The Burger Court Opinion Writing Database

Brennan v. Arnheim & Neely, Inc.

410 U.S. 512 (1973)

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

B

File

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

CHAMBERS OF
THE CHIEF JUSTICE

February 21, 1973

Re: No. 71-1598 - Hodgson v. Arnheim

Dear Potter:

Please join me.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

B file

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 22, 1973

Dear Potter:

I join your opinion in No. 71-1598 - Brennan v. Arnheim & Neely, Inc. - 3rd draft dated February 22, 1973.

W. O. D.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 5, 1973

RE: No. 71-1598 - Hodgson v. Arnheim

Dear Potter:

I agreee.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

Please join me

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

From: Stewart, J.

Circulated: JAN 31

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1598

James D. Hodgson, Secretary of Labor, Petitioner, *v.* Arnheim and Neely, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case began when the Secretary of Labor sued the respondent, a real estate management company, for alleged violations of the Fair Labor Standards Act as amended, 29 U. S. C. § 201 *et seq.* The Secretary sought an injunction against future violations of the minimum wage, overtime, and recordkeeping provisions of the Act, ~~as well as back wages for the affected employees~~. An employee is entitled to the benefits of the minimum wage and maximum hours provisions of the Act if he is, *inter alia*, "employed in an enterprise engaged in commerce or in the production of goods for commerce. . . ." 29 U. S. C. §§ 206 (a), 207 (a).

As stipulated in the District Court, the respondent company manages eight commercial office buildings and one apartment complex in the Pittsburgh area. With the exception of a minor ownership interest in one of the buildings, the respondent does not own these properties. Its services are provided according to management contracts entered into with the owners. Under these contracts, the respondent obtains tenants for the buildings, negotiates and signs leases, institutes whatever legal

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 22, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 71-1598 - Brennan v. Arnheim & Neely, Inc.

The new footnote 8 on page 9 of this proposed opinion is, of course, premature. But it was my understanding at the last Conference that at least four of us thought that certiorari should be granted in Falk v. Hodgson to consider the two questions left unresolved in the present case.

P. S.

P. S.

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

3rd DRAFT

From: Stewart, J.

Circulated: _____

Recirculated: FEB 22

SUPREME COURT OF THE UNITED STATES

No. 71–1598

Peter J. Brennan, Secretary of Labor, Petitioner, *v.* Arnheim and Neely, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case began when the Secretary of Labor sued the respondent, a real estate management company, for alleged violations of the Fair Labor Standards Act as amended, 29 U. S. C. § 201 *et seq.* The Secretary sought an injunction against future violations of the minimum wage, overtime, and recordkeeping provisions of the Act, as well as back wages for the affected employees. An employee is entitled to the benefits of the minimum wage and maximum hours provisions of the Act if he is, *inter alia,* "employed in an enterprise engaged in commerce or in the production of goods for commerce. . . ." 29 U. S. C. §§ 206 (a), 207 (a).

As stipulated in the District Court, the respondent company manages eight commercial office buildings and one apartment complex in the Pittsburgh area. With the exception of a minor ownership interest in one of the buildings, the respondent does not own these properties. Its services are provided according to management contracts entered into with the owners. Under these contracts, the respondent obtains tenants for the buildings, negotiates and signs leases, institutes whatever legal

B

Pp. 5, 9

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

From: Stewart, J.

Circulated: _____

Recirculated FEB 23 1973

SUPREME COURT OF THE UNITED STATES

No. 71-1598

Peter J. Brennan, Secretary of Labor, Petitioner, *v.* Arnheim and Neely, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February 28, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

This case began when the Secretary of Labor sued the respondent, a real estate management company, for alleged violations of the Fair Labor Standards Act as amended, 29 U. S. C. § 201 *et seq.* The Secretary sought an injunction against future violations of the minimum wage, overtime, and recordkeeping provisions of the Act, as well as back wages for the affected employees. An employee is entitled to the benefits of the minimum wage and maximum hours provisions of the Act if he is, *inter alia,* "employed in an enterprise engaged in commerce or in the production of goods for commerce. . . ." 29 U. S. C. §§ 206 (a), 207 (a).

As stipulated in the District Court, the respondent company manages eight commercial office buildings and one apartment complex in the Pittsburgh area. With the exception of a minor ownership interest in one of the buildings, the respondent does not own these properties. Its services are provided according to management contracts entered into with the owners. Under these contracts, the respondent obtains tenants for the buildings, negotiates and signs leases, institutes whatever legal

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 12, 1973

Re: No. 71-1598 - Hodgson v. Arnheim

Dear Potter:

In due course I shall circulate a dissent in this case.

Sincerely,

Byron

Mr. Justice Stewart

Copies to Conference

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

From: White, J.

Circulated: 4-11-73

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 71-1598

James D. Hodgson, Secretary of Labor, Petitioner, *v.* Arnheim and Neely, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1973]

MR. JUSTICE WHITE, dissenting.

