

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



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,

WBP

Mr. Justice Powell

cc: The Conference

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.

William O. Douglas

Mr. Justice Brennan

CC: The Conference

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

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

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

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Pages 3-5

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

From: [Redacted] 1

2nd DRAFT

Circulate

5-8-72

SUPREME COURT OF THE UNITED STATES

Recirculate

No. 71-41

International Union of Operating Engineers, Local 150, AFL-CIO, Petitioner, } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
v.
Flair Builders, Inc.

[May —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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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

2 to 5
Brennan, Jr.

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

Revised version

5/11/72

International Union of Operating 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 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."

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Pages 9, 14, 15

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: Mr. Justice J.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated _____
Received _____
5-29-72

No. 71-41

International Union of Operating Engineers, Local 150, AFL-CIO, Petitioner,
v.
Flair Builders, Inc. } On Writ of Certiorari to the United States Court of Appeals for the Seventh 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 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

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

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

Copies to Conference

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

5
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

2nd DRAFT

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

From: Powell, J.

Circulated: MAY 19 1972

SUPREME COURT OF THE UNITED STATES

No. 71-41

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

On Writ of Certiorari to Recirculated:
the United States Court
of Appeals for the Seventh 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

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JAY

Joined w/ 2
Stylistic Changes Throughout

3rd DRAFT

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

From: Powell, J.

Circulated:

MAY 22 1972

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 71-41

International Union of Operating 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 result 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

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:

MAY 29 1972

Recirculated:

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

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

[May 30, 1972]

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

Through the exercise of formal logic the majority reaches a result 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.

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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,

W.W.

Mr. Justice Brennan

Copies to the Conference