

The Burger Court Opinion Writing Database

Finnegan v. Leu

456 U.S. 431 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

From: **The Chief Justice**

Circulated: APR 1 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2150

DONALD FINNEGAN ET AL., PETITIONERS, *v.*
 HAROLD D. LEU ET AL.

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

[April —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the
 Court.

The question presented in this case is whether the discharge of a union's appointed business agents by the union president, following his election over the candidate supported by the business agents, violated the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 534, 29 U. S. C. § 401 *et seq.* The Court of Appeals held that the Act did not protect the business agents from discharge. We granted certiorari to resolve circuit conflicts,¹ — U. S. — (1981), and we affirm.

I

In December 1977, respondent Harold Leu defeated Omar Brown in an election for the presidency of Local 20 of the In-

¹See, *e. g.*, *Lamb v. Miller*, — U. S. App. D.C. —, 660 F. 2d 792 (1981); *Maceira v. Pagan*, 649 F. 2d 8 (CA1 1981); *Newman v. Local 1101, Communications Workers*, 570 F. 2d 439 (CA2 1978); *Bradford v. Textile Workers Local 1093*, 563 F. 2d 1138 (CA4 1977); *Gabauer v. Woodcock*, 520 F. 2d 1084 (CA8 1975), *cert. denied*, 423 U. S. 1061 (1976); *Wambles v. Teamsters*, 488 F. 2d 888 (CA5 1974); *Wood v. Dennis*, 489 F. 2d 849 (CA7 1973) (*en banc*), *cert. denied*, 415 U. S. 960 (1974); *Grand Lodge of the International Ass'n of Machinists v. King*, 335 F. 2d 340 (CA9), *cert denied*, 397 U. S. 920 (1964); *Sheridan v. Carpenters Local No. 626*, 306 F. 2d 152 (CA3 1962).

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

From: **The Chief Justice**

Circulated: _____

Recirculated: **MAY 4 1982**

2,9
2
12
2nd DRAFT

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No. 80-2150

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STYLISTIC CHANGES

6, 9, 10

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

From: **The Chief Justice**

Circulated: _____

Recirculated: **MAY 13 1982**

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2150

DONALD FINNEGAN ET AL., PETITIONERS, *v.*
 HAROLD D. LEU ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 3, 1982

RE: No. 80-2150 Finnegan v. Leu

Dear Harry:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Blackmun

cc: The Conference

85

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

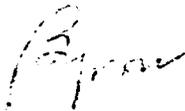
April 28, 1982

Re: 80-2150 - Finnegan v. Leu

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

82 APR 28 P2:25

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 6, 1982

Re: No. 80-2150 - Donald Finnegan v. Harold Leu

Dear Chief:

Please join me.

Sincerely,

J.M.
T.M.

The Chief Justice

cc: The Conference

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

From: Justice Blackmun

Circulated: APR 29 1982

Recirculated: _____

No. 80-2150 - Finnegan v. Leu

JUSTICE BLACKMUN, concurring.

I am not prepared to hold that a newly-elected president of a local union may discipline, without violating the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 534, 29 U.S.C. 401 et seq., and as a matter of retaliation, all union employee-members who opposed his candidacy. As the Court notes, a union member possesses, under the Act, rights to freedom of expression and of speech and assembly, ante, at 6, and a right to support the candidate of his choice.

10

I must assume that what the Court holds today is that the newly-elected president may discharge the union's appointed business agents and other appointed union member-employees who will be instrumental in evolving the president's administrative

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 30, 1972

Re: No. 80-2150 - Finnegan v. Leu

Dear Chief:

The reach of your opinion, which now has a Court, is troubling to me. I therefore am writing a paragraph or two that will be around shortly.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

APR 30 1972

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

From: **Justice Blackmun**

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Recirculated: _____

Printed
 1st DRAFT

SUPREME COURT OF THE UNITED STATES

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[May —, 1982]

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I must assume that what the Court holds today is that the newly-elected president may discharge the union's appointed business agents and other appointed union member-employees who will be instrumental in evolving the president's administrative policies. See *Elrod v. Burns*, 427 U. S. 347 (1976); *Branti v. Finkel*, 445 U. S. 507 (1980). Indeed, the Court uses the terms "officers and agents," *ante*, at 9, and "his own administrators," *ante*, at 10. In addition, this particular union's bylaws expressly give the president plenary authority over the business agents. With that much, I have no difficulty.

On the understanding, but only on the understanding, that the Court by its opinion is not reaching out further to decide the same issue with respect to nonpolicy-making employees, that is, rank-and-file member-employees (a matter which, for

P.1

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'82 MAY -7 A11:23

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

From: Justice Blackmun

Circulated: _____

Recirculated: _____ MAY 7 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2150

DONALD FINNEGAN ET AL., PETITIONERS, v.
HAROLD D. LEU ET AL

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

[May —, 1982]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN joins,
concurring.

I am not prepared to hold that a newly-elected president of a local union may discipline, without violating the Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 534, 29 U. S. C. 401 *et seq.*, and as a matter of retaliation, all union member-employees who opposed his candidacy. As the Court notes, a union member possesses, under the Act, rights to freedom of expression and of speech and assembly, *ante*, at 4-5, and a right to support the candidate of his choice.

I must assume that what the Court holds today is that the newly-elected president may discharge the union's appointed business agents and other appointed union member-employees who will be instrumental in evolving the president's administrative policies. See *Elrod v. Burns*, 427 U. S. 347 (1976); *Branti v. Finkel*, 445 U. S. 507 (1980). Indeed, the Court uses the terms "staff," *ante*, at 9, and "his own administrators," *ante*, at 10. In addition, this particular union's bylaws expressly give the president plenary authority over the business agents. With that much, I have no difficulty.

On the understanding, but only on the understanding, that the Court by its opinion is not reaching out further to decide the same issue with respect to nonpolicy-making employees,

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 22, 1982

80-2150 Finnegan v. Leu

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 22, 1982

Re: No. 80-2150 Finnegan v. Leu

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 5, 1982

Re: 80-2150 - Finnegan v. Leu

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

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210

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR



April 22, 1982

No. 80-2150 Finnegan v. Leu

Dear Chief,

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra", is written below the word "Sincerely".

The Chief Justice

Copies to the Conference