

The Burger Court Opinion Writing Database

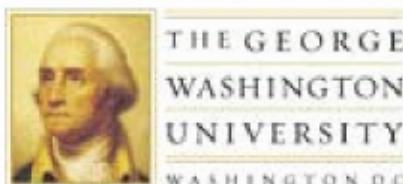
Florida Power & Light Co. v. Electrical Workers

417 U.S. 790 (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

April 29, 1974

Re: No. 73-556 - Florida Power & Light Co. v. International Brotherhood of Electrical Workers
No. 73-795 - NLRB v. International Brotherhood of Electrical Workers

Dear Bill:

Since I conclude an affirmance is not consistent with our holdings as to "supervisors" I vote to reverse and you should assign. I will defer other assignments until I hear from you.

Regards,

WEB

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

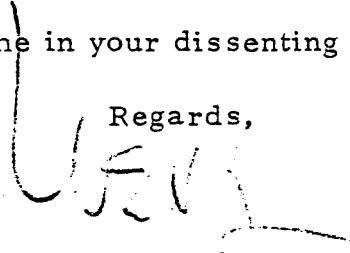
June 20, 1974

Re: (73-556 - Florida Power & Light Co. v. Intl.
(Bro. of Elec. Workers
(73-795 - NLRB v. Intl. Bro. of Elec. Workers

Dear Byron:

Please join me in your dissenting opinion.

Regards,



Mr. Justice White

Copies to the Conference

April 29, 1974

Dear Potter:

After you left the building today to catch your plane the Chief called me about some assignments. The way he had voted in the "supervisors" 73-795, and 73-556 cases it is left for me to assign. It is difficult to assign because the members of the Court were all over the lot. It occurred to me and Bill Brennan agreed that your Conference discussion showed the best promise of Consensus. You may be overloaded and may not want the case but I thought it was the logical assignment.

The Chief will probably talk to you about it but the decision is open ended as far as I am concerned. If you cannot or do not want to do it it can be worked out some other way.

William O. Douglas

Mr. Justice Stewart

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 29, 1974

Dear Chief:

Re: 73-556 Florida Power & Light Co. v. International
Brotherhood of Electrical Workers.

73-795 NLRB v. International Brotherhood of Electrical
Workers.

I have assigned these cases to Potter Stewart.

W.W.
William O. Douglas

The Chief Justice

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 7, 1974

Dear Potter:

Please join me in your opinion
for the Court in 73-556, Florida Power and
Light v. International Brotherhood and
companion case.

WJD

William O. Douglas

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 7, 1974

RE: Nos. 73-556 & 73-795 - Florida Power
& Light & N.L.R.B. v. International
Brotherhood of Electrical Workers, etc.

Dear Potter:

I agree.

Sincerely,

Mr. Justice Stewart
cc: The Conference

Uncorrected

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

1st DRAFT

From: Stewart, J.

JUN

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

Nos. 73-556 AND 73-795

Recirculated: _____

Florida Power & Light Co.,
Petitioner,
73-556 v.

International Brotherhood
of Electrical Workers,
Local 641, 622, 759,
820, and 1263,
et al.

National Labor Relations
Board, Petitioner,
73-795 v.

International Brotherhood
of Electrical Workers,
AFL-CIO, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[June —, 1974]

MR. JUSTICE STEWART delivered the opinion of the
Court.

The respondent unions in these consolidated cases called economic strikes against the employer companies. During the strikes, supervisory employees of the companies, some of whom were members of their respective bargaining units and some of whom were not, but all of whom were union members, crossed the picket lines and performed rank and file struck work, *i. e.*, work normally performed by the nonsupervisory employees then on strike. The unions later disciplined these supervisors for so doing. The question to be decided is whether a union commits an unfair labor practice under § 8 (b)(1)

PP-1, 11, 15

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Nos. 73-556 AND 73-795

Circulated: [REDACTED]

Recirculated: JUN 12

Florida Power & Light Co.,
Petitioner,

73-556 *v.*

International Brotherhood
of Electrical Workers,
Local 641, 622, 759,
820, and 1263,
et al.

National Labor Relations
Board, Petitioner,

73-795 *v.*

International Brotherhood
of Electrical Workers,
AFL-CIO, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[June —, 1974]

MR. JUSTICE STEWART delivered the opinion of the
Court.

Section 8 (b)(1)(B) of the National Labor Relations Act makes it an unfair labor practice for a union "to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances." The respondent unions in these consolidated cases called economic strikes against the employer companies. During the strikes, supervisory employees of the companies, some of whom were members of bargaining units and some of whom were not, but all of whom were union members, crossed the picket lines and performed rank and file struck work, *i.e.*, work normally performed by the nonsupervisory em-

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 19, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-549, Bell Supervisors Protective Assn. v. NLRB
73-877, Local 2150 etc. v. NLRB
73-1024), California Newspapers, Inc. v. San Fran-
 cisco Typographical Union No. 21
73-1199), NLRB v. San Francisco Typographical Union
 No. 21

These cases, which appear on page 4 of the June 21 Conference List, were held for Nos. 73-556, Florida Power and Light Co. v. IBEW, and 73-795, NLRB v. IBEW.

Petitioner in No. 73-549 is an association of certain foremen employed by Illinois Bell, organized to provide legal services for those supervisors who continued to work during the strike. The union fined the organizers \$1, 000 each for performing rank and file struck work. The association then filed charges with the NLRB resulting in the Board decision in the Illinois Bell case that the union had violated § 8(b)(1)(B) by disciplining supervisor members for performing rank and file struck work during an

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

From: White, J.

Circulated: 6-17-71

Recirculated: _____

Nos. 73-556 & 73-795 - Florida Power &
Light Co.

Mr. Justice White, dissenting.

Believing that the majority has improperly substituted its judgment for a fair and reasonable interpretation by the Board of § 8(b)(1)(B) in light of the statutory language and legislative history of that provision and other provisions dealing with supervisors, I must dissent substantially for the reasons expressed by the dissent below.

While it might be unreasonable for the Board to interpret § 8(b)(1)(B) to permit an employer to require absolute loyalty from a supervisor-member in all circumstances, it is certainly apparent that during an economic strike, the supervisor's performance of rank-and-file struck work, which represents a classic "use of economic pressure by the parties to a labor dispute . . . [,] is part and parcel of the process of collective bargaining." N.L.R.B. v. Insurance Agents International Union, 361 U.S. 477, 495 (1960).¹⁷ "As management representatives, supervisory personnel may be requested by management to enhance the bargaining position of their employer during a dispute between it and the particular union involved." International Brotherhood of Electrical Workers, AFL-CIO v. N.L.R.B., 487 F. 2d 1143, 1175 (CA D.C. 1973) (dissenting opinion) (footnote omitted). Moreover, these Union sanctions would unavoidably decrease a supervisor's loyalty to his employer and thereby materially interfere with the performance of those responsibilities which the employer quite properly demands of him. Local Union No. 2150, I.B.E.W. (Wisconsin Electric Power Co.) 192 N.L.R.B. 77, enforced, 486 F. 2d 602 (CA7 1973). Nothing in the language or legislative history of the statute contradicts the conclusion that:

To: The Chief Justice
Mr. Justice Douglas
~~Mr. Justice Blackmun~~
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-556 AND 73-795

Mr. Justice White, J.

Circulated:

Recirculated: 6-21-74

Florida Power & Light Co.,
Petitioner,

73-556 v.

International Brotherhood
of Electrical Workers,
Local 641, 622, 759,
820, and 1263,
et al.

National Labor Relations
Board, Petitioner,

73-795 v.

International Brotherhood
of Electrical Workers,
AFL-CIO, et al.

On Writs of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Circuit.

[June —, 1974]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE,
MR. JUSTICE BLACKMUN and MR. JUSTICE REHNQUIST
join, dissenting.

Believing that the majority has improperly substituted
its judgment for a fair and reasonable interpretation by
the Board of § 8 (b)(1)(B) in light of the statutory lan-
guage and legislative history of that provision and other
provisions dealing with supervisors, I must dissent sub-
stantially for the reasons expressed by the dissent below.

While it might be unreasonable for the Board to inter-
pret § 8 (b)(1)(B) to permit an employer to require abso-
lute loyalty from a supervisor-member in all circum-
stances, it is certainly apparent that during an economic
strike, the supervisor's performance of rank-and-file
struck work, which represents a classic "use of economic

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1974

Re: No. 73-556 -- Florida Power & Light Co. v. International Brotherhood of Electrical Workers
No. 73-795 -- National Labor Relations Board v. International Brotherhood of Electrical Workers

Dear Potter:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 17, 1974

Dear Byron:

Re: No. 73-556 - Florida Power & Light
Co. v. International Brotherhood
No. 73-795 - NLRB v. International
Brotherhood

Your dissenting opinion is persuasive. While I was inclined initially the other way, I am happy to join you.

Sincerely,

H. A. B.

Mr. Justice White

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

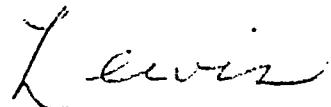
June 7, 1974

No. 73-556 Florida Power & Light v.
International Brotherhood
No. 73-795 NLRB v. International
Brotherhood

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1974

Re: Nos. 73-556 and 73-795 - Florida Power & Light Co.

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,



Mr. Justice White

Copies to the Conference