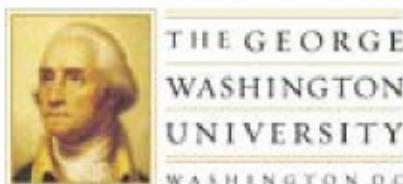


The Burger Court Opinion Writing Database

Electrical Workers v. Foust

442 U.S. 42 (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 23, 1979

Re: 78-38 - International Brotherhood of Electrical
Workers v. Foust

Dear Harry:

Your concurring opinion reflects my view and my vote
at Conference and I join.

Regards,

WB

Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

April 27, 1979

(W)

RE: No. 78-38 International Brotherhood of Electrical
Workers, et al. v. Foust

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 27, 1979

Re: 78-38 - Electrical Workers v. Foust

Dear Thurgood:

Although I expect to join your opinion, I hope you will be willing to delete footnote 10 on page 6.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

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

(4)

CHAMBERS OF
JUSTICE POTTER STEWART

May 1, 1979

Re: No. 78-38, Electrical Workers v. Foust

Dear Thurgood,

I am glad to join your opinion for
the Court, as recirculated April 30.

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

September 26, 1978

Re: No. 78-38 - Electrical Workers, etc.,
v. Foust (page 50)

MEMORANDUM TO THE CONFERENCE:

I ask that the above case be relisted
for me. It was denied today, but I may
write in dissent.

BRW

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: 9/28

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS ET AL. v. LEROY FOUST**

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

No. 78-38. Decided October —, 1978

MR. JUSTICE WHITE, dissenting.

The principal issue here is whether, or in what circumstances, an employee might recover punitive damages in consequence of a union's breach of its duty of fair representation. The court below ruled that such damages are recoverable even absent evidence of express malice, so long as there is proof that the union acted wantonly or in reckless disregard of the employee's rights. The Fourth Circuit shares that view. See *Harrison v. United Trans. Union*, 530 F. 2d 558, 563-564 (CA4 1975), cert. denied, 425 U. S. 958 (1978). In contrast, the Eighth Circuit has endorsed a more rigorous standard, which permits an award of exemplary damages only when express malice or abusive conduct is established. See *Butler v. Local Union 823, Int'l Bhd. of Teamsters*, 514 F. 2d 442, 454 (CA8), cert. denied, 423 U. S. 924 (1975). That Circuit appears to require additionally—or perhaps alternatively—a demonstration that punitive damages are needed to deter future union misconduct. See *Emmanuel v. Omaha Carpenters Dist. Council*, 560 F. 2d 382, 386 (CA8 1977); *Butler v. Local Union 823, Int'l Bhd. of Teamster*, *supra*, at 454.

Other courts have spoken variously to the subject. For example, the Third Circuit has ruled that a union may not be visited with liability for dereliction of its duty of fair representation absent proof that the complaining employee incurred actual injury. *Deboles v. Trans World Airlines, Inc.*, 552 F. 2d 1005, 1018-1020 (CA3), cert. denied, 434 U. S. 837

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1979

(1)

Re: 78-38 - International Brotherhood
of Electrical Workers, et al.
v. Leroy Foust

Dear Thurgood,

Please join me.

Sincerely yours,



Mr. Justice Marshall
Copies to the Conference
cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

September 28, 1978

Re: No. 78-38 - International Brotherhood of
Electrical Workers v. Foust

Dear Byron:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Mr. Justice White

cc: The Conference

26 APR 1979

1st DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 78-38
—

International Brotherhood of
Electrical Workers et al.,
Petitioners,
v.
Leroy Foust. } On Writ of Certiorari to the
United States Court of
Appeals for the Tenth
Circuit.

[April —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This action arises from the failure of petitioner union properly to process respondent's grievance alleging wrongful discharge by his employer. The question presented is whether the Railway Labor Act¹ permits an employee to recover punitive damages for such a breach of a union's duty of fair representation.

I

Respondent, a member of the International Brotherhood of Electrical Workers (IBEW), was injured in March 1970 while working for the Union Pacific Railroad Company (Union Pacific). He received a medical leave of absence through December 22, 1970. The collective-bargaining agreement between the union and the company required that employees either request an extension before their leave expired or return to work as scheduled. Accordingly, respondent sought to renew his leave in late December. Correspondence between Union Pacific and respondent's attorney, however, revealed that the company had not received a doctor's statement supporting respondent's request. Notwithstanding Union Pacific's written assurance on January 25, 1971, that it would

¹ 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*

1
p 6 — footnote deleted
footnotes renumbered

30 APR 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 78-38
—

International Brotherhood of
Electrical Workers et al.,
Petitioners,
v.
Leroy Foust. } On Writ of Certiorari to the
United States Court of
Appeals for the Tenth
Circuit.

[April —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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¹ 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*

—
Pp. 4 & 5
Footnotes renumbered

9 MAY 1979

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

—
No. 78-38
—

International Brotherhood of
Electrical Workers et al.,
Petitioners,
v.
Leroy Foust. } On Writ of Certiorari to the
United States Court of
Appeals for the Tenth
Circuit.

[April —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This action arises from the failure of petitioner union properly to process respondent's grievance alleging wrongful discharge by his employer. The question presented is whether the Railway Labor Act¹ permits an employee to recover punitive damages for such a breach of a union's duty of fair representation.

I

Respondent, a member of the International Brotherhood of Electrical Workers (IBEW), was injured in March 1970 while working for the Union Pacific Railroad Company (Union Pacific). He received a medical leave of absence through December 22, 1970. The collective-bargaining agreement between the union and the company required that employees either request an extension before their leave expired or return to work as scheduled. Accordingly, respondent sought to renew his leave in late December. Correspondence between Union Pacific and respondent's attorney, however, revealed that the company had not received a doctor's statement supporting respondent's request. Notwithstanding Union Pacific's written assurance on January 25, 1971, that it would

¹ 44 Stat. 577, as amended, 45 U. S. C. § 151 *et seq.*

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 27, 1979

Re: No. 78-38 - IBEW v. Foust

Dear Thurgood:

I, of course, shall be with you as to the result in this case. My vote at conference, however, fell short of imposing an absolute bar against punitive damages in fair representation suits. I wished to keep the door open and to refrain from saying "never." I remain of that view. My conference notes indicate that Bill Rehnquist and John were inclined in that direction and, indeed, that you were, too. Perhaps my notes as to your vote are in error.

In any event, this is to let you know that in due course I shall be writing separately and expressing a preference for a more narrow approach to this case.

Sincerely,



Mr. Justice Marshall

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: 8 MAY 1979
Recirculated: _____

No. 78-38 - IBEW v. Foust

MR. JUSTICE BLACKMUN, concurring in the result:

The Court now adopts a per se rule that a union's breach of its duty of fair representation can never render it liable for punitive damages, no matter how egregious its breach may be. I seriously doubt both the correctness and the wisdom of this holding. Whatever the merits of the Court's per se rule, however, there is no need to propound such a blanket proscription in this particular case. The union's conduct here betrayed nothing more than negligence, and thus presented an

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: _____

1st DRAFT Recirculated: 9 MAY 1979

Printed

SUPREME COURT OF THE UNITED STATES

No. 78-38

International Brotherhood of
Electrical Workers et al.,
Petitioners,
v.
Leroy Foust.

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

[May —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST joins, concurring in the result.

The Court now adopts a *per se* rule that a union's breach of its duty of fair representation can never render it liable for punitive damages, no matter how egregious its breach may be. I seriously doubt both the correctness and the wisdom of this holding. Whatever the merits of the Court's *per se* rule, however, there is no need to propound such a blanket proscription in this particular case. The union's conduct here betrayed nothing more than negligence, and thus presented an inappropriate occasion for awarding punitive damages under any formula. In order to dispose of this case, therefore the Court need hold only that the trial judge erred as a matter of law in submitting the punitive damage issue to the jury; this is the holding I would adopt. Inasmuch as the Court reaches to outlaw punitive damages in *all* unfair representation cases, I shall attempt to show why I think the Court errs and why I concur only in the result.

A

Because the duty of fair representation is judicially created, the consequences of its breach necessarily are left to judicial determination. "The appropriate remedy for a breach of a union's duty of fair representation," the Court wrote in *Vaca v. Sipes*, "must vary with the circumstances of the particular

STATEMENTS CHANGES
4 pp. 1, 7 and 8

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: _____

Recirculated: 10 MAY 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-38

International Brotherhood of
Electrical Workers et al.,
Petitioners,
v.
Leroy Foust. } On Writ of Certiorari to the
United States Court of
Appeals for the Tenth
Circuit.

[May —, 1979]

MR. JUSTICE BLACKMUN, with whom MR. JUSTICE REHNQUIST and MR. JUSTICE STEVENS join, concurring in the result.]

The Court now adopts a *per se* rule that a union's breach of its duty of fair representation can never render it liable for punitive damages, no matter how egregious its breach may be. I seriously doubt both the correctness and the wisdom of this holding. Whatever the merits of the Court's *per se* rule, however, there is no need to propound such a blanket proscription in this particular case. The union's conduct here betrayed nothing more than negligence, and thus presented an inappropriate occasion for awarding punitive damages under any formula. In order to dispose of this case, therefore, the Court need hold only that the trial judge erred as a matter of law in submitting the punitive damages issue to the jury; this is the holding I would adopt. Inasmuch as the Court reaches to outlaw punitive damages in *all* unfair representation cases, I shall attempt to show why I think the Court errs and why I concur only in the result.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

(2)

April 27, 1979

No. 78-38 Intern'l. Brotherhood of Elec. Workers v. Foust

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

Copies to the Conference

LFP/lab

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 8, 1979

Re: No. 78-38 - IBEW v. Foust

Dear Harry:

Please join me in your opinion concurring in the result
in this case.

Sincerely,



Mr. Justice Blackmun
Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 8, 1979

Re: No. 78-38 - IBEW v. Foust

Dear Harry:

Please join me in your opinion concurring in the result in this case.

Sincerely,



Mr. Justice Blackmun
Copies to the Conference

P.S. Harry: For my part I would prefer to see omitted the statement that the same result must obtain in cases brought under the Landrum-Griffin Act as obtains under the Court's opinion here, a point which you discuss on pages 14-15 of your circulation of May 8th. It may be that there is no principled distinction to make between the two, but if the concurring opinion flatly states that one follows from the other, it will supply ammunition to those who wish to reach that result. Since you have obviously gone into this matter in depth more than I have, however, my join is in no way conditioned on your changing that portion of your opinion.

Sincerely,



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 27, 1979

Re: 78-38 - IBEW v. Foust

Dear Thurgood:

Before receiving Harry's note, I had dictated the enclosed statement concurring in the judgment. I will probably withdraw and join Harry's circulation, but this at least lets you know my present thinking.

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

MR 27 79
Circulated: _____

Recirculated: _____

78-38 - International Brotherhood of Elec. Workers v. Foust

MR. JUSTICE STEVENS, concurring in the judgment.

Although I agree with the Court's conclusion that punitive damages should not have been awarded in this case, and therefore join in its judgment, I would adhere to the view that the statute which imposes on a union the duty to represent all of its members impartially "contemplates resort to the usual judicial remedies of injunction and award of damages when appropriate for breach of that duty." Steel v. L. & N. R. Co., 323 U.S. 129, 207. Whether a breach of that duty may ever be so outrageous as to make an award of punitive damages appropriate is a question I would reserve for another day.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 9, 1979

Re: 78-38 - IBEW v. Foust

Dear Harry:

Please join me in your concurrence. I will withdraw the short statement previously circulated.

Respectfully,



Mr. Justice Blackmun

Copies to the Conference