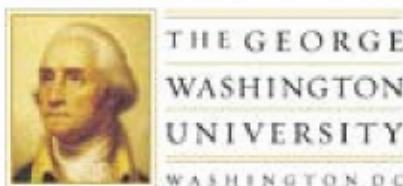


The Burger Court Opinion Writing Database

Walsh v. Schlecht

429 U.S. 401 (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

December 16, 1976

Re: 75-906 Thomas J. Walsh, Jr. v. E. A. Schlecht

Dear Bill:

I join your December 15 circulation.

Regards,

LRB

Mr. Justice Brennan

cc: The Conference

To The Chief Justice
Mr Justice Stewart
Mr Justice White
 Mr Justice Marshall
Mr Justice Black
Mr Justice Harlan
Mr Justice Stone
Mr Justice Brandeis

12-10-76

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-906

[December —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by this case is whether the provision of a collective-bargaining agreement between petitioner, a general construction contractor, and the Oregon State Council of Carpenters, requiring that petitioner pay contributions to certain trust funds with respect to hours of carpentry worked performed by employees of a nonsignatory subcontractor, violated § 302 (a)(1) of the Taft-Hartley Act, 29 U. S. C. § 186, prohibiting agreements of employers to pay money to any representative of their employees, or was enforceable under the exceptions to that general proscription, §§ 302 (c)(5) and (6) of the Act, as a written agreement to pay money to trust funds jointly created and administered by trustees representing Employer Associations and the Union for the purpose of providing medical or hospital care, pensions, or pooled vacations for carpenters employed by the signatory employers, or to defray the costs of apprenticeship or other training programs.¹

¹ Section 302 of the Labor-Management Relations Act of 1947, as amended, now codified as 29 U. S. C. § 186 provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan

From: Mr. Justice Brennan

Offices of the Supreme Court

Requerimiento 12/13/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-906

Thomas J. Walsh, Jr., dba Tom
Walsh & Co., Petitioner, } On Writ of Certiorari to
v. } the Supreme Court of
E. A. Schlecht et al., } Oregon.
as Trustees, etc.

[December —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by this case is whether the provision of a collective-bargaining agreement between ~~a~~ petitioner, a general contractor, and the Oregon State Council of Carpenters, requiring that petitioner pay contributions to certain trust funds with respect to hours of carpentry work performed by employees of a nonsignatory subcontractor, violated § 302 (a)(1) of the Taft-Hartley Act, 29 U. S. C. § 186. That section generally prohibits agreements of employers to pay money to any representative of their employees. Subsections 302 (c)(5) and (6), however, exempt from this general proscription written agreements to pay money to trust funds jointly created and administered by trustees representing Employer Associations and the Union for the purpose of providing medical or hospital care, pensions, pooled vacations for employees of signatory employers, or to defray the costs of apprenticeship or other training programs.¹

¹ Section 302 of the Labor-Management Relations Act of 1947, as amended, now codified as 29 U. S. C. § 186, provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

December 14, 1976

RE: No. 75-906 Walsh v. Schlecht

Dear John:

Thank you for your suggestion regarding my circulation in the above. Would it meet your comment if I were to delete the last paragraph of Part I starting at the bottom of page 8 and substitute the following:

We agree that enforcement of the Subcontractor's Clause, as so construed by the Oregon Supreme Court to require petitioner to make contributions measured by the hours worked by his subcontractor's employees, not only is consistent with the wording of sections 302(c)(5) and (6) but also does no disservice to the congressional purpose in enacting section 302 7/ to combat "corruption of collective bargaining through bribery of employee representatives by employers, . . . extortion by employee representatives, and . . . the possible abuse by union officers of the power which they might achieve if welfare funds were left to their sole control." Arroyo v. United States, 359 U.S. 419, 425-426 (1959).

Sincerely,

Brennan

Mr. Justice Stevens

cc: The Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens
Mr. Justice O'Connor

1000 *W. G. Little, Jr. and E. R. Chapman*

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-906

Thomas J. Walsh, Jr., dba Tom
Walsh & Co., Petitioner,
v.
E. A. Schlecht et al.,
as Trustees, etc. } On Writ of Certiorari to
the Supreme Court of
Oregon.

[December —, 1976]

MR. JUSTICE BRENNAN delivered the opinion of the Court,

The question presented by this case is whether the provision of a collective-bargaining agreement between petitioner, a general contractor, and the Oregon State Council of Carpenters, requiring that petitioner pay contributions to certain trust funds with respect to hours of carpentry work performed by employees of a nonsignatory subcontractor, violated § 302 (a)(1) of the Taft-Hartley Act, 29 U. S. C. § 186. That section generally prohibits agreements of employers to pay money to any representative of their employees. Subsections 302 (c)(5) and (6), however, exempt from this general proscription written agreements to pay money to trust funds jointly created and administered by trustees representing Employer Associations and the Union for the purpose of providing medical or hospital care, pensions, pooled vacations for employees of signatory employers, or to defray the costs of apprenticeship or other training programs.¹

¹ Section 302 of the Labor-Management Relations Act of 1947, as amended, now codified as 29 U. S. C. § 186, provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers . . . to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 14, 1976

Re: No. 75-906, Walsh v. Schlecht

Dear Bill,

I agree with John's suggestion as to the desirability of omitting the last three sentences of Part I of your proposed opinion for the Court. If you are disposed to accept that suggestion, I shall be glad to join the opinion.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 15, 1976

Re: No. 75-906, Walsh v. Schlecht

Dear Bill,

Like John, I am entirely satisfied with your proposed changes and am glad to join your opinion for the Court.

Sincerely yours,

P. B.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 16, 1976

Re: No. 75-906 - Walsh v. Schlect

Dear Bill:

I had hoped to have a brief dissent ready in this case, but I shall have to ask you to put it over.

Sincerely,



Mr. Justice Brennan

Copies to Conference

To: The Chief Justice
Mr. Justice Brennen
Mr. Justice Stewart
~~Mr. Justice Marshall~~
Mr. Justice Black
Mr. Justice Frankfurter
Mr. Justice Douglas
Mr. Justice Harlan

From: Mr. Justice White

Circulated: 1-7-77

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-906

Thomas J. Walsh, Jr., dba Tom
Walsh & Co., Petitioner,
v.
E. A. Schlecht et al.,
as Trustees, etc. | On Writ of Certiorari to
the Supreme Court of
Oregon.

[January —, 1977]

MR. JUSTICE WHITE, dissenting.

Because petitioner, a general contractor, employed a non-union subcontractor, who did not subscribe to the provisions of the collective-bargaining agreement, he was required to maintain records of the jobsite hours worked by the subcontractor's employees and to be "liable for payment of these employees wages, travel, Health-Welfare and Dental, Pension, Vacation, Apprenticeship and CIAF contribution in accordance with this Agreement." R. 82-83. The Oregon Supreme Court described this language as making petitioner liable "for payments into the trust funds for the employees of the nonunion subcontractor." This means to me that the payments were on behalf of the subcontractor's employees. It also appears a straightforward reading of the contractual language that the "subcontractors—employees—contributions" be made by petitioner. Had the subcontractor been eligible to make these contributions, they surely would have been made for the benefit of his employees. The sensible inference from the contractual language is that the contractor, the petitioner, intended the same result. Common sense tells us that petitioner had no intention of making contributions with respect to employees who could never benefit.

As construed in this way, the provision is illegal because

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 10, 1976

Re: No. 75-906, Walsh v. Schlect

Dear Bill:

Please join me.

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

December 13, 1976

Re: No. 75-906 - Walsh v. Schlecht

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 13, 1976

No. 75-906 Walsh v. Schlecht

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

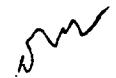
December 15, 1976

Re: No. 75-906 - Walsh v. Schlecht

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 13, 1976

Re: 75-906 - Walsh v. Schlecht

Dear Bill:

Would you consider omitting the last three sentences of Part I?

I am not sure that it is correct that the Subcontractor's Clause at issue here "further[s] the objectives of the exceptions to the prohibition." After rereading the text of § 302(a)(1) and §§ 302 (c) (5) and (6), I feel that the Subcontractor's Clause comes within the exceptions for reasons entirely unrelated to the desirability or undesirability of subcontracting in general. The fact that our decision may endorse the use of such language in collective bargaining agreements is incidental to the objectives of the exceptions. Accordingly, since I personally believe clauses of this kind tend to impair the efficient allocation of resources, I would prefer not to endorse them unnecessarily.

Apart from these three sentences, I think your opinion is fine.

Respectfully,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 15, 1976

Re: 75-906 - Walsh v. Schlecht

Dear Bill:

The change proposed in your letter of December 14, 1976, satisfies my concern completely. I am happy to join the opinion.

Respectfully,



Mr. Justice Brennan

Copies to the Conference