

The Burger Court Opinion Writing Database

NLRB v. Magnavox Co.
415 U.S. 322 (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

February 21, 1974

Re: 72-1637 - NLRB v. Magnavox Co. of Tennessee

Dear Bill:

Please join me.

Regards,

WES

Mr. Justice Douglas

Copies to the Conference

9 Jan

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. 72-1637

Circulate: 1-30

National Labor Relations
 Board, Petitioner,
 v.
 The Magnavox Company
 of Tennessee.

Recirculated: _____

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

[February —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

In 1954, International Union of Electrical, Radio, and Machine Workers (IUE) became the collective-bargaining representative of respondent's employees. At that time respondent had a rule prohibiting employees from distributing literature on all of its property, including parking lots and other nonwork areas. The collective agreement authorized the company to issue rules for the "maintenance of orderly conditions on plant property," provided the rules were not "unfair" or "discriminatory." It also provided that bulletin boards would be available for the posting of union notices, subject to the company's right to reject "controversial" notices. All subsequent contracts contained similar provisions. Throughout the period since 1954 respondent has prohibited employees from distributing literature even in nonworking areas during nonworking time.

In due course IUE challenged the validity of the company's rule and requested that the rule be changed. The request was denied and the IUE filed charges against respondent for unfair labor practices in violation of § 8(a)(1) of the Act, 29 U. S. C. § 158. The

To : The Chief Justice
Mr. Justice Black
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Clark
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Thurgood Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens
Mr. Justice O'Connor
Mr. Justice Souter
Mr. Justice Breyer

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1637

Circ Date: 2-1

Recirculated: 2-1

National Labor Relations
Board, Petitioner,
v.
The Magnavox Company
of Tennessee.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Sixth Circuit.

[February —, 1974]

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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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

For P. J.

Circulate:

No. 72-1637

Recirculated: 2-19

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

[February —, 1974]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. January 31, 1974

RE: No. 72-1637 N.L.R.B. v. Magnavox

Dear Bill:

I agree.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 1, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 72-1637 - NLRB v. Magnavox

In due course, I expect to circulate
a dissenting opinion in this case.

P.S.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1637

From: Stewart, J.

circulated: FEB 15 1974

National Labor Relations
Board, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
The Magnavox Company } peals for the Sixth Circuit.
of Tennessee.

[February —, 1974]

MR. JUSTICE STEWART, concurring in part and dissenting in part.

To the extent the Court holds that a union cannot contractually waive the right of disaffected employees to distribute in nonwork areas and during nonwork time literature advocating the displacement of the incumbent collective-bargaining representative, I am in complete agreement. This is the essence of the Board's decision in *Gale Products*, 142 N. L. R. B. 1246. But it seems to me wholly inconsistent with the letter and spirit of the National Labor Relations Act to relieve the union of its promise that its own self-serving literature will not be so distributed in the plant.

Although the union is deemed to represent all employees in the bargaining unit, both prounion and anti-union, and may waive important § 7 rights in the course of collective bargaining, presumably in return for management concessions on other fronts, this authority cannot extend to rights with respect to which the union and the individual employees have essentially conflicting interests. The Board stated the point succinctly in its decision in *General Motors Corporation*, 158 N. L. R. B. 1723, 1727:

"[T]he employees, by once selecting the union as their representative, do not forfeit their fundamental

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1687

National Labor Relations
Board, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
The Magnavox Company } peals for the Sixth Circuit.
of Tennessee.

[February —, 1974]

MR. JUSTICE STEWART, with whom MR. JUSTICE POWELL joins, concurring in part and dissenting in part.

To the extent the Court holds that a union cannot contractually waive the right of disaffected employees to distribute in nonwork areas and during nonwork time literature advocating the displacement of the incumbent collective-bargaining representative, I am in complete agreement. This is the essence of the Board's decision in *Gale Products*, 142 N. L. R. B. 1246. But it seems to me wholly inconsistent with the letter and spirit of the National Labor Relations Act to relieve the union of its promise that its own self-serving literature will not be so distributed in the plant.

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"[T]he employees, by once selecting the union as their representative, do not forfeit their fundamental

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 31, 1974

Re: No. 72-1637 - NLRB v. The Magnavox Company
of Tennessee

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 31, 1974

Re: No. 72-1637 - NLRB v. The Magnavox Company
of Tennessee

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

But I suggest a word or two on the up ⁱⁿ in
that the issue is the distribution by employer to employees
there is no question of outsiders ~~other~~ coming on the
property, although employer may be distributing
for or against an outside union.

Byron

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 4, 1974

Re: No. 72-1637 -- National Labor Relations Board v.
The Magnavox Company of Tenn.

Dear Bill:

Please join me in your opinion in this case.

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

February 11, 1974

Re: No. 72-1637 - NLRB v. Magnavox Co.

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1974

No. 72-1637 NLRB v. The Magnavox Company

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 21, 1974

Re: No. 72-1637-NLRB v. Magnavox

Dear Potter:

Please join me in your dissent.

Sincerely,

Wm

Mr. Justice Stewart

Copies to the Conference