

# The Burger Court Opinion Writing Database

## *Farmer v. Carpenters*

430 U.S. 290 (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

February 17, 1977

Re: 75-804 - Farmer v. United Brotherhood of Carpenters  
and Joiners of America, Local 25, et al.

Dear Lewis:

I join you. See attached pages of opinion draft  
on some minor matters.

*no attachment*

The closing sentence, p. 16, gives me pause. I  
assume the probable consequence of vacating the judgment  
is that a new trial must be allowed, but should that  
not be referred to specifically?

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 31, 1977

RE: No. 75-804 Farmer v. United Brotherhood of Carpenters

Dear Lewis:

Your careful opinion goes far toward the hope I expressed at Conference that I could be persuaded that in some circumstances, an action for intentional infliction of severe emotional distress in the context of a labor dispute may not be pre-empted by federal labor laws. I think I may say that I now generally agree with your analysis both that such actions are maintainable and with the limitations you impose on such actions. I do have some problems, however, with your disposition of this case in light of that analysis.

It seems clear to me that when the evidence of discriminatory hiring hall practices is subtracted from plaintiff's case, very little is left that could be the basis of a tort judgment. Plaintiff had his chance to try this case, and the trial leaves little doubt that he regarded the hiring hall practices as essential to his case. On the other hand, we must no doubt leave to the state courts the task of deciding whether the evidence of "verbal abuse," etc., standing alone, is sufficient to support a claim under state law. I suggest, however, that we make it clearer that on remand it would be appropriate for the state appellate court to address the question whether those aspects of the case that are not pre-empted are sufficient under state law to amount to conduct "that no reasonable man in a civilized society should be expected to endure."

Even then, if the state court concludes there is enough left to entitle plaintiff to prove the tort, should we not guard more carefully against the possibility that a plaintiff may use such allegations as a pretext to bring about the jury inflammatory evidence of discriminatory practices? You have not said explicitly

- 2 -

that such evidence is inadmissible. I concede the difficulty because such a statement might be overbroad if it proved impracticable to try a case of this sort without making the jury aware of the context in which the case arose. At the least, however, should not a specific statement be made that if the state court on remand decides that a cause of action in tort is stated by those aspects of the complaint that are not pre-empted, and remands the case for a new trial, the trial court must make every effort to limit the jury's exposure to evidence of job discrimination, and, as was not done here, instruct the jury that it may not consider any such evidence? I would hope that this would clarify the task of the state court on remand, protect against intrusion into a federally-pre-empted area, and answer John's argument that the jury was properly instructed in this case.

If you find it possible to accommodate these suggestions, I would be happy to join your opinion.

Sincerely,

Mr. Justice Powell

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 9, 1977

RE: No. 75-804 Farmer v. United Brotherhood of Carpenters  
and Joines of America, Local 25, et al.

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Dear Lewis:

I am happy to join your recirculation of February 8.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 25, 1977

Re: No. 75-804, Farmer v. Carpenters

Dear Lewis,

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

Sincerely yours,

P.S.  
/

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 28, 1977

Re: 75-804 - Farmer v. United Brotherhood of  
Carpenters

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Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 14, 1977

Re: No. 75-804 - Farmer v. United Brotherhood of  
Carpenters

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Dear Lewis:

I am still with you.

Sincerely,



Mr. Justice Powell

Copies to Conference



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 9, 1977

Re: No. 75-804, Farmer v. Carpenters

Dear Lewis:

Please join me.

Sincerely,

*TM.*

T. M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 10, 1977

Re: No. 75-804 - Farmer, Special Administrator v.  
Carpenters

Dear Lewis:

I am glad to join your opinion. The result will not clarify everything in this area for the state courts, but it does help to dispel some of the confusion.

Sincerely,

*Harry*

Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Powell

Circulated: JAN 19 1977

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-804

Joy A. Farmer, Special Administrator, Petitioner,  
 v.

United Brotherhood of Carpenters and Joiners of America,  
 Local 25, et al.

On Writ of Certiorari to the Court of Appeal of California for the Second Appellate District.

[January —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

The issue in this case is whether the National Labor Relations Act, as amended, pre-empts a tort action brought in state court by a union member against the union and its officials to recover damages for the intentional infliction of emotional distress.

### I

Petitioner Richard T. Hill<sup>1</sup> was a carpenter and a member of Local 25 of the United Brotherhood of Carpenters and Joiners of America. Local 25 (the Union) operates an exclusive hiring hall for employment referral of carpenters in the Los Angeles area. In 1965, Hill was elected to a three-year term as vice president of the Union. Shortly thereafter sharp disagreement developed between Hill and the Union Business Agent, Earl Daley, and other Union officials over various internal Union policies. According to Hill, the Union then began to discriminate against him in referrals to employers, prompting him to complain about

<sup>1</sup> Hill died after the petition for a writ of certiorari was granted. On June 1, 1976, Joy A. Farmer, special administrator of Hill's estate, was substituted as petitioner. We will refer to Hill as the petitioner.

January 25, 1977

No. 75-804 Farmer v. United Brotherhood of  
Carpenters and Joiners of America, Local 25

Dear Byron:

Here is a copy of my opinion in the above case, with changes -- as noted -- intended to incorporate your suggestions.

I think you were quite right, and hope that these changes meet the concerns you had in mind. If they do, I will incorporate them in a second draft.

Sincerely,

Mr. Justice White

LFP/lab

Enclosure

Footnote renumbered  
 - new footnotes : 3, 13, 15  
 Changes pp 12, 13

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

From: Mr. Justice Powell

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

Recirculated: **FEB 8 1977**

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 75-804

Joy A. Farmer, Special Administrator, Petitioner,

v.

United Brotherhood of Carpenters and Joiners of America,  
 Local 25, et al.

On Writ of Certiorari to  
 the Court of Appeal of  
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 Appellate District.

[January —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

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### I

Petitioner Richard T. Hill<sup>1</sup> was a carpenter and a member of Local 25 of the United Brotherhood of Carpenters and Joiners of America. Local 25 (the Union) operates an exclusive hiring hall for employment referral of carpenters in the Los Angeles area. In 1965, Hill was elected to a three-year term as vice president of the Union. Shortly thereafter sharp disagreement developed between Hill and the Union Business Agent, Earl Daley, and other Union officials over various internal Union policies. According to Hill, the Union then began to discriminate against him in referrals to employers, prompting him to complain about

<sup>1</sup> Hill died after the petition for a writ of certiorari was granted. On June 1, 1976, Joy A. Farmer, special administrator of Hill's estate, was substituted as petitioner. We will refer to Hill as the petitioner.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 17, 1977

No. 75-804 Farmer v. United Brotherhood

Dear Chief:

Thank you for your note, joining my opinion in the above case.

My thanks also for catching a couple of "typos".

You inquire whether we should not, in the final disposition of the case on page 16, say that the petitioner is entitled to a new trial. I considered making this explicit, but was deterred by the fact that it appears from the opinion of the California Court of Appeals (Petition for Cert, A-3, note 3) that the respondents had raised before that Court (in addition to the preemption issue) "eight additional grounds for reversal" of the judgment of the Superior Court. These additional grounds were not addressed by the Court of Appeals, and conceivably - I suppose - one or more of them could be dispositive of the case without a retrial.

It therefore seemed prudent simply to remand.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

8.15-16

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

From: Mr. Justice Powell

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

4th DRAFT

Recirculated: **FEB 25 1977**

# SUPREME COURT OF THE UNITED STATES

No. 75-804

Joy A. Farmer, Special Admin- istrator, Petitioner, v. United Brotherhood of Carpen- ters and Joiners of America, Local 25, et al.	}	On Writ of Certiorari to the Court of Appeal of California for the Second Appellate District.
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[January —, 1977]

MR. JUSTICE POWELL delivered the opinion of the Court.

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## I

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<sup>1</sup> Hill died after the petition for a writ of certiorari was granted. On June 1, 1976, Joy A. Farmer, special administrator of Hill's estate, was substituted as petitioner. We will refer to Hill as the petitioner.

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 4, 1977

No. 75-804 Farmer v. United Brotherhood  
of Carpenters

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MEMORANDUM TO THE CONFERENCE:

As agreed this morning, this case is scheduled to be announced on Monday, March 7th. In reading the opinion over a final time, I note that we refer on a number of occasions to the danger of interference with the federal scheme of regulation posed by state court actions. In a technical sense, this is not quite accurate. The danger of interference is posed by the existence of a state cause of action, and although suits based on such state causes of action most likely will be filed in state courts, it is possible that such suits will be filed in federal court. Indeed, Linn v. Plant Guard Workers was a federal diversity action based on the state law of libel.

I am therefore correcting this minor inaccuracy by substituting -- on the pages enclosed -- a more general phrase (e.g., "state cause of action") for the present phrase "state court action".

Although I do not view this as a change of substance, I bring it to your attention and will be glad to hold the case if anyone wishes me to do so.

Unless so advised, I will "bring the case down" on Monday.

*L.F.P.*  
L.F.P., Jr.



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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

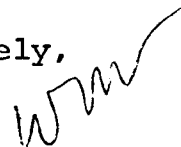
March 1, 1977

Re: No. 75-804 - Farmer v. United Brotherhood of  
Carpenters

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 24, 1977

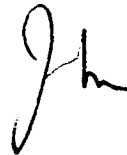
Re: 75-804 - Farmer v. United Brotherhood of  
Carpenters and Joiners of America, etc.

Dear Lewis:

The analysis in Parts I, II, and III is persuasive and I expect to join those parts of your opinion. However, I am still inclined to believe that the trial court judgment should be reinstated. If the legal theory of Count II was acceptable, and if the jury was properly instructed, I have some difficulty with the suggestion that a new trial is required because too much of the evidence focused on the subject over which the Labor Board has jurisdiction.

I plan, therefore, to try my hand at an opinion dissenting from Part IV. If I find that it won't write, I will probably join your entire opinion.

Respectfully,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 24, 1977

Re: 75-804 - Farmer v. United Brotherhood of  
Carpenters etc., et al.

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference