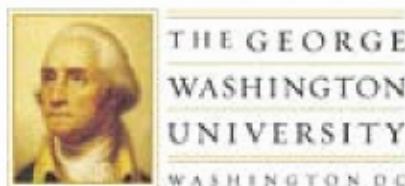


The Burger Court Opinion Writing Database

*Hortonville Join School District No. 1 v.
Hortonville Education Association*
426 U.S. 482 (1976)

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



To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Souter

From: The Oracle Database

Circulated: MAY 19 1976

Recirculation

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1606

Hortonville Joint School Dis-
trict No. 1 et al.,
Petitioners,
v.
Hortonville Education Asso-
ciation et al. } On Writ of Certiorari to
the Supreme Court of
Wisconsin.

[May —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether school board members, vested by state law with the power to employ and dismiss teachers, could, consistent with the Due Process Clause of the Fourteenth Amendment, dismiss teachers engaged in a strike prohibited by state law.

三

The petitioners are a Wisconsin school district, the seven members of its school board, and three administrative employees of the district. Respondents are teachers suing on behalf of all teachers in the district and the Hortonville Education Association (HEA), the collective-bargaining agent for the district's teachers.

During the 1972-1973 school year Hortonville teachers worked under a master collective-bargaining agreement; negotiations were conducted for renewal of the contract, but no agreement was reached for the 1973-1974 school year. The teachers continued to work while negotiations proceeded during the year without reaching agreement.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 17, 1976

Re: No. 74-1606 - Hortonville School District v.
Hortonville Education Association

MEMORANDUM TO THE CONFERENCE:

I propose to add at page 9, Section B, line 12, the following:

Even assuming those cases state the governing standards when the decision-maker is a public employer dealing with public employees, the teachers . . . etc.

Regards,

Web

M. 2, 5, 6, 9, 11-14.

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice O'Connor
Mr. Justice Stevens

From: The Chief Justice

Circulated:

Recirculated: MAY 18 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1606

[May —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether school board members, vested by state law with the power to employ and dismiss teachers, could, consistent with the Due Process Clause of the Fourteenth Amendment, dismiss teachers engaged in a strike prohibited by state law.

I

The petitioners are a Wisconsin school district, the seven members of its school board, and three administrative employees of the district. Respondents are teachers suing on behalf of all teachers in the district and the Hortonville Education Association (HEA), the collective-bargaining agent for the district's teachers.

During the 1972-1973 school year Hortonville teachers worked under a master collective-bargaining agreement; negotiations were conducted for renewal of the contract, but no agreement was reached for the 1973-1974 school year. The teachers continued to work while negotiations proceeded during the year without reaching agreement.

Stylistic changes
throughout; see esp. p. 13.

To: Mr. Justice BRENNAN
Mr. Justice BLACKMUN
Mr. Justice BURGER
Mr. Justice CLARK
Mr. Justice FORTAS
Mr. Justice MARSHALL
Mr. Justice POWELL
Mr. Justice REHNQVIST

From: The Clerk of the Supreme Court

Circulated: John D. Jeffs

Recirculated: John D. Jeffs

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1606

Hortonville Joint School Dis-
trict No. 1 et al.,
Petitioners,
v.
Hortonville Education Asso-
ciation et al.

On Writ of Certiorari to
the Supreme Court of
Wisconsin.

June
[May —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether school board members, vested by state law with the power to employ and dismiss teachers, could, consistent with the Due Process Clause of the Fourteenth Amendment, dismiss teachers engaged in a strike prohibited by state law.

I

The petitioners are a Wisconsin school district, the seven members of its school board, and three administrative employees of the district. Respondents are teachers suing on behalf of all teachers in the district and the Hortonville Education Association (HEA), the collective-bargaining agent for the district's teachers.

During the 1972-1973 school year Hortonville teachers worked under a master collective-bargaining agreement; negotiations were conducted for renewal of the contract, but no agreement was reached for the 1973-1974 school year. The teachers continued to work while negotiations proceeded during the year without reaching agreement.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1976

Re: 74-1638 - Hortonville Educ. Ass'n. v. Hortonville Joint School Dist. No. 1.
75-466 - Crestwood Educ. Ass'n. v. Bd. of Educ. of School Dist. of Crestwood
75-698 - Lake Michigan College Federation of Teachers v. Lake Michigan Community College
75-729 - Anderson v. Bd. of Educ., Princeton City School Dist.
(Heretofore held for decision in 74-1606 - Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Ass'n.)

MEMORANDUM TO THE CONFERENCE:

1. No. 74-1638 - Hortonville Educ. Ass'n. v. Hortonville Joint School Dist. No. 1

This is a cross-petition, in which the teachers claim (1) that the state statutes making their strike illegal deny them equal protection of the laws vis-a-vis private employees, who may strike, and policemen and firemen, who are given compulsory arbitration in exchange for losing the right to strike. The Wisconsin Supreme Court justified the statutes as reflecting the different nature of public employment and the greater need to get policemen and firemen back to work in the event of a strike. The teachers also claim that they were entitled to a pre-termination hearing before an impartial decision-maker other than the Board, and that they are therefore entitled to reinstatement and back pay pending the de novo trial in state court. I believe that the Wisconsin Supreme Court correctly decided the first issue; the second is mooted by our decision in 74-1606.

