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Barrentine v. Arkansas-Best Freight System, Inc.

450 U.S. 728 (1981)

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

January 26, 1981

RE: 79-2006 - Barrentine, et al. v. Arkansas-Best Freight System, Inc., et al.

MEMORANDUM TO THE CONFERENCE:

There may be some confusion as to my vote on this case.

I am alone to affirm believing, Gardner-Denver's rule on Title VII cases has no application to a wage dispute under a contract.

Bill will assign.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

January 30, 1981

MEMORANDUM TO THE CONFERENCE

RE: No. 79-2006, Barrentine v. Arkansas-Best Freight Systems, Inc.

Whether I oversimplified in my discussion of this case at conference, or whether the low-grade but continuing "Bangkok Bug" had debilitated me, I now undertake the kind of analysis I should have presented. If it serves no other purpose, it will inform you of the general direction of my dissent, since I will be away for ten days or more beginning February 4.

The Court proposes to move--and I think unnecessarily--in a direction counter to the needs and interests of workers and employers and the needs of the judicial system. It does so on the theory that Congress commands its result. Careful analysis reveals that Congress, if anything, has mandated the contrary. Moreover, the Executive and the Judicial Branches, with funds appropriated by Congress for this purpose, have carried out studies and pilot programs to remove just such routine and relatively modest-sized claims from the courts.

I agree, of course, that the congressionally created right of individual workers to a minimum wage under §6(b) of the Fair Labor Standards Act, 29 U.S.C. §206(b), may not be waived through a collective bargaining agreement between an employer and the workers' union. Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 707 (1945). Nor can it be disputed that the FLSA also creates a private cause of action to vindicate the right to a minimum wage. FLSA §16, 29 U.S.C. §216. But it is a very different--indeed, totally different--proposition to say that employees may not agree to a means of enforcing their nonwaivable right outside the courts; specifically, that employees, acting through their union in an arm's-length negotiation with the employer, may not bind themselves to submit to final and

binding arbitration "any controversy that might arise," App. 24, rather than enforce their statutory wage rights through litigation. We have held "the fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action," Cannon v. University of Chicago, 441 U.S. 677, 688 (1979): for the same reason, the existence of that right does not necessarily make it nonwaivable; rather, "the question of whether the statutory right may be waived depends upon the intention of Congress as manifested in the particular statute." Brooklyn Savings Bank v. O'Neil, supra, at 705.

Unfortunately, the parties and the United States as amicus curiae have been unable to point to a clear answer, one way or the other, to this question. We do know, however, that there is a strong congressional policy favoring arbitration as a method of resolving labor disputes. See Labor Management Relations Act §§201(b), 203(d), 29 U.S.C. §§171(b), 173(d); Norris-LaGuardia Act §8, 29 U.S.C. §108. This Court has acknowledged that policy on several occasions. See, e.g., United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 578, and n. 4 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 596 (1960); Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 458-459 (1957).

With federal courts flooded by litigation increasing in volume, in length (months or years), and in variety (novel forms), Attorney General Griffin Bell launched a series of programs designed to encourage private arbitration. National Institute of Justice, Neighborhood Justice Centers Field Test: Final Evaluation Report 7-8 (1980); Dispute Resolution, 88 Yale L.J. 905, 905 (1979). The reasons for the congressional policy and the joint efforts of the Executive and the Judicial Branches are as wise as they are obvious: litigation is costly and time consuming, and judges are less adapted to the nuances of the disputes that typically arise in shops and factories than shop stewards, business agents, managerial supervisors, and the traditional ad hoc panels of factfinders. See, e.g., United Steelworkers of America v. Warrior & Gulf Navigation Co., supra, at 581-582. By placing together persons actually involved in the workplace, often assisted by a neutral party experienced in such matters, disputes are resolved more swiftly and cheaply.

If the Court rejects binding arbitration for resolution of simple wage claims under the Fair Labor Standards Act, it thereby rejects a policy Congress has followed throughout the field of labor relations. If it relies on our unanimous holding in Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974), I suggest that reliance is wholly inappropriate. The congressionally created right under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., was aimed at guaranteeing a workplace free from racial and other discrimination. That fundamental right is not and should not be subject to waiver by a collective bargaining agreement negotiated by a union. But there is a vast difference between resolving allegations of discrimination under a statute relating to civil rights and settling a relatively simple wage dispute pursuant to agreed processes of grievance adjustment and arbitration.

The long history of union discrimination against minorities and women, especially in some skilled crafts, led Congress to forbid discrimination by unions as well as employers. See 42 U.S.C. §20003e-2(c). Against a background of union discrimination, Congress was aware that, in the setting of Title VII claims, the union often had been the adversary of the worker. For this very reason, it would not comport with the congressional objectives behind a statute seeking to enforce a range of civil rights, such as Title VII, to allow the very forces that had practiced discrimination to contract away the right to enforce those rights in the courts. For federal courts to defer to arbitral decisions reached by the same combination of forces that had long perpetuated invidious discrimination would be to make the foxes the guardians of the henhouse.

Even beyond the historical fact of union discrimination, we stated in Gardner-Denver that arbitrators are likely to lack experience in dealing with the special issues arising under Title VII. Title VII is a statute "whose broad language frequently can be given meaning only by reference to public law concepts." 415 U.S., at 57. Leaving resolution of Title VII claims to persons unfamiliar with the congressional policies behind that statute could seriously undermine enforcement of fundamental rights Congress intended to protect.

A dispute over wages under the Fair Labor Standards Act arises in an entirely different historical and legal context. In that setting, the union and the employee are the traditional allies, united in seeking adequate

wages for individual employees. It would be the rare exception for union leadership to fail to protect members' interests in a wage dispute. If the rare exception arose, protection of the employee is abundantly available by way of the cause of action for breach of the union's duty of fair representation. See Vaca v. Sipes, 386 U.S. 171 (1967).[1]

In addition, whether certain required activities constitute hours worked for the employer is a factual question particularly well suited for disposition by grievance processes or arbitration. In this case, the controversy is over whether the time spent in the driver's inspection of a vehicle before taking to the road constituted "time spent in service of the Employer" under the collective bargaining agreement, App. 27, and whether it constituted "compensible time" under "Federal Wage Laws." App. 21 (Petitioner Barrentine's grievance). The following factors would be relevant:

> (a) the inspection was mandated, not by the employer, but by a federal regulation, 49 C.F.R. §392.7;
>
> (b) the regulation places the responsibility to inspect the vehicle on the driver directly, ibid.;
>
> (c) the inspection is intended primarily for the benefit of the public, not for the benefit of the employer; and
>
> (d) the petitioners' claim is one for wages.

This inquiry falls well within the expertise of traditional arbitration as it exists under countless collective bargaining agreements. And for years the

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[1]Indeed, count 2 of the petitioners' complaint alleged that Respondent Local 878 had breached its duty of fair representation. App. 7. The district court expressly rejected that claim in its oral ruling, App. to Pet. for Cert. A-12, even though it found some evidence of a side agreement between Local 878 and the employer, id., at A-8 to A-11. The petitioners have not challenged the findings of fact, and the court of appeals held they were not clearly erroneous. 615 F.2d, at 1202.

labor movement has developed panels of persons acceptable to both sides who are familiar with "the law of the shop ... [and] the demands and norms of industrial relations." Alexander v. Gardner-Denver Co., supra, at 57.

Allowing one party to such an elementary industrial dispute unilaterally to resort to the courts when an established and simplified procedure is available--and desired, as here, by the employer and the employee's union--can only increase costs and consume time unnecessarily. It makes neither good sense nor sound law to read the broad language of Gardner-Denver--written in a civil rights discrimination case--to govern a routine wage dispute over a matter traditionally entrusted by the parties' arm's-length bargaining to binding arbitration. The Court's proposed holding runs counter to every study and every exhortation of the Judiciary, the Executive, and the Congress to establish reasonable mechanisms to keep matters of this kind out of the costly, time-consuming processes of the courts. See The Pound Conference: Perspectives on Justice in the Future passim (West Pub. Co. 1979).

The Federal Government has spent millions of dollars in pilot programs experimenting in extrajudicial procedures for simpler mechanisms to resolve disputes. We ought not be oblivious to needed changes to keep the federal courts from being inundated with disputes of a kind that can be handled far better and more swiftly and cheaply by way of grievance and arbitral bodies composed of persons more knowledgable of the workplace than federal judges.

I would affirm and give support to the efforts to keep simple cases of this kind out of the courts when the parties have agreed to do just that.

Regards,

WEB

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

From: The Chief Justice

Circulated: MAR 19 1981

Recirculated: _____

No. 79-2006, Barrentine v. Arkansas-Best Freight Systems, Inc.

CHIEF JUSTICE BURGER, dissenting.

The Court today moves--rather blithely, so it seems to me, and unnecessarily--in a direction counter to the needs and interests of workers and employers. It does so on the theory that this result advances congressional policy. Careful analysis reveals that Congress, if anything, has mandated the contrary. The Executive and the Judicial Branches, with funds appropriated by Congress for this purpose, have undertaken studies and authorized pilot programs to remove just such routine and relatively modest-sized claims as this from the courts. Today, the Court moves in precisely the opposite direction; the holding is reactionary, not progressive.

I agree, of course, that the congressionally created right of individual workers to a minimum wage under §6(b) of the Fair Labor Standards Act, 29 U.S.C. §206(b), may not be waived through a collective bargaining agreement between an employer and the workers' union. Brooklyn Savings Bank v. O'Neil, 324

CHANGES THROUGHOUT

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-2006

Lloyd Barrentine et al., Petitioners, *v.* Arkansas-Best Freight System, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1981]

CHIEF JUSTICE BURGER, with whom JUSTICE REHNQUIST joins, dissenting.

The Court today moves—rather blithely, so it seems to me, and unnecessarily—in a direction counter to the needs and interests of workers and employers and contrary to the interests of the judicial system. It does so on the theory that this result advances congressional policy. Careful analysis reveals that Congress, if anything, has mandated the contrary. The Executive Branch, through the Department of Justice, and the Judicial Branch, with funds appropriated by Congress for this purpose, have undertaken studies and authorized pilot programs to remove just such routine and relatively modest-sized claims as this from the courts. Today, the Court moves in precisely the opposite direction, ignoring the objectives of Congress, the agreement of the parties, and the common sense of the situation. The holding can be fairly described as reactionary.

I agree, of course, that the congressionally created right of individual workers to a minimum wage under § 6 of the Fair Labor Standards Act, 29 U. S. C. § 206, may not be waived through a collective-bargaining agreement between an employer and the workers' union or through a direct agreement between an individual worker and the employer. *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697, 707 (1945). I also agree that the Act creates a private cause of action to vindi-

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

CHAMBERS OF
THE CHIEF JUSTICE

March 27, 1981

MEMORANDUM TO THE CONFERENCE:

As agreed at Conference, the following opinions will be announced next week:

Tuesday, March 31, 1981:

79-2006 - Barrentine v. Arkansas-Best Freight System - WJB (absent objection to changes in my dissent, which should be in all hands by noon Saturday)

Absent dissent, we will proceed.

Regards,

WJB

cc: Mr. Cornio

Brennan 86

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

CHAMBERS OF
THE CHIEF JUSTICE

March 28, 1981

Re: 79-2006 - Barrentine v. Arkansas-Best Freight Systems, Inc.

MEMORANDUM TO THE CONFERENCE:

I am expanding my dissent in this case and it will not be ready for Tuesday announcement.

Regards,

WEB

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CHANGES THROUGHOUT

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

3rd DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 79-2006

Recirculated: APR 2 1981

Lloyd Barrentine et al., Petitioners, *v.* Arkansas-Best Freight System, Inc., et al. | On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1981]

CHIEF JUSTICE BURGER, with whom JUSTICE REHNQUIST joins, dissenting.

The Court today moves—rather blithely, so it seems to me, and unnecessarily—in a direction counter to the needs and interests of workers and employers and contrary to the interests of the judicial system. It does so on the theory that this result advances congressional policy, but careful analysis reveals that Congress, if anything, has mandated the contrary. With funds appropriated by Congress, the Executive Branch, through the Department of Justice, and the Judicial Branch have undertaken studies and pilot programs to remove just such routine and relatively modest-sized claims as this from the courts. Today, the Court moves in precisely the opposite direction, ignoring the objectives of Congress, the agreement of the parties, and the common sense of the situation. It moves toward making federal courts small claims courts contrary to the constitutional concept of these courts as having special and limited jurisdiction.

I

I agree, of course, that the congressionally created right of individual workers to a minimum wage under § 6 of the Fair Labor Standards Act, 29 U. S. C. § 206, may not be waived through a collective-bargaining agreement between an employer and the workers' union or through a direct agreement

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: MAR 19 81

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-2006

Lloyd Barrentine et al., Petitioners, *v.* Arkansas-Best Freight System, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1981]

JUSTICE BRENNAN delivered the opinion of the Court.

The issue in this case is whether an employee may bring an action in federal district court, alleging a violation of the minimum wage provisions of the Fair Labor Standards Act, 29 U. S. C. § 201, *et seq.*, after having unsuccessfully submitted a wage claim based on the same underlying facts to a joint grievance committee pursuant to the provisions of his union's collective-bargaining agreement.

I

Petitioner truck drivers are employed at the Little Rock terminal of respondent Arkansas-Best Freight Systems, Inc., an interstate motor carrier of freight. In accordance with federal regulations and Arkansas-Best's employment practices, petitioners are required to conduct a safety inspection of their trucks before commencing any trip, and to transport any truck failing such inspection to Arkansas-Best's on-premises repair facility. See 49 CFR §§ 392.7, 392.8. Petitioners are not compensated by their employer for the time spent complying with these requirements.[1]

[1] Upon arriving at the terminal to begin a trip, an Arkansas-Best driver must "punch in" on a time clock and perform certain preliminary office

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: _____

Recirculated: Mar 24 1981

MP 1/4/17

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-2006

Lloyd Barrentine et al., Petitioners, *v.* Arkansas-Best Freight System, Inc., et al.	On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

[March —, 1981]

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[1] Upon arriving at the terminal to begin a trip, an Arkansas-Best driver must "punch in" on a time clock and perform certain preliminary office

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 20, 1981

Re: 79-2006 - Barrentine v. Arkansas-Best Freight System

Dear Bill:

I have asked my law clerk, Bob Weisberg, to convey a few relatively minor suggestions to your law clerk, Michael Rubin. If you are disposed to accept the substance of these suggestions, I will gladly join your opinion for the Court.

Sincerely yours,

P.S.

Justice Brennan

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 24, 1981

Re: No. 79-2006, Barrentine v.
Arkansas-Best Freight System

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 20, 1981

Re: 79-2006 - Barrentine v.
Arkansas-Best Freight System, Inc.

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 19, 1981

Re: No. 79-2006 - Barrentine v. Arkansas-Best Freight System, Inc.

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 25, 1981

Re: No. 79-2006 - Barrentine v. Arkansas-Best Freight System, Inc.

Dear Bill:

Please join me.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 23, 1981

79-2006 Barrentine v. Arkansas-Best Freight System

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 20, 1981

Re: No. 79-2006 Barrentine v. Arkansas-Best Freight Systems, Inc.

Dear Chief:

Please join me in your dissenting opinion.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 19, 1981

Re: 79-2006 - Barrentine v. Arkansas

Dear Bill:

Although I am no fan of minimum wage legislation, I think your reading of the statute is the correct one. Please join me in your opinion.

Respectfully,

John

Justice Brennan

Copies to the Conference