

The Burger Court Opinion Writing Database

Pattern Makers v. NLRB

473 U.S. 95 (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

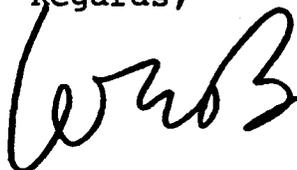
June 20, 1985

Re: No. 83-1894 - Pattern Makers' v. NLRB

Dear Lewis:

I join.

Regards,



Justice Powell

Copies to the Conference

SP 1130 1985

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 29, 1985

No. 83-1894

Pattern Makers' v. NLRB

Dear Harry,

Thurgood, John, you and I are in
dissent in the above. Will you be
willing to take the dissent?

Sincerely,

Bill

Justice Blackmun

Copies to Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 20, 1985

No. 83-1894

Pattern Makers' League of North
America, AFL-CIO, et al.
v. National Labor Relations
Board, et al.

Dear Harry,

Please join me in your dissent.

Sincerely,

*WJB, Jr.
by DL*

Justice Blackmun

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17

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

✓

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1985

83-1894 - Pattern' Makers v. NLRB

Dear Lewis,

I join your opinion and will very likely
write briefly in concurrence.

Sincerely,



Justice Powell

Copies to the Conference

BYRON R. WHITE

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

From: **Justice White**

Circulated: 6-10-85

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1894

**PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, ET AL., PETITIONERS v. NATIONAL
LABOR RELATIONS BOARD ET AL.**

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

[June —, 1985]

JUSTICE WHITE, concurring.

I agree with the Court that the Board's construction of §§ 7 and 8(b)(1)(A) is a permissible one and should be upheld. The employee's rights under § 7 include, among others, the right to refrain from joining or assisting a labor organization and from engaging in concerted activities for mutual aid or protection. The right to join or not to join a labor union includes the right to resign, and § 8(b)(1)(A) forbids unions to interfere with that right except to the extent, if any, that such interference is permitted by the proviso to that section, which preserves the union's right to prescribe its own rules with respect to the acquisition or retention of membership. The proviso might be read as permitting restrictions on resignation during a strike, since they would seem to relate to the "retention" of membership. But it can also be sensibly read to refer only to the union's right to determine who shall be allowed to join and to remain in the union. The latter is the Board's interpretation. Under that view, restrictions on resignations are not saved by the proviso, and the rule at issue in this case may not be enforced.

For the Act to be administered with the necessary flexibility and responsiveness to "the actualities of industrial relations," *NLRB v. Steelworkers*, 357 U. S. 357, 362-364 (1958), the primary responsibility for construing its general provi-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 21, 1985

Re: No. 83-1894-Pattern Makers' League of North
America v. National Labor Relations Board

Dear Harry:

Please join me in your dissent.

Sincerely,

JM.

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 29, 1985

Re: No. 83-1894, Pattern Makers' v. NLRB

Dear Bill:

Yes, I shall be glad to undertake the dissent in
this case.

Sincerely,



Justice Brennan

cc: Justice Marshall
Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1985

MEMORANDUM TO THE CONFERENCE

Re: No. 83-1894, Pattern Makers' v. NLRB

I shall be circulating a dissent in this case in due course:

H.A.B.

87 JUN 10 1985

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

From: Justice Blackmun

Circulated: JUN 20 1985

Recirculated: _____

~~HAB~~
Please join me in your dissent
70

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1894

**PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, ET AL., PETITIONERS v. NATIONAL
LABOR RELATIONS BOARD ET AL.**

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

[June —, 1985]

JUSTICE BLACKMUN, dissenting.

Today the Court supinely defers to a divided-vote determination by the National Labor Relations Board that a union commits an unfair labor practice when it enforces a worker's promise to his fellow workers not to resign from his union and return to work during a strike, even though the worker freely made the decision to join the union and freely made the promise not to resign at such a time, and even though union members democratically made the decision to strike in full awareness of that promise. The Court appears to adopt the NLRB's rule that enforcement of any such promise, no matter how limited and no matter how reasonable, violates the breaching worker's right to refrain from concerted activity. The Board's rule, however, finds no support in either the language of §§ 7 and 8(b)(1)(A) of the National Labor Relations Act on which the Court purports to rely, or in the general goals of the Act, which it ignores. Accordingly, the undeserved deference accorded that rule has produced a holding that improperly restricts a union's federally protected right to make and enforce its own rules, and at the same time traduces the broader aim of federal labor policy implicated by this right: to preserve the balance of power between labor and management by guaranteeing workers an effective right to strike.

WK

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Stylistic Changes
- Page References Changed
Pages: 1, 7, 15-16

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

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 26 1985

SUPREME COURT OF THE UNITED STATES

No. 83-1894

PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, ET AL., PETITIONERS *v.* NATIONAL
LABOR RELATIONS BOARD ET AL.

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

[June 27, 1985]

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and
JUSTICE MARSHALL join, dissenting.

Today the Court supinely defers to a divided-vote determination by the National Labor Relations Board that a union commits an unfair labor practice when it enforces a worker's promise to his fellow workers not to resign from his union and return to work during a strike, even though the worker freely made the decision to join the union and freely made the promise not to resign at such a time, and even though union members democratically made the decision to strike in full awareness of that promise. The Court appears to adopt the NLRB's rule that enforcement of any such promise, no matter how limited and no matter how reasonable, violates the breaching worker's right to refrain from concerted activity. The Board's rule, however, finds no support in either the language of §§7 and 8(b)(1)(A) of the National Labor Relations Act on which the Court purports to rely, or in the general goals of the Act, which it ignores. Accordingly, the undeserved deference accorded that rule has produced a holding that improperly restricts a union's federally protected right to make and enforce its own rules, and at the same time reduces the broader aim of federal labor policy implicated by this right: to preserve the balance of power between labor

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05/30

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

From: **Justice Powell**

Circulated: 5/31/85

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1894

PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, ET AL., PETITIONERS *v.* NATIONAL
LABOR RELATIONS BOARD ET AL.

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

[June —, 1985]

JUSTICE POWELL delivered the opinion of the Court.

The Pattern Makers' League of North America, AFL-CIO (the League), a labor union, provides in its constitution that resignations are not permitted during a strike or when a strike is imminent. The League fined 10 of its members who, in violation of this provision, resigned during a strike and returned to work. The National Labor Relations Board held that these fines were imposed in violation of §8(b)(1)(A) of the National Labor Relations Act, 29 U. S. C. §158(b)(1)(A). We granted a petition for a writ of certiorari in order to decide whether §8(b)(1)(A) reasonably may be construed by the Board as prohibiting a union from fining members who have tendered resignations invalid under a union constitution.

I

The League is a national union composed of local associations (locals). In May 1976, its constitution was amended to provide that:

"[N]o resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent."

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*Walt
Dunn*

June 20, 1985

83-1894 Pattern Makers v. NLRB

Dear Chief:

You said this morning you had not had an opportunity to take a look at this case, and Harry said that his dissent would be circulated today.

I write merely to summarize the status. This was one of the four cases set for reargument. Following the first argument, you voted to affirm the Court of Appeals enforcing the Board's order - as did Byron, Bill Rehnquist and Sandra. After reargument, all four of you adhered to your "affirm" vote.

My Conference notes indicate that in concluding your discussion you said: "Although the language and legislative history were not entirely clear the Board's interpretation has been consistent and is reasonable." You assigned the case to me to write, and this is exactly the way it is written.

Byron, Bill Rehnquist and Sandra have joined.

Sincerely,

The Chief Justice

lfp/ss

Stylistic Changes Throughout

2d Draft

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 83-1894

**PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, ET AL., PETITIONERS v. NATIONAL
LABOR RELATIONS BOARD ET AL.**

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

[June 27, 1985]

JUSTICE POWELL delivered the opinion of the Court.

The Pattern Makers' League of North America, AFL-CIO (the League), a labor union, provides in its constitution that resignations are not permitted during a strike or when a strike is imminent. The League fined 10 of its members who, in violation of this provision, resigned during a strike and returned to work. The National Labor Relations Board held that these fines were imposed in violation of § 8(b)(1)(A) of the National Labor Relations Act, 29 U. S. C. § 158(b)(1)(A). We granted a petition for a writ of certiorari in order to decide whether § 8(b)(1)(A) reasonably may be construed by the Board as prohibiting a union from fining members who have tendered resignations invalid under the union constitution.

I

The League is a national union composed of local associations (locals). In May 1976, its constitution was amended to provide that:

"No resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent."

June 25, 1985

MEMORANDUM TO THE CONFERENCE

Cases held for No. 83-1894, Pattern Makers' League of North America v. NLRB

No. 84-494, NLRB v. Machinists Local 1327, et al. and No. 84-528, Lapinski, et al. v. Machinists Local 1327, et al.

These two curved-line cases present the same question raised in Pattern Makers. Employees resigned from their union and returned to work during a strike. The union constitution (same in both cases) prohibited resignations during, or within 14 days preceding, strikes. The workers' resignations were not accepted, and they were fined for aiding and abetting their employer. The Board held that the union violated §8(b)(1)(A) by fining the employees for returning to work after tendering resignations. CA9, however, refused to enforce the Board's order. Cert. petitions were filed by the Board in 84-494 and by the employees in 84-528.

The Conference should grant cert. in both cases, vacate the judgment of CA9, and remand for further proceedings consistent with our opinion in Pattern Makers. We granted cert. in Pattern Makers to resolve the conflict with CA9's decision in these cases.

I will vote to GVR in both No. 84-494 and No. 84-528.

L.F.P., Jr.

SS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 26, 1985

83-1894 Pattern Markers v. NLRB

MEMORANDUM TO THE CONFERENCE:

I will make no further response to Harry's dissent.

Accordingly, the case is ready to come down tomorrow.

Lewis
L.F.P., Jr.

SS

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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. 83-1894 Pattern Makers' League of North America v.
NLRB

Dear Lewis,

Please join me.

Sincerely,

WHR

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 3, 1985

Re: 83-1894 - Pattern Makers' v. National
Labor Relations Board

Dear Lewis:

Since I voted the other way at Conference, I shall await the dissent. I must confess, however, that you have written a most persuasive opinion and, that your discussion of the legislative history makes a point that I had not perceived before -- namely, that the references in the House bill were really aimed at the closed shop problem rather than the kind of problem that this case presents.

Respectfully,



Justice Powell

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 20, 1985

Re: 83-1894 - Pattern Maker's v. National
Labor Relations Board

Dear Lewis:

Although I do not subscribe to all of Harry's analysis, and therefore will not join his opinion, after restudying the case in the light of his opinion I have finally decided to adhere to my conference vote. I have sent a one-sentence dissenting statement to the printer.

Respectfully,



Justice Powell

Copies to the Conference

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

From: **Justice Stevens**

Circulated: JUN 21 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1894

**PATTERN MAKERS' LEAGUE OF NORTH AMERICA,
AFL-CIO, ET AL., PETITIONERS *v.* NATIONAL
LABOR RELATIONS BOARD ET AL.**

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

[June —, 1985]

JUSTICE STEVENS, dissenting.

The legislative history of the Labor-Management Relations Act of 1947 discussed in Part I-B of JUSTICE BLACKMUN's dissenting opinion, coupled with the plain language in the proviso to §8(b)(1)(A) persuades me that the "right to refrain" protected by §7 of the Act does not encompass the "right to resign." Accordingly, I respectfully dissent.

62 1151 1112

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 3, 1985

No. 83-1894 Pattern Makers' League v. NLRB

Dear Lewis,

Please join me.

Sincerely,

Sandra

Justice Powell

Copies to the Conference