I will vote to deny.

2. No. 75-466 - Crestwood Educ. Ass'n. v. Crestwood Bd. of Educ.

After an off-and-on strike during the fall, resp School Board gave teachers the option of returning to work by a fixed date or submitting resignations. The 184 teachers who failed to report for work were dismissed

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1976

RE: No. 74-1606 Hortonville Joint School District
No. 1, et al. v. Hortonville Education Assn.

Dear Potter:

Please join me in your dissenting opinion in
the above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

J
PS
Planned
1/1

To: The Chief Justice
Mr. Justice BREWSTER
Mr. Justice WARREN
Mr. Justice MURKIN
Mr. Justice BURGER
Mr. Justice POWELL
Mr. Justice REHNQUIST
Mr. Justice SCOTT

From: Mr. Justice SCOTT

Circulated: JUN 11 1976

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1606

OK?

Hortonville Joint School Dis-
trict No. 1 et al.,
Petitioners,
v.
Hortonville Education Asso-
ciation et al.

On Writ of Certiorari to
the Supreme Court of
Wisconsin.

[June —, 1976]

MR. JUSTICE STEWART, dissenting.

The issue in this case is whether the discharge of the respondent teachers by the petitioner school board violated the Due Process Clause of the Fourteenth Amendment because the board members were not impartial decisionmakers. It is now well established that "a biased decisionmaker [is] constitutionally unacceptable [and] 'our system of law has always endeavored to prevent even the probability of unfairness.'" *Withrow v. Larkin*, 421 U. S. 35, 47, quoting *In re Murchison*, 349 U. S. 133, 136.

In order to ascertain whether there is a constitutionally unacceptable danger of partiality, both the nature of the particular decision and the interest of the decisionmaker in its outcome must be examined. Here, Wisconsin law controls the factors that must be found before a teacher may be discharged for striking. The parties present sharply divergent views of what the Wisconsin law requires. The petitioners claim that the decision to discharge a striking teacher is a policy matter entrusted to the discretion of the local school board, whereas the respondents contend that a striking teacher cannot be discharged unless that sanction is reasonable in view of the circumstances culminating in the strike.

To: The Chief Justice
 Mr. Justice B.
 Mr. Justice M.
 Mr. Justice H.
 Mr. Justice B.
 Mr. Justice P.
 Mr. Justice R.
 Mr. Justice S.

From: Mr. Justice S.

Circulated:

JUN 14 1976

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1606

Hortonville Joint School Dis-
 trict No. 1 et al.,
 Petitioners,
 v.
 Hortonville Education Associa-
 tion et al. } On Writ of Certiorari to
 } the Supreme Court of
 } Wisconsin.

[June —, 1976]

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

The issue in this case is whether the discharge of the respondent teachers by the petitioner school board violated the Due Process Clause of the Fourteenth Amendment because the board members were not impartial decisionmakers. It is now well established that "a biased decisionmaker [is] constitutionally unacceptable [and] our system of law has always endeavored to prevent even the probability of unfairness." *Withrow v. Larkin*, 421 U. S. 35, 47, quoting *In re Murchison*, 349 U. S. 133, 136.

In order to ascertain whether there is a constitutionally unacceptable danger of partiality, both the nature of the particular decision and the interest of the decisionmaker in its outcome must be examined. Here, Wisconsin law controls the factors that must be found before a teacher may be discharged for striking. The parties present sharply divergent views of what the Wisconsin law requires. The petitioners claim that the decision to discharge a striking teacher is a policy matter entrusted to the discretion of the local school board, whereas the respondents contend that a striking teacher cannot be discharged unless that sanction is reasonable in view of the circumstances culminating in the strike.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 15, 1976

Re: No. 74-1606 - Hortonville Joint School
District No. 1 v. Hortonville
Education Assn

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1976

Re: No. 74-1606 -- Hortonville Joint School District v.
Hortonville Education Association

Dear Potter:

Please join me.

Sincerely,

JM -
T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

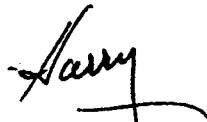
May 31, 1976

Re: No. 74-1606 - Hortonville Joint School District v.
Hortonville Education Association

Dear Chief:

Please join me.

Sincerely,



cc: The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 17, 1976

No. 74-1606 Hortonville Joint School District
v. Hortonville Education Association

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

Revised 5/11

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

✓

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 14, 1976

Re: No. 74-1606 - Hortonville School District v.
Hortonville Education Association

Dear Chief:

Please join me.

Sincerely,

WW

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 18, 1976

Re: 74-1606 - Hortonville Joint School District No. 1
v. Hortonville Education Association

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference