

The Burger Court Opinion Writing Database

NLRB v. Action Automotive, Inc.

469 U.S. 490 (1985)

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



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

From: **The Chief Justice**
JAN 4 1985

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Please join me

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1416

NATIONAL LABOR RELATIONS BOARD, PETITIONER v. ACTION AUTOMOTIVE, INC.

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

[January —, 1985]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the National Labor Relations Board may exclude from a collective-bargaining unit employees who are relatives of the owners of a closely held corporation that employs them, without a finding that the employees receive special job-related benefits.

I

Respondent Action Automotive, Inc., is a retail automobile parts and gasoline dealer with stores in a number of Michigan cities. Action Automotive is a closely held corporation owned equally by three brothers, Richard, Robert and James Sabo. The Sabo brothers are actively involved in the daily operations of the business. They serve as the corporation's officers, make all policy decisions, and retain ultimate authority for the supervision of every department.

In March 1981, the Retail Store Employees Union, Local 40 (the Union) filed with the Board a petition requesting that a representation election be held among Action Automotive's employees. Action Automotive and the Union agreed to elections in two bargaining units—one consisting of employees at the company's nine retail stores, and the other comprising clerical employees at the company's headquarters. The elections were held on May 29, 1981, and the Union re-

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Lori
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back out!!*

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CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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

January 7, 1985

No. 83-1416

National Labor Relations Board
v. Action Automotive, Inc.

Dear Chief,

I agree.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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WJ

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

CHAMBER OF
JUSTICE BYRON R. WHITE

72: 11A e-VAL 48
January 9, 1985

Re: 83-1416 - NLRB v. Action
Automotive, Inc.

Dear Chief,

Please join me.

Sincerely yours,

Byron

The Chief Justice

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 8, 1985

Re: No. 83-1416-NLRB v. Action Automotive

Dear Chief:

Please join me.

Sincerely,

J.M.
T.M.

The Chief Justice

cc: The Conference

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

H
CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 11, 1985

Re: No. 83-1416 - NLRB v. Action Automotive, Inc.

Dear Chief:

Please join me.

Sincerely,
H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 14, 1985

83-1416 NLRB v. Action Automotive

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

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

January 25, 1985

Re: No. 83-1416 NLRB v. Action Automotive, Inc.

Dear John,

Please join me in your dissent.

Sincerely,
WHR

Justice Stevens

cc: The Conference

31 8 2 31 31

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 7, 1985

Re: 83-1416 - NLRB v. Action Automotive

Dear Chief:

In a few days I hope to circulate a brief
dissent.

Respectfully,



The Chief Justice

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

From: Justice Stevens

Circulated: JAN 22 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1416

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

[January —, 1985]

JUSTICE STEVENS, dissenting.

In my opinion, bargaining unit determinations should be based on job characteristics and not on an employee's opinion about unions. Anti-union sentiment may be based on religious views, political convictions, individual respect or hostility, or family considerations. If the characteristics of an employee's job are the same as those of pro-union employees, that employee has the same right to membership in the bargaining unit as a union official or his wife.

The majority's decision prevents the two employees involved in this litigation from participating in the decision to choose or reject representation solely because the extent of their family relations indicates that they are likely to be pro-management and hostile to union representation. In § 2(3) of the Act,¹ however, Congress has already offered its view of the significance of family relationships for federal labor policy. Except for the children or spouses of sole proprietors, partners and majority shareholders,² family members related to owners or management personnel are entitled to

¹"The term 'employee' . . . shall not include . . . any individual employed by his parent or spouse . . ." 29 U. S. C. § 152(3).

²Construing § 2(3), the Board has held that such persons are not "employees" covered by the Act. *Cerni Motor Sales, Inc.*, 201 N. L. R. B. 918, 918 (1973); *Foam Rubber City #2 of Florida, Inc.*, 167 N. L. R. B. 623, 623-624 (1967).

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

From: Justice Stevens

Circulated: _____

Recirculated: **JAN 30 1985**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1416

NATIONAL LABOR RELATIONS BOARD, PETITIONER v. ACTION AUTOMOTIVE, INC.

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

[January —, 1985]

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

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

STYLISTIC CHANGES THROUGHOUT,
SEE PAGES:

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1416

NATIONAL LABOR RELATIONS BOARD, PETITIONER
v. ACTION AUTOMOTIVE, INC.

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

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 7, 1985

No. 83-1416 NLRB v. Action Automotive

Dear Chief,

I will wait for the dissent before deciding
whether to join your opinion.

Sincerely,



The Chief Justice

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 25, 1985

No. 83-1416 NLRB v. Action Automotive, Inc.

Dear John,

Please join me in your dissent.

Sincerely,



Justice Stevens

Copies to the Conference

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