

# The Burger Court Opinion Writing Database

## *Kaiser Steel Corp. v. Mullins*

455 U.S. 72 (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

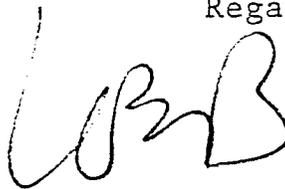
December 19, 1981

Re: No. 80-1345 - Kaiser Steel Corp. v. Mullins

Dear Byron:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'LWB', written in a cursive style.

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

November 16, 1981

MEMORANDUM TO: Justice Marshall  
Justice Blackmun

RE: No. 80-1345 Kaiser Steel Corporation v. Mullins

We three are in dissent in the above. I'll be  
happy to try the dissent.

*Bill*

W.J.B.Jr.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

December 10, 1981

RE: No. 80-1345 Kaiser Steel Corporation v. Mullins

Dear Byron:

I shall circulate a dissent in due course.

Sincerely,



Justice White

cc: The Conference

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

From: Justice Brennan

1st Draft

Circulated: 29 Dec 1981

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

SUPREME COURT OF THE UNITED STATES

No. 80-1345

KAISER STEEL CORPORATION, PETITIONER v. JULIUS MULLINS, ET AL.

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

[January -- , 1981]

JUSTICE BRENNAN, dissenting.

The salient facts of this case are not sufficiently stressed in the Court's opinion, and thus bear repeating. Kaiser Steel Corporation and the United Mine Workers (UMW) entered into a collective-bargaining agreement in 1974. As a part of that agreement, Kaiser promised to make contributions to certain UMW-designated employee health and retirement plan funds, based in

*Minor stylistic changes  
throughout the draft.*

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

From: Justice Brennan

Circulated: 4 January 1982

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

1st PRINTED DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1345

KAISER STEEL CORPORATION, PETITIONER *v.*  
JULIUS MULLINS ET AL.

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

[January —, 1982]

JUSTICE BRENNAN, dissenting.

The salient facts of this case are not sufficiently stressed in the Court's opinion, and thus bear repeating. Kaiser Steel Corporation and the United Mine Workers (UMW) entered into a collective-bargaining agreement in 1974. As a part of that agreement, Kaiser promised to make contributions to certain UMW-designated employee health and retirement plan funds, based in part upon the amount of coal purchased by Kaiser from non-UMW mines. This purchased-coal clause obviously had value to Kaiser's UMW employees, because the agreement provided that if that clause were adjudged illegal, then the union could demand renegotiation of the contract in order to secure a *quid pro quo* for the invalidated clause. During the life of the contract, from 1974 to 1977, Kaiser's UMW employees fully performed their obligations under the contract. Kaiser, in contrast, did not pay a penny of the money that it had promised to pay under the purchased-coal clause. Instead, Kaiser failed to disclose the fact that it had purchased outside coal to which the clause applied, in plain violation of the reporting requirements of the 1974 agreement. In 1978—after Kaiser's UMW employees had lost their opportunity to renegotiate the 1974 agreement, and after they had fully performed their part of that bargain—Kaiser for the first time interposed its claim of illegal-

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

From: Justice White

Circulated: 9 DEC 1981

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1345

KAISER STEEL CORPORATION, PETITIONER *v.*  
JULIUS MULLINS ET AL.

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

[December —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether a coal producer, when it is sued on its promise to contribute to union welfare funds based on its purchases of coal from producers not under contract with the union, is entitled to plead and have adjudicated a defense that the promise is illegal under the antitrust and labor laws.

### I

The National Bituminous Coal Wage Agreement of 1974 is a collective bargaining agreement between the United Mine Workers of America (UMW) and hundreds of coal producers, including steel companies such as petitioner Kaiser Steel Corporation. The agreement required signatory employers to contribute to specified employee health and retirement funds. Section (d)(1) of Article XX required employers to pay specified amounts for each ton of coal produced and for each hour worked by covered employees. In addition, the section required employers to contribute to the trust specified amounts on "each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by [the employer] for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made . . . ." <sup>1</sup> Section (d) also

<sup>1</sup> Kaiser has been a UMW signatory since the 1940s. The purchased

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES:

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

From: Justice White

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

Recirculated: 11 DEC 1981

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1345

KAISER STEEL CORPORATION, PETITIONER *v.*  
JULIUS MULLINS ET AL.

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

[December —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether a coal producer, when it is sued on its promise to contribute to union welfare funds based on its purchases of coal from producers not under contract with the union, is entitled to plead and have adjudicated a defense that the promise is illegal under the antitrust and labor laws.

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<sup>1</sup> Kaiser has been a UMW signatory since the 1940s. The purchased

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

From: Justice White

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

Recirculated: 15 DEC 1981

p. 5, 7

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1345

**KAISER STEEL CORPORATION, PETITIONER v.  
JULIUS MULLINS ET AL.**

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

[December —, 1981]

JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether a coal producer, when it is sued on its promise to contribute to union welfare funds based on its purchases of coal from producers not under contract with the union, is entitled to plead and have adjudicated a defense that the promise is illegal under the antitrust and labor laws.

I

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Stylistic changes &  
pp. 9, 14, 16

To: The Chief Justice  
Justice Brennan  
Justice [unclear]

5 JAN 1982

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

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1345

**KAISER STEEL CORPORATION, PETITIONER v.  
JULIUS MULLINS ET AL.**

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

[January —, 1982]

JUSTICE WHITE delivered the opinion of the Court.

The issue here is whether a coal producer, when it is sued on its promise to contribute to union welfare funds based on its purchases of coal from producers not under contract with the union, is entitled to plead and have adjudicated a defense that the promise is illegal under the antitrust and labor laws.

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HAB

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

CHAMBERS OF  
JUSTICE BYRON R WHITE

February 12, 1982

not 2-16

MEMORANDUM TO THE CONFERENCE

Case Held for: 80-1345 - Kaiser Steel Corp. v. Mullins

81-843 - Northwest Excavating, Inc. v. Waggoner

Respondents are the Trustees of 4 union trust funds. They brought suit against petitioner claiming that it had failed to make contributions to the funds for hours worked by Frank Sandoval in violation of a Master Labor Agreement to which resp is a party. The District Court held that the Agreement did not require contributions for hours worked by Sandoval, a non-employee. However, petitioner had violated the Agreement by using Sandoval, an independent contractor, rather than its own employees for repair work. The court ordered petitioner to pay the trust funds the amount of contributions they would have received had Sandoval been an employee. The CA 9 affirmed.

In so doing and consistently with its opinion in Waggoner v. R. McRay, Inc., 607 F.2d 1229, 1235 (CA 9 1979), the court stated that "district courts may not decide, independent of the NLRB, the merits of an unfair labor practice defense to enforcement of a collective bargaining agreement in a section 302 action." Thus the court refused to entertain petitioner's claim that the provision requiring it to use its own employees was a hot-cargo clause forbidden by §8(e) of the National Labor Relations Act, 29 U.S.C. §158(e). The fact that petitioner had previously filed unsuccessful unfair labor practice charges with the NLRB did not distinguish the case from Waggoner.

Kaiser requires federal courts to entertain §8(b) defenses where the defense is directed to the portion of the contract for which enforcement is sought. This case should be granted, vacated, and remanded for further consideration in light of Kaiser.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 10, 1981

Re: No. 80-1345 - Kaiser Steel Corp. v. Mullins

Dear Byron:

I await the dissent.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 30, 1981

Re: No. 80-1345 - Kaiser Steel Corp. v. Mullins

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 10, 1981

Re: No. 80-1345 - Kaiser Steel Corporation v. Mullins

Dear Byron:

I, too, await the dissent.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 30, 1981

Re: No. 80-1345 - Kaiser Steel Corporation v. Mullins

Dear Bill:

Please join me in your dissent.

Sincerely,



Justice Brennan

cc: The Conference

[note to Justice Brennan only]

Dear Bill:

This is conditioned, of course, on its coming down in  
1982, not January 1981!



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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

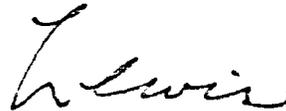
December 10, 1981

80-1345 Kaiser Steel Corp. v. Mullins

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 10, 1981

Re: No. 80-1345 Kaiser Steel Corp. v. Mullins

Dear Byron:

Please join me.

Sincerely,

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

December 10, 1981

Re: 80-1345 - Kaiser Steel v. Mullins

Dear Byron:

Please join me.

Respectfully,



Justice White

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

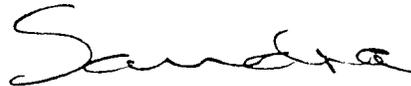
December 10, 1981

80-1345 Kaiser Steel Corp. v. Mullins

Dear Byron,

Please join me in your opinion in the  
referenced case.

Sincerely,



Justice White

Copies to the Conference