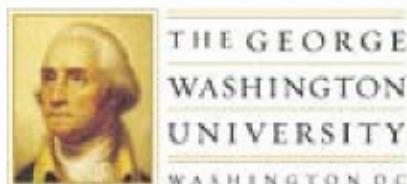


The Burger Court Opinion Writing Database

Connell Construction Co. v. Plumbers
421 U.S. 616 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

May 14, 1975

PERSONAL

Re: No. 73-1256 - Connell Construction Co. v. Plumbers
and Steamfitters Local Union No. 100

Dear Lewis:

My "problem" is that although, on these facts, I lean toward your disposition because it is more than a traditional "hot cargo" case, which would be covered by the NLRA, I wonder if the opinion could not more pointedly demonstrate this as an "antitrust" case.

I'll try to formulate my thoughts today and get them to you tomorrow in more articulate form.

Regards,

WJB

Mr. Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

May 15, 1975

PERSONAL

Re: No. 73-1256 - Connell Construction Co. v. Plumbers &
Steamfitters Local Union No. 100

Dear Lewis:

I have given considerable thought to your proposed disposition of this case and can appreciate what a delicate task writing this decision must have been. You had, at the very beginning, three very difficult barriers with which to deal. In general terms, the reconciliation of antitrust and labor policy has always posed an especially difficult problem in discerning legislative policy. The commentators are correct, in my view, that this is an area where more definitive legislative policy determinations are necessary but are unlikely to come.

My main concern in this case is that our disposition makes it very clear that we are not offering the Declaratory Judgment Act as an alternative remedy for every secondary boycott and hot cargo contract situation. Potter Stewart is quite correct that labor disputes of this type belong in the NLRB and damages are obtainable under § 303. Consequently, I think it important to stress that this situation is far from the typical secondary boycott situation regulated by 8(b)(4) of the NLRA and remedied by § 303 of the LMRA. Your emphasis on the fact that the arrangement here constituted a "direct restraint on the business market" with "substantial anticompetitive effects, both actual and potential, that would not follow naturally from the elimination of competition over wages and working conditions" makes this point clear.

Equally important -- and here is where I have a problem -- I think it necessary to stress more, if you can, that we are basically deciding here whether the prime contractor has a potential antitrust liability -- not deciding the merits of a labor dispute. I think this might be more explicit if, on slip op. 8, you incorporated the text of n.3 in the (1)

body text after the first sentence of the last paragraph. (This might necessitate dropping the "however" in the last sentence.) In a similar vein, I think the last 17 lines of page 16 and the first 5 lines on page 17 could be made merely to show that Congress, whatever remedy it intended in the typical hot cargo contract situation, showed no intent to restrict the availability of antitrust remedies in situations such as the present one. In this case, I do not think we need debate with Potter the effect of the 1959 amendments on the relationship of 8(e) to § 303 (dissent p. 8) since, in any event, there is no manifest congressional intent to make NLRA remedies exclusive for hot cargo agreements with the market impact you have described here.

If you can adopt and adapt some of this I will be "happier."

Regards,

WES

Mr. Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

May 21, 1975

PERSONAL

Re: No. 73-1256 - Connell Construction Co. v.
Plumbers and Steamfitters Local No. 100

Dear Lewis:

Your draft satisfies my concerns and I will join. Would the word "emerge" in lieu of "appear" at line 5, page 9, sharpen the point? I leave it to you.

Regards,

W. B.

Mr. Justice Powell

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

CHAMBERS OF
THE CHIEF JUSTICE

May 28, 1975

Re: 73-1256 - Connell Construction Co. v. Plumbers &
Steamfitters Local Union No. 100

1100 1st ave
S. 5th

Dear Lewis:

Please join me.

Regards,

WR

Mr. Justice Powell

Copies to the Conference

To : The Chief Justice
Mr. Justice BREWSTER
Mr. Justice STEWART
Mr. Justice MARSHALL
Mr. Justice POWELL
Mr. Justice REHNQUIST
Mr. Justice BLACKMUN
Mr. Justice BROWN
Mr. Justice WHITE

From: Douglas

1st DRAFT

Circulate: 3-19

Recirculate: _____

SUPREME COURT OF THE UNITED STATES

No. 73-1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters
Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of
Appeals for the Fifth
Circuit.

[March —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

While I join the opinion of MR. JUSTICE STEWART, I write to emphasize what is, for me, the determinative feature of the case. Throughout this litigation, Connell has maintained only that Local 100 coerced it into signing the subcontracting agreement. With the complaint so drawn, I have no difficulty in concluding that the union's conduct is regulated solely by the labor laws. The question of antitrust immunity would be far different, however, if it were alleged that Local 100 had conspired with mechanical subcontractors to force nonunion subcontractors from the market by entering into exclusionary agreements with general contractors like Connell. An arrangement of that character was condemned in *Allen Bradley Co. v. Local 3, IBEW*, 325 U. S. 797, which held that Congress did not intend "to immunize labor unions who aid and abet manufacturers and traders in violating the Sherman Act," *id.*, at 810. Were such a conspiracy alleged, the multiemployer bargaining agreement between Local 100 and the mechanical subcontractors would unquestionably be relevant. See *United Mine Workers v. Pennington*, 381 U. S. 657, 673 (concurring opinion); *Meat Cutters v. Jewel Tea Co.*, 381 U. S. 676, 737 (dissenting opinion). But since Connell has never alleged

January 28, 1975

RE: No. 73-1256 Connell Const. Co. v. Plumbers
and Steamfitters, etc.

Dear Potter:

Bill Douglas, you, Thurgood and I were
in dissent in the above. If you are still
of that view would you care to try writing
a dissent?

Sincerely,

WDB

Mr. Justice Stewart

Wm Breuer
OC 9 74

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

February 25, 1975

RE: No. 73-1256 Connell Construction Co. v. Plumbers and
Steamfitters Local Union No. 100, etc.

Dear Potter:

Please join me in your simply unanswerable dissent in
this case.

Sincerely,

Brennan

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 30, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1256, Connell Const. Co. v. Plumbers and
Steamfitters

In due course I shall 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

From: Stewart, J.

Circulated: FEB 25 1975

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 73-1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[March —, 1975]

MR. JUSTICE STEWART, dissenting.

As part of its effort to organize mechanical contractors in the Dallas area, the respondent Local Union No. 100 engaged in peaceful picketing to induce the petitioner Connell Construction Co., a general contractor in the building and construction industry, to agree to subcontract plumbing and mechanical work at the construction site only to firms that had signed a collective-bargaining agreement with Local 100. None of Connell's own employees were members of Local 100, and the subcontracting agreement contained the Union's express disavowal of any intent to organize or represent them. The picketing at Connell's construction site was therefore secondary activity, subject to detailed and comprehensive regulation pursuant to § 8 (b)(4) of the National Labor Relations Act, 29 U. S. C. § 158 (b)(4), and § 303 of the Labor Management Relations Act, 29 U. S. C. § 187. Similarly the subcontracting agreement under which Connell agreed to cease doing business with nonunion mechanical contractors is governed by the provisions of § 8 (e) of the National Labor Relations Act, 29 U. S. C. § 158 (e). The relevant legislative history unmistakably demonstrates that in regulating secondary activity and "hot cargo" agreements in 1947 and 1959, Congress selected

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

PP 17

STYLISTIC CHANGES THROUGHOUT.

From: Stewart, J.

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: MAR 20 1975

No. 73-1256

Connell Construction Company, Inc., Petitioner,

v.
Plumbers and Steamfitters
Local Union No. 100, etc.

On Writ of Certiorari to the
United States Court of
Appeals for the Fifth Cir-
cuit.

[March —, 1975]

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join, dissenting.

As part of its effort to organize mechanical contractors in the Dallas area, the respondent Local Union No. 100 engaged in peaceful picketing to induce the petitioner Connell Construction Co., a general contractor in the building and construction industry, to agree to subcontract plumbing and mechanical work at the construction site only to firms that had signed a collective-bargaining agreement with Local 100. None of Connell's own employees were members of Local 100, and the subcontracting agreement contained the Union's express disavowal of any intent to organize or represent them. The picketing at Connell's construction site was therefore secondary activity, subject to detailed and comprehensive regulation pursuant to § 8 (b)(4) of the National Labor Relations Act, 29 U. S. C. § 158 (b)(4), and § 303 of the Labor Management Relations Act, 29 U. S. C. § 187. Similarly the subcontracting agreement under which Connell agreed to cease doing business with nonunion mechanical contractors is governed by the provisions of § 8 (e) of the National Labor Relations Act, 29 U. S. C. § 158 (e). The relevant legislative history unmistakably demonstrates that in regulating secondary activity and "hot cargo" agreements in 1947 and 1959, Congress selected

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 23, 1975

Re: No. 73-1256 - Connell Co. v. Plumbers & Steamfitters

Dear Lewis:

I have been over your first draft, and I am in general agreement. I would rather not, however, subscribe to the paragraph beginning at the bottom of page seven. If any reference is necessary to the effect of including the restraint in a collective bargaining agreement, perhaps you would agree to rewrite the paragraph along the following lines:

Although we need not decide the question,
~~✓~~ "There can be no argument here [for whatever]
~~✓~~ *it might be worth*] that the type of restraint
involved might be entitled to an antitrust ~~in~~ exemption
~~✓~~ *junction* if it were included in a lawful collec-
tive bargaining agreement. Cf. UMW v.
Pennington, supra, at 664-665; Meat Cutters
Local 189 v. Jewel Tea, supra, at 689-690
(opinion of Mr. Justice White); id., at 709-713,
732-733 (opinion of Mr. Justice Goldberg). In
this case, Local 100 had no interest in repre-
senting Connell's employees. The federal policy
favoring collective bargaining therefore offers
no shelter for the union's coercive action
against Connell or its campaign to exclude non-
union firms from the subcontracting market."

