

# The Burger Court Opinion Writing Database

## *Oil Workers v. Mobil Oil Corp.*

426 U.S. 407 (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

June 10, 1976

Re: 74-1254 - Oil, Chemical and Atomic Workers v. Mobil Oil

Dear Thurgood:

With only three weeks remaining (if we are to get the Brennans on that Ferry in time) I have abandoned my writing but the best I can do is a "death bed" concurrence in the judgment.

The one good thing I can see about June is that it cuts down on at least some of our excessive writing.

Regards,

W. B.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 2, 1976

RE: No. 74-1254 Oil, Chemical and Atomic Workers, etc.  
v. Mobil Oil Corporation, etc.

Dear Thurgood:

I agree.

Sincerely,

*Bill*

Mr. Justice Marshall

cc: 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: JUN 1 1976

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

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1254

Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al., Petitioners, v. Mobil Oil Corporation, etc.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[June —, 1976]

MR. JUSTICE STEWART, dissenting.

The respondent, Mobil Oil Corporation, is a New York corporation with its home office in New York City. The Gulf-East Coast Operations Division of Mobil's Marine Transportation Department, located in Beaumont, Tex., operates eight oceangoing American-flag tankers. These ships transport petroleum products between Texas and various ports on the Atlantic Coast. Every month each tanker normally makes two round-trip voyages. On the average voyage a ship is at sea for four or five days and spends approximately 18 to 30 hours in port to load or unload its cargo.

The petitioner, Maritime Local 8-801 of the Oil, Chemical and Atomic Workers International Union, represents the 289 blue-water seamen who man the tankers. When this lawsuit began, 123 of these 289 employees claimed Texas as their residence,<sup>1</sup> and 152 of them had requested the company to list Beaumont as their home port. Although 40% of the seamen had first applied for work in New York, the remainder had applied for the jobs in

<sup>1</sup> Sixty of the employees listed New York as their residence, 21 New Jersey, 16 Florida, 13 Louisiana, 10 Maine, and 10 Rhode Island. The remainder resided in 16 other States.

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

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3rd DRAFT

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# SUPREME COURT OF THE UNITED STATES

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Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al., Petitioners, v. Mobil Oil Corporation, etc.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[June —, 1976]

MR. JUSTICE STEWART, with whom MR. JUSTICE REHN-  
 QUIST joins, dissenting.

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<sup>1</sup>Sixty of the employees listed New York as their residence, 21 New Jersey, 16 Florida, 13 Louisiana, 10 Maine, and 10 Rhode Island. The remainder resided in 16 other States.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 2, 1976

Re: No. 74-1254 - Oil, Chemical and Atomic  
Workers v. Mobile Oil Corp.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

From: Mr. Justice Marshall

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2nd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 74-1254

Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al., Petitioners, v. Mobil Oil Corporation, etc.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[June —, 1976]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Section 8 (a)(3) of the National Labor Relations Act, as amended, 61 Stat. 140, 65 Stat. 601, 73 Stat. 525, 29 U. S. C. § 158 (a)(3), permits employers as a matter of federal law to enter into agreements with unions to establish union or agency shops.<sup>1</sup> Section 14 (b) of the Act, as amended, 61 Stat. 151, 73 Stat. 541, 29 U. S. C. § 164 (b), however, allows individual States and Territories to exempt themselves from § 8 (a)(3) and to enact

<sup>1</sup> A "union shop" agreement provides that no one will be employed who does not join the union within a short time after being hired. An "agency shop" agreement generally provides that while employees do not have to join the union, they are required—usually after 30 days—to pay the union a sum equal to the union initiation fee and are obligated as well to make periodic payments to the union equal to the union dues. See *NLRB v. General Motors*, 373 U. S. 734 (1963). The "union shop" and "agency shop" varieties of "union security" agreements are to be distinguished from the "closed shop" agreement, barred by § 8 (a)(3), which provides that the employer will hire no one who is not a member of the union at the time of hiring.

✓ Pages 6, 12

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

From: Mr. Justice Marshall

Circulated: \_\_\_\_\_  
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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

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Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al., Petitioners, v. Mobil Oil Corporation, etc.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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<sup>1</sup> A "union shop" agreement provides that no one will be employed who does not join the union within a short time after being hired. An "agency shop" agreement generally provides that while employees do not have to join the union, they are required—usually after 30 days—to pay the union a sum equal to the union initiation fee and are obligated as well to make periodic payments to the union equal to the union dues. See *NLRB v. General Motors*, 373 U. S. 734 (1963). The "union shop" and "agency shop" varieties of "union security" agreements are to be distinguished from the "closed shop" agreement, barred by § 8 (a)(3), which provides that the employer will hire no one who is not a member of the union at the time of hiring.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 7, 1976

Re: No. 74-1254 - Oil Workers v. Mobil Oil Corp.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 8, 1976

No. 74-1254 Oil, Chemical and Atomic Workers  
v. Mobil Oil Corp.

Dear Thurgood:

As I prefer to rest our decision on the virtually total federal control of maritime workers, I will circulate a brief opinion concurring in your judgment.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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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 Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: JUN 9 1976

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 74-1254

Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al., Petitioners, v. Mobil Oil Corporation, etc.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[June —, 1976]

MR. JUSTICE POWELL, concurring in the judgment.

Although I concur in the judgment of the Court, I do not think it necessary to determine in this case whether a "job situs" test is appropriate or required generally. The only issue before the Court is whether federal or state law should apply to the employment contracts of maritime workers whose job situs is the high seas and who thereby enjoy a special status. As noted by Judge Ainsworth, writing for the six dissenting members of the Court of Appeals:

"[S]eamen have traditionally maintained an exceptional status in regard to the regulation and control of their employment, and . . . section 14 (b) cannot reasonably be construed to remove them from that category. Seamen, particularly the type of blue-water seamen involved here, as wards of admiralty have been accorded a special status and protection under federal maritime law unknown to state law in the domain of the master-servant relationship. Unlike the land-based worker, the seaman's employment and all of the rights and restrictions flowing

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 7, 1976

Re: No. 74-1254 - Oil, Chemical and Atomic Workers  
v. Mobil Oil Corp.

Dear Potter:

Please join me in your dissent.

Sincerely,

*arm*

Mr. Justice Stewart

Copies to the Conference

1 ✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 2, 1976

Re: 74-1254 - Oil, Chemical and Atomic Workers  
v. Mobil Oil Corp.

Dear Thurgood:

With the qualification noted in the enclosed  
concurring statement, I join your opinion.

Respectfully,



Mr. Justice Marshall

Copies to the Conference

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No. 74-1254

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Oil, Chemical and Atomic Workers,	)	
International Union, AFL-CIO,	)	
et al.,	)	On Writ of Certiorari to
Petitioners,	)	the United States Court
	)	of Appeals for the Fifth
v.	)	Circuit.
	)	
Mobil Oil Corporation, etc.	)	

[June 1976]

MR. JUSTICE STEVENS, concurring.

As I read § 14(b), the prepositional phrase "in any State or Territory" modifies the immediately preceding noun "employment." This reading is consistent with the analysis in the Court's opinion, which I join except for its suggestion that federal policy favors union shop and agency shop agreements.

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

From: Mr. Justice Stevens

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*Printed*  
1st DRAFT

# SUPREME COURT OF THE UNITED STATES

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Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al., Petitioners, v. Mobil Oil Corporation, etc.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
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[June —, 1976]

MR. JUSTICE STEVENS, concurring.

As I read § 14 (b), the prepositional phrase "in any State or Territory" modifies the immediately preceding noun "employment." This reading is consistent with the analysis in the Court's opinion, which I join except for its suggestion that federal policy favors permitting union-shop and agency-shop agreements.