

The Burger Court Opinion Writing Database

NLRB v. Transportation Management Corp.

462 U.S. 393 (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

June 1, 1983

Re: No. 82-168, NLRB v. Trans. Management

Dear Byron:

I join.

Regards,


Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 10, 1983

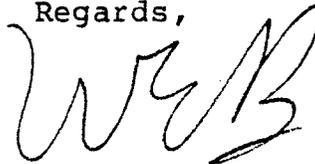
MEMORANDUM TO THE CONFERENCE:

Justices Brennan and White have requested that the following opinions be announced on Wednesday:

82-168 - National Labor Relations Board v. Transportation
Management
(Justice White)

81-2057 - Karcher v. Daggett
(Justice Brennan)

Regards,



Mr. Goldstraw
Mr. Lind
Mr. Stevas

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

4

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 18, 1983

Re: No. 82-168

National Labor Relations Board
v. Transportation Management Corp.

Dear Byron,

I agree.

Sincerely,



Justice White

Copies to the Conference

— Justice Brennan
 ✓ Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: 5/13/83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-168

NATIONAL LABOR RELATIONS BOARD,
 PETITIONER *v.* TRANSPORTATION
 MANAGEMENT CORP.

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

[May —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

The National Labor Relations Act (NLRA or Act), 29 U. S. C. § 151 et seq., makes unlawful the discharge of a worker because of union activity, 29 U. S. C. §§ 158(a)(1), (3),¹ but employers retain the right to discharge workers for any number of other reasons unrelated to the employee's union activities. When the General Counsel files a complaint alleging that an employee was discharged because of his union activities, the employer may assert legitimate motives for his decision. In *Wright Line*, 251 N. L. R. B. 1083 (1980), enforced, 662 F. 2d 899 (CA1), cert. denied 455 U. S. 989 (1982), the National Labor Relations Board reformulated the allocation of the burden of proof in such cases. It determined that the General Counsel carried the burden of persuading the Board that an anti-union animus contributed to the employer's decision to discharge an employee, a burden

¹ Section 8(a) provides, in relevant part:

“(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . .”

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

From: **Justice White**

Circulated: _____

Recirculated: MAY 16 1983

pp. 2, 5, 6, 8, 9
 and stylistic

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-168

NATIONAL LABOR RELATIONS BOARD,
 PETITIONER *v.* TRANSPORTATION
 MANAGEMENT CORP.

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

[May —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

The National Labor Relations Act (NLRA or Act), 29 U. S. C. § 151 et seq., makes unlawful the discharge of a worker because of union activity, 29 U. S. C. §§ 158(a)(1), (3),¹ but employers retain the right to discharge workers for any number of other reasons unrelated to the employee's union activities. When the General Counsel files a complaint alleging that an employee was discharged because of his union activities, the employer may assert legitimate motives for his decision. In *Wright Line*, 251 N. L. R. B. 1083 (1980), enforced, 662 F. 2d 899 (CA1), cert. denied 455 U. S. 989 (1982), the National Labor Relations Board reformulated the allocation of the burden of proof in such cases. It determined that the General Counsel carried the burden of persuading the Board that an anti-union animus contributed to the employer's decision to discharge an employee, a burden

¹ Section 8(a) provides, in relevant part:

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . ."

HAC

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1983

MEMORANDUM TO THE CONFERENCE

Cases held for No. 81-168

N.L.R.B v. Transportation Management Corp.

82-438, NLRB v. Behring International, Inc.

After an unsuccessful campaign by the Teamsters to organize respondent's warehouse workers, respondent began to subcontract warehouse work and laid off eight of its warehouse workers. The Teamsters filed an unfair labor practice charge, claiming that the subcontracting and the layoffs resulted from a desire to prevent the formation of a union. Respondents contended that their decision to subcontract warehouse work was a sound financial move. The ALJ said he was prepared to accept that proposition, but nevertheless concluded that respondent "was motivated, at least in part, ... by a desire to reduce the possibility of another union election in the future." The Board, relying on its Wright Line decision, said that the ALJ was correct in concluding that the employer's actions were in part motivated by anti-union animus, and concluded that respondent had not carried its burden of proof that he would have taken the actions regardless of his anti-union animus. The Board ordered reinstatement of the eight laid-off workers.

The CA3 reversed, finding invalid the Board's shifting of the burden of proof on the question of whether the financial or the anti-union motive was the primary one for the layoffs and subcontracting.

The CA3's rejection of the of the Board's allocation of burdens of proof as explained in its Wright Line decision clearly conflicts with our decision in NLRB v. Transportation Management; I will thus vote to GVR on that case.



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 8, 1983

Re: No. 82-168-National Labor Relations Board v.
Transportation Management Corp.

Dear Byron:

Please join me.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 19, 1983

Re: No. 82-168, NLRB v. Transportation Management Corp.

Dear Bryon:

My position at conference was close to that advanced by the AFL-CIO in its amicus brief in this case. I am inclined to believe that, as a theoretical matter, the Board's approach to the burdens of proof in mixed-motive discharges is permissible only because the issue of but-for causation goes to the propriety of a backpay or reinstatement remedy once an unfair labor practice has been proved by the General Counsel. As you say, the Board historically has found an unfair labor practice where anti-union animus was a motivating factor in the discharge.

I recognize, however, that as a practical matter our views do not differ significantly. The Board's approach, and an approach that would see but-for causation as a remedial issue, result in the same allocation of burdens of proof. Given the value of greater unanimity, I ultimately may be persuaded to conclude, with you, that the Board's affirmative defense approach is sufficiently "reasonable" to justify the deference you accord to it. Consequently, I may be able to join your opinion. For now, however, I shall await further writing. Should a dissent be filed, I shall decide then whether to join you or write a brief separate opinion.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1983

Re: No. 82-168 - NLRB v. Transportation Management Corp.

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a long horizontal flourish extending to the right.

Justice White

cc: The Conference

October 25, 1982

MEMORANDUM TO THE CONFERENCE:

In Nos. (82-168) and 82-438 the NLRB seeks review of decisions by the CA1 and CA3, respectively, on the burden of proof under §8(a)(3). The petition in No. 82-438 simply incorporates by reference the arguments in No. 82-168.

No. 82-438 is set for Conference on Nov. 5, while No. 82-168 is scheduled for Nov. 12. I suggest that No. 82-438 be relisted for the Nov. 12 Conference so that we may consider the two petitions together.

L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 16, 1983

82-168 NLRB v. Transportation Management Corp.

Dear Byron:

Please join me.

Sincerely,

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

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 17, 1983

Re: No. 82-168 NLRB v. Transportation Management Corp.

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 9, 1983

Re: 82-168 - NLRB v. Transportation Mgmt. Corp.

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 31, 1983

No. 82-168 NLRB v. Transportation Management
Corp.

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference