

The Burger Court Opinion Writing Database

Atlas Roofing Co. v. Occupational Safety and Health Review Commission

430 U.S. 442 (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

March 14, 1977

Re: 75-746;748 Atlas Roofing Co., Inc.; Frank Irey, Jr., Inc.
v. Occupational Safety and Health Review
Commission et al

Dear Byron:

Underlying this case is the strictly policy matter of the legislative scheme. It may well be another one of those "monsters" passed by Congress as an assumed response to some need. The response probably goes beyond need, but that is not our business; hence I can see nothing we can do other than travel the route you have taken.

I would be willing to give \$1.00 to every one of the 535 who would certify under oath to having read this legislation before voting on it. It wouldn't cost me much.

In any event I join you.

Regards,

WJB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 11, 1977

RE: Nos. 75-746 and 75-748 Atlas Roofing and Frank Irey,
Jr. v. Occupational Safety and Health Review Comm.

Dear Byron:

I agree.

Sincerely,



Mr. Justice White
cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 14, 1977

Re: No. 75-746; 75-748, Atlas Roofing Co. v.
Occupational Safety & Health Review Comm'n

Dear Byron,

As you know, I was awaiting what John had
to say in this case. Since he now joins your opinion,
so do I.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

To: The

1st DRAFT

SUPREME COURT OF THE UNITED STATES

NOS. 75-746 AND 75-748

Atlas Roofing Company, Inc., Petitioner, 75-746	v.	Occupational Safety and Health Review Commission et al.	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
Frank Irej, Jr., Inc., Petitioner, 75-748	v.	Occupational Safety and Health Review Commission et al.	

*Will
Join*

[February —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether, consistent with the Seventh Amendment, Congress may create a new cause of action in the Government for civil penalties enforceable in an administrative agency where there is no jury trial.

I

After extensive investigation, Congress concluded, in 1970, that work-related deaths and injuries had become a "drastic" national problem.¹ Finding the existing state statutory rem-

¹ The Senate Report stated that:

"The problem of assuring safe and healthful workplaces for our working men and women ranks in importance with any that engages the national attention today. . . . 14,500 persons are killed annually as a result of industrial accidents; accordingly, during the past four years more Americans have been killed where they work than in the Vietnam war. By the lowest count, 2.2 million persons are disabled on the job each year, resulting in the loss of 250 million man days of work—many times more

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: 4, 6, 7, 12

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Mr. Justice White

Circulated: _____

Recirculated: 2-16-77

Nos. 75-746 AND 75-748

Atlas Roofing Company, Inc., Petitioner, 75-746 v. Occupational Safety and Health Review Commission et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
Frank Irey, Jr., Inc., Petitioner, 75-748 v. Occupational Safety and Health Review Commission et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

[February —, 1977]

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6, 18

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: B-4-72

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-746 AND 75-748

<p>Atlas Roofing Company, Inc., Petitioner, 75-746 v. Occupational Safety and Health Review Commission et al.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.</p>
<p>Frank Irey, Jr., Inc., Petitioner, 75-748 v. Occupational Safety and Health Review Commission et al.</p>	}	<p>On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.</p>

[February —, 1977]

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 14, 1977

Re: Nos. 75-746 and 75-748 - Atlas Roofing, et al.
v. Occupational Safety and Health Review Comm.

Dear Byron:

Please join me.

Sincerely,

J.M.

T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 24, 1977

Re: No. 75-746 - Atlas Roofing Co. v. Occupational
Safety & Health Review Comm'n
No. 75-748 - Irey v. Occupational Safety & Health
Review Comm'n

Dear Byron:

Now that you have your court for these cases, would you please add the following at the end of your opinion:

"Mr. Justice Blackmun took no part in the decision of this case."

This is not in the usual form because, as you may remember, I was on the bench during the argument.

Sincerely,

Harry

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 11, 1977

75-746 and 75-748 Occupational
Safety and Health Act Cases

Dear Byron:

You may recall my concern, expressed at Conference, with the procedure prescribed in this Act that forecloses any meaningful right to appeal a decision and findings by a single Commissioner.

As your opinion states (pp. 3 and 4) the party against whom findings are made, and a fine assessed, has no right of appeal to the full Commission. The decision by a single Commissioner - unless the Commission itself elects to review it - becomes final and binding, subject only to review by a Court of Appeals. But on such appeal, findings of fact - if supported by substantial evidence - "shall be conclusive".

I believe this procedure is relatively novel. At least, I would hope so. The administrative agencies with which I am generally familiar require a meaningful decision by the agency itself, with the right at least to file written exceptions to the report of the trial examiner or (now) the administrative law officer.

The net effect of the procedure under this Act is to vest enormous power in a single individual, who may or may not be well qualified, without the procedural and other protections that are available in a court or in most administrative agencies.

I hope you will be willing to add a footnote reserving judgment on the validity of what seems to me to be a serious procedural omission.

Otherwise, I think you have written a fine opinion and will be glad to join you.

Sincerely,

Lewis

Mr. Justice White
Copies to the Conference
LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 16, 1977

Nos. 75-746 and 75-748 Atlas Roofing, et al.
v. Occupational Safety and Health Review Comm.

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 24, 1977

Re: Nos. 75-746 and 75-748 - Atlas Roofing Co.
v. OSHA

Dear Byron:

Please join me.

Sincerely,

WHL
LC

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 14, 1977

Re: Nos. 75-746 and 75-748 - Atlas Roofing, et al.
v. Occupational Safety and Health Review Comm.

Dear Byron:

This case still gives me serious trouble. I would like to study it further before making a final decision. I am still inclined to dissent.

Respectfully,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 14, 1977

Re: 75-746; 748 - Atlas Roofing Co. v.
Occupational Safety & Health Review
Comm'n

Dear Byron:

After a good deal of study and with certain misgivings, I have come to the conclusion that your disposition is correct and that no purpose would be served by any additional writing. I am sorry to have held the case up for so long. Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference