes, including yours. Brother Rehnquist was not interested in changing his mind and hence the attached effort at an opinion for the Court. I should first have checked with you but I hope you aren't mad.

Sincerely,

Byron

Mr. Justice Douglas

Wm Douglas

B.
You joined Brennan
earlier dissent
[Signature]

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

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DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 4-13-72

Nos. 71-123 AND 71-198

Recirculated: _____

National Labor Relations Board,
Petitioner,
71-123 v.
Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,
71-198 v.
National Labor Relations Board
et al.

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

[April —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

Burns International Security Services, Inc. (Burns), replaced another employer, the Wackenhut Corporation (Wackenhut), who had previously provided plant protection services for the Lockheed Aircraft Service Company (Lockheed) located at the Ontario International Airport in California. When Burns began providing security service, 27 of its 42 guards had been employed by Wackenhut but it refused to bargain with the United Plant Guard Workers of America (the union) which had been certified after an NLRB election as the exclusive bargaining representative of Wackenhut's employees less than four months earlier. The narrow issue which is initially presented in this case is whether Burns refused to bargain with a union representing a majority of employees in an appropriate unit, and whether the Board was authorized, under these circumstances, to issue a bargaining order. Resolution turns to a great extent on the precise facts involved here.

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U.S. SUPREME COURT RECORDS

10: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
✓ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

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SUPREME COURT OF THE UNITED STATES

Circulated: 4-28-72

Nos. 71-123 AND 71-198

National Labor Relations Board,
Petitioner,
71-123 v.
Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,
71-198 v.
National Labor Relations Board
et al.

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

[April —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

Burns International Security Services, Inc. (Burns), replaced another employer, the Wackenhut Corporation (Wackenhut), who had previously provided plant protection services for the Lockheed Aircraft Service Company (Lockheed) located at the Ontario International Airport in California. When Burns began providing security service, it employed 42 guards; 27 of them had been employed by Wackenhut. Burns refused, however, to bargain with the United Plant Guard Workers of America (the union) which had been certified after an NLRB election as the exclusive bargaining representative of Wackenhut's employees less than four months earlier. The issues presented in this case are whether Burns refused to bargain with a union representing a majority of employees in an appropriate unit

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March 10, 1972

THE UNIVERSITY OF CHICAGO

Please join me in your circulation
of March 9.

T.M.

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 19, 1972

Re: Nos. 71-123 and 71-198 - NRLB v. Burns, etc.

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

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U.S. SUPREME COURT LIBRARY

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 13, 1972

Re: No. 71-123 - NLRB v. Burns International
Security Services
No. 71-198 - Burns International Security
Services v. NLRB

Dear Byron:

Please join me in your recirculation of

March 11.

Sincerely,

H.A.B.
—

Mr. Justice White

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 17, 1972

Re: No. 71-123 - NLRB v. Burns International
Security Services
No. 71-198 - Burns International Security
Services v. NLRB

Dear Byron:

I am still with you in these cases.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference

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


CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 6, 1972

Re: No. 71-123 NLRB v. Burns International
Security Services, Inc.
No. 71-198 Burns International Security
Services, Inc. v. Burns

Dear Bill:

Please join me in your fine opinion for the Court in the
above cases.

Sincerely,

L. F. P.

Mr. Justice Rehnquist

cc: The Conference

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AN APPROPRIATE CONCEPT

cc: The Conference

38

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 3, 1972

MEMORANDUM TO THE CONFERENCE

Re: 71-123 - NLRB v. Burns
71-198 - Burns v. NLRB

A check of my notes indicates that in these cases there was a substantial majority to affirm the Court of Appeals on the issue of whether the successor was bound by the previously executed collective bargaining agreement. However, on the Burns petition challenging the finding of successorship, the vote was 4-4, with my vote tentative for affirmance. In drafting the opinion, I have concluded that my vote should be for reversal, and the enclosed opinion so reads.

Sincerely,

WHR

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 71-123 AND 71-198

From: Rehnquist, J.
Circulated: 3/3/72

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National Labor Relations Board,
Petitioner,
71-123 v.
Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,
71-198 v.
National Labor Relations Board
et al.

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

[March —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Lockheed Aircraft Services Company operates a facility at the Ontario International Airport, located approximately 40 miles east of downtown Los Angeles in San Bernardino County, California. Shortly before July 1, 1967, on the basis of bids previously called for, Lockheed awarded petitioner Burns a contract to furnish plant protection services at the Lockheed facility. Lockheed began furnishing these services on that date, having hired a total complement of 42 persons for that purpose. Shortly after Burns began performance of its contract with Lockheed, the United Plant Guard Workers of America ("the union") by letter demanded that Burns recognize the union as the exclusive bargaining agent for the 42 guard employees employed by Burns at the Lockheed facility. The union's letter also demanded that

3
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stylistic

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 71-123 AND 71-198

From: Rehnquist, J.
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National Labor Relations Board,
Petitioner,
71-123 v.
Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,
71-198 v.
National Labor Relations Board
et al.

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

[March —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Lockheed Aircraft Services Company operates a facility at the Ontario International Airport, located approximately 40 miles east of downtown Los Angeles in San Bernardino County, California. Shortly before July 1, 1967, on the basis of bids previously called for, Lockheed awarded petitioner Burns a contract to furnish plant protection services at the Lockheed facility. Burns began furnishing these services on that date, having hired a total complement of 42 persons for that purpose. Shortly after Burns began performance of its contract with Lockheed, the United Plant Guard Workers of America ("the union") by letter demanded that Burns recognize the union as the exclusive bargaining agent for the 42 guard employees employed by Burns at the Lockheed facility. The union's letter also demanded that

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U. S. DEPARTMENT OF JUSTICE

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

From: Rehnquist, J.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: _____
Recirculated: 4/26/72

Nos. 71-123 AND 71-198

National Labor Relations Board,
Petitioner,
71-123 v.
Burns International Security
Services, Inc., et al.

Burns International Security
Services, Inc., Petitioner,
71-198 v.
National Labor Relations Board
et al.

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

[May —, 1972]

MR. JUSTICE REHNQUIST, concurring and dissenting.

Although the Court studiously avoids using the term "successorship" in concluding that Burns did have a statutory obligation to bargain with the union, it affirms the conclusions of the Board and the Court of Appeals to that effect which were based entirely on the successorship doctrine. Because I believe that the Board and the Court of Appeals stretched that concept beyond the limits of its proper application, I would enforce neither the Board's bargaining order nor its order imposing upon Burns the terms of the contract between the union and Wackenhut. I therefore concur in 71-123 and dissent in 71-198.

The National Labor Relations Act imposes upon an employer the obligation "to . . . bargain collectively with the representatives of his employees" 29 U. S. C. § 158 (a)(5). It also defines those representa-