

# The Burger Court Opinion Writing Database

## *Ellis v. Railway Clerks*

466 U.S. 435 (1984)

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

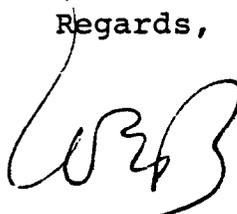
April 18, 1984

Re: 82-1150 - Ellis v. Brotherhood of Railway, Airline  
and Steamship Clerks

Dear Byron:

I join.

Regards,

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

Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 22, 1984

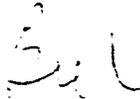
No. 82-1150

Ellis, et al. v. Brotherhood of  
Railway, Airline and Steamship  
Clerks, etc., et al.

Dear Byron,

I agree.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 19, 1984

Memorandum to the Conference

Re: 82-1150 - Ellis v. Railway Clerks

This case has presented some unexpected complexities that had led me to vary somewhat from the conference vote.

First, we had hoped, I believe, that the District Court's dues-reduction plan and the termination of the union as collective bargaining agent would make unnecessary our adjudicating the legality of the union's plan for rebating to objectors their share of the union's political expenses. You will see that the draft, for the reasons given, reaches that issue. Although I believe this is justifiable, I would drop this part if that is the will of the majority.

Second, the Conference voted to permit the union to charge objectors for their share of the expense of maintaining the union's death-benefit program. Under the rationale of our prior cases, however, as somewhat refined in the draft, I have more difficulty than I had anticipated in agreeing with the Court of Appeals that there is a sufficient connection between death benefits and the functions of the exclusive bargaining agent to warrant forcing objectors to participate in the union's death-benefit system that it has historically maintained for its members. In the end, as you will see, the draft avoids deciding the question. But perhaps it is unavoidable and must be resolved.

*Cheers*

*BW*

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

From: Justice White

Circulated: MAR 19 1984

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1150

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

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

[March —, 1984]

In 1951, Congress amended the Railway Labor Act (the Act or RLA) to permit what it had previously prohibited—the union shop. Section 2, Eleventh of the Act permits a union and an employer to require all employees in the relevant bargaining unit to join the union as a condition of continued employment. 45 U. S. C. § 152, Eleventh.<sup>1</sup> In *Ma-*

<sup>1</sup>Section 2, Eleventh provides in relevant part:

“Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

“(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

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

From: Justice White

Circulated: \_\_\_\_\_

Recirculated: APR 3 1984

SEE PAGES: 7, 16

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1150

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

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

[April —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In 1951, Congress amended the Railway Labor Act (the Act or RLA) to permit what it had previously prohibited—the union shop. Section 2, Eleventh of the Act permits a union and an employer to require all employees in the relevant bargaining unit to join the union as a condition of continued employment. 45 U. S. C. §152, Eleventh.<sup>1</sup> In *Ma-*

<sup>1</sup>Section 2, Eleventh provides in relevant part:

“Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

“(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 19, 1984

Re: No. 82-1150 - Ellis v. Brotherhood of Railway,  
Airline and Steamship Clerks

Dear Byron:

Please join me.

Sincerely,

*Jm.*  
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 22, 1984

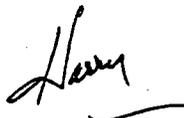
Re: No. 82-1150, Ellis v. Brotherhood of Railway,  
Airline & Steamship Clerks, Etc.

Dear Byron:

Please join me.

Are you so unpersuaded by your opinion that you  
refrain from placing your name on it?

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 3, 1984

82-1150 Ellis, et al. v. Brotherhood of Railway Employees

Dear Byron:

I agree generally with your opinion, and probably will join all of it with the exception of your holding with respect to conventions.

I may write a few words suggesting that some rough proportion of convention expenses is required by your test. We all know that discussing political candidates and causes is a major activity at conventions.

Sincerely,



Justice White

Copies to the Conference

LFP/vde

'84 ABR-3 P2:03

RECEIVED  
SUPREME COURT OF THE U.S.  
JUSTICE LEWIS F. POWELL, JR.

APR 12 1984

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

From: Justice Powell

Circulated: APR 12 1984

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

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-1150

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

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

[April —, 1984]

JUSTICE POWELL, concurring in part and dissenting in part.

I am in accord with Parts I, II, III and IV of the Court's opinion, and with all of Part V except for Subsection 1, which addresses the "convention" issue. I also do not agree with the Court's analysis in Part VI in which petitioners' First Amendment arguments are disposed of summarily.

### I

For the most part, the Court's opinion considers whether the Railway Labor Act itself permits the respondent union to charge non-union employees for the challenged expenditures. The First Amendment, upon which petitioners primarily rely, is not the basis for the Court's decision except to the extent this was addressed in Part VI. In light of prior decisions construing the Act, I agree with the Court's decision to dispose of most of petitioners' claims on statutory rather than constitutional grounds.

The relevant general principles, as the Court has shown, are well settled. *Railway Employees' Department v. Hanson*, 351 U. S. 225 (1956); *Machinists v. Street*, 367 U. S. 740 (1961); *Railway Clerks v. Allen*, 373 U. S. 113 (1963). It is clear from these decisions that objecting non-union employ-

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 2, 1984

Re: No. 82-1150 Ellis v. Brotherhood of Railway,  
Airline and Steamship Clerks

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

March 20, 1984

Re: 82-1150 - Ellis v. Brotherhood of  
Railway, Airline and Steamship Clerks

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

April 3, 1984

Re: No. 82-1150 Ellis v. Brotherhood of Railway,  
Airline and Steamship Clerks, etc.

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference