

# The Burger Court Opinion Writing Database

*American Broadcasting Cos. V. Writers Guild of America, West, Inc.*

437 U.S. 411 (1978)

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 6, 1978

Dear Byron:

Re: 76-1121;53;62 ABC Inc. v. Writers Guild of America  
I join.

Regards,

W B

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

June 14, 1978

RE: Nos. 76-1121, 53, etc. American Broadcasting Co.  
et al. v. Writers Guild of America, etc.

Dear Potter:

Please join me.

Sincerely,

*Bill*

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

May 4, 1978

Nos. 76-1121, 76-1153, and 76-1162, American  
Broadcasting Companies v. Writers Guild

Dear Byron,

In due course I shall circulate a dissenting opinion in these cases.

Sincerely yours,

*P.S.*

Mr. Justice White

Copies to the Conference

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

SUPREME COURT OF THE UNITED STATES Circulated: 14 JUN 1978

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

Nos. 76-1121, 76-1153 and 76-1162

American Broadcasting Companies, Inc., et al., Petitioners, )  
76-1121 v. )  
Writers Guild of American, West, Inc., et al. )  
Association of Motion Picture and Television Producers, Inc., Petitioner, )  
76-1153 v. )  
Writers Guild of America, West, Inc., et al. )  
National Labor Relations Board, Petitioner, )  
76-1162 v. )  
Writers Guild of America, West, Inc., et al. )  
On Writs of Certiorari to the United States Court of Appeals for the Second Circuit

[June--, 1978]

MR. JUSTICE STEWART, dissenting.

The Court holds today that a labor union locked in a direct economic confrontation with an employer is powerless to impose sanctions on its own members who choose to pledge their loyalty to the adversary. Nothing in § 8(b)(1)(B) or any other provision of the National Labor Relations Act permits such a radical alteration of the natural balance of power between labor and management. I therefore respectfully dissent.

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

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

1st PRINTED DRAFT Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

Nos. 76-1121, 76-1153 AND 76-1162

American Broadcasting Com-  
 panies, Inc., et al.,  
 Petitioners,

76-1121 *v.*

Writers Guild of America, West,  
 Inc., et al.

Association of Motion Picture  
 and Television Producers,  
 Inc., Petitioner,

76-1153 *v.*

Writers Guild of America, West,  
 Inc., et al.

National Labor Relations Board,  
 Petitioner,

76-1162 *v.*

Writers Guild of America, West,  
 Inc., et al.

On Writs of Certiorari to  
 the United States Court  
 of Appeals for the Sec-  
 ond Circuit.

[June —, 1978]

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

The Court holds today that a labor union locked in a direct  
 economic confrontation with an employer is powerless to  
 impose sanctions on its own members who choose to pledge  
 their loyalty to the adversary. Nothing in § 8(b)(1)(B)  
 or any other provision of the National Labor Relations Act  
 permits such a radical alteration of the natural balance of  
 power between labor and management. I therefore respect-  
 fully dissent.

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

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 76-1121, 76-1153 AND 76-1162

American Broadcasting Com-  
panies, Inc., et al.,  
Petitioners,

76-1121 *v.*

Writers Guild of America, West,  
Inc., et al.

Association of Motion Picture  
and Television Producers,  
Inc., Petitioner,

76-1153 *v.*

Writers Guild of America, West,  
Inc., et al.

National Labor Relations Board,  
Petitioner,

76-1162 *v.*

Writers Guild of America, West,  
Inc., et al.

*Want to see P*  
On Writs of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

[May —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether a labor union commits an unfair labor practice when it disciplines a member who is a supervisory employee for crossing the union's picket line during a strike and performing his regular supervisory duties, which include the adjustment of grievances.

### I

Respondent, Writer's Guild of America West, Inc., represents persons hired to perform writing functions for employers

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: 6/1

15, 21, 24, 25  
2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

Nos. 76-1121, 76-1153 AND 76-1162

American Broadcasting Com-  
panies, Inc., et al.,  
Petitioners,

76-1121 *v.*

Writers Guild of America, West,  
Inc., et al.

Association of Motion Picture  
and Television Producers,  
Inc., Petitioner,

76-1153 *v.*

Writers Guild of America, West,  
Inc., et al.

National Labor Relations Board,  
Petitioner,

76-1162 *v.*

Writers Guild of America, West,  
Inc., et al.

On Writs of Certiorari to  
the United States Court  
of Appeals for the Sec-  
ond Circuit.

*Ward R/S*

[June —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

The issue in this case is whether a labor union commits an unfair labor practice when it disciplines a member who is a supervisory employee for crossing the union's picket line during a strike and performing his regular supervisory duties, which include the adjustment of grievances.

### I

Respondent, Writer's Guild of America West, Inc., represents persons hired to perform writing functions for employers

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 21, 1978

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 76-1121 - American Broadcasting Co.  
v. Writers Guild of America

No. 76-688 - Chicago Typographical Union No. 16 v. NLRB

After a breakdown in contract negotiations in August of 1973, Hammond Publishers, Inc., locked out its employees and the petitioner labor union retaliated with a strike. (The company denies that there ever was a lockout, and the administrative law judge refused to decide the issue. See petition at A8.) Two of the company's supervisors crossed the picket line in order to perform normal supervisory work, instructing and directing employees who chose not to honor the picket line, and new hires brought in during the strike. These supervisors performed some grievance adjustments during the strike, according to the Board's findings (petition at A 30), and also a "minimal" amount of bargaining unit work in connection with their normal supervisory functions (petition at A 31).

The labor union expelled the two supervisors and imposed a \$1,000 fine on each of them. The supervisors and their employer brought § 8(b)(1)(B) charges against the labor union, but the administrative law judge ruled in the union's favor. He found that the union had imposed discipline merely for crossing the picket line, it making "no difference . . . whether [the supervisors] were engaged in bargaining unit work or supervisory work." (Petition at A 21.)

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 15, 1978

Re: Nos. 76-1121, 76-1153, 76-1162 - American Broadcasting  
Co. v. Writers Guild of America, West, Inc.

Dear Potter:

Please join me.

Sincerely,

J.M.  
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 8, 1978

Re: No. 76-1121 - ABC v. Writers Guild  
No. 76-1153 - Assn. of Motion Picture and  
TV Producers v. Writers Guild  
No. 76-1162 - NLRB v. Writers Guild

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.

May 5, 1978

No. 76-1121 American Broadcasting v. Writers Guild

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

June 1, 1978

Re: Nos. 76-1121, 76-1153 and 76-1162 American Broad-  
casting Co. v. Writers Guild

Dear Byron:

Please join me.

Sincerely,

*WM*

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 5, 1978

Re: 76-1121, 76-1153, and 76-1162 - American  
Broadcasting Cos. v. Writers Guild

Dear Byron:

I shall wait for Potter's dissent in this case.

Respectfully,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 14, 1978

RE: 76-1121, 76-1153, 76-1162 - American Broadcasting, Inc.  
v. Writers Guild of American, West, Inc.

Dear Potter:

Please join me in your dissenting opinion.

Respectfully,



Mr. Justice Stewart

Copies to the Conference