

# The Burger Court Opinion Writing Database

## *Jacksonville Bulk Terminals, Inc. v. Longshoremen*

457 U.S. 702 (1982)

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 22, 1982

RE: 80-1045 - Jacksonville Bulk Terminal v. International  
Longshoremen's Association

MEMORANDUM TO THE CONFERENCE:

I am reexamining my position with respect to Buffalo Forge.  
There were several votes contingent on whether that case should  
be overruled. I will let you know.

Regards,  


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

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

CHAMBERS OF  
THE CHIEF JUSTICE

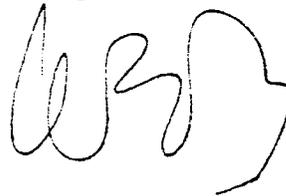
January 27, 1982

RE: No. 80-1045, Jacksonville Bulk Terminals v. ILA

MEMORANDUM TO THE CONFERENCE:

If Buffalo Forge v. United Steelworkers, 428 U.S. 397 (1976), can be read to prevent a federal court from enjoining a union from refusing to handle cargo to or from a foreign country it does not approve of, in violation of the no-strike clause in its contract, I would join to overrule it.

Regards,



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

CHAMBERS OF  
THE CHIEF JUSTICE

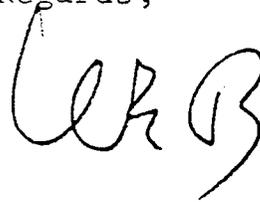
January 28, 1982

RE: No. 80-1045 - Jacksonville Bulk Terminals, Inc. Et al  
v. International Longshoremen's Assn.

MEMORANDUM TO THE CONFERENCE:

One of "us irreconcilables" will be doing a  
dissent in this case.

Regards,

Handwritten signature in cursive, appearing to be "WRB".

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 17, 1982

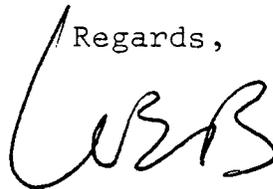
Re: No. 80-1045 - Jacksonville Bulk Terminals  
v. Longshoremen

Dear Thurgood:

Unlike Lewis' "tentative" position I cannot agree that a boycott of Soviet shipping is a "labor dispute" between the ship owner and longshoremen. It is purely a political dispute -- and on which I agree with the longshoremen, but that is not the issue.

I am prepared to overrule Buffalo Forge but I'd like to do it some other way than calling a political boycott a "labor dispute."

Regards,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

March 18, 1982

Re: No. 80-1045 - Jacksonville Bulk Terminals  
v. International Longshoreman's Assn.

MEMORANDUM TO THE CONFERENCE:

I will have a dissent around in this case next week.

Regards,



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



CHAMBERS OF  
THE CHIEF JUSTICE

March 19, 1982

RE: No. 80-1045, Jacksonville Bulk Terminals  
v. International Longshoremens' Association

MEMORANDUM TO THE CONFERENCE:

I indicated earlier that I could, if necessary, overrule Buffalo Forge, but it is now clear to me that we need not reach that issue to reverse in this case.

This case does not involve or grow out of a labor dispute as that term is defined in § 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c) (1976), or as that term is commonly understood. Section 13(c) defines a labor dispute as "any controversy concerning terms or conditions of employment . . . ." The dispute in this case is strictly a political dispute, not a controversy concerning "terms" or "conditions" of employment. If a boycott of shipments to or from the Soviet Union is a labor dispute, then every challenge of a union or its members to a government policy or program can be distorted into a labor dispute. If Congress had intended to bar federal courts from issuing injunctions in political disputes, it could have simply prohibited federal courts from enjoining strikes rather than limiting its prohibition to controversies concerning "terms or conditions of employment." Therefore, I cannot agree with the Court's conclusion that the Norris-LaGuardia Act bars a federal court from enjoining this politically motivated boycott manifested in a work stoppage.

The International Longshoremens' Association objects to the Soviet Union's invasion of Afghanistan. So do I and millions of others. I can and do refuse to buy Russian products, such as Stolnichnaya vodka. The union can do the same, but here it announced that it would not

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

CHAMBERS OF  
THE CHIEF JUSTICE

April 16, 1982

RE: No. 80-1045, Jacksonville Bulk Terminals v. ILA

MEMORANDUM TO THE CONFERENCE:

We seem to have reached an impasse in this case. A majority seems inclined to reverse, but, apparently because of our differing stands on how best to deal with the case, the recorded vote at conference, 5-4 to affirm, left some things "in the air."

As I read the various circulations, (a) John and I see this as a purely political dispute and we would reverse without reaching the Buffalo Forge issue; (b) Bill Brennan, Thurgood, Lewis, and Sandra all think Buffalo Forge should be reached; all but Thurgood are on record as being willing to reverse Buffalo Forge, and Thurgood dissented in Buffalo Forge; (c) Byron and Harry have joined Thurgood's opinion; Byron is on record as opposing overruling Buffalo Forge; and (d) Bill Rehnquist hasn't voted.

To break this impasse, I now inquire whether Thurgood might be willing to reconsider Buffalo Forge. Should he so decide, we would need to add a new section to the opinion dealing with Buffalo Forge. I will join it, even though I think Buffalo Forge need not be overruled to reverse in this case.

If I am correct in my "scoresheet," it is possible that a majority of the Court will go along. That, of course, remains to be seen and will emerge when you respond.

If a majority believes that a strike protesting the invasion of a foreign country may be enjoined, we ought, I submit, so hold. To accomplish that, I am now prepared to join an opinion reversing this case which modifies or overrules Buffalo Forge.

Regards,

WB

CS  
In reply to your inquiry  
of April 16th: I will not write a  
~~vote~~ vote to overrule Buffalo Forge.  
cc conference

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

1982 4 1982

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

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

[June —, 1982]

CHIEF JUSTICE BURGER, dissenting.

This case in no sense involves or grows out of a labor dispute as that term is defined in §13(c) of the Norris-LaGuardia Act, 29 U. S. C. § 113(c) (1976). See *ante*, at 7 n. 9. Section 13(c) defines a labor dispute as "any controversy concerning terms or conditions of employment . . . ." <sup>1</sup> The dispute in this case is a political dispute and has no relation to any controversy concerning terms or conditions of employment. If Congress had intended to bar federal courts from issuing injunctions in political disputes, it could have simply prohibited federal courts from enjoining strikes rather than limiting its prohibition to controversies concerning terms or conditions of employment. Accordingly, I disagree with the Court's conclusion that the Norris-LaGuardia Act bars a federal court from enjoining this politically motivated work stoppage.

The International Longshoremen's Association objects to the Soviet Union's invasion of Afghanistan. As a consequence, it announced that it would not handle any cargo bound to, or coming from, the Soviet Union, or any cargo car-

<sup>1</sup> Section 13(c) also includes union organizational activity within its definition of labor dispute, but this case clearly does not involve such activity.

p. 4

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **The Chief Justice**

Circulated: \_\_\_\_\_

Recirculated: JUN 7 1982

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

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1045

**JACKSONVILLE BULK TERMINALS, INC. ET AL., PE-  
TITIONERS v. INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

[June —, 1982]

**CHIEF JUSTICE BURGER, dissenting.**

This case in no sense involves or grows out of a labor dispute as that term is defined in §13(c) of the Norris-LaGuardia Act, 29 U. S. C. § 113(c) (1976). See *ante*, at 7 n. 9. Section 13(c) defines a labor dispute as "any controversy concerning terms or conditions of employment . . . ." <sup>1</sup> The dispute in this case is a political dispute and has no relation to any controversy concerning terms or conditions of employment. If Congress had intended to bar federal courts from issuing injunctions in political disputes, it could have simply prohibited federal courts from enjoining strikes rather than limiting its prohibition to controversies concerning terms or conditions of employment. Accordingly, I disagree with the Court's conclusion that the Norris-LaGuardia Act bars a federal court from enjoining this politically motivated work stoppage.

The International Longshoremen's Association objects to the Soviet Union's invasion of Afghanistan. As a consequence, it announced that it would not handle any cargo bound to, or coming from, the Soviet Union, or any cargo car-

<sup>1</sup>Section 13(c) also includes union organizational activity within its definition of labor dispute, but this case clearly does not involve such activity.

New Part II

To: Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: The Chief Justice

Circulated: \_\_\_\_\_

Recirculated: JUN 8 1982

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

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

[June —, 1982]

CHIEF JUSTICE BURGER, dissenting.

I

This case in no sense involves or grows out of a labor dispute as that term is defined in §13(c) of the Norris-LaGuardia Act, 29 U. S. C. § 113(c) (1976). See *ante*, at 7 n. 9. Section 13(c) defines a labor dispute as "any controversy concerning terms or conditions of employment. . . ." <sup>1</sup> The dispute in this case is a political dispute and has no relation to any controversy concerning terms or conditions of employment. If Congress had intended to bar federal courts from issuing injunctions in political disputes, it could have simply prohibited federal courts from enjoining strikes rather than limiting its prohibition to controversies concerning terms or conditions of employment. Accordingly, I disagree with the Court's conclusion that the Norris-LaGuardia Act bars a federal court from enjoining this politically motivated work stoppage.

The International Longshoremen's Association objects to the Soviet Union's invasion of Afghanistan. As a conse-

<sup>1</sup>Section 13(c) also includes union organizational activity within its definition of labor dispute, but this case clearly does not involve such activity.

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

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

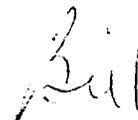
January 22, 1982

RE: No. 80-1045 Jacksonville Bulk Terminal v. International  
Longshoremen's Association

Dear Chief:

Thurgood has agreed to do the opinion for the Court in  
the above.

Sincerely,



The Chief Justice  
cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 18, 1982

RE: No. 80-1045 Jacksonville Bulk Terminals v. Long-  
shoremen

Dear Thurgood:

You'll recall at conference that my view was that this case had to be affirmed unless we were to overrule Buffalo Forge. I gather that's the basis upon which you've written it and as long as Buffalo Forge stands undisturbed I'll join it.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 18, 1982

Re: 80-1045 - Jacksonville Bulk Terminals  
v. Int'l Longshoremen's Ass'n

Dear Thurgood,

Please join me in your circulating draft. Although it is arguable that the Norris-LaGuardia Act was not intended to foreclose injunctions in disputes like this, it seems to me that you have the better of the argument.

With respect to reconsidering Buffalo Forge, I have been strongly opposed to the notion that the dissenting Justices in a particular case should feel free to consider overruling that case as soon as a new Justice with similar views arrives on the scene or as soon as one of the majority is willing to join them. If that were the usual policy, the law would be in a shambles and the Court's authority severely diminished. When a case has received the kind of institutional attention that cases get here, the resulting decision has an authority of its own that should command more respect than the views of individual Justices. At least there should be some sound reason for overruling, such as experience over a period of time. The continued disagreement of those who were in dissent seems to me an unwise predicate for the Court to reverse its course. This is particularly true in statutory construction cases, where Congress is free to remedy what it deems to be improvident interpretations of its laws.

If this is the kind of dispute within the reach of the Norris-LaGuardia Act, as I think it is, reversal of the decision below would be little more than a disagreement with the Congressional policy expressed in that legislation. That is not a legitimate function for us, however.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

MAR 17 1982

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

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

[March —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, we consider the power of a federal court to enjoin a politically motivated work stoppage in an action brought by an employer pursuant to §301(a) of the Labor Management Relations Act (LMRA), 29 U. S. C. §185(a) (giving federal courts jurisdiction over breach-of-contract actions between an employer and a labor organization), to enforce a union's obligations under a collective-bargaining agreement. We first address whether the broad anti-injunction provisions of the Norris-LaGuardia Act, 29 U. S. C. §101 *et seq.*, apply to politically motivated work stoppages. Finding these provisions applicable, we then consider whether the work stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), pending an arbitrator's decision on whether the strike violates the collective-bargaining agreement.

I

On January 4, 1980, President Carter announced that, due to the Soviet Union's intervention in Afghanistan, certain trade with the Soviet Union would be restricted.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 19, 1982

Re: No. 80-1045 - Jacksonville Bulk Terminals v. ILA

Dear Chief:

In reply to your inquiry of April 16, I will  
not write or vote to overrule Buffalo Forge.

Sincerely,

*T.M.*

T.M.

The Chief Justice

cc: The Conference

STYLISTIC CHANGES THROUGHOUT.

PP. 1, 6, 7, 8, 13, 14, 17, 18, 20

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Marshall

Circulated: \_\_\_\_\_

Recirculated: APR 21 1982

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS, *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

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

[April —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, we consider the power of a federal court to enjoin a politically motivated work stoppage in an action brought by an employer pursuant to §301(a) of the Labor Management Relations Act (LMRA), 29 U. S. C. § 185(a) to enforce a union's obligations under a collective-bargaining agreement. We first address whether the broad anti-injunction provisions of the Norris-LaGuardia Act, 29 U. S. C. § 101 *et seq.*, apply to politically motivated work stoppages. Finding these provisions applicable, we then consider whether the work stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), pending an arbitrator's decision on whether the strike violates the collective-bargaining agreement.

I

On January 4, 1980, President Carter announced that, due to the Soviet Union's intervention in Afghanistan, certain trade with the Soviet Union would be restricted.

PP. 1, 13, 17, 21

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: **Justice Marshall**

Circulated: \_\_\_\_\_

MAY 26 1982

Recirculated: \_\_\_\_\_

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS, *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

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

[May —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, we consider the power of a federal court to enjoin a politically motivated work stoppage in an action brought by an employer pursuant to §301(a) of the Labor Management Relations Act (LMRA), 29 U. S. C. § 185(a), to enforce a union's obligations under a collective-bargaining agreement. We first address whether the broad anti-injunction provisions of the Norris-LaGuardia Act, 29 U. S. C. § 101 *et seq.*, apply to politically motivated work stoppages. Finding these provisions applicable, we then consider whether the work stoppage may be enjoined under the rationale of *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), pending an arbitrator's decision on whether the strike violates the collective-bargaining agreement.

I

On January 4, 1980, President Carter announced that, due to the Soviet Union's intervention in Afghanistan, certain trade with the Soviet Union would be restricted.

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

PP. 8, 16

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Marshall

Circulated: \_\_\_\_\_

Recirculated: JUN 8 1982 \_\_\_\_\_

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PE-  
TITIONERS, v. INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION ET AL.

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

[June —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case, we consider the power of a federal court to en-  
join a politically motivated work stoppage in an action  
brought by an employer pursuant to §301(a) of the Labor  
Management Relations Act (LMRA), 29 U. S. C. § 185(a), to  
enforce a union's obligations under a collective-bargaining  
agreement. We first address whether the broad anti-injunc-  
tion provisions of the Norris-LaGuardia Act, 29 U. S. C.  
§ 101 *et seq.*, apply to politically motivated work stoppages.  
Finding these provisions applicable, we then consider  
whether the work stoppage may be enjoined under the ra-  
tionale of *Boys Markets, Inc. v. Retail Clerks Union*, 398  
U. S. 235 (1970), and *Buffalo Forge Co. v. United Steelwork-  
ers*, 428 U. S. 397 (1976), pending an arbitrator's decision on  
whether the strike violates the collective-bargaining  
agreement.

I

On January 4, 1980, President Carter announced that, due  
to the Soviet Union's intervention in Afghanistan, certain  
trade with the Soviet Union would be restricted.

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

JAM

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 23, 1982

Memorandum to the Conference

The following case has been held for Jacksonville Bulk Terminals Co. v. Int'l Longshoremen's Ass'n, No. 80-1058.

80-1045.

No. 80-1058, Hampton Roads Shipping Assoc. v. ILA.

This case also arises out of the ILA decision not to handle Soviet cargo after the invasion of Afghanistan. Petitioners are grain companies which ship cargo to the Soviet Union. Petitioners brought this suit under §301 of the Labor Management Relations Act, arguing that the Union's decision not to handle Soviet goods violated the no-strike clause in the collective-bargaining agreement. Petitioners sought a preliminary injunction against the strike. The District Court granted the preliminary injunction, ruling that the strike violated the collective-bargaining agreement, and that the dispute concerned an arbitrable provision of the contract.

The United States Court of Appeals for the Fourth Circuit reversed. It first assumed that the anti-injunction provisions of the Norris-LaGuardia Act apply. It then noted that the dispute that triggered the work stoppage was between the ILA and the Soviet Union, and that this dispute was not arbitrable under the collective-bargaining agreement. Therefore, the Court of Appeals held that under Boys Markets and Buffalo Forge, a pre-arbitration injunction could not issue. This analysis is fully consistent with our decision in Jacksonville Bulk Terminals Co. v. ILA. Therefore, I will vote to DENY.

Sincerely,

JAM.

TM

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 2, 1982

Re: No. 80-1045 - Jacksonville Bulk Terminals v.  
International Longshoremen's Association

Dear Thurgood:

Please join me. With all the correspondence that has flowed back and forth for this case, I shall not burden us all with comments on my part.

Sincerely,

*Harry*

Justice Marshall

cc: The Conference

4/7  
Wait for CJ

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 19, 1982

Re: No. 80-1045 - Jacksonville Bulk Terminals v. ILA

Dear Chief:

This is in response to your inquiry of April 16. I have no inclination in this case to overrule Buffalo Forge.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 28, 1982

80-1045 Jacksonville Bulk Storage v. ILA

Dear Chief:

I would consider joining an opinion to overrule Buffalo Forge.

It cut back substantially on Boy's Market, and seems to me to be contrary to national policy in favor of arbitration.

As was evident from the briefing and argument of this case, the rationale of Buffalo Forge is being read to justify a strike for any political or policy cause wholly unrelated to disputes between management and unions over the terms and conditions of employment. Unlike the union movement in some other countries, American unions only rarely have authorized or tolerated strikes in the interest of furthering a political cause, foreign or domestic.

The sanctioning of such strikes by this Court could encourage a change in this policy of restraint by U.S. unions.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 17, 1982

80-1045 Jacksonville Bulk Terminals v. Longshoremen

Dear Thurgood:

Your opinion persuasively argues that the dispute in this case was a "labor dispute" involving a central piece of the collective bargaining agreement. You also demonstrate the ease with which a sympathy or political strike can be viewed as a strike over the terms of employment. For both of these reasons I have always been puzzled by the step away from Boy's Market the Court took in Buffalo Forge.

For the time being I will await the dissent. But I would join your opinion if you would add a final section overruling Buffalo Forge.

Sincerely,

*Lewis*

Justice Marshall

Copies to the Conference

LFP/vde

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Powell

Circulated: JUN 7 1982

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PE-  
TITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION ET AL.

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

[June —, 1982]

JUSTICE POWELL, dissenting.

The no-strike clause agreed to by the parties in this case could scarcely be more emphatic: "During the term of this Agreement, . . . the Union agrees there shall not be any strike of any kind or degree whatsoever, . . . for *any cause whatsoever.*" (emphasis added). *Ante*, at 3. Such a clause is one of the most significant provisions in the bargaining agreement. One can fairly assume that the employer gave considerable ground in other areas of the agreement to gain this apparent guarantee that all disagreements would go first to arbitration. Thus, under the plain language of the agreement of the parties, the strike by the respondent should have been enjoined pending arbitration.

But in labor law—since this Court's decision in *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976)—plain language agreed to by a union does not bind it. *Buffalo Forge* is an aberration. It cannot be reconciled with labor law policy to encourage industrial peace through arbitration. It severely undercuts *Boys Markets, Inc. v. Retail Clerks Union*, 398 U. S. 235 (1970). In a word *Buffalo Forge* should be overruled.

The internal contradictions in today's decision by the Court further illustrate absence of principle in *Buffalo Forge's* rea-

71AB

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 24, 1982

Case Held for 80-1045 Jacksonville Bulk Terminals v. ILA

MEMORANDUM TO THE CONFERENCE

At the request of Justice Marhsall's Chambers, I have prepared the following memo. This case probably should have been a "hold" for my decision in 80-1663 ILA v. Allied International, Inc.

\* \* \*

No. 80-1906, Allied International, Inc. v. International Longshoremen's Assn is the cross petition in 80-1663, ILA v. Allied International, Inc., decided earlier this year. In that case the Court of Appeals for the First Circuit held that the ILA boycott of Russian ships violated the secondary boycott provisions of the labor laws. We affirmed that holding. But the Court of Appeals also held that the ILA boycott did not violate the Sherman Act nor amount to a tort under admiralty law. The court reasoned that the ILA's boycott was not the type of conduct the antitrust laws were designed to defeat. The court found as well that the tortious interference with business claim was preempted by the labor laws. The cross-petition challenges these two holdings. In light of our disposition in Allied, I see no reason to go further with this case and will vote to deny.

*L. F. P.*  
L.F.P., Jr.

SS

Reproduced from the Collections of the Manuscript Division, Library of Congress

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

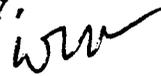
April 19, 1982

Re: No. 80-1045 Jacksonville Bulk Terminals v. ILA

Dear Thurgood:

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

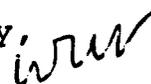
April 19, 1982

Re: No. 80-1045 Jacksonville Bulk Terminals v. ILA

Dear Chief:

I have read your memorandum to the Conference dated April 16th, addressing the various possibilities for a decision in this case. I voted at Conference to affirm the judgment of the Court of Appeals, and continue to be of the view that Buffalo Forge should not be overruled. Because the question of whether or not this was a "labor dispute" seemed to me closer than I had thought, I was awaiting the further circulation of your dissent before finally casting my vote. But since I definitely do not favor overruling Buffalo Forge, which you now suggest, I will vote now to make my position clear.

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 18, 1982

Re: 80-1045 - Jacksonville Bulk Terminals v.  
International Longshoremen's Association

Dear Thurgood:

Although I think that your analysis of the Buffalo Forge issue in Part IV of your opinion is correct, I am still not persuaded that this case involves a "labor dispute" within the meaning of the Norris-LaGuardia Act. As your opinion points out, that term is defined by §13(c) as a controversy "concerning terms or conditions of employment." In my opinion, a controversy concerning the question whether superphosphoric acid shall be shipped to the Soviet Union before it withdraws its armed forces from Afghanistan is not such a controversy. I also do not agree with the notion that the litigation in which the company seeks to enjoin the strike is the kind of "labor dispute" that the anti-injunction provision of the statute contemplated. If that had been Congress' intent, I would think the statute would simply have prohibited all federal injunctions against strikes, rather than injunctions against strikes growing out of disputes over terms and conditions of employment. I shall therefore wait for further writing.

Respectfully,



Justice Marshall

Copies to the Conference

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: **Justice Stevens**

Circulated: JUN 21 '82

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC., ET AL., PE-  
TITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S  
ASSOCIATION ET AL.

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

[June —, 1982]

JUSTICE STEVENS, dissenting.

For the reasons stated in Part I of THE CHIEF JUSTICE's  
dissenting opinion in this case, as well as the reasons stated  
in Part I of my dissenting opinion in *Buffalo Forge Co. v.*  
*Steelworkers*, 428 U. S. 397, 415-424, I respectfully dissent.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 8, 1982

No. 80-1045 Jacksonville Bulk Storage  
v. ILA

Dear Chief,

As I indicated at the Conference, I would  
also consider joining an opinion to overrule  
Buffalo Forge.

Sincerely,



The Chief Justice

Copies to the Conference

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

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 18, 1982

No. 81-1045 Jacksonville Bulk Terminals v.  
Internatinal Longshoremen's Association

Dear Thurgood,

You have written persuasively concerning whether the politically motivated work stoppage in this case is a labor dispute within the meaning of the anti-injunction provisions of the Norris-LaGuardia Act. As I indicated at Conference, I could join an opinion overruling Buffalo Forge. For the present, I shall await further writing.

Sincerely,

*Sandra*

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 8, 1982

No. 80-1045 Jacksonville Bulk Terminals, Inc.  
v. Int'l. Longshoremen's Assoc.

Dear Thurgood,

Please show me as concurring in the judgment.  
I am also circulating a brief separate statement.

Sincerely,



Justice Marshall

Copies to the Conference

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

From: Justice O'Connor

JUN 8 1982

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1045

JACKSONVILLE BULK TERMINALS, INC. ET AL., PETITIONERS *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION ET AL.

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

[June —, 1982]

JUSTICE O'CONNOR, concurring in the judgment.

Based on the legislative history of the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.*, and our previous cases interpreting it, *e. g.*, *New Negro Alliance v. Sanitary Grocery Co.*, 303 U. S. 552 (1938), the Court correctly concludes that this case involves a labor dispute within the meaning of § 4 of the Act, 29 U.S.C. § 104. The Court also correctly determines that under *Buffalo Forge Co. v. United Steelworkers*, 428 U. S. 397 (1976), no injunction may issue pending arbitration because the underlying political dispute is not arbitrable under the collective bargaining agreement. Unless the Court is willing to overrule *Buffalo Forge*, the conclusion reached by the Court in this case is inescapable. Therefore, I concur in the judgment.