

# The Burger Court Opinion Writing Database

## *Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*

472 U.S. 284 (1985)

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

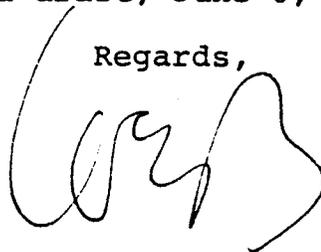
June 6, 1985

Re: No. 83-1368 - Northwest Wholesale v. Pacific  
Stationery

Dear Bill:

I join your second draft, June 6, 1985.

Regards,



Justice Brennan

Copies to the Conference

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

From: **Justice Brennan**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 83-1368

**NORTHWEST WHOLESALE STATIONERS, INC.,  
PETITIONER v. PACIFIC STATIONERY AND  
PRINTING CO.**

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

[May —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

This case requires that we decide whether a *per se* violation of § 1 of the Sherman Act, 15 U. S. C. § 1, occurs when a cooperative buying agency comprising various retailers expels a member without providing any procedural means for challenging the expulsion.<sup>1</sup> The case also raises broader questions as to when *per se* antitrust analysis is appropriately applied to joint activity that is susceptible of being characterized as a concerted refusal to deal.

I

Because the district court ruled on cross-motions for summary judgment after only limited discovery, this case comes to us on a sparse record. Certain background facts are undisputed. Petitioner Northwest Wholesale Stationers is a purchasing cooperative made up of approximately 100 office supply retailers in the Pacific Northwest states. The cooperative acts as the primary wholesaler for the retailers. Retailers that are not members of the cooperative can purchase

<sup>1</sup>That section reads in relevant part:

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

June 4, 1985

~~83-1437~~  
83-1368

Dear Sandra,

I appreciate your suggestions. Would not the following amendment to footnote 6 on page 11 meet them:

"Because Pacific has not been wholly excluded from access to Northwest's wholesale operations, there is perhaps some question whether the challenged activity is properly characterized as a concerted refusal to deal. To be precise, Northwest's activity is a concerted refusal to deal with Pacific on substantially equal terms. Such activity might justify per se invalidation if it placed a competing firm at a severe competitive disadvantage. See generally, Brodley, Joint Ventures and Antitrust Policy, 95 Harv. L. Rev. 1521, 1532 (1982) ('Even if the joint venture does deal with outside firms, it may place them at a severe competitive disadvantage by treating them less favorably than it treats the [participants in the joint venture]')."

Sincerely,

*Bill*

Justice O'Connor

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

STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 11 n. 6

From: **Justice Brennan**

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2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 83-1368

NORTHWEST WHOLESALE STATIONERS, INC.,  
PETITIONER v. PACIFIC STATIONERY AND  
PRINTING CO.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
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[June —, 1985]

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This case requires that we decide whether a *per se* violation of § 1 of the Sherman Act, 15 U. S. C. § 1, occurs when a cooperative buying agency comprising various retailers expels a member without providing any procedural means for challenging the expulsion.<sup>1</sup> The case also raises broader questions as to when *per se* antitrust analysis is appropriately applied to joint activity that is susceptible of being characterized as a concerted refusal to deal.

### I

Because the District Court ruled on cross-motions for summary judgment after only limited discovery, this case comes to us on a sparse record. Certain background facts are undisputed. Petitioner Northwest Wholesale Stationers is a purchasing cooperative made up of approximately 100 office supply retailers in the Pacific Northwest States. The cooperative acts as the primary wholesaler for the retailers. Retailers that are not members of the cooperative can purchase

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“Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

May 31, 1985

83-1368 - Northwest Wholesale Stationers,  
Inc. v. Pacific Stationery and Printing Co.

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 30, 1985

Re: No. 83-1368-Northwest Wholesale Stationers v.  
Pacific Stationery & Printing Co.

Dear Bill:

Please add to your opinion that I took no  
part in the decision of this case.

Sincerely,



T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 5, 1985

Re: No. 83-1368, Northwest Wholesale v. Pacific Stationery :

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice Brennan

cc: The Conference

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



CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 31, 1985

83-1368 Northwest Wholesale v. Pacific Stationery

Dear Bill:

Please add at the end of the next draft of your opinion that I took no part in the decision of this case.

Sincerely,

L. F. P.

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 3, 1985

Re: No. 83-1368 Northwest Stationers v. Pacific Stationery

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

May 30, 1985

Re: 83-1368, Northwestern Stationers v.  
Pacific Stationery

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 3, 1985

No. 83-1368 Northwest Wholesale v. Pacific Stationary

Dear Bill,

I plan to join your excellent opinion in this case, but hope you will consider a minor change in footnote 6 on page 11. Would you be willing to omit any reference to the Hawaiian Oke case and amend the third sentence to read something like: "Such unequal treatment conceivably could warrant per se invalidation if it effectively prevented the disadvantaged firm from competing."?

Sincerely,

*Sandra*

Justice Brennan

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 4, 1985

No. 83-1368 Northwest Stationers v.  
Pacific Stationery

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference