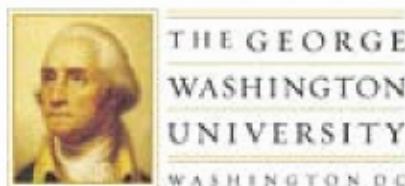


The Burger Court Opinion Writing Database

Nolde Brothers, Inc. v. Bakery Workers
430 U.S. 243 (1977)

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



✓
Chief
Please for me
M

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

From: The Chief Justice

Circulated: FEB 23 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-1198

Nolde Brothers, Inc., Petitioner,
v.
Local No. 358, Bakery & Con-
fectionery Workers Union,
AFL-CIO. } On Writ of Certiorari to the
United States Court of
Appeals for the Fourth
Circuit.

[March —, 1977]

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

This case raises the question of whether a party to a collective-bargaining contract may be required to arbitrate a contractual dispute over severance pay pursuant to the arbitration clause of that agreement even though the dispute, although governed by the contract, arises after its termination. Only the issue of arbitrability is before us.

(1)

In 1970, petitioner Nolde Brothers, Inc., entered into a collective-bargaining agreement with respondent Local No. 358, of the Bakery and Confectionery Workers Union, AFL-CIO covering petitioner's Norfolk, Va., bakery employees. Under the contract, "any grievance" arising between the parties was subject to binding arbitration.¹ In addition, the

¹ Article XII, Grievances and Arbitration:

"ARTICLE XII"

"GRIEVANCES AND ARBITRATION"

"Section 1. All grievances shall be first taken up between the Plant Management and the Shop Steward. If these parties shall be unable to settle the grievance, then the Business Agent of the Union shall be called in, in an attempt to arrive at a settlement of the grievance. If these

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

CHAMBERS OF
THE CHIEF JUSTICE

March 4, 1977

Re: 75-1198 - Nolde Brothers, Inc. v. Local No. 358,
Confectionery Workers Union, AFL-CIO

MEMORANDUM TO THE CONFERENCE:

Enclosed is fresh copy of the above with
purely stylistic changes in the areas marked.
No change in substance or meaning is involved.
A few sentences need touching up to eliminate
awkward structure.

Regards,

WSB

Change
9/10
3/1

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 75-1198

Nolde Brothers, Inc., Petitioner,
v.
Local No. 358, Bakery & Con-
fectionery Workers Union,
AFL-CIO, } On Writ of Certiorari to the
United States Court of
Appeals for the Fourth
Circuit.

[March 7, 1977]

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

This case raises the question of whether a party to a collective-bargaining contract may be required to arbitrate a contractual dispute over severance pay pursuant to the arbitration clause of that agreement even though the dispute, although governed by the contract, arises after its termination. Only the issue of arbitrability is before us.

(1)

In 1970, petitioner Nolde Brothers, Inc., entered into a collective-bargaining agreement with respondent Local No. 358, of the Bakery and Confectionery Workers Union, AFL-CIO covering petitioner's Norfolk, Va., bakery employees. Under the contract, "any grievance" arising between the parties was subject to binding arbitration.¹ In addition, the

¹ Article XII, Grievances and Arbitration:

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

From: The Chief Justice

Circulated:

MAR 4 1977
Recirculated:

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 24, 1977

RE: No. 75-1198 Nolde Brothers v. Local 358, Bakery, etc.

Dear Chief:

I agree.

Sincerely,

Wil

The Chief Justice
cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 23, 1977

75-1198, Nolde Brothers, Inc.
v. Bakery Workers

Dear Chief,

I shall, in due course, circulate a
dissenting opinion in this case.

Sincerely yours,

P.S.
P.S.

The Chief Justice

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

1st DRAFT Circulated: FEB 24 1977

SUPREME COURT OF THE UNITED STATES

Recirculated

No. 75-1198

Nolde Brothers, Inc., Petitioner,
v.
Local No. 358, Bakery & Con-
fectionery Workers Union,
AFL-CIO. } On Writ of Certiorari to the
United States Court of
Appeals for the Fourth
Circuit.

[March —, 1977]

MR. JUSTICE STEWART, dissenting.

When a dispute arises between two parties, that dispute is to be settled by the process of arbitration only if there is an agreement between the parties that the dispute will be settled by that means. Yet the Court today says that a union-employer dispute must be settled by arbitration even though the dispute did not even arise until after the contract containing an agreement to arbitrate had been terminated by action of the union, and the employer had closed its business. I think this conclusion is neither required by existing precedent nor based upon any realistic appraisal of the contracting parties' intent.

Our cases, to be sure, have established the importance of arbitration in resolving disputes arising under collective-bargaining agreements and in thereby maintaining peaceful labor relations. A collective-bargaining agreement erects a system of industrial self-government; grievance and arbitration provisions in such an agreement make that collective-bargaining process continuous: "Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties." *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U. S. 574, 581.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 1, 1977

Re: No. 75-1198 - Nolde Bros. Inc. v. Bakery
Workers

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

February 28, 1977

Re: No. 75-1198 - Nolde Bros. v. Local No. 358

Dear Chief:

Please join me.

Sincerely,

JM
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

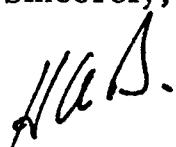
February 25, 1977

Re: No. 75-1198 - Nolde Bros. Inc. v. Local No. 358,
Bakery Confectionery Workers Union

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

75-1198

Supreme Court of the United States
Memorandum

-----, 19-----

Levitt -

Why is your old firm
not still in this case?

H.A.C.

Nolle was bought
out by a Kansas City
Company during the
litigation below.

Hanson, Williams no
longer represents Nolle
or has any interest
in this case. L.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 24, 1977

No. 75-1198 Nolde Brothers v. Local No. 358

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

75-1198

Supreme Court of the United States
Memorandum

, 19

Lewis -

Why is your old firm
not still in this case?

H.A.C.

Nolle was brought
out by a Kansas City
Company during the
litigation below.

Hanson, Williams no
longer represents Nolle
or has any interest
in this case. L.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 3, 1977

Re: No. 75-1198 - Nolde Brothers v. Local 358

Dear Potter:

Please join me in your dissent in this case.

Sincerely,

WM

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 24, 1977

Re: 75-1198 - Nolde Brothers v. Local No. 358

Dear Chief:

Please join me.

Respectfully,



The Chief Justice
Copies to the Conference