

The Burger Court Opinion Writing Database

H.A. Artists & Associates, Inc. v. Actors' Equity Association

451 U.S. 704 (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

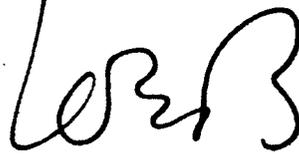
May 7, 1981

RE: 80-348 - H. A. Artists & Associates, Inc. v.
Actors' Equity Association

Dear Bill:

Please join me in your opinion.

Regards,



Justice Brennan

Copies to the Conference

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

H.A. Artists & Associates, Inc. v. Actors' Equity Association ~~From: Mr. Justice Brennan~~

Circulated: APR 30 1981

Recirculated: _____

No. 80-348

Jim

JUSTICE BRENNAN, concurring in part and dissenting in part:

I join all but Part II.D. of the Court's opinion. That part holds that respondents' exaction of a franchise fee is not a "permissible component of the exempt regulatory system." Ante, at 17. Rather, I agree with the Court of Appeals that the approximately \$12,000 collected annually in fees is not "incommensurate with Equity's expenses in maintaining a full-time employee to administer the system," 622 F.2d 647, 651 (CA2 1980), and thus is not "unconnected with any of the goals of national labor policy which justify the antitrust exemption for labor," ibid.

The Court justifies its conclusion by suggesting that, since the union could increase its dues to offset the revenue lost from invalidation of the fee system, "there is no reason to believe that any of [the union's] legitimate interests would be affected," if the fee system were found to violate the antitrust laws. Ante, at 17. The union could of course raise its dues, but the issue here is whether the conceded antitrust immunity of the franchising system includes the franchise fee.

WJB

*Please join me in
your opinion*

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

1st PRINTED DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: APR 30 1981

No. 80-348

H. A. Artists & Associates, Inc., } On Writ of Certiorari to the
et al., Petitioners, } United States Court of
v. } Appeals for the Second
Actors' Equity Association et al. } Circuit.

[May —, 1981]

JUSTICE BRENNAN, concurring in part and dissenting in part.

I join all but Part II-D of the Court's opinion. That part holds that respondents' exaction of a franchise fee is not a "permissible component of the exempt regulatory system." *Ante*, at 17. Rather, I agree with the Court of Appeals that the approximately \$12,000 collected annually in fees is not "incommensurate with Equity's expenses in maintaining a full-time employee to administer the system," 622 F. 2d 647, 651 (CA2 1980), and thus is not "unconnected with any of the goals of national labor policy which justify the antitrust exemption for labor," *ibid*.

The Court justifies its conclusion by suggesting that, since the union could increase its dues to offset the revenue lost from invalidation of the fee system, "there is no reason to believe that any of [the union's] legitimate interests would be affected," if the fee system were found to violate the anti-trust laws. *Ante*, at 17. The union could of course raise its dues, but the issue here is whether the conceded antitrust immunity of the franchising system includes the franchise fee.

I find somewhat incongruous the Court's conclusion that an incident of the overall system constitutes impermissible regulation, but that agents in general may be significantly regulated because they are not a "non-labor group." This incongruity is highlighted by the similarity between union hiring halls and the franchising system, a similarity which

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
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: 23 APR 1981

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 80-348

H. A. Artists & Associates, Inc.,
et al., Petitioners,
v.
Actors' Equity Association et al. } On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[May —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

The respondent, Actors' Equity Association (Equity), is a union representing the vast majority of stage actors and actresses in the United States. It enters into collective-bargaining agreements with theatrical producers that specify minimum wages and other terms and conditions of employment for those whom it represents. The petitioners are independent theatrical agents who place actors and actresses in jobs with producers. The Court of Appeals for the Second Circuit held that the respondents' ¹ system of regulation of theatrical agents is immune from antitrust liability by reason of the statutory labor exemption to the antitrust laws, *H. A. Artists & Associates, Inc. v. Actors' Equity Assn.*, 622 F. 2d 647.² We granted certiorari to consider the availability of that exemption in the circumstances presented by this case. — U. S. —.

I

A

Equity is a national union that has represented stage ac-

¹ The respondent Donald Grody is the Executive Secretary of Equity.

² The basic sources of organized labor's exemption from federal antitrust laws are §§ 6 and 20 of the Clayton Act, 38 Stat. 731 and 738, 15 U. S. C. § 17 and 29 U. S. C. § 52, and the Norris-LaGuardia Act, 47 Stat. 70, 71, and 73, 29 U. S. C. §§ 104, 105, and 113.

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1981

MEMORANDUM TO THE CONFERENCE

Re: No. 80-348, H.A. Artists & Assoc. v.
Actors' Equity Assn.

I plan to add the following short paragraph
to footnote 31 on page 18:

The view expressed in the separate
opinion filed today as to who are the
beneficiaries of the franchising
system here will undoubtedly surprise
the agents who brought this lawsuit.
Post, at ____.

P.S.
/

P.S.

18

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

2nd DRAFT

From: Mr. Justice Stewart

SUPREME COURT OF THE UNITED STATES

1 MAY 1981

No. 80-348

Recirculated: _____

H. A. Artists & Associates, Inc.,
et al., Petitioners,
v.
Actors' Equity Association et al. } On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[May —, 1981]

JUSTICE STEWART delivered the opinion of the Court.

The respondent, Actors' Equity Association (Equity), is a union representing the vast majority of stage actors and actresses in the United States. It enters into collective-bargaining agreements with theatrical producers that specify minimum wages and other terms and conditions of employment for those whom it represents. The petitioners are independent theatrical agents who place actors and actresses in jobs with producers. The Court of Appeals for the Second Circuit held that the respondents' ¹ system of regulation of theatrical agents is immune from antitrust liability by reason of the statutory labor exemption to the antitrust laws, *H. A. Artists & Associates, Inc. v. Actors' Equity Assn.*, 622 F. 2d 647.² We granted certiorari to consider the availability of that exemption in the circumstances presented by this case. — U. S. —.

I

A

Equity is a national union that has represented stage ac-

¹ The respondent Donald Grody is the Executive Secretary of Equity.

² The basic sources of organized labor's exemption from federal antitrust laws are §§ 6 and 20 of the Clayton Act, 38 Stat. 731 and 738, 15 U. S. C. § 17 and 29 U. S. C. § 52, and the Norris-LaGuardia Act, 47 Stat. 70, 71, and 73, 29 U. S. C. §§ 104, 105, and 113.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 27, 1981

Re: 80-348 - H. A. Artists &
Associates, Inc. v. Actors'
Equity Association

Dear Potter,

I agree.

Sincerely yours,



Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 30, 1981

Re: No. 80-348 - H.A. Artists & Associates v.
Actors' Equity Association

Dear Bill:

Please join me in your opinion.

Sincerely,

Jm.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 27, 1981

Re: No. 80-348 - H.A. Artists & Ass'n v. Actors' Equity Ass'n

Dear Potter:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 23, 1981

No. 80-348 H. A. Artists & Associates, Inc.
v. Actors' Equity Association

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

LFP/lab

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 28, 1981

Re: No. 80-348 H.A. Artists & Associates, Inc. v.
Actors' Equity Association

Dear Potter:

Please join me in your opinion of the Court.

Sincerely,

WR

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 23, 1981

Re: 80-348 - H.A. Artists & Associates
v. Actors' Equity Association

Dear Potter:

Please join me.

Respectfully,



Justice Stewart

Copies to the Conference