

The Burger Court Opinion Writing Database

NLRB v. Iron Workers

434 U.S. 335 (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

December 27, 1977

Dear Byron:

Re: 76-719 NLRB v. Local No. 103

I will await Potter's dissent before I come to rest finally. That is consistent with my conference vote.

Regards,

WRB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 5, 1978

No. 76-719 - NLRB v. Local Union 103

MEMORANDUM FOR THE CONFERENCE

I voted to affirm in this case with a question mark on my vote. Being in doubt, I asked Bill Brennan to assign.

I find it close but Byron's opinion persuades me that this question is one calling for more deference to the Board than my old colleagues gave it.

I therefore will join Byron's opinion.

Regards,

W. B.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 7, 1977

MEMORANDUM TO THE CONFERENCE

RE: No. 76-719 N.L.R.B. v. Local Union, 103, etc.

This will confirm that Byron will do the Court opinion
in the above.

W.J.B. Jr.

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

CHAMBERS OF
JUSTICE WM.J. BRENNAN, JR.

December 12, 1977

RE: No. 76-719 National Labor Relations Board v.
Local Union No. 103, etc. et al.

Dear Byron:

I agree.

Sincerely,

Brennan

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 15, 1977

76-719, NLRB v. Bridge Workers

Dear Byron,

I expect to circulate a short dissent in
due course.

Sincerely yours,

P.S.
P.

Mr. Justice White

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

✓ 9 JAN 1978

Circulated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-719

National Labor Relations Board,
 Petitioner,

v.

Local Union No. 103, International
 Association of Bridge, Structural
 and Ornamental Iron Work-
 ers, AFL-CIO, et al.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Dis-
 trict of Columbia Cir-
 cuit.

[January —, 1978]

MR. JUSTICE STEWART, dissenting.

An employer in the construction industry, like any other employer, is under no obligation to bargain with a labor organization that does not represent a majority of its employees.¹ See *NLRB v. Philamon Laboratories, Inc.*, 298 F. 2d 176, 179 (CA2). But unlike other employers, it is free to do so, and may under § 8 (f) sign a contract with a union whose majority status has not been established without risking liability under § 8 (a)(1) for interfering with the organizational rights of employees by recognizing a minority union.² Cf. *Internal*

¹ Section 8 (a)(5) of the National Labor Relations Act, 29 U. S. C. § 158 (a)(5), provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title." Section 9 (a), 29 U. S. C. § 159 (a), provides in pertinent part that "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining"

² Section 8 (f) of the National Labor Relations Act, 29 U. S. C. § 158 (f) provides in pertinent part that

"It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and

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: _____
6 JAN 1978

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-719

National Labor Relations Board, Petitioner, v. Local Union No. 103, International Association of Bridge, Structural and Ornamental Iron Work- ers, AFL-CIO, et al.	On Writ of Certiorari to the United States Court of Appeals for the Dis- trict of Columbia Cir- cuit.
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[January —, 1978]

MR. JUSTICE STEWART, with whom MR. JUSTICE BLACKMUN
and MR. JUSTICE STEVENS join, dissenting.

An employer in the construction industry, like any other employer, is under no obligation to bargain with a labor organization that does not represent a majority of its employees.¹ See *NLRB v. Philamon Laboratories, Inc.*, 298 F. 2d 176, 179 (CA2). But unlike other employers, it is free to do so, and may under § 8 (f) sign a contract with a union whose majority status has not been established without risking liability under § 8 (a)(1) for interfering with the organizational rights of employees by recognizing a minority union.² Cf. *Interna-*

¹ Section 8 (a)(5) of the National Labor Relations Act, 29 U. S. C. § 158 (a)(5), provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159 (a) of this title." Section 9 (a), 29 U. S. C. § 159 (a), provides in pertinent part that "[r]epresentatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining"

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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: 12-12-77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-719

National Labor Relations Board,
Petitioner,
v.
Local Union No. 103, International
Association of Bridge, Structural
and Ornamental Iron Work-
ers, AFL-CIO, et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Cir-
cuit.

[January —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

Sections 8 (b)(7) and 8 (f) were added to the National Labor Relations Act in 1959.¹ Section 8 (f), permitting so-

¹ Pub. L. No. 257, § 704; 86th Cong., 1st Sess., 73 Stat. 541 (1959), § 8 (b)(7), 29 U. S. C. § 158 (b)(7) provides:

"It shall be an unfair labor practice for a labor organization or its agents . . . to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees:

"(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

"(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

"(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without

BRW
Please give me

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 5, 6, 14

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: 12-15-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-719

National Labor Relations Board,
Petitioner,
v.
Local Union No. 103, International
Association of Bridge, Structural
and Ornamental Iron Work-
ers, AFL-CIO, et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Cir-
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[January —, 1978]

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"(A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act,

"(B) where within the preceding twelve months a valid election under section 9(c) of this Act has been conducted, or

"(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 15, 1977

Re: No. 76-719, National Labor Relations Board v.
Local Union No. 103

Dear Byron:

Please join me.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20542

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 21, 1977

Re: No. 76-719 - NLRB v. Local 103

Dear Byron:

I, too, shall await the dissent in this case.

Sincerely,

HAB-

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

✓✓
January 4, 1978

Re: No. 76-719 - NLRB v. Local Union 103

Dear Potter:

Please join me in your dissent.

Sincerely,

H. A. B.
/

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 14, 1977

76-719 NLRB v. Local Union No. 103

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

December 13, 1977

Re: No. 76-719 - NLRB v. Local 103

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

December 15, 1977

Re: 76-719 - NLRB v. Bridge Workers

Dear Byron:

May I welcome the news that Potter will undertake the dissent by advising you that I shall await the results of his endeavor.

Respectfully,



Mr. Justice White .

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

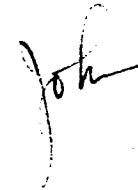
January 4, 1978

Re: 76-719 - NLRB v. Local Union No. 103, etc.

Dear Potter:

Please join me in your dissenting opinion.

Respectfully,



Mr. Justice Stewart

Copies to the Conference