

# The Burger Court Opinion Writing Database

*Detroit Edison Co. v. NLRB*

440 U.S. 301 (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

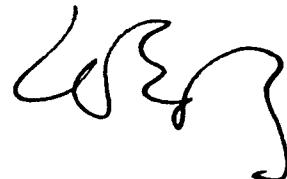
March 1, 1979

Dear Potter:

Re: 77-968 Detroit Edison Co. v. NLRB

I join.

Regards,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 13, 1978

Dear Byron:

You, Thurgood and I are in dissent in Potter's  
No. 77-968 Detroit Edison Co. v. N.L.R.B. Would  
you be willing to undertake the dissent?

Sincerely,



Mr. Justice White

cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

February 27, 1979

RE: No. 77-968 Detroit Edison Co. v. N.L.R.B.

Dear Byron:

Please join me.

Sincerely,

*Biel*

Mr. Justice White

cc: The Conference

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

From: Mr. Justice Stewart

Circulated: 14 FEB 1979

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-968

Detroit Edison Company,  
Petitioner,  
v.  
National Labor Relations  
Board. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Sixth Circuit.

[February —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

The duty to bargain collectively, imposed upon an employer by § 8 (a)(5) of the National Labor Relations Act,<sup>1</sup> includes a duty to provide relevant information needed by a labor union for the proper performance of its duties as the employees' bargaining representative. *NLRB v. Truitt Mfg. Co.*, 351 U. S. 149; *NLRB v. Acme Industrial Co.*, 385 U. S. 432. In this case an employer was brought before the Board to answer a complaint that it had violated this statutory duty when it refused to disclose certain information about employee aptitude tests requested by a union in order to prepare for arbitration of a grievance. The employer supplied the union with much of the information requested, but refused to disclose three items: the actual test questions, the actual employee answer sheets, and the scores linked with the names of the employees who received them.<sup>2</sup> The Board, concluding that all the items requested were relevant to the grievance and would be useful to the union in processing it, ordered the

<sup>1</sup> 29 U. S. C. §§ 151-158 (1970 and Supp. v. 1975).

<sup>2</sup> The arbitration was subsequently held without the benefit of this information, subject to the stipulation that the union could reopen the award if a court ordered disclosure of these materials. See text at p. 6, *infra*.

7-12, 14, 76

To: The Supreme Court

Mr. Justice Brennan

Mr. Justice White

Mr. Justice Marshall

Mr. Justice Blackmun

Mr. Justice Powell

Mr. Justice Rehnquist

Mr. Justice Stevens

Stewart

Clerk of the Supreme Court

27 FEB 1979

Transcribed:

## 2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-968

Detroit Edison Company, Petitioner, v. National Labor Relations Board.	On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.
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[February —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

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<sup>1</sup> 29 U. S. C. §§ 151-158 (1970 and Supp. v. 1975).

<sup>2</sup> The arbitration was subsequently held without the benefit of this information, subject to the stipulation that the union could reopen the award if a court ordered disclosure of these materials. See text at p. 6, *infra*.

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 13, 1978

Re: 77-968 - Detroit Edison Co. v. NLRB

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Dear Bill,

I shall be happy to do the dissent  
in the above case.

Sincerely yours,



Mr. Justice Brennan  
cc: Mr. Justice Marshall

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 16, 1979

Re: 77-968 - Detroit Edison v.  
NLRB

Dear Potter,

I shall shortly circulate a dissent  
in this case.

Sincerely yours,



Mr. Justice Stewart  
Copies to the Conference  
cmc

BRW  
B. White

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: 23 FEB 1979

1st DRAFT

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

## SUPREME COURT OF THE UNITED STATES

No. 77-968

Detroit Edison Company,  
Petitioner,  
v.  
National Labor Relations  
Board. } On Writ of Certiorari to the United  
States Court of Appeals for the  
Sixth Circuit.

[February —, 1979]

MR. JUSTICE WHITE, dissenting.

The Court today disapproves enforcement of an order of the National Labor Relations Board essentially on the theory that the order fails to accommodate properly the competing interests of the Union, individual employees, and the employer. We have formerly stressed, however, that "balancing . . . conflicting legitimate interests . . . to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *Beth Israel Hosp. v. NLRB*, 437 U. S. 483, 501 (1978), quoting *NLRB v. Truck Drivers Union*, 353 U. S. 87, 96 (1957). Because I perceive no warrant to disturb the balance the Board has struck in this case, I dissent.

### I

As the Court holds, the relevance of the test questions and answer sheets to the performance of the Union's statutory duties is established for present purposes by the Company's failure to press the issue properly before the Board. The Court, moreover, does not explicitly upset the Board's determination that the Company's failure to release those materials to the Union amounted to an unfair labor practice. The only issue here regarding the test questions and answer sheets

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

1-9-10

From: Mr. Justice White

2nd DRAFT

Circulated: \_\_\_\_\_  
Recirculated: \_\_\_\_\_  
28 FEB 1979

**SUPREME COURT OF THE UNITED STATES**

No. 77-968

Detroit Edison Company, |  
Petitioner, | On Writ of Certiorari to the United  
v. | States Court of Appeals for the  
National Labor Relations | Sixth Circuit.  
Board.

[February —, 1979]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN |  
joins, dissenting.

The Court today disapproves enforcement of an order of the National Labor Relations Board essentially on the theory that the order fails to accommodate properly the competing interests of the Union, individual employees, and the employer. We have formerly stressed, however, that "balancing . . . conflicting legitimate interests . . . to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review." *Beth Israel Hosp. v. NLRB*, 437 U. S. 483, 501 (1978), quoting *NLRB v. Truck Drivers Union*, 353 U. S. 87, 96 (1957). Because I perceive no warrant to disturb the balance the Board has struck in this case, I dissent.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 22, 1979

Re: No. 77-968 - Detroit Edison v. NLRB

Dear Potter:

I await the dissent.

Sincerely,

*T.M.*

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 28, 1979

Re: No. 77-968 - Detroit Edison v. NLRB

Dear Byron:

Please join me.

Sincerely,

*J.M.*

T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 26, 1979

Re: No. 77-968 - Detroit Edison Co. v. NLRB

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 15, 1979

77-968 Detroit Edison v. NLRB

Dear Potter:

Please join me.

Sincerely,

*Lewis*

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 15, 1979

Re: No. 77-968 - Detroit Edison Co. v. NLRB

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 16, 1979

Re: 77-968 - Detroit Edison v. NLRB

Dear Potter:

Although I expect to join Part IIB of your opinion and may ultimately also join IIA as well, in view of the position I took at conference, I shall wait to see what other writing there is before coming to a final conclusion.

Respectfully,



Mr. Justice Stewart

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: MAR 2 78

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

77-968 - Detroit Edison Co. v. National Labor Relations Board

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

This is a close case on both issues. With respect to the test battery and answer sheets, I agree with MR. JUSTICE WHITE that we should respect the Board's exercise of its broad remedial discretion. On the other hand, I agree with the Court that the Union should not be permitted to invade the individual employees' interest in the confidentiality of their test scores without their consent. Accordingly, I join all but Part II-A of the Court's opinion and Part I of MR. JUSTICE WHITE'S dissent.

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

From: Mr. Justice Stevens

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

MR 2 79

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

1st DRAFT

*Printed*

## SUPREME COURT OF THE UNITED STATES

No. 77-968

Detroit Edison Company, Petitioner,  
v.  
National Labor Relations Board. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[March —, 1979]

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