

# The Burger Court Opinion Writing Database

*Buffalo Forge Co. v. Steelworkers*  
428 U.S. 397 (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 25, 1976

Re: 75-339 - Buffalo Forge Co. v. United Steelworkers

Dear John:

I have had trouble with this case from the outset and, as you know, the voting, including your own, was accompanied by question marks. I had thought a narrow opinion could be written to reverse, but after carefully reviewing all that has been written I conclude I must join Byron.

Regards,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 25, 1976

Re: 75-339 - Buffalo Forege Co. v. United Steelworkers

Dear Byron:

To keep the "bookkeeping" records in order,  
the above case is reassigned to you.

Regards,

*WSB*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 30, 1976

Re: 75-339 - Buffalo Forge Co. v. United Steelworkers  
of America, AFL-CIO

Dear Byron:

I must say that I like John's result better than yours  
and that's the way Congress ought to provide. However, Congress  
did not, and I therefore join you.

Regards,

WEB

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 21, 1976

RE: No. 75-339 Buffalo Forge Co. v. United Steel-  
workers of America, etc.

Dear John:

I am happy to join your very fine opinion in  
the above.

Sincerely,

Mr. Justice Stevens

cc: The Conference

WJS

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

June 30, 1976

RE: No. 75-339 - Buffalo Forge Co. v. United Steelworkers  
of America, AFL-CIO

Dear John:

Please join me in the dissenting opinion you have  
prepared in the above.

Sincerely,

*Bill*

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 22, 1976

No. 75-339 - Buffalo Forge v. United Steelworkers

Dear Byron,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

P.S.  
P.

Mr. Justice White

Copies to the Conference

WQ

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 28, 1976

Re: No. 75-339, Buffalo Forge Co. v. United  
Steelworkers of America, AFL-CIO

Dear Byron,

I am glad to join your opinion for the  
Court in this case.

Sincerely yours,

P. S.,  
W

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 21, 1976

Re: No. 75-339 - Buffalo Forge Co. v. United  
Steelworkers of America

Dear John:

I shall shortly circulate a dissent in  
this case.

Sincerely,



Mr. Justice Stevens

Copies to Conference

23

No. 75-339 — Buffalo Forge Co. v. United Steelworkers

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: 6-21-76

Recirculated: ~~6-21-76~~

MR. JUSTICE WHITE, dissenting.

I dissent because today's judgment invites the courts into any and every arbitrable dispute between labor and management and would permit the district courts, if after evidence and argument they are sufficiently convinced that the parties seeking arbitration will prevail, to issue an injunction restoring the status quo ante pending the arbitral decision. Section 301 assigns a major role to the courts in enforcing collective bargaining contracts, but where the parties have chosen to provide their own dispute-settlement machinery culminating in impartial arbitration, until now the role of the courts has been to enforce the promise to arbitrate, and if necessary the arbitral decision itself, but not to intimate their own views on the merits of the dispute since it is the congressional intention

2nd Draft

No. 75-339 — Buffalo Forge Co. v. United Steelworkers

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 1, 5-6, 8-9, 11-12 + NN. 1, 2

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: 6-23-76

MR. JUSTICE WHITE, with whom MR. JUSTICE STEWART  
and MR. JUSTICE REHNQUIST join, dissenting.

I dissent because today's judgment invites the federal courts into any and every arbitrable dispute between labor and management and would permit the district courts, if after evidence and argument they are sufficiently convinced that the parties seeking arbitration will prevail, to issue an injunction restoring the status quo ante pending the arbitral decision. Section 301, 61 Stat. 156, 29 U.S.C. § 185, assigns a major role to the district courts in enforcing collective bargaining contracts, Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957), but where the parties have bargained for their own dispute-settlement machinery culminating in impartial arbitration, until now the role

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: 6-28-76

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

No. 75-339 - Buffalo Forge Co. v. United  
Steelworkers of America,  
AFL-CIO

Mr. Justice White delivered the opinion of the  
Court.

The issue for decision is whether a federal court  
may enjoin a sympathy strike pending the arbitrator's  
decision as to whether the strike is forbidden by the  
express no-strike clause contained in the collective bar-  
gaining contract to which the striking union is a party.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 29, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 75-339 — Buffalo Forge Co.  
v. United Steelworkers of America, AFL-CIO

There are four cases being held:

1. No. 75-524 — Hyster Co. v. Employees Ass'n of Kewanee

Petitioner Hyster operates plants in Peoria, Kewanee and Danville, Illinois. Two independent unions, respondent Independent Towing and Lifting Machine Association, and Employees Association of Kewanee, represent employees at the Peoria and Kewanee plants, respectively. Employees at the Danville plant are represented by a third independent union, which is not a party to this litigation. Each union is a party to a separate collective bargaining agreement with Hyster. The Peoria and Kewanee agreements include similar arbitration and no-strike provisions. CA 7 took the Peoria language as representative. The grievance and arbitration procedures apply to "[a]ll differences, disputes or controversies which arise between the Union, the Company or any employee covered by this Agreement and the Company," and the no-strike clause reads:

"The Union will not authorize, sanction, condone, promote or instigate any strike, work stoppage, sit-down, slow down, picketing or curtailment of work or interference with the efficient operation of the Company's plant or premises during the term of this Agreement."

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

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 6, 10-13

From: Mr. Justice White

Circulated:

Recirculated: 7-2-76

**1st DRAFT**

**SUPREME COURT OF THE UNITED STATES**

No. 75-339

Buffalo Forge Co., Petitioner, v. On Writ of Certiorari to  
United Steelworkers of America, AFL-CIO, et al. the United States Court  
of Appeals for the Second Circuit.

[June —, 1976]

Opinion of the Court by MR. JUSTICE WHITE, announced by MR. JUSTICE REHNQUIST.

The issue for decision is whether a federal court may enjoin a sympathy strike pending the arbitrator's decision as to whether the strike is forbidden by the express no-strike clause contained in the collective-bargaining contract to which the striking union is a party.

I

The Buffalo Forge Company (the employer) operates three separate plant and office facilities in the Buffalo, New York area. For some years production and maintenance (P&M) employees at the three locations have been represented by the United Steelworkers of America, AFL-CIO, and its Local Unions No. 1874 and No. 3732 (the Union). The United Steelworkers is a party to the two separate collective-bargaining agreements between the locals and the employer. The contracts contain identical no-strike clauses,<sup>1</sup> as well as grievance and

<sup>1</sup> Section 14.b. of each agreement provides:

"There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 23, 1976

Re: No. 75-339 -- Buffalo Forge Company v. United  
Steelworkers of America, AFL-CIO

Dear John:

Please join me.

Sincerely,

*J.W.*  
T. M.

Mr. Justice Stevens

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 30, 1976

Re: No. 75-339 -- Buffalo Forge Co. v. United Steelworkers

Dear John:

Please join me in your dissent.

Sincerely,

*T. M.*  
T. M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 25, 1976

Re: No. 75-339 - Buffalo Forge Co. v. United Steel Workers

Dear Byron:

Please join me in your dissent in this case.

Sincerely,



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Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 29, 1976

Re: No. 75-339 - Buffalo Forge Co. v. United Steel Workers

Dear Byron:

Please join me in your circulation of June 28.

Sincerely,



Mr. Justice White

cc: The Conference

June 21, 1976

No. 75-339 Buffalo Forge v. USW, AFL-CIO

Dear John:

Although I will join your opinion, there is one point that I would appreciate your considering.

At page 19 you state that an injunction may issue only "upon convincing evidence that the strike is clearly within the no-strike clause." In Gateway Coal, there was a substantial question as to whether the strike was in violation of the no-strike clause. The Court of Appeals thought it was not, and we reversed on this issue. This case is distinguishable from Gateway Coal in that there is no "underlying grievance" involved, but I am not sure this distinction should affect the presumption in favor of arbitrability.

In Gateway Coal we emphasized the "now well-known presumption of arbitrability for labor disputes", enunciated in United Steelworkers of America, 363 U.S. at 582-583. I would have thought that the rule should be that an injunction is appropriate unless it is clear that the strike is not in violation of the no-strike clause.

As a matter of general policy we are now so strongly committed to arbitration as the means of resolving industrial disputes, it seems preferable for

2.

the presumption to run in favor of an injunction wherever there is a strong no-strike clause as in this case.

As noted at the outset, I will join your excellent opinion in any event as future labor contracts will be negotiated in light of our holding. But injunctions may well be sought under existing labor contracts in which the presumption (burden of proof) may be determinative of the controversy. Therefore, I would hope that you will think some change in this respect is appropriate.

Sincerely,

Mr. Justice Stevens

LFP/gg

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 22, 1976

No. 75-339 Buffalo Forge Co. v. United  
Steelworkers

---

Dear John:

Please join me.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 29, 1976

No. 75-339 Buffalo Forge Co. v.  
United Steelworkers

Dear John:

I remain firmly with you and Gateway coal.

Sincerely,

*Lewis*

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 22, 1976

Re: No. 75-339 - Buffalo Forge v. United Steelworkers

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,

*WW*

Mr. Justice White

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 25, 1976

Re: No. 75-339 - Buffalo Forge v. United Steelworkers

Dear Byron:

Please join me in what was formerly your dissenting opinion.

Sincerely,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 30, 1976

Re: No. 75-339 - Buffalo Forge Co. v. United Steelworkers

Dear Byron:

Please join me.

Sincerely,

WWM

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 Black  
Mr. Justice Powell  
Mr. Justice Rehnquist

✓ Paul  
No. 75-339 - Buffalo Forge Company v. United  
Steelworkers of America, AFL-CIO, From: Mr. Justice Stevens et al.

Circulated: JUN 18

Recirculated:

MR. JUSTICE STEVENS delivered the opinion of the Court.

There are two questions in dispute: (1) whether the no-strike clause in the parties' collective bargaining agreement applies to a sympathy strike; and (2) whether a federal court may enjoin the strike pending an arbitrator's decision on the first question. The second question is for us to decide.

The United Steelworkers of America, AFL-CIO, and its Local Unions No. 1874 and No. 3732 (collectively, the Union) have represented the production and maintenance (P&M) employees of Buffalo Forge Company (the Company) at its three facilities in the vicinity of Buffalo, New York, for many years. Their collective bargaining agreements<sup>1/</sup> contain a broadly worded no-strike clause<sup>2/</sup> and a mandatory arbitration clause covering any dispute involving a question of interpretation of the

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<sup>1/</sup> Buffalo Forge Company has entered into separate agreements with the two local unions. The United Steelworkers is a party to both agreements. The relevant provisions of each agreement are identical. The parties have stipulated that the collective bargaining agreements in effect at the time of the events giving rise to this action apply to the dispute in this case. App. 25.

2/ Section 14.b. of the agreements provides:

"There shall be no strikes, work stoppages or interruption or impeding of work. No Officers or representatives of the Union shall authorize, instigate, aid or condone any such activities. No employee shall participate in any such activity. The Union recognizes its possible liabilities for violation of this provision and will use its influence to see that work stoppages are prevented. Unsuccessful efforts by Union

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  
JUN 28 1976  
Circulated:  
Recirculated:

75-339 - Buffalo Forge Co. v. United Steelworkers

MR. JUSTICE STEVENS, dissenting.

A contractual undertaking not to strike is the union's normal quid pro quo for the employer's undertaking to submit grievances to binding arbitration. The issue in this case is whether that quid pro quo is severable into two parts--one which a federal court has power to enforce by injunction while the other is beyond the reach of a federal court's injunctive power.

Less than three years ago all eight of my Brethren joined in an opinion which answered that question quite directly by stating that whether a district court has authority to enjoin a work stoppage "depends on whether the union was under a contractual duty not to strike." <sup>1/</sup>  
Gateway Coal Co. v. Mine Workers, 414 U.S. 368, 380.

1/ The Court "concluded that § 301(a) empowers a federal court to enjoin violations of a contractual duty not to strike." 414 U.S. at 381. There was no dissent from that

SUBSTANTIVE CHANGES, pp. 1-2.  
STYLISTIC CHANGES THROUGHOUT.

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

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

Recirculated: JUN 29 1976

75-339 - Buffalo Forge Co. v. United Steelworkers

MR. JUSTICE STEVENS, dissenting.

A contractual undertaking not to strike is the union's normal quid pro quo for the employer's undertaking to submit grievances to binding arbitration. The question in this case is whether that quid pro quo is severable into two parts--one which a federal court may enforce by injunction and another which it may not.

Less than three years ago all eight of my Brethren joined in an opinion which answered that question quite directly by stating that whether a district court has authority to enjoin a work stoppage "depends on whether the union was under a contractual duty not to strike."

Gateway Coal Co. v. United Mine Workers, 414 U.S. 368, 380. <sup>1/</sup>

The Court today holds that only a part of the union's <sup>2/</sup> quid pro quo is enforceable by injunction. The principal bases for the holding are (1) the Court's literal interpretation of the Norris-LaGuardia Act; and (2) its fear that the federal judiciary would otherwise make a "massive" entry into the business of contract interpretation heretofore reserved

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 30, 1976

Re: 75-339 - Buffalo Forge Co. v. United Steelworkers

Dear Byron:

In surrebuttal, I propose to add the following:

- (1) At the end of footnote 14, p. 10:  
As the Court reminded us in Gateway Coal, supra, at 379, "the parties' objective in using the arbitration process is primarily to further their common goal of uninterrupted production under the agreement, to make the agreement serve their specialized needs."
- (2) At the end of footnote 26, p. 17:  
Consistently with this Court's holding the arbitrator remained free to decide that the underlying dispute was not arbitrable and hence that the enjoined strike was not in violation of the agreement.

Sincerely,



Mr. Justice White

Copies to the Conference