

# The Burger Court Opinion Writing Database

*NLRB v. Savair Manufacturing Co.*  
414 U.S. 270 (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

CHAMBERS OF  
THE CHIEF JUSTICE

December 13, 1973

Re: 72-1231 - NLRB v. Savair Manufacturing Co.

Dear Bill:

Please join me.

Regards,



Mr. Justice Douglas

Copies to the Conference

To : The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Tom C. Clark

1st DRAFT

From: Douglas, J.

**SUPREME COURT OF THE UNITED STATES**

Recirculated.

No. 72-1231

National Labor Relations Board, Petitioner,  
*v.*  
Savair Manufacturing Company. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Sixth  
Circuit.

[December —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The National Labor Relations Board acting pursuant to § 29 (c) of the Act,<sup>1</sup> 29 U. S. C. § 159 (c), conducted an election by secret ballot among the production and maintenance employees of respondent at the request of the Mechanics Educational Society of America (the

<sup>1</sup> Section 9 (c)(1)(A) provides:

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a).

"The Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

To : The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Black  
 Mr. Justice Powell  
 Mr. Justice Rehnquist

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

From: Douglas, J.

Circulate.

No. 72-1231

Decirculated. 11-29

National Labor Relations  
 Board, Petitioner. } On Writ of Certiorari to  
 v.  
 Savair Manufacturing  
 Company. } the United States Court  
 of Appeals for the Sixth  
 Circuit.

[December — 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the  
 Court

The National Labor Relations Board acting pursuant  
 to § 9 (c) of the Act,<sup>1</sup> 29 U. S. C. § 159 (c), conducted  
 an election by secret ballot among the production and  
 maintenance employees of respondent at the request of  
 the Mechanics Educational Society of America (the

<sup>1</sup> Section 9 (c)(1)(A) provides.

"(c)(1) Whenever a petition shall have been filed, in accordance  
 with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or  
 labor organization acting in their behalf alleging that a substantial  
 number of employees (i) wish to be represented for collective bar-  
 gaining and that their employer declines to recognize their represen-  
 tative as the representative defined in section 9 (a).

"The Board shall investigate such petition and if it has reasonable  
 cause to believe that a question of representation affecting commerce  
 exists shall provide for an appropriate hearing upon due notice. . . .  
 If the Board finds upon the record of such hearing that such a ques-  
 tion of representation exists, it shall direct an election by secret  
 ballot and shall certify the results thereof."

6-9

To : The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Black  
 Mr. Justice Marshall  
 Mr. Justice Harlan  
 Mr. Justice Blackmun

4th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulate:

No. 72-1231

Recirculated: 13-4

National Labor Relations  
 Board, Petitioner, } On Writ of Certiorari to  
 v. } the United States Court  
 Savair Manufacturing } of Appeals for the Sixth  
 Company. } Circuit.

[December —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The National Labor Relations Board acting pursuant to § 9 (c) of the Act,<sup>1</sup> 29 U. S. C. § 159 (c), conducted an election by secret ballot among the production and maintenance employees of respondent at the request of the Mechanics Educational Society of America (the

<sup>1</sup> Section 9 (c)(1)(A) provides:

"(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a),

"The Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

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

From: Douglas, J.

5th DRAFT

Circulated:

Receiving stamp

12-7-73

**SUPREME COURT OF THE UNITED STATES**

No. 72-1231

National Labor Relations Board, Petitioner, v. Savair Manufacturing Company.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
--	---

[December —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The National Labor Relations Board acting pursuant to § 9 (c) of the Act,<sup>1</sup> 29 U. S. C. § 159 (c), conducted an election by secret ballot among the production and maintenance employees of respondent at the request of the Mechanics Educational Society of America (the

<sup>1</sup> Section 9 (c)(1)(A) provides:

"(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a),

"The Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

To : The Chief Justice  
 Mr. Justice BREWSTER  
 Mr. Justice DOUGLAS  
 Mr. Justice HARLAN  
 Mr. Justice MARSHALL  
 Mr. Justice MINTON  
 Mr. Justice POWELL  
 Mr. Justice REHNQUIST

8  
 6th DRAFT

From: Douglas, J.

Circulated:

No. 72-1231

Recirculated: 12-10

National Labor Relations Board, Petitioner,	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
v.	
Savair Manufacturing Company.	

[December —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court

The National Labor Relations Board acting pursuant to § 9 (c) of the Act,<sup>1</sup> 29 U. S. C. § 159 (c), conducted an election by secret ballot among the production and maintenance employees of respondent at the request of the Mechanics Educational Society of America (the

<sup>1</sup> Section 9 (c)(1)(A) provides:

"(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a).

"The Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

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

3, 4, 7, 8, 10, 11

7th DRAFT

**SUPREME COURT OF THE UNITED STATES**

Franklin, Roosevelt, U.S.  
STATES

Circulate:

No. 72-1231

Recirculated: 12-11

National Labor Relations Board, Petitioner,  
*v.*  
Savair Manufacturing Company. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Sixth  
Circuit.

[December —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The National Labor Relations Board acting pursuant to § 9 (c) of the Act,<sup>1</sup> 29 U. S. C. § 159 (c), conducted an election by secret ballot among the production and maintenance employees of respondent at the request of the Mechanics Educational Society of America (the

<sup>1</sup> Section 9 (c)(1)(A) provides:

"(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a).

"The Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

*11*  
*Handwritten*

To : The Chief Justice  
 Justice Brennan  
 Justice Stewart  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist

NOTICE : This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

From: \_\_\_\_\_  
 Circuit: \_\_\_\_\_

No. 72-1231

Recirculated: 12-14

National Labor Relations  
 Board, Petitioner, }  
 v. } On Writ of Certiorari to  
 Savair Manufacturing } the United States Court  
 Company. } of Appeals for the Sixth  
 Circuit.

[December 17, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The National Labor Relations Board acting pursuant to § 9 (c) of the Act,<sup>1</sup> 29 U. S. C. § 159 (c), conducted an election by secret ballot among the production and maintenance employees of respondent at the request of the Mechanics Educational Society of America (the

<sup>1</sup> Section 9 (c)(1)(A) provides:

"(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

"(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a),

"the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. . . . If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

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

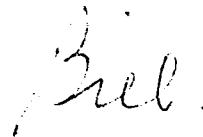
CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. December 3, 1973

RE: No. 72-1231 N.L.R.B. v. Savair Mfg. Co.

Dear Byron:

Please join me in your dissenting  
opinion in the above.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 28, 1973

No. 72-1231 - NLRB v. Savair Mfg. Company

Dear Bill,

I shall await the circulation of  
Byron's dissenting opinion before finally com-  
ing to rest in this case.

Sincerely yours,

PS

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 7, 1973

No. 72-1231, NLRB v. Savair

Dear Bill,

Your addition of Note 4 in today's recirculation largely takes care of the problems I have been having with this case. If you could see your way clear to deleting the sentence beginning on line 7 of page 8: 'When it comes to the protection . . . ,'" which I think inaccurately overstates the case before us, I would gladly join the opinion.

Sincerely yours,

P.S.  
P.

Mr. Justice Douglas

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 10, 1973

Re: No. 72-1231, NLRB v. Savair Manufacturing Co.

Dear Bill,

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

Sincerely,

*P.S.*

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 27, 1973

Re: No. 72-1231 - NLRB v. Savair Mfg. Co.

Dear Bill: .

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

Sincerely,



Mr. Justice Douglas

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

SUPREME COURT OF THE UNITED STATES

com: White, J.

No 72-1231

Circulated: 11-30-73

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

National Labor Relations  
Board, Petitioner.

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

Savair Manufacturing  
Company.

(December --, 1973)

MR. JUSTICE WHITE, dissenting

The report of the Hearing Officer, filed in response to the Company's objections to the election, reveals that prior to the filing of the representation petition, a union organizer had told employees that, if the union won the election, they would be subject to an initiation fee or "fine" if they did not sign an authorization card. The union was then engaged in securing the necessary 30% showing of union support which would entitle it to hold an election under the Labor Board's rules. 29 CFR §§ 101.17, 101.18 (1973). The officer concluded that there was "insufficient evidence . . . that a threat of a 'fine' occurred either before or after the filing date of the petition." In any event, he also concluded that conduct occurring before the filing of an election petition was not grounds for setting aside the election since "[w]hether or not a sufficient valid showing of interest was obtained, constitutes a matter for administrative determination." *Goodyear Tire and Rubber Co.*, 138 N. L. R. B. (1962).

<sup>1</sup> The opinion for the Court places no special emphasis on the fact that the waiver of initiation fees may have been referred to as a "fine." Since the Hearing Officer expressly found that no such representation was made, the matter deserves no further attention.

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

Ap 1, 7-9

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

com: White, J.

No. 72-1231

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

Recirculated: 12 - 5 -

National Labor Relations  
Board, Petitioner, v.  
Savair Manufacturing  
Company.

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

[December —, 1973]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN join, dissenting.

The report of the Hearing Officer, filed in response to the Company's objections to the election, reveals that prior to the filing of the representation petition, a union organizer had told employees that, if the union won the election, they would be subject to an initiation fee or "fine" if they did not sign an authorization card. The union was then engaged in securing the necessary 30% showing of union support which would entitle it to hold an election under the Labor Board's rules. 29 CFR §§ 101.17, 101.18 (1973). The officer concluded that there was "insufficient evidence . . . that a threat of a 'fine' occurred either before or after the filing date of the petition." In any event, he also concluded that conduct occurring before the filing of an election petition was not grounds for setting aside the election since "[w]hether or not a sufficient valid showing of interest was obtained, constitutes a matter for administrative determination." *Goodyear Tire and Rubber Co.*, 138 N. L. R. B. (1962).<sup>1</sup>

<sup>1</sup> The opinion for the Court places no special emphasis on the fact that the waiver of initiation fees may have been referred to as a

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

p. 6

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.  
Circulated: \_\_\_\_\_

No. 72-1231

Recirculated: 12-13-7

National Labor Relations  
Board, Petitioner,  
v.  
Savair Manufacturing  
Company.

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

[December —, 1973]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN and MR. JUSTICE BLACKMUN join, dissenting.

The report of the Hearing Officer, filed in response to the Company's objections to the election, reveals that prior to the filing of the representation petition, a union organizer had told employees that, if the union won the election, they would be subject to an initiation fee or "fine" if they did not sign an authorization card. The union was then engaged in securing the necessary 30% showing of union support which would entitle it to hold an election under the Labor Board's rules. 29 CFR §§ 101.17, 101.18 (1973). The officer concluded that there was "insufficient evidence . . . that a threat of a 'fine' occurred either before or after the filing date of the petition." In any event, he also concluded that conduct occurring before the filing of an election petition was not grounds for setting aside the election since "[w]hether or not a sufficient valid showing of interest was obtained, constitutes a matter for administrative determination." *Goodyear Tire and Rubber Co.*, 138 N. L. R. B. (1962).<sup>1</sup>

<sup>1</sup> The opinion for the Court places no special emphasis on the fact that the waiver of initiation fees may have been referred to as a

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 11, 1973

Re: No. 72-1231 -- National Labor Relations Board v.  
Savair Manufacturing Company

Dear Bill:

Please join me in your opinion.

Sincerely,



T. M.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 29, 1973

Dear Bill:

Re: No. 72-1231 - NLRB v. Savair Manufacturing Co.

I, too, shall await Byron's dissent before coming to  
rest in this case.

Sincerely,

*H.A.B.*

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 3, 1973

Re: No. 72-1231 - NLRB v. Savair Manufacturing Co.

Dear Byron:

Please join me in your dissent.

Sincerely,

*haw.*

*1*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 28, 1973

No. 72-1231 NLRB v. Savair Mfg. Co.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 3, 1973

Re: No. 72-1231 - NLRB v. Savair Manufacturing Co.

Dear Bill:

I did not feel very sure of myself when I voted to affirm this case at Conference, and relied pretty much on my instinctive reaction that if an employer couldn't make this sort of an inducement, a union shouldn't be able to either. After reading your opinion and Byron's dissent, I still feel instinctively that we are right. I wonder if you would have any objection to taking up in your opinion Byron's discussion in Part III of his dissent, which begins on page 6, where he states that:

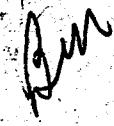
"The special inducement is to sign the card, not to vote for the union. The majority decision collapses these two choices into one, and is thus untenable."

Since the Court held in NLRB v. Gissel Packing Co., 395 U.S. 575, that the union's presenting a majority of signed cards to the employer may, when accompanied by an unfair labor practice, pretermit the necessity of an election, at least in these circumstances the giving of the authorization may be the only chance the employee has to decide whether or not the union will represent him. I think, though I am not sure, that this fact tends to undercut Part II of

- 2 -

Byron's dissent and the Board's opinion in D.I.T.-M.C.O. in addition to the way you have already noted in your opinion.

Sincerely,



Mr. Justice Douglas

72-1231

Jawors

Supreme Court of the United States

Memorandum

19  
July 19

Bill -

that looks good  
to me - I will send  
you a joint letter  
as soon as the cert  
"bulletin" comes around

P.M.K.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 4, 1973

Re: No. 72-1231 - NLRB v. Savair Manufacturing Co.

Dear Bill:

Please join me in the draft opinion you circulated today.

Sincerely,

Mr. Justice Douglas

Copies to the Conference