

The Burger Court Opinion Writing Database

Bureau of Alcohol, Tobacco and Firearms v. FLRA

464 U.S. 89 (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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

November 17, 1983

'83 NOV 18 A9:49

Re: No. 82-799 Bureau of Alcohol, Tobacco and
Firearms v. Federal Labor Relations
Authority

Dear Bill:

I join.

Regards,



Justice Brennan

Copies to the Conference

✓

rec'd 11/16/83
11:03 pm

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

~~WLS~~
~~Placed in [unclear]~~

From: Justice Brennan

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-799

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
PETITIONER *v.* FEDERAL LABOR RELATIONS
AUTHORITY ET AL.

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

[November —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

Title VII of the Civil Service Reform Act of 1978 ("Act"), Pub. L. No. 95-454, 92 Stat. 1111, 5 U. S. C. § 7131(a), requires federal agencies to grant "official time" to employees representing their union in collective bargaining with the agencies. The grant of official time allows the employee negotiators to be paid as if they were at work, whenever they bargain during hours they would otherwise be on duty. The Federal Labor Relations Authority ("FLRA" or "Authority") concluded that the grant of official time also entitles employee union representatives to a per diem allowance and reimbursement for travel expenses incurred in connection with collective bargaining. 2 F.L.R.A. 265 (1979). In this case, the Court of Appeals for the Ninth Circuit enforced an FLRA order requiring an agency to pay a union negotiator travel expenses and a per diem, finding the Authority's interpretation of the statute "reasonably defensible." 672 F. 2d 732 (1982). Three other Courts of Appeals have rejected the FLRA's construction of the Act.¹ We granted certiorari to resolve this conflict, — U. S. — (1983), and now reverse.

¹ *Florida National Guard v. FLRA*, 699 F. 2d 1082 (CA11 1983), cert. pending, No. 82-1970; *United States Department of Agriculture v. FLRA*, 691 F. 2d 1242 (CA8 1982), cert. pending, No. 82-979; *Division of Military*

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*stylistic changes
throughout*

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

From: Justice Brennan

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-799

**BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
PETITIONER v. FEDERAL LABOR RELATIONS
AUTHORITY ET AL.**

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

[November —, 1983]

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¹*Florida National Guard v. FLRA*, 699 F. 2d 1082 (CA11 1983), cert. pending, No. 82-1970; *United States Department of Agriculture v. FLRA*, 691 F. 2d 1242 (CA8 1982), cert. pending, No. 82-979; *Division of Military*

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 29, 1983

MEMORANDUM TO THE CONFERENCE

There are three holds for Bureau of Alcohol, Tobacco & Firearms v. Federal Labor Relations Authority, No. 82-799. Each of these decisions is fully consistent with our decision in BATF and I will therefore vote to deny certiorari in all three. The cases are:

1. No. 82-979, FLRA v. USDA, 691 F. 2d 1242 (CA8 1982). In this case, the Court of Appeals refused to enforce an FLRA decision finding that the Department of Agriculture committed an unfair labor practice by refusing to pay travel expenses and per diem allowances to employee union representatives engaged in collective bargaining with the Department. The FLRA decision was, as in BATF, based on the Authority's 1979 Interpretation and Guidance.

2. No. 82-1021, FLRA v. Div. of Military & Naval Affairs, 683 F. 2d 45 (CA2 1982). Again, the Court of Appeals denied enforcement to an FLRA decision, this time directed at the federally-administered state militia, requiring the payment of travel expenses and a per diem allowance to employee union representatives engaged in collective bargaining. Again, the FLRA order was premised on the Interpretation and Guidance.

3. No. 82-1970, FLRA v. Florida National Guard, 699 F. 2d 1082 (CA11 1983). As in No. 82-1021, the Authority ordered a state national guard to pay employee negotiators travel expenses and per diems on the basis of its Interpretation and Guidance. Like the Second and Eighth Circuits, the Eleventh Circuit denied enforcement.

Sincerely,

W.J.B., Jr.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 21, 1983

Re: 82-799 - Bureau of Alcohol, Tobacco and
Firearms v. Federal Labor Relations Authority

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 18, 1983

Re: No. 82-799-Bureau of Alcohol, Tobacco and
Firearms v. Federal Labor Relations Authority

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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SUPREME COURT U.S.
JUSTICE MARSHALL

November 17, 1983

'83 NOV 18 A9:49

Re: No. 82-799 - Bureau of Alcohol, Tobacco and Firearms
v. Federal Labor Relations Authority

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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SUPREME COURT CLERK
JUSTICE MARSHALL

November 17, 1983

'83 NOV 18 A9:49

82-799 Bureau of Alcohol, Tobacco & Firearms v.
Federal Labor Relations Authority

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

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LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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SUPREME COURT U.S.
JUSTICE W. H. REHNQUIST

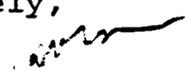
'83 NOV 18 A9:49

November 17, 1983

Re: No. 82-799 Bureau of Alcohol, Tobacco and
Firearms v. FLRA

Dear Bill,

Please join me.

Sincerely,


Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

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SUPREME COURT U.S.
JUSTICE STEVENS

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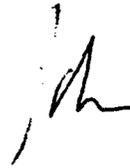
November 16, 1983

Re: 82-799 - Bureau of Alcohol, Tobacco and
Firearms v. Federal Labor Relations
Authority

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

November 17, 1983

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No. 82-799 Bureau of Alcohol, Tobacco and
Firearms v. FLRA

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

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