

# 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



36  
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,

WB RS

Mr. Justice Rehnquist

cc: The Conference

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

April 14, 1972

CHAMBERS OF  
THE CHIEF JUSTICE

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,  


Mr. Justice Rehnquist

Copies to the Conference

P  
Supreme Court of the United States  
Washington, D. C. 20543CHAMBERS OF  
THE CHIEF JUSTICE

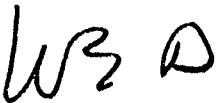
May 12, 1972

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,



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.

*W.O.D.*  
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.

William O. Douglas

Mr. Justice White

CC: The Conference

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,



Mr. Justice Rehnquist

cc: The Conference

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,



Mr. Justice Rehnquist

cc: The Conference

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

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

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

*BM*

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,

*RS*  
*1*

Mr. Justice Rehnquist

Copies to the Conference

*3*  
You have  
joined the  
Court  
present

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

(8)  
gw  
*Please give me*  
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

Nos. 71-123 AND 71-198

From: White, J.

Circulated: 3-9-72

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,

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: MAR 11 1972

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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p. 1

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

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,



Mr. Justice Douglas



B  
You joined Bill  
earlier dessert  
MM

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

151  
9  
4th DRAFT

From: White, J.

TES Circulated: 4-13-72

**SUPREME COURT OF THE UNITED STATES.**

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.

3: 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.

2nd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES<sup>1</sup>

ATES Calculated: 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

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 10, 1972

Re: Nos. 71-123 and 71-198 - NLRB v. Burns  
International Security Services, et al.

Dear Byron:

Please join me in your circulation  
of March 9.

Sincerely,

  
T.M.

Mr. Justice White

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

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,

*Hab.*

Mr. Justice White

cc: The Conference

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,

*HAB*

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

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 1, 1972

Re: Nos. 71-123 and 71-198 NLRB v. Burns  
International Security Services, Inc.

Dear Bill:

As Byron has a Court for his opinion in these cases, I assume that your opinion - which I have previously joined - will become a dissenting opinion.

Although the issue is a close one on the "successorship" point, I will remain with you in dissent.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

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

To: The Chief Justice 13  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 71-123 AND 71-198

FRONT, RECOMMENDED, J.  
STATES Circulated: 3/3/72  
Recirculated: \_\_\_\_\_

Recirculated:

National Labor Relations Board,  
Petitioner.

71-123

Burns International Security  
Services, Inc., et al.

Burns International Security  
Services, Inc., Petitioner,

71-198

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

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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**

Ernest Rehnquist, J.

Circulated:

Recirculated: 3/16/72

National Labor Relations Board,  
Petitioner,  
71-122

71-123

**Burns International Security  
Services, Inc., et al.**

**Burns International Security  
Services, Inc., Petitioner,**

71-198

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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**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

3rd DRAFT

From: Rehnquist, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated:

Regirculated

4/26/72

Nos. 71-123 AND 71-198

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-