

# The Burger Court Opinion Writing Database

*NLRB v. City Disposal Systems, Inc.*  
465 U.S. 822 (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

March 15, 1984

MEMORANDUM TO THE CONFERENCE

Re: 82-960 - NLRB v. City Disposal Systems, Inc.

I am now persuaded that it takes too much  
"wrenching" to conclude that there was "concerted"  
action here and I join Sandra's dissent.

Regards,



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

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

From: Justice Brennan

Circulated: 2/9/84

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

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-960

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER v. CITY DISPOSAL  
SYSTEMS INC.

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

[February —, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

James Brown, a truck driver, employed by respondent, was discharged when he refused to drive a truck that he honestly and reasonably believed to be unsafe because of faulty brakes. Article XXI of the collective-bargaining agreement between respondent and Local 247 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which covered Brown, provides:

“[t]he Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with safety appliances prescribed by law. It shall not be a violation of the Agreement where employees refuse to operate such equipment unless such refusal is unjustified.”<sup>1</sup>

The question to be decided is whether Brown's honest and reasonable assertion of his right to be free of the obligation to drive unsafe trucks constituted “concerted activit[y]” within the meaning of § 7 of the National Labor Relations Act

<sup>1</sup> App. 64. Article XXI also provides that “[t]he Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.”

p.6

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

From: Justice Brennan

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

Recirculated: FEB 21 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-960

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER v. CITY DISPOSAL  
SYSTEMS INC.

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

[February —, 1984]

JUSTICE BRENNAN delivered the opinion of the Court.

James Brown, a truck driver employed by respondent, was discharged when he refused to drive a truck that he honestly and reasonably believed to be unsafe because of faulty brakes. Article XXI of the collective-bargaining agreement between respondent and Local 247 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, which covered Brown, provides:

“[t]he Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with safety appliances prescribed by law. It shall not be a violation of the Agreement where employees refuse to operate such equipment unless such refusal is unjustified.”<sup>1</sup>

The question to be decided is whether Brown’s honest and reasonable assertion of his right to be free of the obligation to drive unsafe trucks constituted “concerted activit[y]” within the meaning of §7 of the National Labor Relations Act

<sup>1</sup> App. 64. Article XXI also provides that “[t]he Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.”

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

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 22, 1984

MEMORANDUM TO THE CONFERENCE

No. 82-960

City Disposal Systems v. NLRB

There are two holds for this case: No. 82-2061, NLRB v. Roadway Express, and No. 82-1909, NLRB v. Scooba Manufacturing Co. In each of these cases, the Court of Appeals has interpreted "concerted activities" narrowly and denied enforcement of the Board's order. In Roadway Express, the Court of Appeals rejected the Interboro doctrine under circumstances similar to those of City Disposal. Therefore I recommend GVR in light of City Disposal.

no call

In Scooba Manufacturing, an employee got into an argument with her employer during the course of which she told the employer that she favored unionization. In response, the employer fired her, stating that "don't nobody threaten me with no damn union because this is my plant, and I run it any damn way I want." Rejecting the Board's position, the Court of Appeals interpreted concerted activity to require an objective of initiating, inducing, or preparing for group action and held that the employee was not engaged in concerted activity. City Disposal demonstrates that this is an erroneous interpretation of concerted activity. Therefore I recommend GVR in light of City Disposal.

Reproduced from the Collections of the Manuscript Division, Library of Congress



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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 13, 1984

RECEIVED  
SUPREME COURT U.S.  
JUSTICE BYRON R. WHITE

'84 FEB 13 P3:50

Re: 82-960 NLRB v. City Disposal Systems

---

Dear Bill,

Please join me.

Sincerely,

Justice Brennan

Copies to the Conference

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

①

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 13, 1984

Re: No. 82-960-NLRB v. City Disposal Systems

Dear Bill:

Please join me.

Sincerely,

*T.M.*  
T.M.

Justice Brennan

cc: The Conference

3

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

February 13, 1984

Re: No. 82-960 - NLRB v. City Disposal Systems

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

November 22, 1983

82-960 NLRB v. City Disposal Systems, Inc.

Dear Sandra:

Thank you for being willing to write the dissent in this case.

As you jokingly suggested, in view of our being the only two dissenters, I will "stay with you".

Sincerely,

Justice O'Connor

lfp/ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 17, 1984

82-960 NLRB v. City Disposal Systems

Dear Sandra:

Please join me in your dissent.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 15, 1984

Re: No. 82-960 NLRB v. City Disposal Systems, Inc.

Dear Sandra:

Your dissent persuades me that my vote at Conference was wrong, and I now join your dissent.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 10, 1984

Re: 82-960 - NLRB v. City Disposal Systems,  
Inc.

Dear Bill:

Please join me. I have only one minor suggestion for your consideration. I think Justice Rutledge's opinion in NLRB v. Hearst Publications, 322 U.S. 111 (1944) provides a useful discussion of the difference between cases of purely legal questions in which no deference is required, and cases involving administrative expertise in administering a statute which do justify deference. In order to track that approach, in the first sentence of the first full paragraph on page 6, you might consider adding the phrase "on an issue that implicates its expertise in the labor relations process" after the phrase "a reasonable construction by the Board".

Respectfully,



Justice Brennan

Copies to the Conference

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

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

February 10, 1984

Re: No. 82-960 NLRB v. City Disposal Systems

Dear Bill,

In due course I will circulate a dissent in this case.

Sincerely,



Justice Brennan

Copies to the Conference

MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

pp. 3, 5

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

Circulated: FEB 15 1984

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-960

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER *v.* CITY DISPOSAL  
SYSTEMS INC.

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

[February —, 1984]

JUSTICE O'CONNOR, dissenting.

Under the *Interboro* doctrine, an individual employee is deemed to have engaged in "concerted activity," within the meaning of § 7 of the National Labor Relations Act (Act), 29 U. S. C. § 157, if the right he reasonably and in good faith asserts is grounded in his employer's collective bargaining agreement.<sup>1</sup> On this view, the reasonable, good faith assertion of a right contained in the collective bargaining agreement is said to be an extension of the concerted action that produced the agreement; alternatively, the reasonable, good faith assertion of the contract right is said to affect the rights of all the other employees in the workforce. See *ante*, at 6. Thus, if the employer "interfere[s] with, restrains, or coerces" the employee in response to the latter's assertion of the alleged contract right, the *Interboro* doctrine enables the employee to file a § 8(a)(1) unfair labor practice charge with the National Labor Relations Board (Board). See 29 U. S. C. § 158(a)(1). Although the concepts of individual action for personal gain and "concerted activity" are intuitively

<sup>1</sup> See *Interboro Contractors, Inc.*, 157 N. L. R. B. 1295, 1298 (1966), enforced, 388 F. 2d 495 (CA2 1967); see also *Bunney Bros. Construction Co.*, 139 N. L. R. B. 1516, 1519 (1962).

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

PP. 1, 3, 4, 5, 6

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

RECEIVED  
SUPREME COURT OF THE UNITED STATES  
JUSTICE O'CONNOR

From: **Justice O'Connor**

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

Recirculated: FEB 21 1984

'84 FEB 22 AM 11:27

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 82-960

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER *v.* CITY DISPOSAL  
SYSTEMS INC.

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

[February —, 1984]

JUSTICE O'CONNOR, with whom JUSTICE POWELL and JUSTICE REHNQUIST join, dissenting.

Under the *Interboro* doctrine, an individual employee is deemed to have engaged in "concerted activity," within the meaning of § 7 of the National Labor Relations Act (Act), 29 U. S. C. § 157, if the right he reasonably and in good faith asserts is grounded in his employer's collective bargaining agreement.<sup>1</sup> On this view, the reasonable, good faith assertion of a right contained in the collective bargaining agreement is said to be an extension of the concerted action that produced the agreement; alternatively, the reasonable, good faith assertion of the contract right is said to affect the rights of all the other employees in the workforce. See *ante*, at 6. Thus, if the employer "interfere[s] with, restrains, or coerces" the employee in response to the latter's assertion of the alleged contract right, the *Interboro* doctrine enables the employee to file a § 8(a)(1) unfair labor practice charge with the National Labor Relations Board (Board). See 29 U. S. C. § 158(a)(1). Although the concepts of individual action for personal gain and "concerted activity" are intuitively

<sup>1</sup> See *Interboro Contractors, Inc.*, 157 N. L. R. B. 1295, 1298 (1966), enforced, 388 F. 2d 495 (CA2 1967); see also *Bunney Bros. Construction Co.*, 139 N. L. R. B. 1516, 1519 (1962).

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

PP 3,4

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens

From: Justice O'Connor

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

Recirculated: FEB 23 1984

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 82-960

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER *v.* CITY DISPOSAL  
SYSTEMS INC.

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

[February —, 1984]

JUSTICE O'CONNOR, with whom JUSTICE POWELL and JUSTICE REHNQUIST join, dissenting.

Under the *Interboro* doctrine, an individual employee is deemed to have engaged in "concerted activity," within the meaning of § 7 of the National Labor Relations Act (Act), 29 U. S. C. § 157, if the right he reasonably and in good faith asserts is grounded in his employer's collective bargaining agreement.<sup>1</sup> On this view, the reasonable, good faith assertion of a right contained in the collective bargaining agreement is said to be an extension of the concerted action that produced the agreement; alternatively, the reasonable, good faith assertion of the contract right is said to affect the rights of all the other employees in the workforce. See *ante*, at 6. Thus, if the employer "interfere[s] with, restrains, or coerces" the employee in response to the latter's assertion of the alleged contract right, the *Interboro* doctrine enables the employee to file a § 8(a)(1) unfair labor practice charge with the National Labor Relations Board (Board). See 29 U. S. C. § 158(a)(1). Although the concepts of individual action for personal gain and "concerted activity" are intuitively

<sup>1</sup>See *Interboro Contractors, Inc.*, 157 N. L. R. B. 1295, 1298 (1966), enforced, 388 F. 2d 495 (CA2 1967); see also *Bunney Bros. Construction Co.*, 139 N. L. R. B. 1516, 1519 (1962).

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