The Burger Court Opinion Writing Database

New York Telephone Co. v. New York State Department of Labor

440 U.S. 519 (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

March 13, 1979

Re: 77-961 - N.Y. Telephone Co. v. N.Y. State Dept. of Labor

Dear John:

In Conference I expressed the view that if the people of New York wanted to subsidize strikers it was up to them. I am now persuaded that the impact on the national labor picture is too great to let any one state tilt the balance. I will therefore probably join Lewis' dissent.

Regards,

WEB

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 15, 1979

Dear Lewis:

Re: 77-961 New York Telephone Co., v. New York State Department of Labor

Please show me joining in your dissent.

Regards,

WEB

Mr. Justice Powell

cc: The Conference

Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

1st Draft From: Mr. Justice Brennan

Circulated

Supreme Court of the United States

Recirculated

No. 77-961

New York Telephone Company et al., Petitioners, v. New York State Department of Labor et al.) On Writ of Certiori to the United States Court of Appeals for the Second Circuit

[February __, 1979]

Mr. Justice BRENNAN, concurring in the result.

I agree with the Court that the New York statute challenged in this case does not regulate or prohibit private conduct that is either arguably protected by § 7 or arguably prohibited by § 8 of the NLRA. Any claim that the New York law is preempted must therefore be based on the principles applied in Teamsters Union v. Morton, 377 U.S. 252 (1964), and Lodge 76 v. Wisconsin Employment Relations Comm'n, 427 U.S. 132 (1976). Although I agree that the "statutory policy" articulated in those cases has some limits, I am not completely at ease with the distinctions employed by the Court in this case to define those limits.[1/] However, since I agree with my Brother Blackmun's conclusion that the legislative histories of

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–961

New York Telephone Company et al., Petitioners, *v.* New York State Department of Labor et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1979]

MR. JUSTICE BRENNAN, concurring in the result.

I agree with the Court that the New York statute challenged in this case does not regulate or prohibit private conduct that is either arguably protected by § 7 or arguably prohibited by § 8 of the NLRA. Any claim that the New York law is pre-empted must therefore be based on the principles applied in *Teamsters Union* v. *Morton*, 377 U. S. 252 (1964), and *Lodge 76* v. *Wisconsin Employment Relations Comm'n*, 427 U. S. 132 (1976). Although I agree that the "statutory policy" articulated in those cases has some limits, I am not completely at ease with the distinctions employed by the Court in this case to define those limits.* However, since I agree with my

*The Court correctly observes that our past pre-emption cases have dealt with statutes that regulate private conduct, rather than confer public benefits, but does not make clear why these different objectives justify different levels of scrutiny. Furthermore, although the distinction between laws of general applicability and laws directed particularly at labor-management relations perhaps has more significance in the application of the principles of *Lodge 76* than in the application of pre-emption principles where Congress has arguably protected or prohibited conduct, see Cox, Labor Law Preemption Revisited, 85 Harv. L. Rev. 1337, 1355–1356 (1972), I am not at all sure that the New York statute is a law of general applicability. See *id.*, at 1356; POWELL, J., dissenting, *post*, at 7, and n. 9. I find more substance in the Court's conclusion that the legislative history of the Social Security Act supports the argument that New York's law should be accorded a deference not unlike that accorded state laws touching

To: The Chief Justice
Mr. Justice
Mr. Justice
Mr.
Mr.
Mr.
Mr.

Stylistic Changes

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-961

New York Telephone Company et al., Petitioners, *v.* New York State Department of Labor et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[March —, 1979]

MR. JUSTICE BRENNAN, concurring in the result.

I agree that the New York statute challenged in this case does not regulate or prohibit private conduct that is either arguably protected by § 7 or arguably prohibited by § 8 of the NLRA. Any claim that the New York law is pre-empted must therefore be based on the principles applied in *Teamsters Union* v. *Morton*, 377 U. S. 252 (1964), and *Lodge 76* v. *Wisconsin Employment Relations Comm'n*, 427 U. S. 132 (1976). Although I agree that the "statutory policy" articulated in those cases has some limits, I am not completely at ease with the distinctions employed by my Brother STEVENS in this case to define those limits.* However, since I agree with my

*My Brother STEVENS correctly observes that our past pre-emption cases have dealt with statutes that regulate private conduct, rather than confer public benefits, but does not make clear why these different objectives justify different levels of scrutiny. Furthermore, although the distinction between laws of general applicability and laws directed particularly at labor-management relations perhaps has more significance in the application of the principles of *Lodge 76* than in the application of pre-emption principles where Congress has arguably protected or prohibited conduct, see Cox, Labor Law Preemption Revisited, 85 Harv. L. Rev. 1337, 1355–1356 (1972), I am not at all sure that the New York statute is a law of general applicability. See *id.*, at 1356; POWELL, J., dissenting, *post*, at 7, and n. 9. I find more substance in my Brother STEVENS' conclusion that the legislative history of the Social Security Act supports the argument that New York's law should be accorded a deference not unlike that accorded state

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 3, 1979

Re: No. 77-961, N.Y. Telephone Co. v. N.Y. State Dept. of Labor

Dear John,

You may remember that I expressed considerable doubt during the Conference discussion of this case, and ended up by abstaining. Although I think you have written an admirable opinion in support of the conclusion you reach, my doubt lingers. Accordingly, I shall wait to see what, if anything, Lewis decides to write.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 22, 1979

Re: No. 77-961, New York Tel. Co. v.
New York Labor Dept.

Dear Lewis,

Please add my name to your excellent dissenting opinion.

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

January 3, 1979

Re: No. 77-961 - New York Telephone Co. v. New York State Department of Labor

Dear John,

Please join me in your fine opinion in this case.

Sincerely yours,

Byron

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 15, 1979

Re: 77-961 - New York Telephone Company v. New York State Department of Labor

Dear Harry:

Please join me.

Sincerely,

T.M.

Mr. Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 18, 1979

Re: No. 77-961 - New York Telephone Co. v. New York Department of Labor

Dear John:

I still am not at rest in this case. I hope you will give me a few more days. I may be writing separately.

Sincerely,

HAB.

Mr. Justice Stevens

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 JAN 1978

Recirculated: _____

No. 77-961 - New York Telephone Company v. New York State Department of Labor

MR. JUSTICE BLACKMUN, concurring in the judgment.

I concur in the result. I agree with that portion of Part III of the Court's opinion where the conclusion is reached that Congress has made its decision to permit a State to pay unemployment benefits to strikers. (Whether Congress has made that decision wisely is not for this Court to say.) Because I am not at all certain that the Court's opinion is fully consistent with the principles recently enunciated in Machinists v. Wisconsin Emp. Rel.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–961

New York Telephone Company et al., Petitioners, *v.* New York State Department of Labor et al. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1979]

MR. JUSTICE BLACKMUN, concurring in the judgment.

I concur in the result. I agree with that portion of Part III of the Court's opinion where the conclusion is reached that Congress has made its decision to permit a State to pay unemployment benefits to strikers. (Whether Congress has made that decision wisely is not for this Court to say.) Because I am not at all certain that the Court's opinion is fully consistent with the principles recently enunciated in *Machinists* v. *Wisconsin Emp. Rel. Comm'n*, 427 U. S. 132 (1976), I refrain from joining the opinion's pre-emption analysis.

The Court recognizes, *ante,* at 10, that the economic weapons employed in this case are similar to those under consideration in *Machinists;* there, too, the Court concluded that Congress intended to leave the employment of such weapons to the free play of economic forces, and not subject to regulation by either the State or the NLRB. And the opinion also recognizes, *ibid.,* as the District Court and the Court of Appeals both found, that New York's statutory policy of paying unemployment benefits to strikers does indeed alter the economic balance between labor and management. See *Super Tire Engineering Co.* v. *McCorkle,* 416 U. S. 115, 123–124 (1974).

