

The Burger Court Opinion Writing Database

NLRB v. Pipefitters

429 U.S. 507 (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

✓

October 18, 1976

75-777

Re: NLRB v. Enterprise Association of Steam, Hot Water, etc.

MEMORANDUM TO THE CONFERENCE:

Just as I was about to send the assignment sheet, I received word from Lewis that his "doubtful" vote in this case was now to reverse.

The revised assignment sheet is enclosed.

Regards,
WESB

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

CHAMBERS OF
THE CHIEF JUSTICE

February 10, 1977

RE: 75-777 - NLRB v. Enterprise Association of Steam
Hot Water, Hydraulic Sprinkler, etc.,
Local Union No. 638

Dear Byron:

I join.

W.H
Regards,

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 20, 1976

MEMORANDUM TO: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Marshall

RE: No. 75-777 N.L.R.B. v. Enterprise Assn. Local No. 638

My records show that the four of us are in dissent
in the above. I'll be happy to take on this one.

W.J.B. Jr.

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Marshall
Mr. Justice Clark
Mr. Justice Harlan
Mr. Justice Hugo Black
Mr. Justice John M. Harlan
Mr. Justice William O. Douglas
Mr. Justice Thurgood Marshall
Mr. Justice William J. Brennan, Jr.
Mr. Justice Harry A. Blackmun
Mr. Justice Lewis F. Powell, Jr.
Mr. Justice Sandra Day O'Connor
Mr. Justice Antonin Scalia
Mr. Justice Anthony M. Kennedy
Mr. Justice Ruth Bader Ginsburg
Mr. Justice Stephen G. Breyer
Mr. Justice Sonia Sotomayor
Mr. Justice Elena Kagan

1st DRAFT *1/35 PM*

SUPREME COURT OF THE UNITED STATES

No. 75-777

National Labor Relations Board,
Petitioner,

v.

Enterprise Association of Steam,
Hot Water, Hydraulic Sprinkler,
Pneumatic Tube, Ice Machine
and General Pipefitters of
New York and Vicinity,
Local Union No.
638, etc.

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Colum-
bia Circuit.

[February —, 1977]

MR. JUSTICE BRENNAN, dissenting.

I dissent. Today's holding that union members exert secondary pressure in violation of § 8 (b)(4)(B) of the NLRA by striking their own employer to protest his conceded violation of a lawful work preservation provision in the parties' collective-bargaining agreement is patently precluded by *National Woodwork Manufacturers Assn. v. NLRB*, 386 U. S. 612 (1967).

I

Briefly to summarize the facts detailed in the Court's opinion, the collective-bargaining agreement between respondent Union and Hudik-Ross Company (Hudik), a heating and air-conditioning contractor, included a provision that Hudik's employees represented by the Union would cut and thread the internal piping in climate-control units installed by Hudik. This is concededly work traditionally performed by them. Hudik, however, on obtaining a subcontract from the Austin Company to install climate-control units, agreed with Austin to install prefabricated units manufactured by Slant/Fin Cor-

stylistic changes, 9-10

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Burger
 Mr. Justice O'Connor
 Mr. Justice Scalia
 Mr. Justice Thomas
 Mr. Justice Souter

2nd DRAFT

1-26-77

SUPREME COURT OF THE UNITED STATES

No. 75-777

National Labor Relations Board,
 Petitioner,

v.

Enterprise Association of Steam,
 Hot Water, Hydraulic Sprinkler,
 Pneumatic Tube, Ice Machine
 and General Pipefitters of
 New York and Vicinity,
 Local Union No.

638, etc.

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the District of Colum-
 bia Circuit.

[February —, 1977]

MR. JUSTICE BRENNAN, dissenting.

I dissent. Today's holding that union members exert secondary pressure in violation of § 8(b)(4)(B) of the NLRA by striking their own employer to protest his conceded violation of a lawful work preservation provision in the parties' collective-bargaining agreement is patently precluded by *National Woodwork Manufacturers Assn. v. NLRB*, 386 U. S. 612 (1967).

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1,6,8

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice Black
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Burger
 Mr. Justice Clark
 Mr. Justice Harlan

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-777

National Labor Relations Board,
 Petitioner,

v.

