

The Burger Court Opinion Writing Database

Jim McNeff, Inc. v. Todd

461 U.S. 260 (1983)

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 5 1983**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2150

**JIM McNEFF, INC., PETITIONER v.
 FRANK L. TODD ET AL.**

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

[April —, 1983]

CHIEF JUSTICE BURGER delivered the opinion of the court.

We granted certiorari to resolve conflicts in the Circuits as to whether monetary obligations that have accrued under a prehire contract authorized by Section 8(f) of the National Labor Relations Act, 29 U. S. C. § 158(f), can be enforced, prior to the repudiation of such a contract, in a suit brought by a union against an employer under § 301 of the Labor Management Relations Act, 29 U. S. C. § 185, absent proof that the union represented a majority of the employees.

I

Petitioner is engaged in the construction industry and, in September 1978, was a subcontractor on a jobsite in Southern California. The general contractor was contractually bound to the Master Labor Agreement negotiated between the International Union of Operating Engineers, Local No. 12, and the Southern California General Contractors Associations. The Master Labor Agreement provided that work at the jobsite was to be performed only by subcontractors who had signed a labor agreement with the Union.¹ The Master

¹ Article IV, § D of the Agreement provides:

"The Contractor agrees that neither he nor any of his subcontractors on the jobsite will subcontract any work to be done at the site of construction, al-

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

CHAMBERS OF
THE CHIEF JUSTICE

April 14, 1983

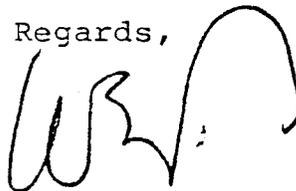
Re: 81-2150, McNeff v. Todd

Dear John:

I am quite willing to add a footnote along the lines you suggest. It will be in the next circulation, along with a footnote to meet a point Bill Brennan raised.

Thank you for the suggestion.

Regards,

A handwritten signature in black ink, appearing to be 'W.S.', with a large, sweeping flourish extending upwards and to the right.

Justice Stevens

cc: Justice Brennan
Justice Blackmun

PP. 10, 11

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

From: **The Chief Justice**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2150

**JIM McNEFF, INC., PETITIONER v.
 FRANK L. TODD ET AL.**

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

CHAMBERS OF
THE CHIEF JUSTICE

April 21, 1983

Re: No. 81-2150, Jim McNeff, Inc. v. Todd

Dear Harry:

I have your memo of April 19 on this case.

This is correct
As I read your memo your proposal is to say what is already there but in another way. *3*

I am glad to accommodate your version in the final draft.

4
EB
Regards,

Justice Blackmun

P. 11

Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **The Chief Justice**

Circulated: _____

APR 22 1983

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2150

**JIM MCNEFF, INC., PETITIONER v.
 FRANK L. TODD 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
THE CHIEF JUSTICE

May 9, 1983

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 81-2150, Jim McNeff, Inc. v. Todd

1. No. 81-1946, Clark v. Paddock. Petrs in this case are construction contractors. They entered into prehire agreements with two carpenter unions. Petrs failed to abide by the terms of the agreements and resps, trustees of union trust funds, brought this action to collect the contributions due. Petrs argued that they were not bound to make contributions to the trust funds. The DC held that the prehire agreements were not enforceable because the unions had not attained majority status at the work site in issue. The CA9 reversed relying on its recent decision in Todd v. Jim McNeff, Inc., 667 F. 2d 800 (CA9 1982), which we have affirmed. I WILL DENY.

2. No. 81-2209, McDowell v. W. Washington Lab-Emp. Health & Sec. Trust Fund. Petr entered a prehire agreement with the local chapter of the Associated General Contractors of America. Resps, trust funds, brought this action to review petr's records to ensure that he had properly made and reported his contribution payments. Petr defended with the argument that the prehire agreement was unenforceable because the Union had never represented a majority of his employees. The DC ruled for petr. The CA9 reversed relying on its recent decision in Todd v. Jim McNeff, Inc., 667 F. 2d 800 (CA9 1982), which we have affirmed. I WILL DENY.

3. No. 82-889, Overhead Door Co. v. Washington Area Carpenters' Welfare Fund. Petr entered into a prehire agreement. Petr made required contributions to union fringe benefit funds for some employees but not for others. Resp, trustee of the funds, brought this action to enforce the prehire agreement. The DC granted summary judgment for petr. The CADC reversed, relying heavily on Todd v. Jim McNeff, Inc., 667 F. 2d 800 (CA9 1982). I WILL DENY.

Regards



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 6, 1983

Re: Jim McNeff, Inc. v. Todd, No. 81-2150

Dear Chief:

I agree with most of your opinion in this case. I have one small reservation, however. In your paragraph running from pages 10 to 11, you give the suggestion that a union would be free to repudiate a pre-hire agreement at will. I am not sure this is correct. One of the reasons §8(f) was enacted was that construction employers need predictable and reliable labor costs. I would be reluctant to allow a union to negotiate a pre-hire agreement, and then to repudiate it and demand higher pay after the employer has made a bid in reliance on the agreement. I agree that the union and the employer stand in the same position as far as the voidable nature of the agreement under §8(f) goes, but I wonder if some other principles might properly prevent a union's repudiation in such circumstances. For example, a union might be estopped to deny its own majority status, thus undermining the legitimacy of its representation altogether; or there might be an equitable estoppel in light of the employer's reliance.

I do not suggest that we reach or address this point in the present case. I wonder, however, if you might be willing to add a footnote along the following lines:

"We need not consider in this case whether principles of estoppel or other considerations outside the scope of §8(f) itself might prevent a union, in particular circumstances, from exercising its option under §8(f) to repudiate a prehire agreement before it demonstrates majority status."

If you could make a change along these lines, I will be happy to join your opinion.

Sincerely,

WJB
WJB, Jr.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 19, 1983

Re: No. 81-2150, McNeff v. Todd

Dear Chief,

I agree.

Sincerely,



The Chief Justice

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 7, 1983

Re: 81-2150 - McNeff v. Todd

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 25, 1983

Re: No. 81-2150-McNeff v. Todd

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

81-2150

April 8, 1983

Dear John:

It seems to me that you and I are somewhat off by ourselves in two cases: No. 2150, Jim McNeff, Inc. v. Todd and No. 81-984, First National City Bank v. Banco Para El Comercio Exterior de Cuba.

I should have written you before, but would you be inclined to take on the necessary writing in McNeff? I then shall try my hand at something in the Cuba case.

Sincerely,

HAB

Justice Stevens

HAB

April 14, 1983

Dear John:

Re: No. 81-2150, Jim McNeff, Inc. v. Todd

I agree that an attempt to preserve the repudiation/election issue for another day is worth making, notwithstanding the language of the Chief's opinion, which strongly suggests that some form of unilateral employer conduct can void a prehire agreement. The footnote you propose would be a step forward, of course. I am concerned, however, that as written, the footnote, like the text of the majority, virtually answers the question it purports to leave open by stating that repudiation may be "demonstrated" by an employer's "specific act." If the employer may accomplish repudiation unilaterally, of course, a union election -- which is the sum of employees' acts -- is not required.

Might I suggest the following modification of your current suggestion:

"We therefore need not decide what specific acts would effect the repudiation of a prehire agreement -- sending notice to the union, engaging in activity overtly and completely inconsistent with contractual obligations, or, as respondents suggest, precipitating a representation election pursuant to the §8(f) proviso that shows the union does not enjoy majority support."

I agree that this question is not presented on these facts and therefore need not be decided; this prehire agreement was not voided under any standard. So I could go along with the majority, reluctantly, were such a footnote included.

Sincerely,
HAB

Justice Stevens

HAB

April 19, 1983

Re: No. 81-2150 - Jim McNeff, Inc. v. Todd

Dear Chief:

With the changes made in your second draft, I am very close to being able to join your opinion without reservation. I remain somewhat troubled, however, by the language in Part III of the current draft. As you state at page 10 and in new footnote 11, and as John said in his letter of April 14, this case does not present the question as to what steps are required to repudiate a prehire agreement. I am concerned that continued reference to the "employer" and "petitioner" in Part III, rather than to both parties, is inconsistent with reserving this question for another day.

My concerns would be eliminated easily by making the following minor changes in Part III:

"III

A §8(f) prehire agreement is subject to repudiation until the union establishes majority status. However, the monetary obligations assumed by an employer under a prehire contract may be recovered in a §301 action brought by a union prior to the repudiation of the contract, even though the union has not attained majority support in the relevant unit. There having been no repudiation in this case, the judgment of the Court of Appeals is

Affirmed."

If you can accept this, I shall join your opinion and shall not write separately to emphasize that the issue is an open one.

Sincerely,

HAB

The Chief Justice

bcc: Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 22, 1983

Re: No. 81-2150 - Jim McNeff, Inc. v. Todd

Dear Chief:

I am glad to join your third draft circulated today.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

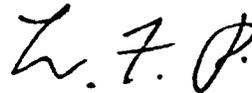
April 6, 1983

81-2150 McNeff v. Todd

Dear Chief:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. F. P.", is written in dark ink.

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 5, 1983

Re: No. 81-2150 McNeff, Inc. v. Todd

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

cc: The Conference

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

81-2150

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 11, 1983

Dear Harry:

If you don't mind, I will first suggest to the Chief that he make some changes in his McNeff opinion. If that does not prove successful, I will be glad to undertake writing out something consistent with the opinion that we both took when we joined Potter's dissent in the Iron Workers' case.

Sincerely,



Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 13, 1983

Re: 81-2150 - McNeff v. Todd

Dear Harry:

Although I am not too happy with some of the comments on pages 9 and 10 of the Chief's opinion concerning the employer's right to repudiate a prehire agreement, it has occurred to me that the problem might be cured by an appropriate footnote. I am considering asking him to add a footnote at the end of the first full sentence on page 10 reading as follows:

"We therefore need not decide what specific act an employer must take to demonstrate its repudiation of a prehire agreement--sending notice to the union, engaging in activity overtly and completely inconsistent with its contractual obligations, or, as respondents suggest, precipitating a representation election pursuant to the §8(f) proviso that shows that the union does not enjoy majority support."

I'd be interested in your reaction to this thought before I propose it to the Chief.

Respectfully,



Justice Blackmun

HAK

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 14, 1983

Re: 81-2150 - McNeff v. Todd

Dear Chief:

Although I agree with your conclusion and with most of what you have written in your circulating opinion, like Harry, I joined Potter's dissent in Higdon, and probably have somewhat different views from those that are suggested at pages 9 and 10 of your opinion concerning the steps that might be required of an employer seeking to repudiate a prehire agreement. This case does not actually present any question concerning the procedure that would have to be followed in connection with such a repudiation, and your opinion does not purport to decide any question. Nevertheless, I wonder if you would be willing to add a footnote on page 10 to make the point perfectly clear? Something to this effect could be added at the end of the first full sentence on page 10:

"We therefore need not decide what specific acts would effect the repudiation of a prehire agreement--sending notice to the union, engaging in activity overtly and completely inconsistent with contractual obligations, or, as respondents suggest, precipitating a representation election pursuant to the §8(f) proviso that shows the union does not enjoy majority support."

If this change is acceptable to you, I will join your opinion.

Respectfully,



The Chief Justice

cc: Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 19, 1983

Re: 81-2150 - McNeff v. Todd

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 7, 1983

No. 81-2150 McNeff v. Todd

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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