But the Court now appears to hold, *ante,* 11–12, that the analysis developed in *Machinists* and in its predecessor case,

I discussed this at Conference on 11/1/78. All agreed I should not disqualify

October 28, 1978

77-961 New York Telephone Company v. NY State Department of Labor

Dear Chief:

In preparing for the argument on Monday of the above case, the question occurred to me as to whether or not there may be some recusal question for those of us who own stock in major American corporations.

As the amici briefs make clear, American industry is broadly interested in the outcome of this case. Although I own no stock in the parties or in any of the named companies filing amicus briefs, I do own - as you know - stock in some eight or ten American companies, large and small. I believe that several of our Brothers also are stock owners.

I do not know (having made no investigation) which of my corporations may be subject to the New York Unemployment Compensation tax. I believe that at least one corporation is headquartered in New York.

Nor do I know the extent to which other states have laws like New York's, authorizing unemployment benefits from a fund maintained solely by employer contributions.

In any event, the situation is one in which it can be argued that business in general has an interest in one side of this case. Of course, this can be argued in other cases just as the general effect of decisions here may touch upon various interests of Justices indirectly.

I have understood the general rule to be that a federal judge does not disqualify himself in this type situation. This case seems, however, somewhat more closely

related to business in general than others we have had. I therefore plan to bring this up at Wednesday's Conference, and wanted to give you an opportunity to think about it in advance.

Sincerely,

The Chief Justice

lfp/ss

November 8, 1978

No. 77-961 N.Y. Telephone Company

Dear Potter:

Over the weekend, in an effort to sort out my own thoughts, I wrote the enclosed memorandum.

It reflects - as will be evident - my own rather strong conviction as to how the case should be decided in the national interest. I am still not entirely at rest when I wear my "judicial" hat. When colleagues like the Chief Justice, Harry and Bill Rehnquist think we should affirm, this causes me to ask myself whether my tentative view is based on considerations of policy, rather than neutral judicial principles. But I am having difficulty finding a principle - neutral or otherwise - that supports affirmance.

As you may recall, I remained out of all Bell system cases for my first five years on the Court. I did so because I was a member of the local board of directors of the C&P Telephone Company of Virginia - a subsidiary of the C&P Telephone Company based here in Washington. I had no client-lawyer relationship with any Bell system company; nor did my firm, except some infrequent employment on a Virginia problem.

In sum, at your convenience it would be most helpful to me if I could spend 10 or 15 minutes with you discussing the case.

Sincerely,

Mr. Justice Stewart

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 2, 1979

No. 77-961 N.Y. Telephone Co. v. N.Y. State Dept. of Labor

Dear John:

As I indicated at Conference, I have serious reservations as to the decision in this case.

I probably will circulate a dissent.

Sincerely,

Lewis

Mr. Justice Stevens

lfp/ss

cc: The Conference

January 4, 1979

No. 77-961 New York Telephone Company v.
New York Labor Department

Dear Potter:

Following our telephone talk, I read John's opinion in this case with some care and, like you, remain unpersuaded.

The enclosed memorandum reflects thoughts that came to me as I read his opinion. I have asked my clerk, Bruce Boisture, to draft a dissent embodying the substance of the thinking in my memo of November 16, and making such use of the enclosed memo in responding to John as may seem appropriate.

As Bruce is otherwise engaged this week, it could be another week or more before I have something in print. I will send it to you before circulating, and will be grateful - as always - for your comments.

Sincerely,

Mr. Justice Stewart

lfp/ss
Enc.

February 14, 1979

77-961 N.Y. Telephone Co. v. N.Y. State Dept. of Labor

Dear Potter:

Here is the first draft of a dissenting opinion in the above case. It follows generally, with elaboration, the line of analysis we have discussed.

I would appreciate your comments on the draft, and view as to whether we should file it.

Sincerely,

Mr. Justice Stewart

lfp/ss

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: 15 FEB 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–961

New York Telephone Company et al., Petitioners, *v.* New York State Department of Labor et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1979]

MR. JUSTICE POWELL, dissenting.

The Court's decision substantially alters, in the State of New York, the balance of advantage between management and labor prescribed by the National Labor Relations Act (the NLRA). It sustains a New York law that requires the employer, after a specified time, to pay striking employees as much as 50% of their normal wages. In so holding, the Court substantially rewrites the principles of pre-emption that have been developed to protect the free collective bargaining which is the essence of federal labor law.

I

The Policy of Free Collective Bargaining

Free collective bargaining is the cornerstone of the structure of labor-management relations carefully designed by Congress when it enacted the NLRA. Of the numerous actions that labor or management may take during collective bargaining to bring economic pressure to bear in support of their respective demands, the NLRA protects or prohibits only some. The availability and usefulness of many others depend entirely upon the relative economic strengths of the parties.[1]

[1] See *Lodge 76* v. *Wisconsin Employment Relations Comm'n*, 427 U. S. 132, 134–135, 140–148 (1976).

1, 12

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: _____

2nd DRAFT Recirculated: 1 MAR 1979

SUPREME COURT OF THE UNITED STATES

No. 77-961

New York Telephone Company et al., Petitioners, *v.* New York State Department of Labor et al.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[February —, 1979]

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

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[1] See *Lodge 76* v. *Wisconsin Employment Relations Comm'n*, 427 U. S. 132, 134–135, 140–148 (1976).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 3, 1979

Re: No. 77-961 New York Telephone Co. v. New York State Department of Labor

Dear John:

Please join me.

Sincerely,

Wm

Mr. Justice Stevens

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77–961

New York Telephone Company et al., Petitioners, *v.* New York State Department of Labor et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1979]

MR. JUTICE STEVENS delivered the opinion of the Court.

The question presented is whether the National Labor Relations Act, as amended, implicitly prohibits the State of New York from paying unemployment compensation to strikers.

Communication Workers of America, AFL–CIO (CWA) represents about 70% of the nonmanagement employees of companies affiliated with the Bell Telephone Company. In June of 1971, when contract negotiations had reached an impasse, CWA recommended a nationwide strike. The strike commenced on July 14, 1971, and, for most workers, lasted only a week. In New York, however, the 38,000 CWA members employed by petitioners remained on strike for seven months.[1]

[1] Petitioners—New York Telephone Company, American Telephone & Telegraph Company Long Lines Department, Western Electric Company, and Empire City Subway Company—are the four Bell Telephone Company affiliates with facilities and employees in the State of New York.

The goal of the strike was to disassociate the New York units of the CWA from the nationally settled upon contract and to dislodge petitioners from the "pattern" bargaining format long used by Bell affiliates. Under that format, management and International CWA officials would select two Bell affiliates with early contract expiration dates and would attempt to reach a settlement at both, which would then be used as the basis for the contracts at all Bell units around the country. In order to "break the

P.22

Mr. 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: _____

Recirculated: FEB 16 79

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-961

New York Telephone Company et al., Petitioners, *v.* New York State Department of Labor et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1979]

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-961

New York Telephone Company et al., Petitioners, v. New York State Department of Labor et al. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1979]

MR. JUSTICE STEVENS announced the judgment of the Court and an opinion in which MR. JUSTICE WHITE and MR. JUSTICE REHNQUIST joined.

The question presented is whether the National Labor Relations Act, as amended, implicitly prohibits the State of New York from paying unemployment compensation to strikers.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 28, 1979

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 77-961 - New York Telephone Co. v. New York State Dept. of Labor

Reference is made to my letter of March 22 wherein I recommended a "Deny" in 77-1833. This case is an appeal and I am therefore changing my recommendation to "DWSFQ."

Respectfully,

JPS