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McDonough Power Equipment, Inc. v. Greenwood

464 U.S. 548 (1984)

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



HAL

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

CHAMBERS OF
THE CHIEF JUSTICE

May 11, 1983

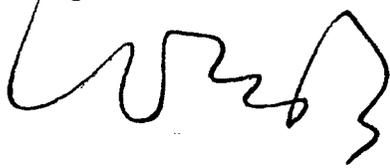
MEMORANDUM TO THE CONFERENCE:

RE: 82-958 - McDonough Power Equipment, Inc. v.
Greenwood, et al.

Dear Bill:

I join your Per Curiam of April 1.

Regards,



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

CHAMBERS OF
THE CHIEF JUSTICE

June 6, 1983

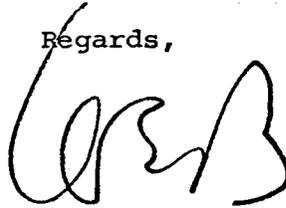
Re: 82-958 - McDonough Power Equipment, Inc. v. Greenwood

Dear Bill:

Upon reconsideration, I have decided for the time being that this case does not merit our attention. It will be retried and maybe "it will go away."

Accordingly, I withdraw my vote from the per curiam opinion.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 7, 1983

Re: No. 82-958, McDonough Power v. Greenwood

MEMORANDUM TO THE CONFERENCE:

I, too, wish to keep the docket down and for that reason voted as I did.

However, since some have very strong feelings -- which I largely share -- about this absurd holding, I will "reverse" again and give a Stanley Reed "Kentucky Comity" vote to Join-3!

Regards,

WEB

HAB

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 4, 1983

Re: McDonough Power v. Greenwood, No. 82-958

Dear Bill:

I voted to deny cert in this case because I thought the issue involved was too unimportant, and the impact of the case too small, to warrant our intervention. I still think so, and would still vote to deny. However, if you get seven or eight votes for your summary reversal, I will go along with it too.

Sincerely,


WJB, Jr.

Justice Rehnquist

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 7, 1983

Re: McDonough Power v. Greenwood, No. 82-958

MEMORANDUM TO THE CONFERENCE

I have always felt that this case does not warrant our attention. Since there are no longer five votes to reverse summarily, I, like John, withdraw my vote to grant and instead vote to deny.

Sincerely,


WJB, Jr.

The Conference

*This is case in which
union members,
compelled to join & pay
dues under closed or union
shop, object to use of dues
for purposes*

- ✓ The Chief Justice
- Justice Brennan
- Justice Marshall
- Justice Blackmun
- Justice Powell
- Justice Rehnquist
- Justice Stevens
- Justice O'Connor

From: **Justice White**

Circulated: APR 7 1983

Recirculated: _____

1st DRAFT unrelated - except

SUPREME COURT OF THE UNITED STATES *arguably -*

HOWARD ELLIS, ET AL., v. BROTHERHOOD OF
RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION
EMPLOYEES, ET AL.

*to collectively
bargaining.*

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

No. 82-1150. Decided April —, 1983

*I'll join
Byron*

JUSTICE WHITE dissenting from the denial of certiorari.

It is often the case that the union selected by a majority of the public employees in a certain bargaining unit is the exclusive representative of employees in the unit, and that all members of that unit, even those who disagree with the goals of the union or the concept of unionization itself, must pay dues to the union. In *Aboud v. Detroit Board of Education*, 431 U. S. 209 (1977), we were presented with the question whether compulsory dues violated the First Amendment rights of collective bargaining unit members who disagreed with the aims of the unit's exclusive representative. We held that insofar as the dues are used to "finance expenditures by the Union for the purposes of collective bargaining, contract administration, and grievance adjustment", mandatory dues requirements did not violate the First Amendment rights of dissident union members, *id.*, at 225, 232, but that to the extent that the union expended funds for "the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative" the opposite conclusion was warranted, *id.*, at 235. At least two of the questions raised by petitioners deserve this our attention.

*only commented
the issue like of
public sector U.*

Aboud

still deny??

*if you are con-
vinced they
Court will
need to reach
this soon,
you
might
consider
a grant.*

In the decision that petitioners ask us to review, *Ellis v. Brotherhood of Railway, Airline and Steamship Clerks*, 685 F. 2d 1065 (1982), a panel of the Ninth Circuit held, over vig-

BW makes a good case that the ^{dues} issue will certainly be here in the near future & that this may be a good case to consider the issue. On the other hand, there is no collect on that issue yet still

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

HAB

From: **Justice Marshall**

Circulated: MAY 24 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

McDONOUGH POWER EQUIPMENT, INC. v.
BILLY G. GREENWOOD ET AL.

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

No. 82-958. Decided May —, 1983

JUSTICE MARSHALL, dissenting.

Assuming that the decision below is to be reviewed by this Court, I would issue an order (1) noting that the case will be disposed of without oral argument and (2) permitting both sides to file briefs on the merits. See *INS v. Miranda*, — U. S. —, — (1982) (*per curiam*) (MARSHALL, J., dissenting); *Wyrick v. Fields*, — U. S. —, — (1982) (*per curiam*) (MARSHALL, J., dissenting).

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 12, 1983

Re: No. 82-958 - McDonough Power Equipment, Inc. v. Greenwood

Dear Bill:

I join your per curiam recirculation of April 1.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 2, 1983

82-958 McDonough Power Equipment v. Greenwood

Dear Bill:

Please join me in your Per Curiam for the Court.

Sincerely,



Justice Rehnquist

Copies to the Conference

LFP/vde

9/16
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 14, 1983

82-958 McDonough Power Equipment, Inc. v. Greenwood

Dear Bill:

Please add my name to your dissent.

Sincerely,

L.F.P.

Justice Rehnquist

Copies to the Conference

LFP/vde

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

From: Justice Rehnquist

Circulated: FEB. 28 - 83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

MCDONOUGH POWER EQUIPMENT, INC. *v.* BILLY G.
GREENWOOD ET AL.

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

No. 82-958. Decided March —, 1983

PER CURIAM.

In this case the Court of Appeals reversed a judgment entered on a jury verdict for respondents, and ordered a new trial. It did so on the ground that a juror's failure to respond to a question put by respondents' attorney on *voir dire* examination "prejudiced the [respondents'] right to preemptory challenge." 687 F. 2d 338, 342 (CA10 1982).

Respondents sought to recover damages from petitioner in the United States District Court for the District of Kansas. Respondent Billy Greenwood, who was then two years old, was injured when a neighbor ran over his feet with a lawn mower manufactured by petitioner McDonough Power Equipment, Inc. Billy and his parents asserted a products liability claim against petitioner on the basis of defective design and negligent construction of the mower.¹

On *voir dire*, respondents' attorney asked prospective jurors the following question:

"Now, how many of you have yourself or any members of your immediate family sustained any severe injury, not necessarily as severe as Billy, but sustained any inju-

¹The facts are not disputed. Jeff Morris, age 13, was mowing the Morris yard on a riding mower made by petitioner. The Morrises lived next door to the Greenwoods. Jeff was aware that Billy and several other children were playing in the yard. Jeff did not see Billy approach the mower to pick up a doll from its path. When Jeff finally did see Billy, he shouted "watch out" and turned the mower to the right. Jeff was unable to avoid Billy's feet, which struck the mower blade. Billy lost both feet. Billy's mother was in her house at the time. It does not appear that any adults were in the back yard. 687 F. 2d, at 339, 340.

ND

P.3

STYLISTIC CHANGES THROUGHOUT

pg 2, 5

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

From: Justice Rehnquist

Circulated: _____

Recirculated: APR 1 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

McDONOUGH POWER EQUIPMENT, INC. v. BILLY G.
GREENWOOD ET AL.

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

No. 82-958. Decided March —, 1983

PER CURIAM.

In this case the Court of Appeals reversed a judgment entered on a jury verdict for respondents, and ordered a new trial. It did so on the ground that a juror's failure to respond to a question put by respondents' attorney on *voir dire* examination "prejudiced the [respondents'] right to preemptory challenge." 687 F. 2d 338, 342 (CA10 1982).

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

From: **Justice Rehnquist**

Circulated: JUN 13 1983

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

MCDONOUGH POWER EQUIPMENT, INC. v. BILLY G.
GREENWOOD ET AL.

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

No. 82-958. Decided June —, 1983

JUSTICE REHNQUIST, dissenting.

In this case the Court of Appeals reversed a judgment entered on a jury verdict for respondents, and ordered a new trial. It did so on the ground that a juror's failure to respond to a question put by respondents' attorney on *voir dire* examination "prejudiced the [respondents'] right to preemptory challenge." 687 F. 2d 338, 342 (CA10 1982).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 1, 1983

Re: 82-958 - McDonough Power Equipment v.
Greenwood (Conf. 6/2/83, p. 9)

Dear Bill:

After re-examining the Court of Appeals opinion, I have decided that I will not be able to join your draft per curiam. I think there is a little more merit to the Court of Appeals position than your draft acknowledges. For example, I think there is some significance to the fact that the juror in question, Mr. Payton, was the foreman of the jury and that the District Court did not grant permission to interview him until after the plaintiff's attorney had made two separate motions for permission to approach the jurors.

The conduct of the jury was somewhat unusual because they not only returned a verdict finding in favor of defendants, but first assessed damages at \$0.00, notwithstanding the fact that the two-year-old child had lost both feet in the accident. The jury was required to reconvene for further deliberations and found that his damages amounted to \$375,000. Finally, it does seem significant that the Court of Appeals did conclude that the information that the foreman of the jury failed to reveal "indicated probable bias."

What all this means is that I think there is enough doubt about the case to justify argument if at least four people feel cert should be granted. I would still prefer to deny, but I am willing to grant rather than have the case decided summarily.

If there are not four votes to grant tomorrow, I will again ask to have the case relisted so that I can prepare a short dissent. I am sorry I did not have time to do that already.

Respectfully,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 6, 1983

Re: 82-958 - McDonough Power Equipment v.
Greenwood

Dear Chief:

In the interest of minimizing the crowded condition of our docket, I am prepared to change my vote from a "grant" to a "deny."

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

March 2, 1983

No. 82-958 McDonough Power Equipment, Inc.
v. Greenwood

Dear Bill,

I agree with your per curiam.

Sincerely,



Justice Rehnquist

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71AB

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 7, 1983

No. 82-958 McDonough Power v. Greenwood

MEMORANDUM TO THE CONFERENCE

Since this case is not to be handled
summarily, my vote is to grant.

Sincerely,

Sandra

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HAL

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 13, 1983

Re: No. 82-958 McDonough Power Equipment v. Greenwood

Dear Bill,

Please join me in your dissent from denial of certiorari.

Sincerely,

Sandra

Justice Rehnquist

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