

# The Burger Court Opinion Writing Database

*Emporium Capwell Co. v. Western  
Addition Community Organization*  
420 U.S. 50 (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

January 24, 1975

Re: No. 73-696 - The Emporium Capwell Co. v.  
Western Addition Community Organization  
No. 73-830 - NLRB v. Western Addition Community  
Organization

Dear Thurgood:

I join in your opinion circulated December 18.

Regards,



Mr. Justice Marshall

Copies to the Conference

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U.S. DEPARTMENT OF COMMERCE

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**

Nos. 73-696 AND 73-830

From: Douglas; J.

Circulate: 12-17

Recirculate: \_\_\_\_\_

The Emporium Capwell Co.,  
Petitioner,  
73-696 v.  
Western Addition Community  
Organization.  
  
National Labor Relations  
Board, Petitioner,  
73-830 v.  
Western Addition Community  
Organization et al.

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

[December —, 1974]

MR. JUSTICE DOUGLAS, dissenting.

The Court's opinion makes these union members—  
and others similarly situated—prisoners of the union.  
The law, I think, was designed to prevent that tragic  
consequence. Hence, I dissent.

Petitioners, who are black and were members of a  
union through which they obtained employment by the  
Emporium, would seem to have suffered rank discrimina-  
tion because of their race.<sup>1</sup> They theoretically had a  
cause of action against their union for breach of its duty  
of fair representation spelled out in *Steele v. Louisville R.  
Co.*, 323 U. S. 192. But as the law on that phase of the  
problem has evolved it would seem that the burden on  
the employee is heavy. See *Vaca v. Sipes*, 386 U. S. 171,  
190, where it was held that the union action must be  
“arbitrary, discriminatory, and in bad faith.”

<sup>1</sup> See appendix to this opinion.

V

Complete revision

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 73-696 AND 73-830

From: Douglas, J.

Circulate: \_\_\_\_\_  
Recirculate: 12-19

The Emporium Capwell Co.,  
Petitioner,  
73-696 v.  
Western Addition Community  
Organization.  
  
National Labor Relations  
Board, Petitioner,  
73-830 v.  
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the employee is heavy. See *Vaca v. Sipes*, 386 U. S. 171,  
190, where it was held that the union action must be  
"arbitrary, discriminatory, and in bad faith."

The employees might also have sought relief under  
Title VII of the Civil Rights Act of 1964, which forbids

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U. S. DEPARTMENT OF JUSTICE

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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

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

From: Douglas; J.

Nos. 73-696 AND 73-830

Circulate: \_\_\_\_\_

Recirculate: 1-31

The Emporium Capwell Co.,  
Petitioner,  
73-696 v.

Western Addition Community  
Organization.

National Labor Relations  
Board, Petitioner,  
73-830 v.

Western Addition Community  
Organization et al.

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

[February —, 1975]

MR. JUSTICE DOUGLAS, dissenting.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 2, 1975

RE: Nos. 73-696 and 73-830 The Emporium Capwell & N.L.R.B.  
v. Western Addition Community Organization

Dear Thurgood:

I agree.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: The Conference

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M

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 9, 1974

Nos. 73-696 and 73-830  
Emporium Capwell Co. v. Community Org.

Dear Thurgood,

I am glad to join your opinion for  
the Court in these cases.

Sincerely yours,

P.S.

Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 20, 1975

Re: Nos. 73-696 & 73-830 - Emporium Capwell Co.  
v. Western Addition Community  
Organization

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Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

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Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

dated: DEC 6 1974

Nos. 73-696 AND 73-830

Recirculated: \_\_\_\_\_

The Emporium Capwell Co.,  
Petitioner,  
73-696            v.  
Western Addition Community  
Organization,  
National Labor Relations  
Board, Petitioner,  
73-830            v.  
Western Addition Community  
Organization et al.

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

[December —, 1974]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether, in light of the national policy against racial discrimination in employment, the National Labor Relations Act protects concerted activity by a group of minority employees to bargain with their employer over issues of employment discrimination. The National Labor Relations Board held that the employees could not circumvent their elected representative to engage in such bargaining. The Court of Appeals for the District of Columbia Circuit reversed and remanded, holding that in certain circumstances the activity would be protected. 485 F. 2d 917. Because of the importance of the issue to the administration of the Act, we granted certiorari. 415 U. S. 913. We now reverse.

Wm. Taylor  
009 74

8, 10, 13, 18

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

2nd DRAFT

From: Marshall, J.

**SUPREME COURT OF THE UNITED STATES**

Circulated: \_\_\_\_\_

Nos. 73-696 AND 73-830

Recirculated: DEC 18 1974

The Emporium Capwell Co.,  
Petitioner,  
73-696 v.  
Western Addition Community  
Organization.  
  
National Labor Relations  
Board, Petitioner,  
73-830 v.  
Western Addition Community  
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*Wm. Douglas*  
0-177

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 17, 1974

Re: No. 73-696 - Emporium Capwell Co. v.  
Western Addition Community  
No. 73-830 - NLRB v. Western Addition  
Community Organization

Dear Thurgood:

Please join me.

Sincerely,

*Harry*

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 2, 1975

No. 73-696 Emporium Capwell v. Western  
Addition  
No. 73-830 NLRB v. Western Addition

Dear Thurgood:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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U.S. SUPREME COURT

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 3, 1975

Re: Nos. 73-696 and 73-830 - Emporium Capwell v.  
Western Addition

Dear Thurgood:

Please join me.

Sincerely,

*WRM*

Mr. Justice Marshall

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