

# The Burger Court Opinion Writing Database

*Eastex, Inc. v. NLRB*

437 U.S. 556 (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

June 12, 1978

Re: 77-453 - Eastex, Inc. v. NLRB

Dear Bill:

Please join me in your dissent.

Regards,

W. B.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE W. J. BRENNAN, JR.

June 2, 1978

RE: No. 77-453 Eastex, Inc. v. National Labor  
Relations Board

Dear Lewis:

I agree.

Sincerely,

*Bill*

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 1, 1978

Re: No. 77-453, Eastex, Inc. v. NLRB

Dear Lewis,

I am glad to join your opinion  
for the Court.

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

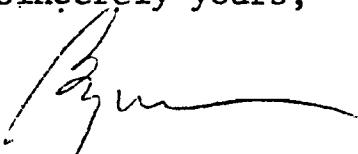
June 14, 1978

Re: 77-453 - Eastex v. NLRB

Dear Lewis,

I shall file a brief concurrence  
joining the judgment and your opinion.

Sincerely yours,



Mr. Justice Powell  
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: 6/14/78

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

No. 77-453 - Eastex v. NLRB

MR. JUSTICE WHITE, concurring.

As I understand the record in this case, the only issue before the administrative law judge and before the Board was whether the activity engaged in here by the employees was the kind of activity protected by § 7 of the National Labor Relations Act. The administrative law judge held that the circulars were related to matters encompassed by § 7 and noted that there had been no attempt or evidence to show that even though the distributions were § 7 activity, there were nevertheless circumstances that permitted the employer to forbid the distributions on his property. The Board adopted the report of the administrative law judge.

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

(Mr. Justice White)

No. 77-453

Circulated:

6/16

Recirculated:

Eastex, Incorporated, Petitioner, v.  
National Labor Relations Board. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[June —, 1978]

MR. JUSTICE WHITE, concurring.

As I understand the record in this case, the only issue before the administrative law judge and before the Board was whether the activity engaged in here by the employees was the kind of activity protected by § 7 of the National Labor Relations Act. The administrative law judge held that the circulars were related to matters encompassed by § 7 and noted that there had been no attempt or evidence to show that even though the distributions were § 7 activity, there were nevertheless circumstances that permitted the employer to forbid the distributions on his property. The Board adopted the report of the administrative law judge.

I agree that the employees here were engaged in activity protected by § 7, at least in the sense that the employer could not discharge employees for propagandizing their fellow workers with materials concerning minimum wages and right-to-work laws, so long as the distribution takes place off the employer's property. I agree further that under current law and the facts and claims in this record, the distributions could take place on the employer's property. Accordingly, the Board was entitled to have its order enforced and I join the judgment and opinion of the Court.

In doing so, I should say that it is not easy to explain why an employer need permit his property to be used for distributions about subjects unrelated to his relationship with his employees simply because it is convenient for the latter to use

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 15, 1978

Re: No. 77-453 - Eastex, Inc. v. NLRB

Dear Lewis:

Please join me.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 2, 1978

Re: No. 77-453 - Eastex, Inc. v. NLRB

Dear Lewis:

Please join me.

I share John's reaction to footnote 24 and I, too, would be happier if it were omitted.

I would not mind your adding a positive statement on page 18 that the Board should now continue to guide the general evolution in this area. This, I think, would give the opinion more of a permissive rather than a restrictive tone, as some might read it in its present form.

Sincerely,



Mr. Justice Powell

cc: The Conference

*✓* ✓  
*✓ KEP*  
*Placed in file*

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: 31 MAY 1978

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-453

Eastex, Incorporated, Petitioner,  
v.  
National Labor Relations Board. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[June —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

Employees of petitioner sought to distribute a union newsletter in nonworking areas of petitioner's property during nonworking time urging employees to support the union and discussing a proposal to incorporate the state "right-to-work" statute into the state constitution and a presidential veto of an increase in the federal minimum wage. The newsletter also called on employees to take action to protect their interests as employees with respect to these two issues. The question presented is whether petitioner's refusal to allow the distribution violated § 8 (a)(1) of the National Labor Relations Act, as amended, 29 U. S. C. § 158 (a)(1), by interfering with, restraining, or coercing employees' exercise of their right under § 7 of the Act, 29 U. S. C. § 157, to engage in "concerted activities for the purpose of . . . mutual aid or protection."

I

Petitioner is a company that manufactures paper products in Silsbee, Tex. Since 1954, petitioner's production employees have been represented by Local 801 of the United Paperworkers International Union. It appears that many, although not all, of petitioner's approximately 800 production employees are members of Local 801. Since Texas is a "right-to-work"

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 6, 1978

No. 77-453 Eastex v. NLRB

Dear Harry:

Thank you for your letter of June 2, joining my opinion.

I will omit footnote 24, as you suggest. I would prefer, however, not to add a more positive statement on page 18 with respect to what the Board should do.

