

The Burger Court Opinion Writing Database

Windward Shipping (London) Ltd. V. American Radio Association

415 U.S. 104 (1974)

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

CHAMBERLAIN
THE CHIEF JUSTICE

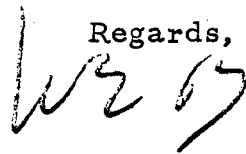
February 12, 1974

Re: 72-1061 - Windward Shipping Ltd. v. American
Radio Association, AFL-CIO

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 12, 1974

WJ
PERSONAL

Re: 72-1061 - Windward Shipping, Ltd. v.
American Radio Association, AFL-CIO

Dear Bill:

Please join me. I call attention to page 10,
line 3 of the first full paragraph: here I suggest
you could add force to the sentence by having
it embrace the whole story by adding something
like:

"by foreign owners of foreign registered
vessels, under contracts made outside
the United States."

I join with or without this.

Regards,
WBJ

Mr. Justice Rehnquist

*done
HBJ
2/13*

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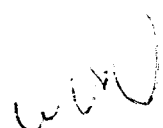
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 11, 1974

Dear Bill:

Please join me in your dissent in
Shipping, Ltd. v. American Radio Assoc. 72-106


William O. Douglas

Mr. Justice Brennan

cc: The Conference

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

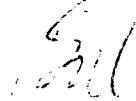
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 18, 1973

Dear Thurgood:

I note that you and I are in dissent in No. 72-1061, Windward Shipping Ltd. v. American Radio Association. My view was that this was closer to my Ariadne than it was to Benz. I am willing to take this on unless you are just passionately desirous of writing it.

Sincerely,



Mr. Justice Marshall

Amended
2-11-74

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1061

Windward Shipping (London) Limited et al., Petitioners, v. American Radio Association, AFL-CIO, et al.	}	On Writ of Certiorari to the Court of Civil Appeals of Texas, 14th Supreme Judicial Dis- trict.
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[February —, 1974]

MR. JUSTICE BRENNAN, dissenting.

Today's reversal of the Texas Court of Civil Appeals does not of course end this case. There remains for disposition on remand two of the respondents' defenses not reached by the Texas courts, namely (1) that Texas law does not proscribe respondents' picketing, and (2) that, in any event, the First and Fourteenth Amendments protect respondents' conduct.¹

But the fact that today's decision does not finally decide the legality of respondents' picketing should not obscure the significance of the Court's holding. Ninety-five percent of our export trade has already fled American-flag vessels for cheaper, foreign-registered shipping.² In holding that respondents' picketing against foreign-flag vessels does not give rise to a dispute "affecting commerce" within the National Labor Relations Board's jurisdiction, the Court effectively deprives American seamen, among all American employees in commerce, any

¹See *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U. S. 58 (1964); *id.*, at 76 (Black, J., concurring); *Thornhill v. Alabama*, 310 U. S. 88 (1940).

²See S. Rep. No. 91-1080, 91st Cong., 2d Sess. 16 (1970). See also *id.*, at 17 (Chart 7: Projected Decline in Seafaring Job Opportunities in Foreign Trade Fleet from 1969 to 1980).

SUPREME COURT OF THE UNITED STATES

No. 72-1061

Windward Shipping (London) Limited et al., Petitioners, v. American Radio Association, AFL-CIO, et al.	}	On Writ of Certiorari to the Court of Civil Appeals of Texas, 14th Supreme Judicial Dis- trict.
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[February 19, 1974]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, dissenting.

Today's reversal of the Texas Court of Civil Appeals does not of course end this case. There remain for disposition on remand two of the respondents' defenses not reached by the Texas courts, namely (1) that Texas law does not proscribe respondents' picketing, and (2) that, in any event, the First and Fourteenth Amendments protect respondents' conduct.¹

But the fact that today's decision does not finally decide the legality of respondents' picketing should not obscure the significance of the Court's holding. Ninety-five percent of our export trade has already fled American-flag vessels for cheaper, foreign-registered shipping.² In holding that respondents' picketing against foreign-flag vessels does not give rise to a dispute "affecting commerce" within the National Labor Relations Board's jurisdiction, the Court effectively deprives American seamen, among all American employees in commerce, of any

¹ See *NLRB v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U. S. 58 (1964); *id.*, at 76 (Black, J., concurring); *Thornhill v. Alabama*, 310 U. S. 88 (1940).

² See S. Rep. No. 91-1080, 91st Cong., 2d Sess. 16 (1970). See also *id.*, at 17 (Chart 7: Projected Decline in Seafaring Job Opportunities in Foreign Trade Fleet from 1969 to 1980).

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 28, 1974

Re: No. 72-1061, Windward Shipping v. American
Radio Association

Dear Bill,

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

Sincerely yours,

P.S.
/

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 21, 1974

Re: No. 72-1061 - Windward Shipping (London)
Limited v. American Radio Assn.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 27, 1973

Re: No. 72-1061 -- Windward Shipping Ltd. v. American
Radio Association

Dear Bill:

I will be delighted to bow to you in this dissent.

Sincerely,



T. M.

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 12, 1974

Re: No. 72-1061 -- Windward Shipping v. American
Radio Association

Dear Bill:

Please join me in your dissent.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 21, 1974

Re: No. 72-1061 - Windward Shipping Ltd. v.
American Radio Ass'n

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 19, 1974

No. 72-1061 Windward Shipping v. American Radio

Dear Bill:

As Jo and I hope to be away for the next ten days, I will not be able to review carefully your circulated opinion for the Court until after my return.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 24, 1974

No. 72-1061 Windward Shipping Ltd. v. Am. Radio Assoc.

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist
CC: The Conference
LFP/gg

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1061

1/13/74

Windward Shipping (London) Limited et al., Petitioners, v. American Radio Association, AFL-CIO, et al.	}	On Writ of Certiorari to the Court of Civil Appeals of Texas, 14th Supreme Judicial Dis- trict.
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[January —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioners are the owners and managing agents of two ships which are registered under the laws of Liberia and fly the Liberian flag. They sought injunctive relief in the state courts in Texas to bar picketing of their vessels by respondent unions. The trial court denied relief, finding that the dispute was "arguably" within the jurisdiction of the National Labor Relations Board and that the jurisdiction of the state courts was therefore pre-empted. The Texas Court of Civil Appeals affirmed,¹ and we granted certiorari. — U. S. —, to consider whether the activities here complained of were activities "affecting commerce" within the meaning of § 2 (6) and (7) of the National Labor Relations Act, 29 U. S. C. § 152 (6) and (7).² We hold that they were not, and therefore reverse the judgment of the Court of Civil Appeals.

¹ 482 S. W. 2d 675 (1972).

² The definitions in 29 U. S. C. § 152 (6) and (7), part of the Labor Management Relations Act, are as follows:

"(6) The term 'commerce' means trade, traffic, commerce, transportation, or communication among the several States, or be-