

# The Burger Court Opinion Writing Database

*NLRB v. Boeing Co.*

412 U.S. 67 (1973)

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

April 2, 1973

Re: Assignments

MEMORANDUM TO THE CONFERENCE:

Several of you whose offices were still open at 5:00 p.m. Saturday received the original assignment sheet. Please disregard it.

After the list was delivered, Bill Brennan advised me that he had assigned 71-1607 - NLRB v. Boeing Co. to Bill Rehnquist. A new assignment sheet is enclosed since I was unaware of this assignment.

Since I contemplated assigning the companion case 71-1417 - Booster Lodge v. NLRB I had made that assignment to Thurgood, along with 71-1607, overlooking the vote in 71-1417 as 8-1 and in 71-1607 as 5-4. (I had relied on the vote sheet in 71-1417 in assigning to Thurgood.) In these circumstances, with Bill Rehnquist having 71-1607 - NLRB v. Boeing Co., it is logical to assign 71-1417 - Booster Lodge v. NLRB also to Bill Rehnquist.

To make up for this withdrawal from Thurgood I now assign 71-1647 - Federal Maritime Comm. v. Seatrain Lines to him.

Regards,

WLB

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

CHAMBERS OF  
THE CHIEF JUSTICE

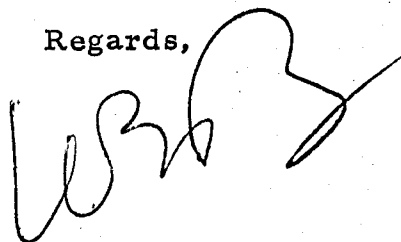
May 16, 1973

Re: No. 71-1607 - NLRB v. Boeing Co.

MEMORANDUM TO THE CONFERENCE:

I will be dissenting in the above along the lines  
in the attached.

Regards,



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

From: Mr. Justice

Circulated: MAY 16 1971

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

No. 71-1607 - NLRB v. The Boeing Co.

MR. CHIEF JUSTICE BURGER, dissenting.

It is odd, to say the least, to find a union urging on us severe limitations on NLRB authority, and telling us that the state courts are the proper forum for the union and its members to resolve questions regarding the reasonableness of fines imposed on workers for violation of union rules. For years, there has been unrelenting union opposition to state court "intervention" into industrial and union disputes. We have been told countless times that the "expertise" of the Labor Board, based on its overview and intimate familiarity with labor problems, is essential in this area. And there is, of course, much logic in that approach.

A union must, of course, have some disciplinary powers or it would disintegrate. However, the power to discipline can easily turn

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Circular

[May 21, 1973]

It is odd, to say the least, to find a union urging on us severe limitations on NLRB authority, and telling us that state courts are the proper forum to resolve questions regarding the reasonableness of fines imposed on workers for violation of union rules. For years, there has been unrelenting union opposition to state court "intervention" into industrial disputes and union activities. We have been told countless times that the "expertise" of the Labor Board, based on its overview and intimate familiarity with labor problems, is essential in this area.

A union must, of course, have some disciplinary powers or it would disintegrate. However, the power to discipline can easily turn from a means of enforcing valid rules to an oppressive and coercive device of retribution, a weapon which, when used to extremes, may deprive a working man of his very means of sustenance. Whether a particular fine is required in a particular situation involves a weighing of the delicate balance of relations between the employers, employees and union involved. Such an intimate knowledge of labor relations has consistently been ascribed to the Board, often by the unions. It is the Board that deals with such matters on a daily basis. It is the Board that has the jurisdiction and

# AN ILLUSTRATION OF CONCRETE

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

CHAMBERS OF  
THE CHIEF JUSTICE

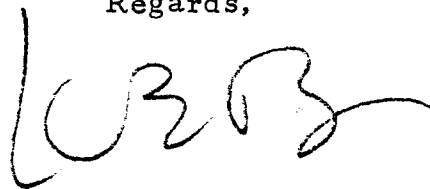
May 21, 1973

Re: 71-1607 - NLRB v. Boeing Co.

Dear Bill:

I inadvertently neglected to formally join  
your dissenting opinion in the above. I do so now  
and the printed reports will carry this omission.

Regards,



Mr. Justice Douglas

Copies to the Conference

cc: Mr. Rodak  
Mr. Putzel

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WD

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 1st, 1973

Dear Bill:

I had hoped to have my dissent  
in No. 71-1417 - Booster Lodge v. NLRB -  
around this week. It is in draft form  
but will not be circulated probably until  
May 7 or 8.

W. O. D.

*should be 71-1607  
RBB*

Mr. Justice Rehnquist

cc: Conference

3  
71-  
71417

To: The Chief Justice  
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

No. 71-1607

From: Douglas, J.

National Labor Relations Board, Petitioner,  
v.  
The Boeing Company et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the District of Columbia Circuit.

5-4-73

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

[May —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

I dissent from the holding of the Court that the Board has no jurisdiction to determine the "reasonableness" of the fines placed by the union on its dissident members.

The union and Boeing had an effective collective-bargaining agreement from May 16, 1963 through September 15, 1965. On the expiration of that contract the union struck against Boeing, causing a work stoppage that lasted 18 days. On October 2, 1967, a new collective agreement was reached and work was resumed.

During the strike about 143 employees at the Michoud plant crossed the picket line and reported for work. All of these had been union members during the 1963-1965 contract period. Some of the 143 who worked during the strike did not resign from the union. 119 did resign—61 before they crossed the picket line and returned to work; 58 resigned during the course of the strike, but after they had crossed the picket line. All of these resignations were submitted after the expiration of the 1963-1965 collective agreement. The union never warned members on this or on earlier occasions, that disciplinary measures could or would be taken against members who crossed the picket line.

After the new collective agreement was reached, the union notified all members, who had crossed the picket

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5-8-73

2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 71-1607

National Labor Relations Board, Petitioner,	} On Writ of Certiorari to the United States Court of Appeals for the Dis- trict of Columbia Circuit.
v.	
The Boeing Company et al.	

[May 2, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK-  
MUN concurs, dissenting.

I dissent from the holding of the Court that the Board has no jurisdiction to determine the "reasonableness" of the fines placed by the union on its dissident members.

The union and Boeing had an effective collective-bargaining agreement from May 16, 1963 through September 15, 1965. On the expiration of that contract the union struck against Boeing, causing a work stoppage that lasted 18 days. On October 2, 1965, a new collective agreement was reached and work was resumed.

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After the new collective agreement was reached, the union notified all members who had crossed the picket

WD

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 24, 1973

Re: NLRB v. Boeing Co., No. 71-1607

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Dear Bill:

Please join me.

Sincerely yours,

*Bill*

Mr. Justice Rehnquist

Copies to the Conference

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 24, 1973

Re: No. 71-1607, NLRB v. Boeing Co.

Dear Bill,

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

Sincerely yours,

P.S.  
✓

Mr. Justice Rehnquist

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U.S. SUPREME COURT RECORDS

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 25, 1973

Re: No. 71-1607 - NLRB v. The Boeing Co.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

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U.S. DEPARTMENT OF COMMERCE

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 26, 1973

Re: No. 71-1607 - NLRB v. Boeing Co.

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 7, 1973

Re: No. 71-1607 - NLRB v. Boeing Company

Dear Bill:

I am in sympathy with the dissent you have prepared for this case. Would you, however, be willing to change the third and fourth sentences of the first full paragraph on page 4 to read as follows:

"Employees, however, often are at the bottom of the totem pole, indigent and unworldly when it comes to litigation. Such a suit is likely to be no contest."

If this could be done, I am with you.

Sincerely,



Mr. Justice Douglas

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WD

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 8, 1973

Re: No. 71-1607 - NLRB v. Boeing Company

Dear Bill:

This will state formally that I join your dissenting  
opinion as circulated today.

Sincerely,

*Harry*

Mr. Justice Douglas

Copies to the Conference

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SECTION OF ADVISORY

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 8, 1973

No. 71-1607 NLRB v. Boeing Co.

(71-1417)

Dear Bill:

Although I voted tentatively the other way at the Conference and still consider the question a close one, I am persuaded now to join your opinion for the Court.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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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

W/4 R  
Please join me  
JY

2nd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

dated: 4/23/73

No. 71-1607

Re: [illegible]

National Labor Relations Board, Petitioner,	} On Writ of Certiorari to	
v.		the United States Court
The Boeing Company et al.		of Appeals for the Dis-
		trict of Columbia Circuit.

[April —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented in this case is whether the National Labor Relations Board is required by § 8 (b) (1)(A) of the National Labor Relations Act<sup>1</sup> to inquire into the reasonableness of a disciplinary fine imposed by a union upon a member when the Board exercises its admitted authority under that section to determine whether the fine otherwise constitutes an unfair labor practice. The Board held that the validity of union fines under the Act does not depend on their being reasonable in amount. *Booster Lodge No. 405*, 185 N. L. R. B. No. 23, 75 L. R. R. M. 1004, 1007 n. 16 (1970). On petition for judicial review of this determination, the Court of Appeals held that an unreasonably large fine is coercive and restraining within the meaning of § 8(b)(1)(A), and remanded the case to the Board with directions to con-

<sup>1</sup>“(b) It shall be an unfair labor practice for a labor organization or its agents—

“(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . .” 29 U. S. C. § 158(b)(1)(A) (1970).

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-  
p. 8

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

No. 71-1607

4/26/73

National Labor Relations Board, Petitioner,  
v.  
The Boeing Company et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Circuit.

[April —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . . 29 U. S. C. § 158(b)(1)(A) (1970).

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