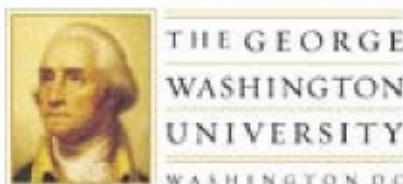


# The Burger Court Opinion Writing Database

*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

CHAMBER  
THE CHIEF JUSTICE

February 12, 1974

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

Dear Bill:

Please join me.

Regards,

WJ

Mr. Justice Rehnquist

Copies to the Conference



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

CHAMBERS OF  
THE CHIEF JUSTICE

February 12, 1974

DC

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,

WB

Mr. Justice Rehnquist

done  
HBJ  
2/15

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. 72-104

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

Crenulated  
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.<sup>1</sup>

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.<sup>2</sup> 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

<sup>1</sup> 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).

<sup>2</sup> 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,

OS.  
1/

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

Copies to Conference

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

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. 20530

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 72-1061

1/18/74

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.

[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,<sup>1</sup> 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).<sup>2</sup> We hold that they were not, and therefore reverse the judgment of the Court of Civil Appeals.

<sup>1</sup> 482 S. W. 2d 675 (1972).

<sup>2</sup> 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-