

The Burger Court Opinion Writing Database

*Ford Motor Co. (Chicago Stamping Plant)
v. NLRB*

441 U.S. 488 (1979)

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 8, 1979

Dear Byron:

Re: 77-1806 Ford Motor Company v. National Labor
Relations Board

I join.

Regards
WRB

Mr. Justice White
Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

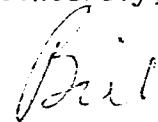
April 23, 1979

RE: No. 77-1806 Ford Motor Co. v. N.L.R.B.

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 20, 1979

Re: 77-1806 - Ford Motor Co. v. NLRB

Dear Byron:

I am glad to join your opinion for the Court.

Sincerely yours,

PS,

Mr. Justice White

Copies for the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 24, 1979

Re: No. 77-1806, Ford Motor Co. v. NLRB

Dear Byron,

Although I have joined your opinion for the Court in this case, I agree with Lewis's proposed addition and hope you will see fit to incorporate it.

Sincerely yours,

P.S.
P.J.

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

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

FORD MOTOR COMPANY, ETC. v. NATIONAL LABOR
RELATIONS BOARD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 77-1806. Decided October —, 1978

MR. JUSTICE WHITE, dissenting.

This case concerns the questions whether and when prices for in-plant cafeteria and vending machine food are "terms and conditions of employment" subject to mandatory collective bargaining under § 8 (d) of the National Labor Relations Act. 29 U. S. C. § 158 (d) (1976 ed.). The NLRB has long maintained that such prices are always a statutory topic. The courts of appeals have uniformly rejected that absolute approach, but the Board continues to cling to it. The court below found that bargaining over such prices was required under the circumstances of this case, relying primarily upon the facts that alternative means of acquiring lunch were inadequate and that the employer had substantial control over prices. *Ford Motor Co. v. NLRB*, 571 F. 2d 993 (CA7 1978). No other Court of Appeals decision has enforced a Board order to bargain though each case has involved one or more of the factors relied upon here. Cf. *NLRB v. Ladish*, 538 F. 2d 1267 (CA7 1976); *NLRB v. Package Machinery Corp.*, 457 F. 2d 936 (CA1 1972); *McCall Corp. v. NLRB*, 432 F. 2d 187 (CA4 1970); *Westinghouse Elec. Corp. v. NLRB*, 387 F. 2d 242 (CA4 en banc 1967).

Though square conflicts are uncommon in an area dependent in large part on the facts of the particular practice, see *Fibreboard Paper Products Corp. v. NLRB*, 379 U. S. 203, 215 (1964), there is evident and confusing disagreement in the courts of appeals over what factors are important or even pertinent to the resolution of this question of federal law.

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

No. 77-1806

Ford Motor Company, etc.,
Petitioner,
v.
National Labor Relations Board
et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[April —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

The principal question¹ in this case is whether prices for in-plant cafeteria and vending machine food and beverages are "terms and conditions of employment" subject to mandatory collective bargaining under §§ 8 (a)(5) and 8 (d) of the National Labor Relations Act. 29 U. S. C. §§ 158 (a)(5) and 158 (d) (1976 ed.).²

¹ The National Labor Relation Board's order at issue here directed petitioner to bargain with respondent Union "with respect to food services and changes in food prices in [petitioner's in-plant] vending machines and cafeterias. . . ." *Ford Motor Co. (Chicago Stamping Plant)*, 230 N. L. R. B. 716, 719 (1977), enf'd sub nom. *NLRB v. Ford Motor Co.*, 571 F. 2d 993 (CA7 1978). The duty to bargain over nonprice aspects of in-plant food services is thus also at issue here. The Board's order also obligated petitioner to supply respondent "with the information necessary for bargaining." *Ibid.* It seems agreed that if food prices and service are mandatory bargaining subjects, the order to furnish information should stand. See *Detroit Edison Co. v. NLRB*, — U. S. — (1979) (slip op., at 1).

² The relevant provisions of the National Labor Relations Act are as follows:

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

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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25 APR 1979

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 9, 13

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1806

Ford Motor Company, etc.,
Petitioner,
v.
National Labor Relations Board
et al. | On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[April —, 1979]

MR. JUSTICE WHITE delivered the opinion of the Court.

The principal question ¹ in this case is whether prices for in-plant cafeteria and vending machine food and beverages are "terms and conditions of employment" subject to mandatory collective bargaining under §§ 8 (a)(5) and 8 (d) of the National Labor Relations Act. 29 U. S. C. §§ 158 (a)(5) and 158 (d).²

¹ The National Labor Relation Board's order at issue here directed petitioner to bargain with respondent Union "with respect to food services and changes in food prices in [petitioner's in-plant] vending machines and cafeterias. . . ." *Ford Motor Co. (Chicago Stamping Plant)*, 230 N. L. R. B. 716, 719 (1977), enf'd *sub nom. NLRB v. Ford Motor Co.*, 571 F. 2d 993 (CA7 1978). The duty to bargain over nonprice aspects of in-plant food services is thus also at issue here. The Board's order also obligated petitioner to supply respondent "with the information necessary for bargaining." *Ibid.* It seems agreed that if food prices and service are mandatory bargaining subjects, the order to furnish information should stand. See *Detroit Edison Co. v. NLRB*, — U. S. —, — (1979) (slip op., at 1).

² The relevant provisions of the National Labor Relations Act are as follows:

"SEC. 8. (a) It shall be an unfair labor practice for an employer—

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 23, 1979

Re: No. 77-1806 - Ford Motor Company v. NLRB

Dear Byron:

Please join me.

Sincerely,



T.M.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

September 28, 1978

Re: No. 77-1806 - Ford Motor Co. v. NLRB

Dear Bryon:

Please join me in your dissent.

Sincerely,



Mr. Justice White

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 24 APR 1979

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No. 77-1806 - Ford Motor Co. v. NLRB

MR. JUSTICE BLACKMUN, concurring in the result.

I am in accord with much -- indeed with most -- of what the Court pronounces in its opinion, and I join its judgment.

My concern is with the last two sentences of the penultimate paragraph of the Court's opinion. Ante, at 14. The Court there says that "[i]n any event" an employer, by initiating or altering a subsidy to a third-party supplier, "can always affect prices" and "will typically have the right to change suppliers at some point in the future." Thus, to this extent, "the employer holds future, if not present, leverage over in-plant food services and prices." To me, this language seems to

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

From: Mr. Justice Blackmun

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Recirculated: 25 APR 1979

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-1806

Ford Motor Company, etc.,
Petitioner,
v.
National Labor Relations Board
et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[April —, 1979]

MR. JUSTICE BLACKMUN, concurring in the result.

I am in accord with much—indeed with most—of what the Court pronounces in its opinion, and I join its judgment.

My concern is with the last two sentences of the penultimate paragraph of the Court's opinion. *Ante*, at 14. The Court there says that “[i]n any event” an employer, by *initiating* or altering a subsidy to a third-party supplier, “can always affect prices” and “will typically have the right to change suppliers at some point in the future.” Thus, to this extent, “the employer holds future, if not present, leverage over in-plant food services and prices.” To me, this language seems to say that Ford's control over prices under the facts of this case is really irrelevant to the “mandatory subject” inquiry, and seems to imply that an employer must bargain about prices even if he has no actual control over them at all. Any employer, of course, could achieve some measure of future control over prices, by initiating a subsidy or by changing suppliers. That future possibility, however, should not be enough.

If the employer has no control over prices, bargaining about them is futile. If the employer rents space in a corner of the plant to a restaurateur, and thereafter maintains a “hands off” attitude and has no input into the food operation, it is difficult for me to see how bargaining about food prices makes any

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 23, 1979

No. 77-1806 Ford Motor Co. v. NLRB

Dear Byron:

Although I expressed the preference at Conference for the "facts and circumstances" approach, and would have affirmed on that basis, I am about persuaded by your opinion that it may be just as well to adopt a "bright line" rule.

One point that was raised at Conference by Potter, and I thought accepted by most if not all of us, was that where an employer has not chosen to provide in-plant food services, and the providing thereof would require a capital investment, this would present a different case. On page 9 of your opinion, you may make this point inferentially by the reference in the third sentence of the second paragraph to "where the employer has chosen, apparently in his own interest, to make available a system of in-plant feeding facilities for his employees", bargaining is reasonable. This does not, however, incorporate Potter's point to the effect that requiring management to make a capital investment necessary to provide such services, would not be the subject of collective bargaining. Normally this would come within the scope of management prerogative.

Do you think you could add a note that at least makes clear that such a situation would present an entirely different question?

Sincerely,



Mr. Justice White

Copies to the Conference

LFP/lab

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
25 APR 1979
Circulated:

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SUPREME COURT OF THE UNITED STATES

No. 77-1806

Ford Motor Company, etc.,
Petitioner,
v.
National Labor Relations Board
et al. } On Writ of Certiorari to
the United States Court
of Appeals for the Sev-
enth Circuit.

[April —, 1979]

MR. JUSTICE POWELL, concurring.

The Court today holds that prices for in-plant cafeteria and vending machine food and beverages are "terms and conditions of employment" subject to mandatory collective bargaining under the National Labor Relations Act. Although this view of the Act has been taken consistently by the National Labor Relations Board, none of the courts of appeals has agreed with the absolute approach of the Board. Rather, these courts in general have taken the position that whether bargaining with respect to in-plant food service was required depends upon the facts and circumstances of each case. Although the Court of Appeals for the Seventh Circuit enforced the Board's order in this case, it did so on a "facts and circumstances" basis.

I had thought that the case-by-case approach was more likely to be fair to both employer and union than the mandatory bargaining rule adopted today. The conditions and circumstances under which in-plant food service is provided can and do vary widely among the thousands of enterprises subject to the Act. Yet, curiously enough, neither petitioner nor respondent in this case supports the "facts and circumstances" approach of the Court of Appeals. On balance, I suppose there is merit in having a "bright line" with respect to this issue. This does put the parties to all collective

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 26, 1979

No. 77-1806 Ford Motor Co. v. NLRB

Dear Byron:

This will confirm my "join" of your opinion.
I have circulated a brief concurrence.

Sincerely,



Mr. Justice White

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

September 28, 1978

Re: No. 77-1806 Ford Motor Co. v. NLRB

Dear Byron:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 24, 1979

Re: No. 77-1806 - Ford Motor Co. v. NLRB

Dear Byron:

Please join me in your opinion. I would prefer, as Potter would, to see the footnote suggested by Lewis added to it.

sincerely,



Mr. Justice White

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

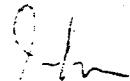
April 25, 1979

Re: 77-1806 - Ford Motor Co. v. NLRB

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference