

The Burger Court Opinion Writing Database

Golden State Bottling Co. v. NLRB
414 U.S. 168 (1973)

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

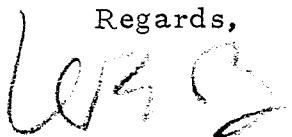
November 29, 1973

Re: No. 72-702 - Golden State Bottling Co. v. NLRB

Dear Bill:

Please join me.

Regards,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

November 14, 1973

Dear Bill:

In 72-702, Golden State Bottling
v. NLRB please join me.

WILLIAM O. DOUGLAS

Mr. Justice Brennan

cc: The Conference

Circulated

11-9-73

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-702

Golden State Bottling Company, Inc., et al.,
Petitioners,
v.
National Labor Relations Board.

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

[November —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The principal question for decision in this case is whether the bona fide purchaser of a business, who acquires and continues the business with knowledge that his predecessor has committed an unfair labor practice in the discharge of an employee, may be ordered by the National Labor Relations Board to reinstate the employee with back pay.

Petitioners are Golden State Bottling Company, Inc. (Golden State), and All American Beverages, Inc. (All American). All American bought Golden State's soft drink bottling and distribution business after the National Labor Relations Board had ordered Golden State "its officers, successor and assigns" to reinstate with back pay a driver-salesman, Kenneth L. Baker, whose discharge by Golden State was found by the Board to have been an unfair labor practice.¹ In a subsequent back-

¹ On June 10, 1964, the Board found that Golden State violated §§ 8 (a)(3) and(1) of the Act by discharging Baker, on August 16, 1963, because of union activities, and ordered Baker's reinstatement

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41-15-73

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-702

Golden State Bottling Company, Inc., et al.,
Petitioners,
v.
National Labor Relations Board.

On Writ of Certiorari to
the United States Court
of Appeals for the Ninth
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¹ On June 10, 1964, the Board found that Golden State violated §§ 8 (a)(3) and (1) of the Act by discharging Baker, on August 16, 1963, because of union activities, and ordered Baker's reinstatement

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Circulated
11-20-73

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-702

Golden State Bottling Company, Inc., et al.,
Petitioners,
v.
National Labor Relations Board

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

[November —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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Petitioners are Golden State Bottling Company, Inc. (Golden State), and All American Beverages, Inc. (All American). All American bought Golden State's soft drink bottling and distribution business after the National Labor Relations Board had ordered Golden State "its officers, successors and assigns" to reinstate with back pay a driver-salesman, Kenneth L. Baker, whose discharge by Golden State was found by the Board to have been an unfair labor practice.¹ In a subsequent back-

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 15, 1973

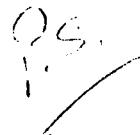
Re: No. 72-702, Golden State Bottling Co. v. NLRB

Dear Bill,

You may remember that at the Conference I expressed extreme doubt that there was any substantial evidence showing knowledge on the part of All American of the unfair labor practices litigation. I continue to harbor that doubt, despite Universal Camera and despite your admirable efforts in Part I of this opinion. I have concluded, however, that it would be a waste of time and printer's ink to dissent on this factual issue.

The points that Byron makes in his concurring opinion seem quite valid to me. It occurs to me that these points might well be made in your opinion for the Court, but I suppose that Byron's exposure of them is sufficient. In sum, you can count on my joining your opinion for the Court in this case.

Sincerely yours,



Mr. Justice Brennan

Copies to the 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

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 11-13-73

No. 72-702

Recirculated: _____

Golden State Bottling Company, Inc., et al.,
 Petitioners,
 v.
 National Labor Relations Board.

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

[November —, 1973]

MR. JUSTICE WHITE, concurring in the judgment.

I concur in the judgment of the Court.

A purchasing company can not be obligated to carry out under § 10 (c) every outstanding and unsatisfied order of the Board. For example, because the successor company is not obligated by the Act to hire any of the predecessor's employees, the successor employer, if he does not hire any or a majority of those employees, will not be bound by an outstanding order to bargain issued by the Board against the predecessor nor by any order tied to the continuance of the bargaining agent in the unit involved. *NLRB v. Burns Security Services*, 406 U. S. 272, 280-281 (1972). It is also apparent that had Golden State already reinstated Baker with back pay before the sale of its business, and thereby fully complied with the Board's order, All American would have had no more obligation to employ him in the continuing business than it had to employ any of Golden State's other employees.

I fully agree, however, that the policy and reach of § 10 (c) is such that when a purchasing company, the so-called successor, knows that a particular employee has been unlawfully discharged and has been ordered rein-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

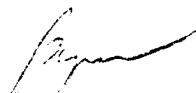
November 15, 1973

Re: No. 72-702 - Golden State
Bottling Co., Inc. v. NLRB

Dear Bill:

I shall can my concurrence
and join your opinion.

Sincerely,



Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

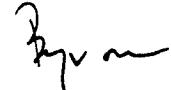
November 15, 1973

Re: No. 72-702 - Golden State Bottling Co. Inc.
v. NLRB

Dear Bill:

I shall can my concurrence and join your
opinion.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 13, 1973

Re: No. 72-702 -- Golden State Bottling Co., Inc., v.
National Labor Relations Board

Dear Bill:

Please join me in your opinion.

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

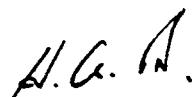
November 15, 1973

Re: No. 72-702 - Golden State Bottling Co. v. NLRB

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

P.S. (to Mr. Justice Brennan only)

Dear Bill:

This is a personal postscript. I probably would have been a little happier had you discussed Darlington in Part III. The petitioners' argument in this area is largely based on Darlington and I suppose, in a sense, that the thrust of the present opinion is somewhat contrary to Darlington. On the other hand, the result you reach is defensible on policy grounds. I shall abide by your judgment so far as making or omitting mention of Darlington is concerned.

H. A. B.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 16, 1973

No. 72-702 Golden State Bottling Co. v. NLRB

Dear Bill:

I voted, as did Potter and Bill Rehnquist, to reverse primarily on the ground that there was no evidence - beyond assumptions and speculation - to support the Board's holding of knowledge on the part of All American.

Your opinion addresses this issue fairly and fully. While I still do not agree with the conclusion you reach, there is much to Potter's view that the issue is factual and there is little point in dissenting on this ground.

But I am troubled by footnote 3, p. 6, which comes very close to holding flatly that "the burden of proving the absence of knowledge" rests upon the successor corporation rather than leaving the burden of proof on the complaining party (NLRB). It seems to me that this would be a far reaching conclusion, contrary to established procedure. Moreover, it is unnecessary for you to go this far in this case in view of your reading of the facts and the inferences you are willing to draw from them.

Footnote 3, if I understand it correctly, appears to rely on another proposition which I could not endorse. In substance, the note states (on page 6) that since one witness testified favorably to All American on the "knowledge" issue, "the Board's reasonable expectation would have been that, if other officers had been called upon to testify, they would have supported the [same] view." This is saying, in diplomatic language, that because one witness for the acquiring corporation had testified falsely (as you read the evidence) all other officers could be expected also to perjure themselves. Perhaps I misread the note, but this is what it conveys to me.

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94303-6000



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- 2 -

Although you have a solid Court, I nevertheless want to share my views with you. If you conclude that note 3 can be eliminated without weakening your opinion (as I think it can), I may be able to join you.

Sincerely,

Mr. Justice Brennan

lfp/ss

cc: The Conference

Attached to 72-702 LFP
11/16/1973

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HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94350-0000



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Bill: As Potter has deserted us, and all others (except the Chief) also have joined Bill Brennan, I am on the verge of surrendering. But if footnote 3 remains in the opinion in its present form, I will file a short dissent. What do you think?

L. F. P., Jr.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 21, 1973

No. 72-702 Golden State Bottling Co. v. NLRB

Dear Bill:

Please join me.

Sincerely,

L. E. Powell

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 15, 1973

Re: 72-702 - Golden State v. NLRB

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference