

The Burger Court Opinion Writing Database

NLRB v. Yeshiva University
444 U.S. 672 (1980)

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

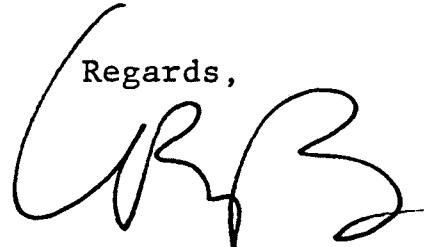
December 13, 1979

Re: (78-857 - NLRB v. Yeshiva University
(78-997 - Yeshiva University Faculty Association v.
Yeshiva University)

Dear Lewis:

I join.

Regards,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 20, 1979

RE: Nos. 78-857 & 997 Yeshiva University Cases

Dear Lewis:

I'll be circulating a dissent in the above in
due course.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

From: Mr. Justice Brennan
Circulated: JAN 8 1980

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 78-857 AND 78-997

National Labor Relations Board,
Petitioner,

78-857 v.

Yeshiva University.

Yeshiva University Faculty
Association, Petitioner,

78-997 v.

Yeshiva University.

On Writs of Certiorari to
the United States Court
of Appeals for the Sec-
ond Circuit.

[January —, 1980]

MR. JUSTICE BRENNAN, dissenting.

In holding that the full-time faculty members of Yeshiva University are not covered employees under the National Labor Relations Act, but instead fall within the exclusion for supervisors and managerial employees, the Court disagrees with the determination of the National Labor Relations Board. Because I believe that the Board's decision was neither irrational nor inconsistent with the Act, I respectfully dissent.

I

Almost 10 years ago the Board first asserted jurisdiction over private nonprofit institutions of higher education. *Cornell University*, 183 N. L. R. B. 329 (1970). Since then, the Board has often struggled with the procrustean task of attempting to implement in the altogether different environment of the academic community the broad directives of a statutory scheme designed for the bureaucratic industrial workplace. See, e. g., *Adelphi University*, 195 N. L. R. B. 639, 648 (1972). Resolution of the particular issue presented in this case—whether full-time faculty members are covered “employees” under the Act—is but one of several challenges

Chancery 14-7-a, 171315

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

From: Mr. Justice Brennan

Circulated: _____

2nd DRAFT

Recirculated: JAN 10 1980

SUPREME COURT OF THE UNITED STATES

Nos. 78-857 AND 78-997

National Labor Relations Board,
Petitioner,

78-857 v.

Yeshiva University.

Yeshiva University Faculty
Association, Petitioner,

78-997 v.

Yeshiva University.

On Writs of Certiorari to
the United States Court
of Appeals for the Sec-
ond Circuit.

[January —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE
and MR. JUSTICE BLACKMUN join, dissenting.

In holding that the full-time faculty members of Yeshiva University are not covered employees under the National Labor Relations Act, but instead fall within the exclusion for supervisors and managerial employees, the Court disagrees with the determination of the National Labor Relations Board. Because I believe that the Board's decision was neither irrational nor inconsistent with the Act, I respectfully dissent.

I

Almost 10 years ago the Board first asserted jurisdiction over private nonprofit institutions of higher education. *Cornell University*, 183 N. L. R. B. 329 (1970). Since then, the Board has often struggled with the procrustean task of attempting to implement in the altogether different environment of the academic community the broad directives of a statutory scheme designed for the bureaucratic industrial workplace. See, e. g., *Adelphi University*, 195 N. L. R. B. 639, 648 (1972). Resolution of the particular issue presented

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

From: Mr. Justice Brenn

Circulated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-857 AND 78-997

National Labor Relations Board,
Petitioner.

78-857

Yeshiva University.

Yeshiva University Faculty
Association, Petitioner.

78-997 *v.*

Yeshiva University.

On Writs of Certiorari to
the United States Court
of Appeals for the Sec-
ond Circuit

[January —, 1980]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN join, dissenting.

In holding that the full-time faculty members of Yeshiva University are not covered employees under the National Labor Relations Act, but instead fall within the exclusion for supervisors and managerial employees, the Court disagrees with the determination of the National Labor Relations Board. Because I believe that the Board's decision was neither irrational nor inconsistent with the Act, I respectfully dissent.

1

Almost 10 years ago the Board first asserted jurisdiction over private nonprofit institutions of higher education. *Cornell University*, 183 N. L. R. B. 329 (1970). Since then, the Board has often struggled with the procrustean task of attempting to implement in the altogether different environment of the academic community the broad directives of a statutory scheme designed for the bureaucratic industrial workplace. See, e. g., *Adelphi University*, 195 N. L. R. B. 639, 648 (1972). Resolution of the particular issue presented

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

CHAMBERS OF
JUSTICE POTTER STEWART

✓

October 15, 1979

Re: No. 78-857, 78-997, NLRB v. Yeshiva University

Dear Lewis,

I see no valid reason why your honorary degree from Yeshiva should disqualify you from writing the Court opinion in this case. But the pertinent question, I suppose, is whether you yourself would in any way feel uncomfortable in being the author.

Sincerely yours,

P. S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 29, 1979

Re: Nos. 78-857 and 78-997,
NLRB v. Yeshiva University

Dear Lewis,

I am glad to join your opinion for the
Court.

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 8, 1980

Re: Nos. 78-857 and 78-997 --

NLRB v. Yeshiva University; and
Yeshiva University Faculty Assn.
v. Yeshiva University.

Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 16, 1979

Re: Nos. 78-857 and 78-997 - Yeshiva

Dear Lewis:

I see no reason at all to disqualify you from writing the opinion in this case.

Sincerely,

J.M.

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 29, 1979

Re: Nos. 78-857 and 78-997,
NLRB v. Yeshiva University

Dear Lewis:

I will await the dissent.

Sincerely,

J.M.

T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

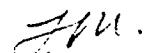
January 17, 1980

Re: No. 78-857 - NLRB v. Yeshiva University
No. 78-997 - Yeshiva Univ. Faculty Asso. v.
Yeshiva Univ.

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20530

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 26, 1979

Re: No. 78-857 - NLRB v. Yeshiva University
No. 78-997 - Yeshiva University Faculty
University v. Yeshiva University

Dear Lewis:

I shall await the dissent in this case.

Sincerely,

H.A.B.

Mr. Justice Powell
cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

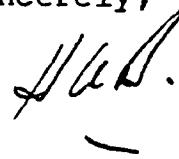
January 9, 1980

Re: No. 78-857 - NLRB v. Yeshiva University
No. 78-997 - Yeshiva University Faculty Association
v. Yeshiva University

Dear Bill:

Please join me in your dissent.

Sincerely,



Mr. Justice Brennan

cc: The Conference

lfp
CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

October 15, 1979

78-857; 997 Yeshiva

Dear Chief:

I am happy to prepare an opinion for the Court in the above cases, unless there is thought that my having received an honorary degree from Yeshiva in 1976 might make this arguably inappropriate.

The Conference agreed that this was no reason for me to recuse myself. If I author the Court's opinion, would this put a different light on the question?

I am sending a copy of this note to the Conference, and would welcome your views.

L.F.P., Jr.

ss
cc: The Conference

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: 19 NOV 1979

1st DRAFT

Recirculated:

SUPREME COURT OF THE UNITED STATES

Nos. 78-857 AND 78-997

National Labor Relations Board,
Petitioner.

78-857

Yeshiva University.

Yeshiva University Faculty
Association, Petitioner,

78-997

Yeshiva University

On Writs of Certiorari to
the United States Court
of Appeals for the Sec-
ond Circuit.

[November —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Supervisors and managerial employees are excluded from the categories of employees entitled to the benefits of collective bargaining under the National Labor Relations Act.¹ The question presented is whether the full-time faculty of Yeshiva University fall within those exclusions.

1

Yeshiva is a private university which conducts a broad range of arts and sciences programs at its five undergraduate and eight graduate schools in New York City. On October 30, 1974, the Yeshiva University Faculty Association (Union) filed a representation petition with the National Labor Relations Board (Board). The Union sought certification as bargaining agent for the full-time faculty members at 10 of the 13

¹ As amended, 61 Stat. 136, 73 Stat. 519, 29 U. S. C. § 151 *et seq.*; see 29 U. S. C. §§ 152 (3), 152 (11), 164 (a); *NLRB v. Bell Aerospace Co.*, 416 U. S. 267 (1974).

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

3,7-11,14-17

From: Mr. Justice Powell

11-28-79

Circulated:

28NOV 1979

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 78-857 AND 78-997

National Labor Relations Board,
Petitioner,

78-857 v.
Yeshiva University.

Yeshiva University Faculty
Association. Petitioner.

78-997 v.
Yeshiva University.

On Writs of Certiorari to
the United States Court
of Appeals for the Sec-
ond Circuit.

[November —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Supervisors and managerial employees are excluded from the categories of employees entitled to the benefits of collective bargaining under the National Labor Relations Act.¹ The question presented is whether the full-time faculty of Yeshiva University fall within those exclusions.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 18, 1980

No. 78-957 and 78-997 Yeshiva v. NLRB

Dear Chief:

I would prefer not to bring Yeshiva down next Monday, and therefore would appreciate it being held over until the next opinion day. It is possible that I may add a footnote or two.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

5/12-16/88
 The Clerk
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Rehnquist
 Mr. Justice Stevens

1-30-80

From: Mr. Justice Powell

Circulated: _____

3rd DRAFT

Recirculated: FEB 4 1980

SUPREME COURT OF THE UNITED STATES

Nos. 78-857 AND 78-997

National Labor Relations Board,
 Petitioner,

78-857 v.
 Yeshiva University.

Yeshiva University Faculty
 Association, Petitioner,

78-997 v.
 Yeshiva University.

On Writs of Certiorari to
 the United States Court
 of Appeals for the Sec-
 ond Circuit.

[November —, 1979]

MR. JUSTICE POWELL delivered the opinion of the Court.

Supervisors and managerial employees are excluded from the categories of employees entitled to the benefits of collective bargaining under the National Labor Relations Act.¹ The question presented is whether the full-time faculty of Yeshiva University fall within those exclusions.

I

Yeshiva is a private university which conducts a broad range of arts and sciences programs at its five undergraduate and eight graduate schools in New York City. On October 30, 1974, the Yeshiva University Faculty Association (Union) filed a representation petition with the National Labor Relations Board (Board). The Union sought certification as bargaining agent for the full-time faculty members at 10 of the 13

¹ As amended, 61 Stat. 136, 73 Stat. 519, 29 U. S. C. § 151 *et seq.*; see 29 U. S. C. §§ 152 (3), 152 (11), 164 (a); *NLRB v. Bell Aerospace Co.*, 416 U. S. 267 (1974).

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 15, 1979

Re: Nos. 78-857; and 78-997 - Yeshiva

Dear Lewis:

I thought that it was pretty well talked out at Conference on Friday that your having received an honorary degree from Yeshiva in 1976 should not disqualify you from participating in this case. I think if we were to say that although you could participate in the case and vote in it, you could not sign the opinion as its author, we would truly be elevating form over substance. Therefore, I see no reason why you should not accept the Chief's assignment of the preparation of the opinion of the Court in this case to you.

Sincerely,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 29, 1979

Re: Nos. 78-857 and 78-997 - National Labor Relations Board
v. Yeshiva

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 22, 1979

Re: 78-857 and 78-997 - Yeshiva University

Dear Lewis:

Only because the absence of a letter might be misunderstood do I confirm in writing what I indicated at Conference. Having thought through a somewhat similar problem when I authored the opinion in Cannon, I surely and most strongly have concluded that it is entirely proper for you to write the opinion in Yeshiva.

I might add, that unlike Bill Rehnquist, I do think there might be situations in which it might be better for a particular Member of the Court not to write the opinion even though it was proper to participate. There were a few occasions on the Court of Appeals in which we thought that a non-disqualifying factor was still sufficiently significant to affect the writing assignment. I definitely would not think that this is such a case however.

Respectfully,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 20, 1979

Re: 78-857 and 78-997 - Yeshiva University Cases

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference