

# The Burger Court Opinion Writing Database

*Woelke & Romero Framing, Inc. v. NLRB*

456 U.S. 645 (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

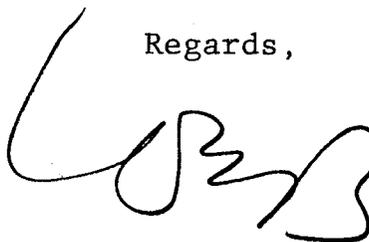
May 19, 1982

Re: No. 80-1798 - Woelke & Romero Framing, Inc. v. NLRB  
80-1808 - Pacific Northwest Chapter, etc. v. NLRB  
81-91 - Oregon-Columbia Chapter etc. v. NLRB

Dear Thurgood:

I join.

Regards,

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

Justice Marshall

Copies to the Conference

①

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 4, 1982

RE: Nos. 80-1798, 1808 and 81-91 Woelke & Romero Framing  
Pacific Northwest, etc. & Oregon-Columbia Chapter, etc.  
v. National Labor Relations Board

Dear Thurgood:

I agree.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 7, 1982

Re: 80-1798, 80-1808 & 81-91 -

Woelke & Romero Framing, Inc.  
v. NLRB, etc.

Dear Thurgood,

I agree with your Parts I, IIA, III and with your result. Part IIB, however, I cannot swallow. I see little or no reason to address §8(f). You also endorse the necessity, wisdom and fairness of the construction industry proviso. But it seems to me that the proviso was a concession necessary for passage rather than a reasoned conclusion based on the economics of the construction industry. At least, I need not independently endorse it as good public policy or even good labor policy.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

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

May 7, 1982

CHAMBERS OF  
JUSTICE BYRON R. WHITE

Re: 80-1798, 80-1808 & 81-91 -

Woelke & Romero Framing, Inc.  
v. NLRB, etc.

Dear Thurgood,

Amending my earlier note to you in this case, I also wonder about dismissing as improvidently granted the picketing-to-secure issue rather than vacating the judgment of the Court of Appeals in this respect.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 17, 1982

Re: 80-1798, 80-1808 and 81-91:  
Woelke & Romero Framing, Inc. v. NLRB, etc.

Dear Thurgood,

I join your third draft and I appreciate  
the changes you have made.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm



STYLISTIC CHANGES THROUGHOUT.

pp. 6, 9, 15, 19, 23, 24, 25

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

From: **Justice Marshall**

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

Recirculated: **MAY 6 1982**

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 80-1798, 80-1808 AND 81-91

WOELKE & ROMERO FRAMING, INC., PETITIONER,  
80-1798 *v.*  
NATIONAL LABOR RELATIONS BOARD ET AL.

PACIFIC NORTHWEST CHAPTER OF THE ASSOCI-  
ATED BUILDERS & CONTRACTORS, INC.,  
PETITIONER,  
80-1808 *v.*  
NATIONAL LABOR RELATIONS BOARD ET AL.

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED  
GENERAL CONTRACTORS OF AMERICA, INC.,  
PETITIONER,  
81-91 *v.*  
NATIONAL LABOR RELATIONS BOARD ET AL.

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

[May —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In these consolidated cases, we confront the question whether union signatory subcontracting clauses that are sought or negotiated in the context of a collective-bargaining relationship are protected by the construction industry proviso to § 8(e) of the National Labor Relations Act (Act), 29 U. S. C. § 158(e). Such clauses bar subcontracting except to subcontractors who are signatories to agreements with par-

PP. 1, 2, 6, 9, 15, 19, 20, 21

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

From: **Justice Marshall**

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

Recirculated: MAY 14 1982

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 80-1798, 80-1808 AND 81-91

WOELKE & ROMERO FRAMING, INC., PETITIONER,  
80-1798 v.  
NATIONAL LABOR RELATIONS BOARD ET AL.

PACIFIC NORTHWEST CHAPTER OF THE ASSOCIATED BUILDERS & CONTRACTORS, INC.,  
PETITIONER,  
80-1808 v.  
NATIONAL LABOR RELATIONS BOARD ET AL.

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
PETITIONER,  
81-91 v.  
NATIONAL LABOR RELATIONS BOARD ET AL.

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

[May —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.

In these consolidated cases, petitioners ask us to decide whether union signatory subcontracting clauses that are sought or negotiated in the context of a collective-bargaining relationship are protected by the construction industry proviso to § 8(e) of the National Labor Relations Act (Act), 29 U. S. C. § 158(e). Such clauses bar subcontracting except to subcontractors who are signatories to agreements with par-

P. 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: MAY 21 1982

(4th)

3/4 DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 80-1798, 80-1808 AND 81-91

WOELKE & ROMERO FRAMING, INC., PETITIONER,  
80-1798  
*v.*  
NATIONAL LABOR RELATIONS BOARD ET AL.

PACIFIC NORTHWEST CHAPTER OF THE ASSOCIATED BUILDERS & CONTRACTORS, INC.,  
PETITIONER,  
80-1808  
*v.*  
NATIONAL LABOR RELATIONS BOARD ET AL.

OREGON-COLUMBIA CHAPTER, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.,  
PETITIONER,  
81-91  
*v.*  
NATIONAL LABOR RELATIONS BOARD ET AL.

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

[May —, 1982]

JUSTICE MARSHALL delivered the opinion of the Court.  
In these consolidated cases, petitioners ask us to decide whether union signatory subcontracting clauses that are sought or negotiated in the context of a collective-bargaining relationship are protected by the construction industry proviso to § 8(e) of the National Labor Relations Act (Act), 29 U. S. C. § 158(e). Such clauses bar subcontracting except to subcontractors who are signatories to agreements with par-

7113

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

June 1, 1982

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

MEMORANDUM TO THE CONFERENCE

Re: Cases being held for No. 80-1798, Woelke & Romero Framing, Inc. v. National Labor Relations Board, and Nos. 80-1808 and 81-91.

No. 80-1257, Schrivver v. NLRB - Petitioner entered into a §8(f) prehire agreement with a carpenters' union that contained a union signatory subcontracting clause. In violation of this agreement, petitioner subcontracted to nonunion subcontractors. In response, the union picketed petitioner. Petitioner then filed unfair labor practice charges, arguing that the subcontracting clause violated §8(e) of the National Labor Relations Act, and that picketing to enforce the clause was unlawful. The NLRB concluded that the clause was protected by the construction industry proviso to §8(e) of the Act, but that the union could not engage in picketing to enforce the clause. The Court of Appeals for the District of Columbia Circuit affirmed. It rejected petitioner's claim that the proviso does not protect union signatory subcontracting clauses that are not limited in application to particular job sites, or that are obtained as part of a prehire agreement. This Court denied a petition for a writ of certiorari. After this Court granted certiorari in Woelke & Romero, the petitioner applied for a rehearing. The petition for rehearing has been held pending decision in Woelke & Romero.

This case goes further than Woelke & Romero. The subcontracting agreement was sought as part of a §8(f) prehire agreement, rather than as part of an ordinary collective bargaining agreement. However, the Court of Appeals' conclusion that the scope of §8(e) extends to clauses obtained in the context of a §8(f) agreement is consistent with the purposes of §§8(e) and 8(f). Certainly, nothing contained in the opinion is inconsistent with our decision in Woelke & Romero. There is no split among Circuits on the question whether the proviso extends to protect agreements sought as part of a prehire agreement. Accordingly, I will vote to deny the petition for rehearing.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 7, 1982

Re: No. 80-1798) - Woelke & Romero Framing, Inc. v. NLRB  
No. 80-1808) - Pacific Northwest v. NLRB  
No. 81-91) - Oregon-Columbia Chapter v. NLRB

Dear Thurgood:

I go along with the opinion you have prepared for these cases. I would not mind, however, if you feel free to do so, your eliminating the DIG of the picketing issue, as set forth in footnote 6 on page 6, and your replacing that DIG with a vacation of the Ninth Circuit's judgment so far as it concerns the picketing.

Sincerely,



Justice Marshall  
cc: The Conference

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL  
82 MAY -7 10:22

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 17, 1982

Re: No. 80-1798) - Woelke & Romero Framing, Inc. v. NLRB  
No. 80-1808) - Pacific Northwest v. NLRB  
No. 81-91) - Oregon-Columbia Chapter v. NLRB

Dear Thurgood:

I am still with you.

Sincerely,

Handwritten signature of Harry A. Blackmun, consisting of stylized initials 'H.A.' followed by a flourish.

Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 10, 1982

80-1798, 80-1808, 81-91 Woelke & Romeo, etc.

Dear Thurgood:

Subject to reservations indicated below, I think you have written this rather difficult case quite well.

I can join Parts I, IIA and IV. For reasons similar to those indicated in Byron's memo to you of May 7, I cannot join Part IIB. I also still have some reservations about what you have written in Part III as to "top down" pressure for unionization - pressure that falls heavily on small non-union contractors, and that often has an adverse effect on the cost of housing and other construction. I may add a few sentences along the foregoing lines in a concurring opinion.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 19, 1982

80-1798 Woelke & Romero v. NLRB

Dear Thurgood:

Please join me.

I appreciate your making the changes in response  
to my concerns.

Sincerely,



Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 18, 1982

Re: No. 80-<sup>1798</sup>~~1789~~, 80-1808 and 81-91 Woelke & Romero  
Framing, Inc. v. NLRB

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 7, 1982

Re: 80-1798 - Woelke & Romero v. NLRB

Dear Thurgood:

What you have written about the construction industry is, I believe, completely faithful to the statute and its legislative history. One sentence in footnote 17 on page 19 may go beyond the construction industry and, although it may be correct, gives me some concern. It is this sentence:

"An agreement that prohibited all subcontracting of work performed by employers in a bargaining unit would plainly be valid under National Woodworkers."

I wonder if you could leave out the statement that it "would plainly be valid under National Woodworkers" and simply combine the two sentences in the footnote to read something like this:

"An agreement that prohibited all subcontracting of work performed by employers in a bargaining unit, in the context of the construction industry, would interfere with the ordinary practices ...."

Otherwise, I am prepared to join your opinion.

Respectfully,

85 MAY -3 11 1982 *JM*

Justice Marshall  
Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 7, 1982

Re: 80-1798 - Woelke-Romero v. NLRB

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

Copies to the Conference

82 MAY -7 12:52

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 7, 1982

No. 80-1798    Woelke & Romero Framing v. NLRB  
No. 80-1808    Pacific Northwest Chapter of the  
                  Associated Builders & Contractors  
                  v. NLRB  
No. 81-91      Oregon-Columbia Chapter v. NLRB

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Dear Thurgood,

At Conference I was of the view that if we could reach the picketing issue, we should reverse. Your opinion convinces me we should not reach it. However, I agree with Harry's suggestion that the judgment of the Ninth Circuit be vacated insofar as it concerns the picketing issue. Otherwise, I am in agreement with your opinion.

Sincerely,

*Sandra*

Justice Marshall

Copies to the Conference

82 MAY -7 P1:06

RECEIVED  
SUPREME COURT U.S.  
JUSTICE MARSHALL

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

May 19, 1982

Re: 80-1798 Woelke & Romero v. NLRB

Dear Thurgood,

Please join me.

Sincerely,



Justice Marshall

Copies to the Conference