Sincerely,

*L Lewis*

Mr. Justice Blackmun

lfp/ss

cc: The Conference

Pp. 8, 10, 12, 15, 16, 18

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: 18 JUN 1978

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-453

Eastex, Incorporated, Petitioner,  
v.  
National Labor Relations Board. } On Writ of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[June —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

Employees of petitioner sought to distribute a union newsletter in nonworking areas of petitioner's property during nonworking time urging employees to support the union and discussing a proposal to incorporate the state "right-to-work" statute into the state constitution and a presidential veto of an increase in the federal minimum wage. The newsletter also called on employees to take action to protect their interests as employees with respect to these two issues. The question presented is whether petitioner's refusal to allow the distribution violated § 8 (a)(1) of the National Labor Relations Act, as amended, 29 U. S. C. § 158 (a)(1), by interfering with, restraining, or coercing employees' exercise of their right under § 7 of the Act, 29 U. S. C. § 157, to engage in "concerted activities for the purpose of . . . mutual aid or protection."

### I

Petitioner is a company that manufactures paper products in Silsbee, Tex. Since 1954, petitioner's production employees have been represented by Local 801 of the United Paperworkers International Union. It appears that many, although not all, of petitioner's approximately 800 production employees are members of Local 801. Since Texas is a "right-to-work"

June 26, 1978

MEMORANDUM TO THE CONFERNCE:

Cases Held for No. 77-453 Eastex, Inc. v. NLRB

No. 77-1264, Reading Hospital and Medical Center v. NLRB

Until 1975, petr hospital participated in a surgical residency program under which physicians assigned to the hospital were trained as surgeons. This program was under the control of the American College of Surgeons, the American Board of Surgery, the Council on Medical Education, and the American Medical Association. Early in 1975 these bodies decided to discontinue the program.

Rea, a nurse employed by petr, learned of this decision. In the nurse's lounge she initiated a discussion with other nurses in which all expressed concern that discontinuance of the program would result in nurses being required to perform work previously performed by residents, and in particular work in operating rooms that should be performed by physicians. Rea and the others also discussed the possibility of circulating a petition or writing a letter to a local newspaper in opposition to discontinuance of the residency program.

Petr learned of the discussions and contemplated action by the nurses, and it suspended Rea from work. A few days later petr discharged Rea, citing both her allegedly unsatisfactory work and her threat to write a letter to the newspaper. Rea filed an unfair labor practice charge with the NLRB, and the ALJ held that she had been discharged in part because of her participation in concerted activity protected by §7's "mutual aid or protection" clause. Petr argued that the nurses' discussions and contemplated letter fell outside the

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 1, 1978

Re: No. 77-453 Eastex, Inc. v. NLRB

Dear Lewis:

In due course I will circulate a dissent in this case.

Sincerely,

*WR*

Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice Rehnquist

Circulated: JUN 7 197

No. 77-453 Eastex, Inc. v. National Labor Relations Board

MR. JUSTICE REHNQUIST, dissenting.

It is not necessary to determine the scope of the "mutual aid or protection" language of § 7 of the National Labor Relations Act to conclude that Congress never intended to require the opening of private property to the sort of political advocacy involved in this case. Petitioner's "bare property right," as described by the Court, ante at 15, is the right of a property owner, fully recognized under Texas law, to prescribe the conditions under which strangers may enter its property. "A licensee who goes beyond the rights and privileges granted by the license becomes a trespasser." Burton Construction & Shipbuilding

P.1

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

From: Mr. Justice Rehnquist

Circulated: JUN 9 1978

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 77-453

Eastex, Incorporated, Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
National Labor Relations Board. } of Appeals for the Fifth  
Circuit.

[June —, 1978]

MR. JUSTICE REHNQUIST, dissenting.

It is not necessary to determine the scope of the "mutual aid or protection" language of § 7 of the National Labor Relations Act to conclude that Congress never intended to require the opening of private property to the sort of political advocacy involved in this case. Petitioner's right as a property owner to prescribe the conditions under which strangers may enter its property is fully recognized under Texas law. "A licensee who goes beyond the rights and privileges granted by the license becomes a trespasser." *Burton Construction & Shipbuilding Co. v. Broussard*, 273 S. W. 2d 598, 603 (Tex. 1954) (citation omitted). See also *Brown v. Dellinger*, 355 S. W. 2d 742 (Tex. Civ. App. 1962); 56 Tex. Jur. 2d Trespass § 4 (1964). Thus, the employees' effort to distribute their leaflet in defiance of petitioner's wishes would clearly be a trespass infringing upon petitioner's property right. There is no indication that Texas takes so narrow a view of petitioner's rights that it may fairly be said that its "only cognizable property right in this respect is in preventing employees from bringing literature onto its property and distributing it there." *Ante*, at 16. So far as appears, a Texas property owner may admit certain leaflets onto his property and exclude others, as it pleases him. The Court can only

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 1, 1978

RE: No. 77-453 - Eastex v. NLRB

Dear Lewis:

Please join me.

Frankly, I find footnote 24 a little confusing and would be happier if it were omitted, but my join is not conditioned on this suggestion.

Respectfully,



Mr. Justice Powell

Copies to the Conference