

# The Burger Court Opinion Writing Database

*Ohio Bureau of Employment Services v.  
Hodory*

431 U.S. 471 (1977)

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

May 18, 1977

RE: 75-1707 - Ohio Bureau of Employment Services  
v. Hodory

Dear Harry:

I join. Byron's suggested footnote for  
page eight is acceptable to me.

Regards,

WEB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 17, 1977

RE: No. 75-1707 Ohio Bureau of Employment Services v.  
Hodory

Dear Harry:

I agree.

Sincerely,

*Bill*

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 17, 1977

No. 75-1707, Ohio Bureau of Employment  
Services et al. v. Hodory

Dear Harry,

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

Sincerely yours,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 18, 1977

Re: No. 75-1707 - Ohio Bureau of Employment  
Services v. Hodory

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Dear Harry:

I join your opinion in this case but hope you could add a footnote on page eight to the effect that we indicate no view as to the merits of the Younger claim that might have been asserted by the State in the circumstances of this case.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 18, 1977

Re: No. 75-1707, Ohio Bureau of Employment Services v. Hodory

Dear Harry:

Please join me.

Sincerely,



T. M.

Mr. Justice Blackmun

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 5/16/77

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

**2nd DRAFT**

**SUPREME COURT OF THE UNITED STATES**

**No. 75-1707**

Ohio Bureau of Employment Services et al., Appellants,  
v.  
Leonard Paul Hodory. } On Appeal from the United States District Court for the Northern District of Ohio.

[May —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents a challenge to Ohio Rev. Code § 4141.29 (D)(1)(a). That statute, at the times relevant to this suit, imposed a disqualification for unemployment benefits when the claimant's unemployment was "due to a labor dispute other than a lockout at any factory . . . owned or operated by the employer by which he is or was last employed." The challenge is based on the Supremacy Clause and on the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The case also raises questions concerning abstention.

**I**

In November 1974 plaintiff-appellee, Leonard Paul Hodory, was employed as a millwright apprentice with United States Steel Corporation (USS) at its works in Youngstown, Ohio. The United Mine Workers at that time were out on strike at coal mines owned by USS and by Republic Steel Corporation throughout the country. These company-owned mines supplied the fuel used in the operation of manufacturing facilities of USS and Republic. As a result of the strike, the fuel supply at the Youngstown plant was reduced. The plant eventually was shut down, and appellee was furloughed on November 12, 1974.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 18, 1977

MEMORANDUM TO THE CONFERENCE:

Re: No. 75-1707 - Ohio Bureau of Employment v. Hodory

If there is no objection, then, pursuant to Byron's request, I shall add the following footnote:

"In view of this conclusion, we need not and do not express any view on whether the District Court erred in refusing to abstain on Younger grounds."

Dropped from the end of the full paragraph on page 8, this will be footnote 9. Succeeding footnotes will then be lifted one number.

*ML*,

J. 8  
STYLISTIC CHANGES

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

From: Mr. Justice Blackmun

Circulated: May 10, 1977Recirculated: May 12, 1977

## 3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-1707

Ohio Bureau of Employment Services et al., Appellants,  
 v.  
 Leonard Paul Hodory. } On Appeal from the United States District Court for the Northern District of Ohio.

[May —, 1977]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents a challenge to Ohio Rev. Code § 4141.29 (D)(1)(a). That statute, at the times relevant to this suit, imposed a disqualification for unemployment benefits when the claimant's unemployment was "due to a labor dispute other than a lockout at any factory . . . owned or operated by the employer by which he is or was last employed." The challenge is based on the Supremacy Clause and on the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The case also raises questions concerning abstention.

## I

In November 1974 plaintiff-appellee, Leonard Paul Hodory, was employed as a millwright apprentice with United States Steel Corporation (USS) at its works in Youngstown, Ohio. The United Mine Workers at that time were out on strike at coal mines owned by USS and by Republic Steel Corporation throughout the country. These company-owned mines supplied the fuel used in the operation of manufacturing facilities of USS and Republic. As a result of the strike, the fuel supply at the Youngstown plant was reduced. The plant eventually was shut down, and appellee was furloughed on November 12, 1974.

HAB

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 27, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 75-1707, Ohio Bureau of  
Employment Services v. Hodory

The only case held for Hodory is No. 75-1644, Drassenower v. Levine, here on petition for certiorari to the Court of Appeals of the State of New York. Petitioners are aircraft maintenance workers employed by Trans World Airlines. TWA's flight attendants went on strike and, as a consequence, petitioners were laid off when the strike forced the Airline to curtail its operations. Petitioners applied for employment benefits and were turned down on the basis of New York Labor Law § 592.1, which provides:

"The accumulation of benefit rights by a claimant shall be suspended during a period of seven consecutive weeks beginning with the day after he lost his employment because of a strike, lockout, or other industrial controversy in the establishment in which he was employed."

On appeal from that administrative denial petitioners claimed that the statute violated their rights to equal protection (because the State had no rational interest in denying benefits to employees who were not participants in the strike), and also that it violated their rights to due process (asserting that the statute created an irrebuttable presumption). The New York courts upheld the constitutionality of the exclusion in the face of these challenges and rejected petitioners' claims.

Petitioners make the same constitutional arguments here. They rely on the decision of the three-judge federal district court in Hodory, which we now are reversing. Petitioners make no claim relating to the National Labor Relations Act.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 17, 1977

No. 75-1707 Ohio Bureau of Employment  
Services et al. v. Hodory

Dear Harry:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Blackmun  
LFP/lab  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 17, 1977

Re: 75-1707 - Ohio Bureau of Employment Svcs.  
v. Hodory

Dear Harry:

Please join me.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference