

The Burger Court Opinion Writing Database

Potomac Electric Power Co. v. Director, Office of Workers' Compensation Programs

449 U.S. 268 (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

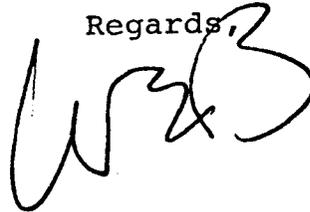
December 12, 1980

RE: 79-816 - PEPCO v. Director, Office of Workers'
Compensation Programs, United States
Department of Labor

Dear John:

I join.

Regards,



Mr. Justice Stevens

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THE MANUSCRIPT DIVISION

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 11, 1980

RE: No. 79-816 Potomac Electric Power Co. v. Director,
Office of Workers' Compensation Programs

Dear John:

I agree.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 24, 1980

Re: No. 79-816, PEPCO v. DWCP

Dear John,

I am glad to join your opinion for
the Court.

Sincerely yours,

P.S.
/

Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 24, 1980

Re: 79-816 - PEPCO v. DOWC

Dear John,

Please join me.

Sincerely yours,



Mr. Justice Stevens

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NATIONAL ARCHIVES MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 24, 1980

Re: No. 79-816 - PEPCO v. Director, Office of
Workers' Compensation Programs

Dear John:

As you recall, I was in solitary dissent when this case was discussed at conference. If I determine to write, I shall endeavor to get something to you before too long.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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U.S. SUPREME COURT

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

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No. 79-816 - Potomac Electric Power Co. v. Director,
Office of Workers' Compensation Programs

JUSTICE BLACKMUN, dissenting.

The Court in this case and the dissent in the Court of Appeals argue rather persuasively (but, for me, not convincingly) that, although they reach an incongruous result, see ante, at 14-16, the statute is to be construed in favor of that incongruity and of the anomalies that concededly exist. It is said that this is so because Congress just wrote the statute that way. Now that the Court has so ruled, the Congress fortunately can remedy the anomalous situation if only it will go about doing it.

That, of course, is of no help or comfort to respondent Cross, the particular litigant here, who suffered the injury and who, as the Court concedes, ante, at 15, might have had a greater

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pp. 4, 6-8

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Souter
Mr. Justice Ginsburg

From: Mr. Justice Blackmun

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-816

Potomac Electric Power Company,
Petitioner,
v.
Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

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

[December —, 1980]

JUSTICE BLACKMUN, dissenting.

The Court in this case and the dissent in the Court of Appeals argue rather persuasively (but, for me, not convincingly) that, although they reach an incongruous result, see *ante*, at 14-16, the statute is to be construed in favor of that incongruity and of the anomalies that concededly exist. It is said that this is so because Congress just wrote the statute that way. Now that the Court has so ruled, the Congress fortunately can remedy the anomalous situation if only it will go about doing it.

That, of course, is of no help or comfort to respondent Cross, the particular litigant here, who suffered the injury and who, as the Court concedes, *ante*, at 15, might have had a *greater* award had his injury been less enduring. That does not make much sense to me and, while I realize that statutory inequities occasionally exist in the area of workmen's compensation where seemingly arbitrary lines must be drawn somewhere, I cannot believe that by the language of this statute Congress intended such a result.

Soon after the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, 33 U. S. C. §§ 901-950, became law in 1927, this Court unanimously announced

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 24, 1980

Re: No. 79-816 Potomac Electric Power v. Director

Dear John:

Please join me. My join is unconditional, but as a matter of style it seems to me that on page 2 in the second full sentence the same meaning would be conveyed by "although Congress could authorize such an election, it has not done so", rather than to include the language about such an election being consistent with the statutory scheme; for me it would be enough to say that it is certainly permissible for Congress to do this, but it has not done it -- without indulging in a hypothetical analysis of a scheme which Congress has not chosen to adopt. However, I leave the matter in your hands, since it is a small one, indeed.

Sincerely,



Mr. Justice Stevens

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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

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-816

Potomac Electric Power Company,
Petitioner,
v.
Director, Office of Workers' Com-
pensation Programs, United
States Department of
Labor, et al.

On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Cir-
cuit.

[December —, 1980]

JUSTICE STEVENS delivered the opinion of the Court.

Under the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), 33 U. S. C. §§ 901-950, compensation for a permanent partial disability must be determined in one of two ways. First, if the injury is of a kind specifically identified in the schedule set forth in §§ 8 (c) (1)-(20) of the Act, 33 U. S. C. §§ 908 (c) (1)-(20), the injured employee is entitled to receive two-thirds of his average weekly wages for a specific number of weeks, regardless of whether his earning capacity has actually been impaired. Second, in all other cases, § 8 (c) (21), 33 U. S. C. § 908 (c) (21), authorizes compensation equal to two-thirds of the difference between the employee's preinjury average weekly wages and his postinjury wage-earning capacity, during the period of his disability.¹

¹ Section 8 provides, in part, as follows:

"Compensation for disability shall be paid to the employee as follows:

"(c) Permanent partial disability: In case of disability partial in character but permanent in quality the compensation shall be 66 $\frac{2}{3}$ per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in

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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

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-816

Potomac Electric Power Company,
Petitioner,
v.
Director, Office of Workers' Compensation Programs, United States Department of Labor, et al.

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

[December —, 1980]

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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

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-816

Potomac Electric Power Company,
Petitioner,
v.
Director, Office of Workers' Com-
pensation Programs, United
States Department of
Labor, et al.

On Writ of Certiorari to
the United States Court
of Appeals for the Dis-
trict of Columbia Cir-
cuit.

[December —, 1980]

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