

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

10310-2015

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Rehnquist
Mr. Justice Souter

1st DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

11-27

No. 72-1231

Recirculated:

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,¹ 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

¹ 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 Brandenburg
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulate.

No. 72-1231

Recirculated. 11-29

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,¹ 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

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6-9

To : The Chief Justice
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Telford

4th DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulate: _____

No. 72-1231

Recirculated: 12-4

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,¹ 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

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3-5
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: _____

SUPREME COURT OF THE UNITED STATES *Reassigned* 12-7-73

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.
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[December —, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The National Labor Relations Board acting pursuant to § 9 (c) of the Act,¹ 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

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To : The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Rehnquist

6th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Department of Justice

Circulated: _____

No. 72-1231

Recirculated: 12-10

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,¹ 29 U. S. C. § 159 (c), conducted
an election by secret ballot among the production and
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the Mechanics Educational Society of America (the

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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).

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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."

3-4, 7-8, 10, 11

To : The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Rehnquist
Mr. Justice Stevens
Mr. Justice Souter
Mr. Justice Ginsburg
Mr. Justice Breyer

7th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

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,¹ 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

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

throughout

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

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

No. 72-1231

Reconsidered: 12-14

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 17, 1973]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

The National Labor Relations Board acting pursuant to § 9 (c) of the Act,¹ 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

¹ 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—

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"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

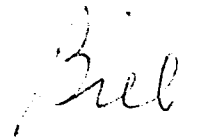
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. December 3, 1973

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,

A handwritten signature in cursive script, likely belonging to Justice Brennan, written in dark ink.

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 coming to rest in this case.

Sincerely yours,

PS
✓

Mr. Justice Douglas

Copies to the Conference

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

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.
✓

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 Manufac-
turing 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

From: White, J.

No 72-1231

Circulated: 11-30-73

Recirculated: _____

National Labor Relations
Board, Petitioner.

Savair Manufacturing
Company.

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

[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).

¹ 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.

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

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

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).¹

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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

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).¹

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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

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

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,

H.A.B.

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 II of his dissent, which begins on page 6, where he states that:

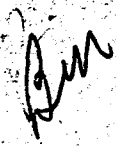
"The special inducement is to sign the card, not to vote for the union. The majority decision collapses these two choices into one, and is thus untenable."

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, pretermitt 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,

A handwritten signature, likely of John F. Kennedy, written in dark ink. The signature is stylized and appears to be "JFK".

Mr. Justice Douglas

72-1231

Lavan

Supreme Court of the United States

Memorandum

12/27

, 19

Bill -

that looks good
to me - I will send
you a join letter
as soon as the cer-
tification comes around
Bill R.

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