

# The Burger Court Opinion Writing Database

*Federal Maritime Commission v. Pacific Maritime Association*

435 U.S. 40 (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. 20542

CHAMBERS OF  
THE CHIEF JUSTICE

February 15, 1978

Dear Byron:

Re: 76-938 FMC v. Pacific Maritime Association

I join.

Regards,



Mr. Justice White

cc: The Conference

1 copy

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

CHAMBERS OF  
JUSTICE WM.J. BRENNAN, JR.

December 12, 1977

RE: No. 76-938 Federal Maritime Commission v. Pacific  
Maritime Association

Dear Lewis:

I am attempting to parcel out the dissents in the last list. You, Thurgood and I are in dissent in the above. Would you care to undertake the dissent in it?

Sincerely,

*Bul*

Mr. Justice Powell

cc: Mr. Justice Marshall

4

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

CHAMBERS OF  
JUSTICE W.H. BRENNAN, JR.

February 17, 1978

RE: No. 76-938 FMC v. Pacific Maritime Association

Dear Lewis:

Please join me in the dissenting opinion you have  
prepared in the above.

Sincerely,

*Brennan*

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 23, 1978

No. 76-938, FMC v. Pacific Maritime Assn.

Dear Byron,

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

Sincerely yours,

P.S.  
P.S.

Mr. Justice White

Copies to the Conference

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: 1/20

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 76-938

Federal Maritime Commission et al., Petitioners  
v.  
Pacific Maritime Association et al.

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

[January —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

Section 15 of the Shipping Act, 1916, 39 Stat. 733, as amended, 46 U. S. C. § 814,<sup>1</sup> requires the filing with the

<sup>1</sup> Section 15, 46 U. S. C. § 814, provides as follows:

"Every common carrier by water, or other person subject to this chapter, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

"The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this chapter, and shall approve all other agreements,

L F P T W  
dissent

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 15-18

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: 1/26

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 76-938

Federal Maritime Commission  
et al., Petitioners,  
v.  
Pacific Maritime Association et al. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Dis-  
trict of Columbia Circuit.

[January —, 1978]

MR. JUSTICE WHITE delivered the opinion of the Court.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 28, 1978

Re: No. 76-938 - FMC v. Pacific Maritime Association

Dear Lewis:

Please join me.

Sincerely,

*JM*

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 12, 1977

No. 76-938 Federal Maritime Commission v.  
Pacific Maritime Association

Dear Bill:

I will be glad to undertake the dissent in the  
above case.

Sincerely,

*Lewis*

Mr. Justice Brennan

lfp/ss

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 23, 1978

No. 76-938 Federal Maritime Commission v.  
Public Maritime Commission

Dear Byron:

Although you have written a persuasive opinion, I am still inclined to affirm CADC and in due time will circulate a short dissent.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

2/15/78

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  
16 FEB 1978

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

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

RE: No. 76-938, FMC v. Pacific Maritime Association

MR. JUSTICE POWELL, dissenting.

The Court today holds that collective-bargaining agreements in the maritime industry are subject to the filing and prior approval requirements of § 15 of the Shipping Act (Act) of 1916, 46 U.S.C. § 814. Neither statutory language nor legislative history offers specific support for this result. For well over a half a century, the agency responsible for enforcing the Act did not consider §15 previews of maritime labor contracts to be within its mission, even though collective bargaining is hardly a recent development in the major ports of the nation.<sup>1</sup> No intervening legislation explains the Court's willingness to recognize this belated assertion of jurisdiction.<sup>2</sup>

This decision would be debatable but unexceptional were it not for the presence of a competing statute. The task confronting the Court is one of reconciling the broad language of §15 with the distinct policy of federal labor law embodied in the National Labor Relations Act, 29 U.S.C. §§141, et seq. It seems to me that today's ruling

## Stylistic Changes Throughout

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: \_\_\_\_\_

1st DRAFT

Recirculated 22 FEB 1978

**SUPREME COURT OF THE UNITED STATES**

No. 76-938

Federal Maritime Commission et al., Petitioners, v. Pacific Maritime Association et al. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[February —, 1978]

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

The Court today holds that collective-bargaining agreements in the maritime industry are subject to the filing and prior approval requirements of § 15 of the Shipping Act (Act) of 1916, 46 U. S. C. § 814. Neither statutory language nor legislative history offers specific support for this result. For well over a half a century, the agency responsible for enforcing the Act did not consider § 15 previews of maritime labor contracts to be within its mission,<sup>1</sup> even though collective

<sup>1</sup> Prior to 1968, the Federal Maritime Commission (Commission) and its predecessors resisted the idea that § 15 reached agreements affecting employer-employee relationships. Three years after this Court's ruling in *Volkswagenwerk v. FMC*, 390 U. S. 261 (1968), however, the Commission held that § 15 applied to work-gang allocation and employee-recall provisions developed among members of a multi-employer association. The recall provision had been embodied in a collective-bargaining agreement. *United Stevedoring Corp. v. Boston Shipping Assn.*, 15 F. M. C. 33, 46 (1971). On appeal, the United States, as statutory respondent, incorporating the positions of the Department of Labor and the National Labor Relations Board, objected to the Commission's decision. The opposition of the United States prompted the Commission to move for a remand for further consideration. The Court of Appeals granted the motion, expressing "astonishment" at the Commission's failure to recognize the difference "between attaching a separate, § 15, agreement, in which the union had little interest, to a collective bargaining agreement, and making a multi-employer agreement with a union, eyeball to eyeball, but which, by the very fact that it is multi-employer, has some effect on employer competi-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

January 24, 1978

Re: No. 76-938 - FMC v. Pacific Maritime Assoc.

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 23, 1978

Re: 76-938 - Federal Maritime Commission v.  
Pacific Maritime Association et al.

Dear Byron:

- Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference