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NLRB v. Robbins Tire & Rubber Co.

437 U.S. 214 (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 7, 1978

Dear John:

Re: 77-911 NLRB v. Robbins Tire and Rubber Co.

Please show me as joining your concurring
opinion.

Regards,

WEB
W

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 3, 1978

RE: No. 77-911 N.L.R.B. v. Robbins Tire & Rubber Co.

Dear Lewis:

I am again in the process of trying to whack up dissents. You and I were in agreement that the judgment in this should be modified to make a distinction between employee and other witnesses. Would it be convenient for you to undertake a dissent to that effect?

Sincerely,



Mr. Justice Powell

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 9, 1978

RE: No. 77-911 NLRB v. Robins Tire & Rubber Co.

Dear Lewis:

Please join me in your opinion concurring in part and dissenting in part.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 31, 1978

Re: No. 77-911, NLRB v. Robbins Tire & Rubber Co.

Dear Thurgood,

It seems to me that the concerns voiced by our Brothers Rehnquist and Stevens would be largely met by the deletion of footnote 19 and the related sentence in the text on page 30 of your opinion. Since I share those concerns, I hope you will be able to see your way clear to make these minor deletions, which I think would really not detract at all from the flow or comprehensiveness of what you have written. If these minor changes are made, I shall be glad to join your opinion for the Court.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

P.S.
/

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1978

77-911, NLRB v. Robbins Tire & Rubber Co.

Dear Thurgood,

In accord with my note to you of
May 31, I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 6, 1978

Re: 77-911 - NLRB v. Robbins Tire and
Rubber Company

Dear Thurgood,

Although I voted to affirm in
conference, I shall come along quietly.

Sincerely yours,



Mr. Justice Marshall

Copies to the Conference

30 MAY 1978

No. 77-911, N.L.R.B. v. Robbins Tire & Rubber Co.

MR. JUSTICE MARSHALL delivered the opinion of the Court

The question presented is whether the Freedom of Information Act (FOIA), 5 U.S.C. § 552, requires the National Labor Relations Board to disclose, prior to its hearing on an unfair labor practice complaint, statements of witnesses whom the Board intends to call at the hearing. Resolution of this issue depends on whether production of the material before the hearing would "interfere with enforcement proceedings" within the meaning of Exemption 7(A) of FOIA, 5 U.S.C. § 552(b)(7)(A)

FOOTNOTES

1/

After investigating the union's objections to the election, the Regional Director not only issued an unfair labor practice charge but recommended that seven challenged ballots be counted and, if they did not result in the union's receiving a majority, that a hearing be held on certain of the Union's objections. The Board adopted the Regional Director's recommendations and, when a count of the challenged ballots failed to give the union a majority, the hearing on its objections to the election was consolidated with the hearing on the unfair labor practice charge.

2/

As a preliminary matter, the Court of Appeals rejected the Board's argument that the District Court had, in effect, granted an injunction against the Board proceeding, thereby

changes;
deletions at p. 24, 28

5 JUN 1978

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-911

National Labor Relations Board, Petitioner, <i>v.</i> Robbins Tire and Rubber Company.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
--	---	--

[June —, 1978]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The question presented is whether the Freedom of Information Act (FOIA), 5 U. S. C. § 552, requires the National Labor Relations Board to disclose, prior to its hearing on an unfair labor practice complaint, statements of witnesses whom the Board intends to call at the hearing. Resolution of this question depends on whether production of the material prior to the hearing would "interfere with enforcement proceedings" within the meaning of Exemption 7 (A) of FOIA, 5 U. S. C. § 552 (b)(7)(A).

I

Following a contested representation election in a unit of respondent's employees, the Acting Regional Director of the NLRB issued an unfair labor practice complaint charging respondent with having committed numerous violations of § 8 (a)(1) of the National Labor Relations Act (NLRA), 29 U. S. C. § 158 (a)(1), during the pre-election period.¹ A

¹ After investigating the union's objections to the election, the Regional Director not only issued an unfair labor practice charge but recommended that seven challenged ballots be counted and, if they did not result in the union's receiving a majority, that a hearing be held on certain of the union's objections. The Board adopted the Regional Director's recom-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1978

Re: No. 77-911 - NLRB v. Robbins Tire and Rubber Co.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference

March 31, 1978

No. 77-911 NLRB v. Robbins Tire and Rubber

Dear Chief:

The above case is now tentatively set for argument on April 26.

The SG filed his brief on March 15, having previously notified opposing counsel and Mike Rodak of a strong desire to have the case argued this Term.

We received today an application from respondent's counsel requesting an extension of time until May 9, 1978. The SG, by letter dated March 30, opposes the extension for reasons that are persuasive.

As I view the situation, counsel for respondent - perhaps for good reason - wants to carry this case over to the October Term. As the SG's letter indicates, he has been proceeding on the assumption that the case will be argued in April.

Unless an extension is granted, respondent's brief will be due on April 14. I suggest that we extend the time for filing of respondent's brief only to April 20.

Sincerely,

The Chief Justice

lfp/ss

May 5, 1978

No. 77-911 NLRB v. Robbins Tire

Dear Bill:

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

Sincerely,

Mr. Justice Brennan

lfp/ss

lfp/ss 6/9/78

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

Circulated: 9 JUN 1978

Recirculated: _____

Re: No. 77-911, NLRB v. Robins Tire & Rubber Co.

MR. JUSTICE POWELL, concurring in part and dissenting in part.

I join the Court's opinion to the extent that it holds that Exemption 7(A) of the Freedom of Information Act (Act or FOIA), 80 Stat. 383, as amended, 5 U.S.C. § 552(b) (7) (A), permits the federal courts to determine that "with respect to particular kinds of enforcement proceedings, disclosure of particular kinds of investigatory records while a case was pending would generally 'interfere with enforcement proceedings.'" Ante, at 21. I endorse the limitation of such "generic determinations of likely interference," ibid., to "an imminent adjudicatory proceeding" that is "necessarily of a finite duration," id., at 14-15 n.10. I also agree that the National Labor Relations Board (Board) has sustained its burden of justifying nondisclosure of statements by current employees that are unfavorable to their employer's cause in an unfair labor practice proceeding against that

pp. 1-2, 10-11

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

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SUPREME COURT OF THE UNITED STATES

No. 77-911

National Labor Relations Board, Petitioner, <i>v.</i> Robbins Tire and Rubber Company.	}	On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
--	---	--

[June —, 1978]

MR. JUSTICE POWELL, with whom MR. JUSTICE BRENNAN joins, concurring in part and dissenting in part.

I join the Court's opinion to the extent that it holds that Exemption 7 (A) of the Freedom of Information Act (Act or FOIA), 80 Stat. 383, as amended, 5 U. S. C. § 552 (b) (7) (A), permits the federal courts to determine that "with respect to particular kinds of enforcement proceedings, disclosure of particular kinds of investigatory records while a case was pending would generally 'interfere with enforcement proceedings.'" *Ante*, at 21. I endorse the limitation of such "generic determinations of likely interference," *ibid.*, to "an imminent adjudicatory proceeding" that is "necessarily of a finite duration," *id.*, at 14-15, n. 10. I also agree that the National Labor Relations Board (Board) has sustained its burden of justifying nondisclosure of statements by current employees that are unfavorable to their employer's cause in an unfair labor practice proceeding against that employer. But I cannot accept the Court's approval of the application of the Board's rule of nondisclosure to *all* witness statements, unless and until a witness gives direct testimony before an administrative law judge. And I disagree with the Court's apparent interpretation of Exemption 7 (A) as providing no "earlier or greater access" to records than that available under the discovery rules that an agency chooses to promulgate. See concurring opinion

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST


May 31, 1978

No. 77-911 NLRB v. Robbins Tire & Rubber Co.

Dear Thurgood:

I am in substantial agreement with John's letter to you of May 31st in this case. I voted to reverse at Conference, and remain of that view, but could not join an opinion which even by implication suggested that there might be one result under an FOIA suit where the Labor Board was involved, and another where some other agency or the United States as prosecutor in a criminal case was involved. If you do intend such a result as a result of the language in Part III of your opinion, I will ultimately align myself with John's separate concurrence. Certainly the danger of company abuse of potential Board witnesses is no greater than the danger of abuse of government witnesses by the mob in a forthcoming criminal trial. It may be that existing discovery rules provide broader access for a criminal defendant to the names of witnesses than do Board discovery rules, but for FOIA purposes I do not see any basis for differentiating one from the other.

Sincerely,



Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 5, 1978

Re: No. 77-911 - NLRB v. Robbins Tire and Rubber Co.

Dear John:

Please join me in your concurring opinion in this case. As is apparent from the language of that opinion, by so doing I will likewise be joining Thurgood's opinion for the Court.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

MEMBERS OF
JUSTICE JOHN PAUL STEVENS

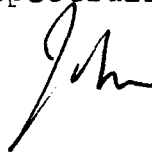
May 31, 1978

Re: 77-911 - NLRB v. Robbins Tire and Rubber Co.

Dear Thurgood:

Because I cannot agree with footnote 19, I have prepared this short concurrence.

Respectfully,



Mr. Justice Marshall

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 Rehnquist

From: Mr. Justice Stevens

Circulated: NOV 31 78

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77-911 - NLRB v. Robbins Tire and Rubber Co.

MR. JUSTICE STEVENS, concurring in part and concurring in the judgment.

While I join the Court's judgment and Parts I and II of its opinion, I do so on the understanding that its rationale is not limited to Labor Board proceedings or to the statements of prospective witnesses. Any intermeddling in a pending enforcement proceeding of any kind is an interference within the meaning of the statute. Any additional discovery that would not be available under the rules otherwise applicable to the proceeding is necessarily a change, and therefore an interference in that proceeding. Both the legislative history and my copy of Webster's Dictionary reinforce my understanding of the statutory language.*

*/ One of the definitions for interference is: "The act of meddling in or hampering an activity or process." Webster's Third New International Dictionary.

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

From: Mr. Justice Stevens

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78-911 - NLRB v. Robbins Tire and Rubber Co.

MR. JUSTICE STEVENS, concurring. |

The "act of meddling in" a process is one of Webster's accepted definitions of the word "interference."^{*} A statute that authorized discovery greater than that available under the rules normally applicable to an enforcement proceeding would "interfere" with the proceeding in that sense. The Court quite correctly holds that the Freedom of Information Act does not authorize any such interference in Labor Board enforcement proceedings. Its rationale applies equally to any enforcement proceeding. On that understanding, I join the opinion.

^{*} One of the definitions for interference is: "The act of meddling in or hampering an activity or process." Webster's Third New International Dictionary.

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

From: Mr. Justice Stevens

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SUPREME COURT OF THE UNITED STATES

No. 77-911

National Labor Relations Board, Petitioner,	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
v.	
Robbins Tire and Rubber Company.	

[June —, 1978]

MR. JUSTICE STEVENS, with whom MR. JUSTICE REHNQUIST joins, concurring.

The "act of meddling in" a process is one of Webster's accepted definitions of the word "interference."* A statute that authorized discovery greater than that available under the rules normally applicable to an enforcement proceeding would "interfere" with the proceeding in that sense. The Court quite correctly holds that the Freedom of Information Act does not authorize any such interference in Labor Board enforcement proceedings. Its rationale applies equally to any enforcement proceeding. On that understanding, I join the opinion.

*One of the definitions for interference is: "The act of meddling in or hampering an activity or process." Webster's Third New International Dictionary.

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

From: Mr. Justice Stevens

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SUPREME COURT OF THE UNITED STATES

Recirculated: ~~JUN 12 1978~~

No. 77-911

National Labor Relations Board, Petitioner,
v.
Robbins Tire and Rubber Company. } On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1978]

MR. JUSTICE STEVENS, with whom THE CHIEF JUSTICE and MR. JUSTICE REHNQUIST join, concurring.

The "act of meddling in" a process is one of Webster's accepted definitions of the word "interference."* A statute that authorized discovery greater than that available under the rules normally applicable to an enforcement proceeding would "interfere" with the proceeding in that sense. The Court quite correctly holds that the Freedom of Information Act does not authorize any such interference in Labor Board enforcement proceedings. Its rationale applies equally to any enforcement proceeding. On that understanding, I join the opinion.

*One of the definitions for interference is: "The act of meddling in or hampering an activity or process." Webster's Third New International Dictionary.