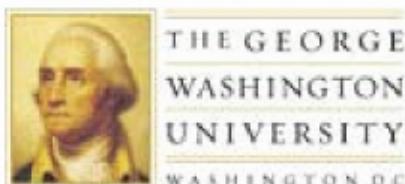


# The Burger Court Opinion Writing Database

*Hines v. Anchor Motor Freight, Inc.*  
424 U.S. 554 (1976)

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

February 27, 1976

Re: 74-1025 - Hines v. Anchor Motor Freight, Inc.

Dear Bill:

I join your dissenting opinion.

Regards,

WB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 14, 1976

RE: No. 74-1025 Charles A. Hines, etc. v. Anchor  
Motor Freight, Inc., et al.

Dear Byron:

I agree.

Sincerely,

*Bill*

Mr. Justice White

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 15, 1976

No. 75-1025 - Hines v. Anchor Motor Freight

Dear Byron,

I shall probably circulate a short separate concurring opinion in this case, reflecting the views I expressed during our Conference discussion.

Sincerely yours,

P. S.  
✓

Mr. Justice White

Copies to the Conference

To: The Chief Justice ✓  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall —  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 10/10/1988

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-1025

Charles A. Hines, etc., et al., Petitioners,  
v.  
Anchor Motor Freight, Inc., et al. } On Writ of Certiorari to  
the United States Court of Appeals for the Sixth Circuit.

[January —, 1976]

MR. JUSTICE STEWART, concurring.

I agree with the Court that proof of breach of the Union's duty of fair representation will remove the bar of finality from the arbitral decision that Anchor did not wrongfully discharge the petitioners. See *Vaca v. Sipes*, 386 U. S. 171, 194; *Humphrey v. Moore*, 375 U. S. 335, 348-351. But this is not to say that proof of breach of the Union's representation duty would render Anchor potentially liable for backpay accruing between the time of the "tainted" decision by the grievance committee and a subsequent "untainted" determination that the discharges were, after all, wrongful.

If an employer relies in good faith on a favorable arbitral decision, then his failure to reinstate discharged employees cannot be anything but rightful, until there is a contrary determination. Liability for the intervening wage loss must fall not on the employer but on the Union. Such an apportionment of damages is mandated by *Vaca*'s holding that "damages attributable solely to the employer's breach of contract should not be charged to the union, but increases if any in those damages caused by the union's refusal to process the grievance should not be charged to the employer." 386 U. S., at 197-198. To hold an employer liable for back wages for the period

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

From: Mr. Justice White

Circulated: 1-13-76

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1025

Charles A. Hines, etc., et al.,  
Petitioners,  
v.  
Anchor Motor Freight, Inc.,  
et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Sixth  
Circuit.

[January —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether a suit against an employer by employees asserting breach of a collective-bargaining contract was properly dismissed where the accompanying complaint against the union for breach of duty of fair representation has withstood the union's motion for summary judgment and remains to be tried.

I

Petitioners,<sup>1</sup> who were formerly employed as truck drivers by respondent Anchor Motor Freight, Inc. (Anchor), were discharged on June 5, 1967. The applicable collective-bargaining contract forbade discharges without just cause. The company charged dishonesty. The practice at Anchor was to reimburse drivers for money spent for lodging while the drivers were on the road overnight. Anchor's assertion was that petitioners

<sup>1</sup> Two of the original petitioners, Burtice A. Hines and Arthur D Cartwright, are deceased. Charles A Hines and Chyra J Cartwright have been substituted as party petitioners. 423 U. S. 816, — (1975).

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

From: Mr. Justice White

Circulated:

Recirculated: 1/15/76

STYLISTIC CHANGES THROUGHOUT.  
~~SEE PAGES.~~

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-1025

Charles A. Hines, etc., et al., Petitioners, <i>v.</i> Anchor Motor Freight, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[January —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether a suit against an employer by employees asserting breach of a collective-bargaining contract was properly dismissed where the accompanying complaint against the union for breach of duty of fair representation has withheld the union's motion for summary judgment and remains to be tried.

**I**

Petitioners,<sup>1</sup> who were formerly employed as truck drivers by respondent Anchor Motor Freight, Inc. (Anchor), were discharged on June 5, 1967. The applicable collective-bargaining contract forbade discharges without just cause. The company charged dishonesty. The practice at Anchor was to reimburse drivers for money spent for lodging while the drivers were on the road overnight. Anchor's assertion was that petitioners

<sup>1</sup> Two of the original petitioners, Burtice A. Hines and Arthur D. Cartwright, are deceased. Charles A. Hines and Chyra J. Cartwright have been substituted as party petitioners. 423 U. S. 816, — (1975).

SEE PAGES: 2, 3, 11, 12, 14

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. George White

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

Recirculated: 2-19-76

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 74-1025

Charles A. Hines, etc., et al.,  
Petitioners,  
v.  
Anchor Motor Freight, Inc.,  
et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Sixth  
Circuit.

[February —, 1976]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether a suit against an employer by employees asserting breach of a collective-bargaining contract was properly dismissed where the accompanying complaint against the union for breach of duty of fair representation has withstood the union's motion for summary judgment and remains to be tried.

I

Petitioners,<sup>1</sup> who were formerly employed as truck drivers by respondent Anchor Motor Freight, Inc. (Anchor), were discharged on June 5, 1967. The applicable collective-bargaining contract forbade discharges without just cause. The company charged dishonesty. The practice at Anchor was to reimburse drivers for money spent for lodging while the drivers were on the road overnight. Anchor's assertion was that petitioners

<sup>1</sup> Two of the original petitioners, Burtice A. Hines and Arthur D. Cartwright, are deceased. Charles A. Hines and Chyra J. Cartwright have been substituted as party petitioners. 423 U. S. 816, — (1975).

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 14, 1976

Re: No. 74-1025 -- Charles A. Hines v. Anchor Motor  
Freight, Inc.

Dear Byron:

Please join me.

Sincerely,

*T.M.*  
T. M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 15, 1976

Re: No. 74-1025 - Hines v. Anchor Motor Freight

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 15, 1976

No. 74-1025 Hines v. Anchor Motor Freight

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 15, 1976

Re: No. 74-1025 - Hines v. Anchor Motor Freight, Inc.

Dear Byron:

In due course I will circulate a dissent.

Sincerely,

*WR*

Mr. Justice White

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackman  
Mr. Justice Powell  
Mr. Justice Stevens

Mr. Justice Rohr, not

Circulated: 1/10/04 10/10

## 1st DRAFT

### Regulated:

SUPREME COURT OF THE UNITED STATES

No. 74-1025

Charles A. Hines, etc., et al.,  
Petitioners,  
v.  
Anchor Motor Freight, Inc.,  
et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Sixth  
Circuit.

[February —, 1976]

MR. JUSTICE REHNQUIST, dissenting.

Petitioners seek \$1 million damages from their employer and their union on the grounds that they were wrongfully discharged from their jobs. The District Court granted summary judgment for respondents, finding that the issues had been finally decided as to respondent Anchor Motors by the arbitration committee and that petitioners had failed "to show facts comprising bad faith, arbitrariness or perfudoriness on the part of the Unions." The Court of Appeals reversed the summary judgment as to the unions holding that the issue of bad faith should not have been summarily decided. However, as to respondent Anchor Motors the Court of Appeals affirmed, holding that where, as here, the collective-bargaining agreement provided that arbitration would be final and binding, the decision of the arbitrator would not be upset, "absent a showing of fraud, misrepresentation, bad faith, dishonesty of purpose or such gross mistake or inaction as to imply bad faith on the part of the Union or the employer." This Court, assuming *arguendo* that the union breached its duty of fair representation for the reasons set forth in the opinion, reversed as to Anchor Motors, holding that the *union's* breach of its duty to its members voided an otherwise