It is undisputed that for the minimum wage requirements of the Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U. S. C. § 201 *et seq.*, to apply in this case, the employees involved must be employed in an "enterprise engaged in commerce or in the production of goods for commerce." [1] 29 U. S. C. § 206 and § 207. An "enterprise" for the purpose of the Act "means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose . . . ." *Id.*, § 203 (r). An enterprise, however, does not include the related activities performed for the enterprise by an independent contractor nor other specified arrangements including otherwise independent establishments occupying premises leased to them by the same person. *Ibid.*

[1] As discussed in the majority opinion, the Act as passed in 1938, 52 Stat. 1060, covered only employees "engaged in commerce or in the production of goods for commerce." The 1961 amendments, 75 Stat. 65 and 67, greatly broadened the scope of the Act by adding the "enterprise" concept to cover those employees not directly engaged in commerce or in the production of goods for commerce but employed by an "enterprise" that was. Because the employees in this case are not engaged in commerce or in the production of goods for commerce, they must belong to an "enterprise" so engaged, if they are to be covered.

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

From: White, J.

Circulated: _____

Recirculated: 2-23-73

SUPREME COURT OF THE UNITED STATES

No. 71-1598

Peter J. Brennan, Secretary of Labor, Petitioner, *v.* Arnheim and Neely, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1973]

MR. JUSTICE WHITE, dissenting.

It is undisputed that for the minimum wage requirements of the Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U. S. C. § 201 *et seq.*, to apply in this case, the employees involved must be employed in an "enterprise engaged in commerce or in the production of goods for commerce."[1] 29 U. S. C. §§ 206 and 207. An "enterprise" for the purpose of the Act "means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose . . . ." *Id.*, § 203 (r). An enterprise, however, does not include the related activities performed for the enterprise by an independent contractor nor other specified arrangements, including other-

[1] As discussed in the majority opinion, the Act as passed in 1938, 52 Stat. 1060, covered only employees "engaged in commerce or in the production of goods for commerce." The 1961 amendments, 75 Stat. 65–67, 69, greatly broadened the scope of the Act by adding the "enterprise" concept to cover those employees not directly engaged in commerce or in the production of goods for commerce but employed by an "enterprise" that was. Because the employees in this case are not engaged in commerce or in the production of goods for commerce, they must belong to an "enterprise" so engaged, if they are to be covered.

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

From: White, J.

Circulated: _____

Recirculated: 2-26-73

SUPREME COURT OF THE UNITED STATES

No. 71-1598

Peter J. Brennan, Secretary of Labor, Petitioner, *v.* Arnheim and Neely, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February 28, 1973]

MR. JUSTICE WHITE, dissenting.

It is undisputed that for the minimum wage and maximum hour requirements of the Fair Labor Standards Act, 52 Stat. 1060, as amended, 29 U. S. C. § 201 *et seq.*, to apply to all the employees involved in this case, they must be employed in an "enterprise engaged in commerce or in the production of goods for commerce."[1] 29 U. S. C. §§ 203 (s), 206, and 207. An "enterprise" for the purpose of the Act "means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose . . . ." *Id.*, § 203 (r). An enterprise, however, does not include the related activities performed for the enterprise by an independent contractor nor other specified arrangements, including other-

[1] As discussed in the majority opinion, the Act as passed in 1938, 52 Stat. 1060, covered only employees "engaged in commerce or in the production of goods for commerce." The 1961 amendments, 75 Stat. 65-67, 69, greatly broadened the scope of the Act by adding the "enterprise" concept to cover those employees not directly engaged in commerce or in the production of goods for commerce but employed by an "enterprise" that was. Therefore, those employees in this case not engaged in commerce or in the production of goods for commerce, must belong to an "enterprise" so engaged, if they are to be covered.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 7, 1973

Re: No. 71-1598 - Hodgson v. Arnheim and Neely, Inc.

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 1, 1973

Re: No. 71-1598 - Hodgson, Secretary v. Arnheim and Neely, Inc., et al.

Dear Potter:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Stewart

Copies to the Conference

B

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 6, 1973

Re: No. 71-1598 - Hodgson v. Arnheim and Neely

Dear Potter:

I have not yet decided what I will do in this case.

Your opinion is an excellent one, and I may well join you. I am concerned, however, as to the precedent it will set in situations involving large numbers of owners of small apartment houses who rely on agents for the many services that are required. I have difficulty in believing that the Act was intended to reach that far.

Sincerely,

Lewis

Mr. Justice Stewart

February 19, 1973

Re: No. 71-1598 Hodgson v. Arnheim and Neely

Dear Potter:

This will confirm my oral advice to you that I have now decided to join your opinion.

Sincerely,

L F P

Mr. Justice Stewart

cc: The Conference

February 19, 1973

Re: No. 71-1598 Hodgson v. Arnheim and Neely

Dear Potter:

This will confirm my oral advice to you that I have now decided to join your opinion.

Sincerely,

Mr. Justice Stewart

cc: The Conference

Dear Chief: The point that concerned me is the use of "gross rentals" rather than net rental commissions, in determining whether a real estate company is covered by the Fair Labor Standards Act. As this issue - which was reserved in Potter's opinion in Arnheim - is squarely presented in the Fourth Circuit case which we relisted for next Friday's Conference, I am joining Potter and will vote to grant the Fourth Circuit case. Potter also will vote to grant, as will Harry.

L. F. P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 2, 1973

Re: No. 71-1598 - Hodgson v. Arnheim and Neely

Dear Potter:

I voted the other way at Conference, and will wait to see what else is written; I do not rule out the possibility of joining your quite persuasive opinion.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 22, 1973

Re: No. 71-1598 - Hodgson v. Arnheim and Neely

Dear Potter:

Please join me.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference