

# The Burger Court Opinion Writing Database

*Operating Engineers v. Flair Builders, Inc.*  
406 U.S. 487 (1972)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University  
Forrest Maltzman, George Washington University



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

CHAMBERS OF  
THE CHIEF JUSTICE

May 29, 1972

Re: No. 71-41 - Intl. Union of Operating Engineers  
Local 150 v. Flair Builders

Dear Lewis:

Please join me in your dissent.

I find this case close and difficult but your dissent  
tips the scales for me.

Regards,

WRB

Mr. Justice Powell

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

B

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May fifth  
1972

Dear Bill:

In No. 71-41 - International Union  
v. Flair Builders, I agree with your  
draft of May 5, 1972.

*WOD*  
William O. Douglas

Mr. Justice Brennan

CC: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

From: Brennan, J.

1st DRAFT

Circulated: 5-5-72

**SUPREME COURT OF THE UNITED STATES**

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

No. 71-41

International Union of Oper-  
ating Engineers, Local 150,  
AFL-CIO, Petitioner,  
v.  
Flair Builders, Inc.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sev-  
enth Circuit.

[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In June 1968, petitioner brought an action in the United States District Court for the Northern District of Illinois, seeking damages and injunctive relief for an alleged breach by respondent of their collective-bargaining agreement. The complaint charged that since June 1, 1966, respondent had "continually violated" the contract by refusing to abide by any of its terms, including wage, hiring hall, and fringe benefit provisions. The agreement, which incorporated the terms of master contracts between petitioner and a local contractors' association, provided for arbitration "of any difference . . . between the parties hereto which cannot be settled by their representatives, within 48 hours of the occurrence."

The District Court dismissed petitioner's action for failure to state a claim and noted, but did not pass upon, two additional contentions of the company—"that (1) no contract was ever created, and (2) . . . if consummated, the agreement was subsequently abandoned by the union." — F. Supp. —, — (1969). The court suggested that the parties arbitrate the binding effect of

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

From: Brennan, J.

2nd DRAFT

Circulate

SUPREME COURT OF THE UNITED STATES

Recirculate

5-8-72

No. 71-41

International Union of Oper-  
ating Engineers, Local 150,  
AFL-CIO, Petitioner,  
v.  
Flair Builders, Inc.

On Writ of Certiorari to  
the United States Court  
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U.S. DEPARTMENT OF COMMERCE

2 to 5

Please join me  
[Signature]

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 71-41

5/11/72

International Union of Oper-  
ating Engineers, Local 150,  
AFL-CIO, Petitioner,  
v.  
Flair Builders, Inc.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sev-  
enth Circuit.

[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the  
Court.

In November 1968, petitioner brought an action in the  
United States District Court for the Northern District of  
Illinois, seeking damages and injunctive relief for an al-  
leged breach by respondent of their collective-bargaining  
agreement. The complaint charged that since June 1,  
1966, respondent had "continually violated" the contract  
by refusing to abide by any of its terms, including wage,  
hiring hall, and fringe benefit provisions. The agree-  
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between petitioner and a local contractors' association,  
provided for arbitration "of any difference . . . between  
the parties hereto which cannot be settled by their rep-  
resentatives, within 48 hours of the occurrence."

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no contract was ever created, and (2) . . . if consum-  
mated, the agreement was subsequently abandoned by  
the union." — F. Supp. —, — (1969). The court  
suggested that the parties arbitrate the binding effect of

3  
/

pages 2, 4, 5

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

4th DRAFT

From: The Hon. J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_  
Reframed: 5-29-72

No. 71-41

International Union of Oper- ating Engineers, Local 150, AFL-CIO, Petitioner, v. Flair Builders, Inc.	} On Writ of Certiorari to the United States Court of Appeals for the Sev- enth Circuit.
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[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In November 1968, petitioner brought an action in the United States District Court for the Northern District of Illinois, seeking damages and injunctive relief for an alleged breach by respondent of their collective-bargaining agreement. The complaint charged that since June 1, 1966, respondent had "continually violated" the contract by refusing to abide by any of its terms, including wage, hiring hall, and fringe benefit provisions. The agreement, which incorporated the terms of master contracts between petitioner and a local contractors' association, provided for arbitration "of any difference . . . between the parties hereto which cannot be settled by their representatives, within 48 hours of the occurrence."

The District Court dismissed petitioner's action for failure to state a claim and noted, but did not pass upon, two additional contentions of the company—"that (1) no contract was ever created, and (2) . . . if consummated, the agreement was subsequently abandoned by the union." No. 68-C-2091 (April 14, 1969) (unreported). The court suggested that the parties arbitrate the binding effect of their contract. When the company

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OFFICE OF THE CLERK OF THE SUPREME COURT

3

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 9, 1972

71-41 - Intl Union of Operating  
Engrs v. Flair Builders

Dear Bill,

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

Sincerely yours,

P.S.  
✓

Mr. Justice Brennan

Copies to the Conference

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SSSBCNOC 20 ADV DDL 1 IN



8

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 11, 1972


Re: No. 71-41 - International  
Union of Operating Engineers  
v. Flair Builders, Inc.

---

Dear Bill:

Please join me in your  
circulation of May 11, 1972.

Sincerely,



Mr. Justice Brennan

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U.S. SUPREME COURT MANUSCRIPTS

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 11, 1972

Re: No. 71-41 - International Union of  
Operating Engineers v. Flair Builders

Dear Bill:

Please join me.

Sincerely,

  
T.M.

Mr. Justice Brennan

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

6

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 11, 1972

Re: No. 71-41 - International Union v. Flair  
Builders, Inc.

Dear Bill:

Please join me.

Sincerely,

HAB

Mr. Justice Brennan

cc: The Conference

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SSS UNOC 30 ADV 1 IN

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-41

From: Powell, J.

Circulated: MAY 19 1972

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

International Union of Oper-  
ating Engineers, Local 150,  
AFL-CIO, Petitioner,  
v.  
Flair Builders, Inc.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sev-  
enth Circuit.

[May —, 1972]

MR. JUSTICE POWELL, dissenting.

Through the exercise of formal logic the majority reaches a conclusion which I believe is unjust. A full statement of the facts is necessary to put this case in proper perspective. Flair Builders, Inc. (Flair) is a small independent construction firm. The International Union of Operating Engineers, Local 150, AFL-CIO (the Union), had a master collective-bargaining agreement in effect with many contractor associations in Flair's area. On May 12, 1964, the Union and Flair signed a memorandum agreement which adopted the terms of the then existing master bargaining agreement. The memorandum provided that Flair would be bound by any future master agreement entered between the Union and the contractor associations. Flair had *only one* employee at the time it signed the memorandum agreement with the Union. This employee joined the Union, but left Flair's employment about two weeks later. His job was filled successively by employees who operated the only piece of equipment owned by Flair. None of these successor employees belonged to the Union.

In the ensuing years, Flair prospered and added a modest amount of additional equipment. By 1967 it owned four pieces. Throughout the period from May 1964 until the summer of 1968, Flair operated all of its equipment

B 144

Joined w/ B  
Stylistic Changes Throughout

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-41

From: Powell, J.

Circulated: MAY 22 1972

Recirculated:

International Union of Oper-  
ating Engineers, Local 150,  
AFL-CIO, Petitioner,  
v.  
Flair Builders, Inc. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Sev-  
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[May —, 1972]

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-41

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

Recirculated: MAY 29 1972

International Union of Oper-  
ating Engineers, Local 150,  
AFL-CIO, Petitioner,  
v.  
Flair Builders, Inc.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Sev-  
enth Circuit.

[May 30, 1972]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE  
joins, dissenting.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

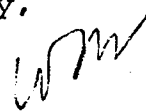
May 15, 1972

Re: 71-41 - International Union v. Flair Builders

Dear Bill:

Please join me in your opinion of the Court in this case.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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U.S. SUPREME COURT