Enterprise Association of Steam,
 Hot Water, Hydraulic Sprinkler,
 Pneumatic Tube, Ice Machine
 and General Pipefitters of
 New York and Vicinity,
 Local Union No.
 638, etc.

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the District of Colum-
 bia Circuit.

[February —, 1977]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL
 joins, dissenting.

I dissent. Today's holding that union members exert secondary pressure in violation of § 8 (b)(4)(B) of the NLRA by striking their own employer to protest his conceded violation of a lawful work preservation provision in the parties' collective-bargaining agreement is patently precluded by *National Woodwork Manufacturers Assn. v. NLRB*, 386 U. S. 612 (1967).

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1,8,12

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

From: Mr. Justice Brennan

Circumstances

Received by 2/11/77

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-777

National Labor Relations Board,
 Petitioner,

v.
 Enterprise Association of Steam,
 Hot Water, Hydraulic Sprinkler,
 Pneumatic Tube, Ice Machine
 and General Pipefitters of
 New York and Vicinity,
 Local Union No.
 638, etc.

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the District of Colum-
 bia Circuit.

[February —, 1977]

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

I dissent. Today's holding that union members exert secondary pressure in violation of § 8(b)(4)(B) of the NLRA by striking their own employer to protest his conceded violation of a lawful work preservation provision in the parties' collective-bargaining agreement is patently precluded by *National Woodwork Manufacturers Assn. v. NLRB*, 386 U. S. 612 (1967).

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 17, 1977

Re: No. 75-777, NLRB v. Pipefitters

Dear Byron,

At the Conference discussion of this case I expressed the view that the judgment had to be affirmed under the authority of the National Woodwork decision, a decision with which I strongly disagreed. My ambivalence continues, and I shall, therefore, await to see what is written in dissent before coming to rest.

Sincerely yours,

P.S.
P.J.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 3, 1977

75-777 - NLRB v. Pipefitters

Dear Bill,

I join all but Part V of your dissenting opinion and have sent to the printer a short snapper so stating.

Sincerely yours,

PS,
1/

Mr. Justice Brennan

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

FFB 4 1077
Circulated: _____

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-777

National Labor Relations Board,
Petitioner,
v.
Enterprise Association of Steam,
Hot Water, Hydraulic Sprinkler,
Pneumatic Tube, Ice Machine
and General Pipefitters of
New York and Vicinity,
Local Union No.
638, etc.

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Colum-
bia Circuit.

[February —, 1977]

MR. JUSTICE STEWART, dissenting.

I disagreed with the Court in *National Woodwork Manufacturers' Assn. v. NLRB*, 386 U. S. 612, 650. Until that decision is overruled, however, it stands as an authoritative construction of § 8 (b)4(B) of the National Labor Relations Act. For the reasons stated in MR. JUSTICE BRENNAN's dissenting opinion, I agree with him that the Court's decision today is "patently precluded" by the *National Woodwork* case. On that basis I join all but Part V of MR. JUSTICE BRENNAN's dissenting opinion.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 12, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-777 - NLRB v. Enterprise Association

Having taken another look at this case, I now think -- as John correctly argued -- that the construction industry proviso to § 8(e) is no comfort to the union in this case and that I was wrong in placing substantial reliance on it in voting against the Board. Without it, the case is more difficult, and I am tentatively changing my vote to reverse the Court of Appeals.

B.R.W.

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

1st DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Circulated: 1-13-77

No. 75-777

Recirculated: _____

National Labor Relations Board,
 Petitioner,

v.
 Enterprise Association of Steam,
 Hot Water, Hydraulic Sprinkler,
 Pneumatic Tube, Ice Machine
 and General Pipefitters of
 New York and Vicinity,
 Local Union No.
 638, etc.

On Writ of Certiorari
 to the United States
 Court of Appeals for
 the District of Colum-
 bia Circuit.

*Want to
 present of NLRB*

[January —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

Under § 8 (b)(4)(B) of the National Labor Relations Act,
 29 U. S. C. § 158 (b)(4)(B),¹ a union commits an unfair

¹ Section 8 (b) of the National Labor Relations Act, 29 U. S. C. § 158 (b), provides in relevant part:

“It shall be an unfair labor practice for a labor organization or its agents—

“(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise, handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

“(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 21 - 23

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: 2-1-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-777

National Labor Relations Board,
Petitioner,

v.
Enterprise Association of Steam,
Hot Water, Hydraulic Sprinkler,
Pneumatic Tube, Ice Machine
and General Pipefitters of
New York and Vicinity,
Local Union No.
638, etc.

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Colum-
bia Circuit.

[January —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

Under § 8 (b)(4)(B) of the National Labor Relations Act,
29 U. S. C. § 158 (b)(4)(B),¹ a union commits an unfair

¹ Section 8 (b) of the National Labor Relations Act, 29 U. S. C. § 158 (b), provides in relevant part:

"It shall be an unfair labor practice for a labor organization or its agents—

"(4) (i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is—

"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other

pp 2-3, 22-23

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: 2-15-77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-777

National Labor Relations Board,
Petitioner,

v.

Enterprise Association of Steam,
Hot Water, Hydraulic Sprinkler,
Pneumatic Tube, Ice Machine
and General Pipefitters of
New York and Vicinity,
Local Union No.
638, etc.

On Writ of Certiorari
to the United States
Court of Appeals for
the District of Colum-
bia Circuit.

[January —, 1977]

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Under § 8(b)(4)(B) of the National Labor Relations Act,
29 U. S. C. § 158 (b)(4)(B),¹ a union commits an unfair

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"(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1977

MEMORANDUM TO THE CONFERENCE

Re: Cases heretofore held for NLRB v. Enterprise Association,
No. 75-777: NLRB v. Local 742, United Brotherhood of
Carpenters, No. 75-1706; J. L. Simmons Co., Inc. v.
Local 742, United Brotherhood of Carpenters, No. 75-1755

Both of these cases arise out of the same set of facts. Simmons agreed to become the general contractor on a construction project involving additions to a hospital. The contract specifications, as ultimately amended by the builder, required the installation of pre-finished plastic doors. Simmons hired members of respondent Union to perform carpentry work on the project. Simmons did not have a collective-bargaining contract with the Union, but it did have an agreement with the parent international by which Simmons agreed to observe the working conditions and wages prevailing in the local community. When the pre-finished doors arrived on the job site, the Union protested, insisting that the pre-finished doors be replaced by unfinished doors so that the finishing could be done at the job site. When Simmons told the Union that it was unable to comply with this demand, the Union refused to permit its members to hang the disputed doors. The Union's attorney suggested that the parties might negotiate the payment of a wage premium for each pre-finished door installed, but this offer was rejected by Simmons. Simmons filed an unfair labor practice charge with the Board, and the Union then installed the disputed doors under protest.

Applying its "control" test, the Board found that the Union had engaged in secondary activity prohibited by § 8(b)(4)(B) of the NLRA because it had demanded work that Simmons had no power to give. CA DC reversed and remanded for a determination of whether the Union's objective was

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 26, 1977

Re: No. 75-777, National Labor Relations Board v.
Pipefitters

Dear Bill:

Please join me in your dissent.

Sincerely,


T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 2, 1977

Re: No. 75-777 - NLRB v. Enterprise Ass'n

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 18, 1976

No. 75-777 NLRB v. Enterprise Ass'n

Dear Chief:

This will confirm my advice to you by telephone that I am changing my vote in the above case from a tentative "affirm" to a tentative "reverse".

The case has given me a good deal of trouble from the outset. When Bill Brennan and Byron were together as to the meaning of Woodwork (which Bill wrote and in which Byron joined), I felt that that case was the most relevant precedent, and that it pointed toward affirmance here.

I am now influenced in my present decision by Byron's view that Woodwork is not controlling. I understand that Byron initially thought that § 8(e) was directly relevant, but he now views this solely as a § 8(b)(4)(B) case.

I devoted a substantial amount of time to this case over the weekend. I hope this change has not caused you or Bill Brennan too much inconvenience.

Sincerely,

Lewis

The Chief Justice

1fp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 19, 1977

No. 75-777 NLRB v. Local 638

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

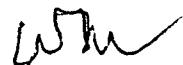
January 19, 1977

Re: No. 75-777 - NLRB v. Enterprise

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 14, 1977

Re: 75-777 - NLRB v. Enterprise Assn. of Steam,
Hot Water, etc.

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference