

# The Burger Court Opinion Writing Database

## *Shepard v. NLRB*

459 U.S. 344 (1983)

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 6, 1983

Re: No. 81-1627, Shepard v. NLRB

Dear Bill:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WRW3', written over the typed word 'Regards,'.

Justice Rehnquist

Copies to the Conference

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Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 4, 1983

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

'82 DEC 35 P1:35

RE: No. 81-1627 Shepard v. National Labor Relations Board

Dear Bill:

I agree.

Sincerely,

Justice Rehnquist

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Supreme Court of the United States  
SUPREME COURT U.S.  
Washington, D.C. 20543  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE BYRON R. WHITE

'82 DEC 35 P1:35

January 4, 1983

Re: 81-1627 - Shepard v. NLRB

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Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist  
Copies to the Conference

cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 13, 1983

Re: No. 81-1627 - Shepard v. NLRB

Dear Bill:

Please join me.

Sincerely,

*J.M.*

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 4, 1983

Re: No. 81-1627 - Shepard v. NLRB

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist  
cc: The Conference

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

RECEIVED  
SUPREME COURT, U.S.  
JUSTICE MARSHALL

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

'82 DEC 35 P1:33

January 3, 1983

81-1627 Shepard v. NLRB

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: JAN 3 1983

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 81-1627

LARRY SHEPARD, PETITIONER *v.* NATIONAL  
LABOR RELATIONS BOARD ET AL.

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

[December —, 1982]

JUSTICE REHNQUIST delivered the opinion of the Court.

This case grows out of a labor dispute in the construction industry in San Diego County, California. The issue is whether the National Labor Relations Board was required to provide a make-whole remedy for a violation of § 8(e) of the National Labor Relations Act (the Act), 29 U. S. C. § 158(e) (1976), which prohibits so-called "hot cargo" contracts.<sup>1</sup>

Petitioner Larry Shepard owns a dump truck, and operates it in the San Diego area to haul materials to and from construction sites. Contractors in this area generally hire dump truck operators through so called "brokers" on a day-to-day basis. Brokers agree with contractors to supply trucks and operators, then refer hauling jobs to individual owner-operators such as Shepard. Brokers handle the owner-operators' billing and perform other coordinating services. They receive commissions based on the amount billed.

<sup>1</sup> Section 8(e) provides in pertinent part:

"It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement . . . whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any employer, or to cease doing business with any other person, and any contract or agreement entered into . . . containing such an agreement shall be to such extent unenforceable [sic] and void. . . ."

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

From: Justice Rehnquist

Circulated: \_\_\_\_\_  
Recirculated: JAN 11 1983

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1627

LARRY SHEPARD, PETITIONER *v.* NATIONAL  
LABOR RELATIONS BOARD ET AL.

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

[January —, 1983]

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8.2  
WATP  
~~Please join me~~  
TM

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60  
JAN 11 1983

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 8, 1983

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 81-1627, Shepard v. NLRB

No. 82-3, Jt. Council of Teamsters v. NLRB

The facts in this case are almost identical to those in Shepard. The CA9 remanded to the Board with directions to order reimbursement or to give a better explanation of its reasons for declining to do so. The decision was expressly rejected in Shepard. Slip. op., at 4, 5. I recommend GVR.

Sincerely,



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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 3, 1983

Re: 81-1627 - Shepard v. NLRB

Dear Bill:

Please join me.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

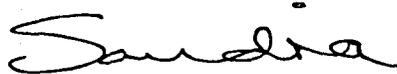
January 12, 1983

No. 81-1627 Shepard v. NLRB

Dear Bill,

As I think I mentioned to you and as I suggested at Conference, I believe this case should be remanded so that the Board can reconsider whether a "make-whole" order would be appropriate. I will circulate something so stating in the next day or so.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

From: **Justice O'Connor**

Circulated: JAN 13 1983

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1627

**LARRY SHEPARD, PETITIONER v. NATIONAL  
LABOR RELATIONS BOARD, ET AL.**

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

[January —, 1983]

**JUSTICE O'CONNOR, dissenting.**

I agree with the Court that the National Labor Relations Board (NLRB) could reasonably determine in this case that reimbursing the petitioner is not necessary to effectuate the objectives of the National Labor Relations Act (the Act). My disagreement is with the Court's conclusion that the Board provided an adequate explanation for its decision. The Board offered three reasons for its conclusion that reimbursing the petitioner would not effectuate the purposes of the Act. Each of its stated reasons was in error or inadequate to justify its conclusion. I would therefore remand the case to the Board in order to give it an opportunity to determine the appropriateness of reimbursement in light of the Court's opinion.

**I**

A brief review of the facts is useful in understanding the inadequacy of the Board's explanation for its decision.

For over a decade, there has been a dispute between respondent Building Material and Dump Truck Drivers, Teamsters Local 36 (the Union) and respondent California Dump Truck Owners Association (the Association) over the availability of hauling jobs for non-union truck operators. In June 1977, three contractors' associations, which are respond-

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PP. 4, 6

P.P. 4, 4

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

From: Justice O'Connor

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Recirculated: JAN 17 1983

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1627

LARRY SHEPARD, PETITIONER *v.* NATIONAL  
LABOR RELATIONS BOARD, ET AL.

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

[January —, 1983]

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