Sincerely,



Mr. Justice Powell

73-1256

2/26/75

Lewis,

Your suggested changes are
OK with me, but I have not
yet studied the dissent
sufficiently to determine whether
to say something in concurrence.

Ryan

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 28, 1975

Re: No. 73-1256 - Connell Construction Co. Inc.
v. Plumbers and Steamfitters
Local Union No. 100

Dear Lewis:

I join your circulating opinion in this
case.

Sincerely,



Mr. Justice Powell

Copies to Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 27, 1975

Re: No. 73-1256 -- Connell Construction Company, Inc. v.
Plumbers and Steamfitters Local Union No. 100, etc.

Dear Potter:

Please join me in your dissent.

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

February 4, 1975

Re: No. 73-1256 - Connell Construction Co. v. Plumbers
and Steamfitters Union

Dear Lewis:

Please join me.

Sincerely,



cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 22, 1975

Re: No. 73-1256 - Connell Construction Co. v.
Plumbers and Steamfitters Local

Dear Lewis:

If the changes proposed on pages 8, 9, 16 and 17
of the 5th draft are made, I am still with you.

Sincerely,



Mr. Justice Powell

cc: The Chief Justice
Mr. Justice White
Mr. Justice Rehnquist

LFP.

Who this circulated?
Yes to BW

1st DRAFT
1/22/75

SUPREME COURT OF THE UNITED STATES

No. 73-1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

The building trades union in this case supported its efforts to organize mechanical subcontractors by picketing certain general contractors, including Petitioner. The union's sole objective was to compel the general contractors to agree that in letting subcontracts for mechanical work they would deal only with firms that were parties to the union's current collective-bargaining agreement. The union disclaimed any interest in representing the general contractors' employees. In this case the picketing succeeded, and Petitioner seeks to annul the resulting agreement as an illegal restraint on competition under federal and state law. The union claims immunity from federal antitrust statutes and argues that federal labor regulation pre-empts state law.

I

Local 100 is the bargaining representative for workers in the plumbing and mechanical trades in Dallas. When this litigation began, it was party to a multiemployer bargaining agreement with the Mechanical Contractors Association of Dallas, a group of about 75 mechanical

January 27, 1975

No. 73-1256 Connell v. Local 100

Dear Byron:

I am today circulating for the first time to the Conference a draft (Draft No. 2) in the above case. This draft includes the helpful suggestion in your letter of January 23. There are a few verbal changes, but I believe the substance is faithful to your suggestion. If you think otherwise, I will change it.

The only other change of any consequence commences on page 6, where I have added a discussion of the multi-employer agreement. On rereading the opinion, it seemed to me that the relevance of this agreement to the present litigation was not clear. Although not challenged by petitioner, its presence adds some coloration to the case, especially as to the effect on the business market of the agreement which Local 100 extracted from Connell.

With my thanks for your assistance.

Sincerely,

Mr. Justice White

1fp/ss

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1256

From: Powell, J.

Circulated: JAN 27 1975

Recirculated: _____

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

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I

Local 100 is the bargaining representative for workers in the plumbing and mechanical trades in Dallas. When this litigation began, it was party to a multiemployer bargaining agreement with the Mechanical Contractors Association of Dallas, a group of about 75 mechanical

pp 5, 8, 17, 19

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

From: Powell, J.

Circulated: _____

Recirculated FEB 26 1975

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

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I

Local 100 is the bargaining representative for workers in the plumbing and mechanical trades in Dallas. When this litigation began, it was party to a multiemployer bargaining agreement with the Mechanical Contractors Association of Dallas, a group of about 75 mechanical

PP 7,19

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

From: Powell, J.

Circulated:

APR 23 1975

Recirculated:

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters
Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of
Appeals for the Fifth Cir-
cuit.

[January —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

The building trades union in this case supported its efforts to organize mechanical subcontractors by picketing certain general contractors, including Petitioner. The union's sole objective was to compel the general contractors to agree that in letting subcontracts for mechanical work they would deal only with firms that were parties to the union's current collective-bargaining agreement. The union disclaimed any interest in representing the general contractors' employees. In this case the picketing succeeded, and Petitioner seeks to annul the resulting agreement as an illegal restraint on competition under federal and state law. The union claims immunity from federal antitrust statutes and argues that federal labor regulation pre-empts state law.

I

Local 100 is the bargaining representative for workers in the plumbing and mechanical trades in Dallas. When this litigation began, it was party to a multiemployer bargaining agreement with the Mechanical Contractors Association of Dallas, a group of about 75 mechanical

May 15, 1975

No. 73-1256 Connell v. Plumbers and
Steamfitters Local

Dear Chief:

Thank you for your note of May 14.

I would welcome any suggestion that would meet your thought as to emphasizing the antitrust laws.

In view of what Byron has written in this area and his special interest, any change in the present draft would have to be acceptable to him as well as to Harry and Bill Rehnquist.

Sincerely,

The Chief Justice

lfp/ss

5

May 16, 1975

No. 73-1256 Connell Construction Co.
v. Local 100

Dear Chief:

Thank you for your helpful letter on the above case.

I have tried to accommodate your suggestions as I understand them, and enclose two copies of a 5th draft of the opinion. You will see the changes on pages 8-9 and 16-17. I think they do clarify and strengthen the opinion.

I have not circulated this draft, as I wanted your approval of the changes. My plan, if you approve, is then to clear them with the other three Justices who have joined me prior to circulating.

I am leaving this afternoon for a meeting of the Colonial Williamsburg Board of Trustees. I will not be back in my office until Tuesday morning, and will be available from then on.

Sincerely,

The Chief Justice

lfp/ss

*Send to C.J.
with my
letter of 5/16*

5th DRAFT

5/16/75

SUPREME COURT OF THE UNITED STATES

No. 73-1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1975]

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The building trades union in this case supported its efforts to organize mechanical subcontractors by picketing certain general contractors, including Petitioner. The union's sole objective was to compel the general contractors to agree that in letting subcontracts for mechanical work they would deal only with firms that were parties to the union's current collective-bargaining agreement. The union disclaimed any interest in representing the general contractors' employees. In this case the picketing succeeded, and Petitioner seeks to annul the resulting agreement as an illegal restraint on competition under federal and state law. The union claims immunity from federal antitrust statutes and argues that federal labor regulation pre-empts state law.

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May 22, 1975

No. 73-1256 Connell v. Plumbers and
Steamfitters Local

Dear Byron, Harry and Bill:

As the suggestion of the Chief Justice, I have made changes in the opinion on pages 8-9 and 16-17, as appear from the enclosed 5th draft.

Before recirculating I would like to be sure that these changes also meet with your approval. In my view, they merely clarify rather than change the substance of the opinion.

Sincerely,

Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Rehnquist

lfp/ss

cc: The Chief Justice

May 23, 1975

No. 73-1256 Connell v. Plumbers

TO: The Chief Justice
Mr. Justice Blackmun
Mr. Justice Rehnquist

Each of you approved the changes made in the 5th draft of this opinion, which I sent to each of you - and to Byron - prior to circulation.

I am now circulating a 6th Draft to the Conference. It embodies the changes which you approved in the 5th Draft, except that the full paragraph on page 17 has been reframed in line with a suggestion made by Byron.

I believe the paragraph, as reframed, is a more precise statement of what we hold.

Sincerely,

lfp/ss

cc: Mr. Justice White

PP 8-9, 16-17

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

From: Powell, J.

Circulated:

6th DRAFT

Recirculated MAY 23 1975

SUPREME COURT OF THE UNITED STATES

No. 73-1256

Connell Construction Company, Inc., Petitioner,
v.
Plumbers and Steamfitters Local Union No. 100, etc. } On Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit.

[January —, 1975]

MR. JUSTICE POWELL delivered the opinion of the Court.

The building trades union in this case supported its efforts to organize mechanical subcontractors by picketing certain general contractors, including Petitioner. The union's sole objective was to compel the general contractors to agree that in letting subcontracts for mechanical work they would deal only with firms that were parties to the union's current collective-bargaining agreement. The union disclaimed any interest in representing the general contractors' employees. In this case the picketing succeeded, and Petitioner seeks to annul the resulting agreement as an illegal restraint on competition under federal and state law. The union claims immunity from federal antitrust statutes and argues that federal labor regulation pre-empts state law.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

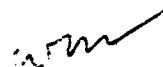
February 10, 1975

Re: No. 73-1256 - Connell Construction v. Plumbers and
Steamfitters

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

✓
May 27, 1975

Re: No. 73-1256 - Connell v. Plumbers and Steamfitters Local

Dear Lewis:

I am still with you on your most recent circulation
of the proposed opinion in this case.

Sincerely,

✓
WRW

Mr. Justice Powell

Copies to the Conference