

# The Burger Court Opinion Writing Database

## *Metropolitan Edison Co. v. NLRB*

460 U.S. 693 (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

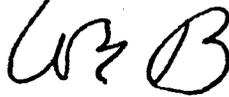
March 31, 1983

No. 81-1664, Metropolitan Edison Co. v. NLRB

Dear Lewis:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'WPB', written in a cursive style.

Justice Powell

Copies to the Conference

M

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 21, 1983

RE: No. 81-1664 Metropolitan Edison Co. v. N.L.R.B.

Dear Chief:

Lewis has agreed to undertake the opinion for the Court  
in the above.

Sincerely,

Bill

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 29, 1983

Re: No. 81-1664 -- Metropolitan  
Edison Co. v. NLRB

Dear Lewis,

I agree.

Sincerely,

*Bill*

Justice Powell

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

April 21, 1983

Re: No. 81-1664

Metropolitan Edison Co. v. NLRB

Dear Lewis,

I agree with your suggestion.

Sincerely,



Justice Powell

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 28, 1983

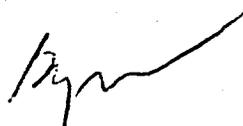
Re: 81-1664 -  
Metropolitan Edison Co. v. NLRB

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Dear Lewis,

Please join me.

Sincerely yours,



Justice Powell

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cpm

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 28, 1983

Re: No. 81-1664-Metropolitan Edison v. NLRB

Dear Lewis:

Please join me.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 21, 1983

Re: No. 81-1664-Metropolitan Edison Co. v. NLRB

Dear Lewis:

I agree and will endorse whatever you do in this one.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 1, 1983

Re: No. 81-1664 - Metropolitan Edison Co. v. NLRB

Dear Lewis:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 20, 1983

Re: No. 81-1664 - Metropolitan Edison Co. v. NLRB

Dear Lewis:

I am content to leave your opinion as it is. I shall go along, however, with whatever you decide to do. You have my complete proxy.

Sincerely,

*Larry*

Justice Powell

cc: The Conference

*LAP*

*I agree and will endorse whatever you do in this one*

*JM*

*cc Conference*

MAR 25 1983

*LFB*  
*Please join me*  
*M*

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

From: **Justice Powell**

Circulated: MAR 25 1983

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 81-1664

**METROPOLITAN EDISON COMPANY, PETITIONER v.  
NATIONAL LABOR RELATIONS BOARD ET AL.**

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

[March —, 1983]

*Join*

JUSTICE POWELL delivered the opinion of the Court.

The issue is whether an employer may discipline union officials more severely than other union employees for participating in an unlawful work stoppage.

I

Metropolitan Edison Company began construction of a two-unit nuclear generating station at Three Mile Island in 1968. Over half of its employees were represented by the International Brotherhood of Electrical Workers. Article XI of the collective-bargaining agreement between the company and the union provided:

“The Brotherhood and its members agree that during the term of this agreement there shall be no strikes or walkouts by the Brotherhood or its members, and the Company agrees that there shall be no lockouts of the Brotherhood or its members, it being the desire of both parties to provide uninterrupted and continuous service to the public.” App. to Pet. for Cert. A-32.

Despite this no-strike clause, union members participated in four unlawful work stoppages between 1970 and 1974.<sup>1</sup> On

<sup>1</sup>Although the collective-bargaining agreement applicable to the inci-

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April 13, 1983

MEMORANDUM TO THE CONFERENCE

Held for Metropolitan Edison Co. v. NLRB, No. 81-1664

No. 81-1438, Hammermill Paper Co. v. NLRB

Petitioner suspended two employees and discharged seven others for failing to obey a work order. The two employees were suspended rather than discharged because they had not been involved previously in any similar incidents. Six of the other employees were discharged because each had a history of prior infractions. The seventh employee, a union steward, had not committed any prior infractions. He was discharged because of his failure to fulfill his duty as a union official during this incident.

An arbitrator found that petitioner had acted properly in suspending the two employees. He determined, however, that discharge was too harsh a sanction and ordered the seven discharged employees reinstated, effectively imposing a five-month suspension without backpay. The arbitrator specifically found that petitioner had not been justified in placing a greater duty, and increased penalty, on the union steward because at the time of the incident the steward was not acting in any official capacity. The arbitrator, however, failed to order that the steward be awarded any backpay. The Board found that the failure to treat the union steward in the same manner as the other two employees who, like the steward, had not committed any prior infractions violated §8(a)(3). The CA3 affirmed. It determined that because the arbitrator had not found any contractual or legitimate business reason for treating the union steward differently, the Board could determine that the employer's more severe treatment of the steward constituted an unfair labor practice.

The arbitrator did not find any contractual justification for treating the steward differently, and the CA3's treatment of the statutory issue is consistent with Metropolitan Edison. I will vote to deny.

LFP

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

April 20, 1983

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

MEMORANDUM TO THE CONFERENCE

81-1664 Metropolitan Edison Co. v. NLRB

This refers to Professor Shieber's letter of April 11 to me, with copies to each of you. Professor Shieber objects to the following passage in my opinion for the Court in this case:

"Congress, however, did not intend to make unlawful all acts that might have the effect of discouraging union membership. ... Rather, the intention was to forbid only those acts that are motivated by an antiunion animus. See e.g., NLRB v. Great Dane Trailers, Inc., 388 U.S. 26, 33 (1967); NLRB v. Brown, 380 U.S., at 286-287." See p. 6-7 of Slip Opinion.

In the professor's view, the Court's prior cases have not stated that discriminatory or antiunion animus is a required element of §8(a)(3) violations.

As I read the cases, the Court consistently has recognized that impermissible motive or antiunion animus is a necessary element in establishing a §8(a)(3) violation. NLRB v. Brown, 380 U.S. 278 (1965), for example, stated:

"Nor does the record show any basis for concluding that respondents violated §8(a)(3). Under that section both discrimination and a resulting discouragement of union membership are necessary, but the added element of unlawful intent is also required. ... The discriminatory act is not by itself unlawful unless intended to prejudice the employees' position because of their membership in the union; some element of antiunion animus is necessary." Id., at 286.

See also NLRB v. Great Dane Trailers, Inc., 388 U.S. 26, 33 (1967); American Ship Building Co. v. NLRB, 380 U.S. 300, 311 (1965); NLRB v. Erie Resistor Corp., 373 U.S. 221, 227 (1963). Of course, antiunion animus may be inferred from

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

March 31, 1983

Re: No. 81-1664 Metropolitan Edison Co. v. NLRB

Dear Lewis:

Please join me.

Sincerely,

*WW*

Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

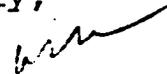
April 21, 1983

Re: No. 81-1664 Metropolitan Edison Co. v. NLRB

Dear Lewis:

I agree with your opinion as is, or modified as  
you suggest.

Sincerely,



Justice Powell

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 25, 1983

Re: 81-1664 - Metropolitan Edison v. NLRB

Dear Lewis:

Please join me.

I voted the other way because I was troubled by the issue discussed in part III-B of your opinion. I was of the view that these arbitrators' awards became a part of the contract. I must confess, however, that I concentrated more on the question whether awards during one contract term carried over into another term and less on the distinction that you make between an award that interprets the intent of the contracting parties and one that attempts to interpret general labor law. I think your opinion makes good sense and therefore I have decided to go along with you.

Respectfully,



Justice Powell

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 21, 1983

Re: 81-1664 - Metropolitan Edison v. NLRB

Dear Lewis:

You have my proxy.

Respectfully,



Justice Powell

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

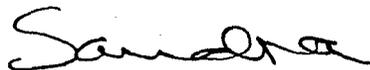
March 28, 1983

No. 81-1664 Metropolitan Edison v. NLRB

Dear Lewis,

Please join me.

Sincerely,



Justice Powell

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

April 21, 1983

No. 81-1664 Metropolitan Edison Co. v. NLRB

Dear Lewis,

I will go along with whatever you decide  
is best.

Sincerely,



Justice Powell

Copies to the Conference

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