

The Burger Court Opinion Writing Database

NLRB v. Longshoremens

473 U.S. 61 (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

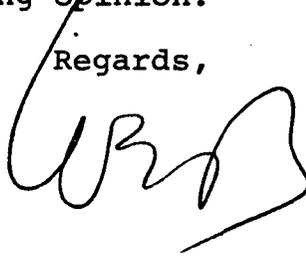
June 20, 1985

Re: No. 84-861 - NLRB v. International Long-
shoremen's Association

Dear Bill:

I join your dissenting opinion.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 26, 1985

No. 84-861

NLRB v. International
Longshoremen's Association

Dear Chief,

I'll undertake the opinion for the
Court in the above case.

Sincerely,



The Chief Justice

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

From: Justice Brennan

MAY 31 1985

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WB
From your ml
M

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

The Rules on Containers are collectively bargained-for guidelines requiring marine shipping companies to allow some of the large cargo containers that they own or lease to be loaded or unloaded by longshoremen at the pier. In *NLRB v. International Longshoremen's Assn.*, 447 U. S. 490 (1980) (*ILA I*), we reviewed the National Labor Relations Board's conclusion that the Rules and their enforcement constituted unlawful secondary activity under Sections 8(b)(4)(B) and 8(e) of the National Labor Relations Act, 29 U. S. C. §§ 158(b)(4)(B) and 158(e). Respondent union, the International Longshoremen's Association (ILA), defended the Rules as lawful under the "work preservation" doctrine of *National Woodwork Manufacturers Assn. v. NLRB*, 386 U. S. 612 (1967). We ruled, however, that the Board's preliminary definition of the work in dispute had been legally erroneous, because it focused on the off-pier work of non-longshoremen rather than on the work of longshoremen sought to be preserved. 447 U. S., at 507-508. We therefore remanded the Rules to the Board, directing it to "focus on the work of the bargaining unit employees, not on the work of other employees who may be doing the same or similar work." *Id.*, at 507. The Board then sustained the Rules, but held that their enforcement against "short-

Louis

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changes, pp. 5, 17, 19

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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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June —, 1985]

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: //

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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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 19, 1985

No. 84-861

NLRB v. International
Longshoremen's Association

Dear Bill,

Having read a typescript of your now-circulated dissent, I believe the Court opinion largely addresses your concerns as presently written. I, therefore, will shortly circulate a new draft containing only a few additions.

Sincerely,



Justice, Rehnquist

Copies to the Conference

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changes: 11, 12, 20

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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Recirculated: JUN 19 1985

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

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8-12

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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5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

The Rules on Containers are collectively bargained-for guidelines requiring marine shipping companies to allow some of the large cargo containers that they own or lease to be loaded or unloaded by longshoremen at the pier. In *NLRB v. Longshoremen*, 447 U. S. 490 (1980) (*ILA I*), we reviewed the National Labor Relations Board's conclusion that the Rules and their enforcement constituted unlawful secondary activity under §§ 8(b)(4)(B) and 8(e) of the National Labor Relations Act, as amended, 29 U. S. C. §§ 158(b)(4)(B) and 158(e). Respondent union, the International Longshoremen's Association (ILA), defended the Rules as lawful under the "work preservation" doctrine of *National Woodwork Manufacturers Assn. v. NLRB*, 386 U. S. 612 (1967). We ruled, however, that the Board's preliminary definition of the work in dispute had been legally erroneous, because it focused on the off-pier work of nonlongshoremen rather than on the work of longshoremen sought to be preserved. 447 U. S., at 507-508. We therefore remanded the Rules to the Board, directing it to "focus on the work of the bargaining unit employees, not on the work of other employees who may be doing the same or similar work." *Id.*, at 507. The Board then sustained the Rules, but held that their enforcement against "shortstopping" truckers and "traditional" warehous-

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 25, 1985

MEMORANDUM TO THE CONFERENCE
Re: Cases held for NLRB v. ILA, No. 84-861:

- No. 84-677 -- American Warehousemen's Assoc. v. ILA, et al.
No. 84-684 -- Internat'l Brotherhood of Teamsters, etc.,
v. ILA, et al.
No. 84-691 -- Internat'l Assoc. of NVOCCs, et al., v. NLRB,
et al.
No. 84-696 -- American Trucking Assoc., et al., v. ILA, et
al.
No. 84-869 -- Houff Transfer, Inc., v. ILA, et al.

The only cases held for NLRB v. ILA are five petitions filed from the same underlying judgment of the Fourth Circuit by warehousemen, truckers and freight consolidators (NVOCCs).

Petitioners in Nos. 84-684 and 84-869 sought review of the judgment only insofar as CA 4 refused to enforce the Board's ruling regarding the Rules on Containers as applied to "shortstopping" truckers and "traditional" warehousemen. This is the same position argued by the Board, which we have rejected in No. 84-861. I will vote to deny both these petitions.

Petitioners in Nos. 84-677, 84-691, and 84-696 sought review of both CA 4's judgment and the Board's judgment, contending the Rules in their entirety violate the National Labor Relations Act. By affirming CA 4 and the Board with regard to the validity of the Rules in general, we have rejected this contention. Petitioners in 84-691 and 84-696 also seek to raise points of federal maritime law that allegedly vitiate the maritime shipping companies "right to control" the containers at issue. We have rejected this argument to the extent that these points are validly before us. See slip opinion at 8, n. 10 and 11-12, n. 12. I therefore will vote to deny these petitions as well.

Sincerely,

Bill

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1985

84-861 - NLRB v. Int'l Longshoremen's Ass'n

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

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BY MAIL JUN 10 1985

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CHAMBERS OF
JUSTICE THURGOOD MARSHALL

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

May 31, 1985

Re: No. 84-861-NLRB v. Internat'l Longshoremen's
Association

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

LIBRARY OF CONGRESS
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DIVISION

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 7, 1985

Re: No. 84-861, NLRB v. International Longshoremen's Ass'n

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Justice Brennan

cc: The Conference

.82 11-3 1111

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U.S. GOVERNMENT PRINTING OFFICE

M

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

June 5, 1985

84-861 NLRB v. International Longshoremen's Association

Dear Bill:

Please join me.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

82 71-2 6111

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

28 89 13 77 16

June 3, 1985

Re: No. 84-861 NLRB v. International Longshoremen's Assoc.

Dear Bill,

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

Sincerely,

wm

Justice Brennan

cc: The Conference

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

From: Justice Rehnquist

Circulated: 6/19/85

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June —, 1985]

JUSTICE REHNQUIST, dissenting.

It is not surprising that neither the opinion of the Court today, nor the body of the opinion in *NLRB v. Longshoremen*, 447 U. S. 490 (1980) (*ILA I*), contains the text of the Rules that the Court is called upon to consider. Nor is it surprising that §§ 8(b)(4)(B) and 8(e) of the National Labor Relations Act are not set out in full in the body of those two opinions. For if one were to set the provisions of the Rules side by side with the provisions of the Act one could not help but conclude that the Rules are proscribed by those sections. It is only by stringing together a series of highly questionable propositions that the Court has arrived at the contrary result. In my view, Congress did not intend the union activities at issue to be sanctioned by the National Labor Relations Act.

The Rules on Containers, an agreement entered into between various shipowners and the International Longshoremen's Association (ILA), begin by proclaiming their intent to "preserve the work jurisdiction of longshoremen and all other ILA crafts" They move on to define certain classes of containers which "shall be loaded or discharged . . . at a waterfront facility by deepsea ILA labor." Among the containers which must be so handled are those described by Rule 1(a)(3)—"[c]ontainers designated for a single consignee from

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Pp 1+7

STYLISTIC CHANGES THROUGHOUT

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER *v.* INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June —, 1985]

JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR joins, dissenting.

It is not surprising that neither the opinion of the Court today, nor the body of the opinion in *NLRB v. Longshorem*, 447 U. S. 490 (1980) (*ILA I*), contains the text of the Rules that the Court is called upon to consider. Nor is it surprising that §§ 8(b)(4)(B) and 8(e) of the National Labor Relations Act are not set out in full in the body of those two opinions. For if one were to set the provisions of the Rules side by side with the provisions of the Act one could not help but conclude that the Rules are proscribed by those sections. It is only by stringing together a series of highly questionable propositions that the Court has arrived at the contrary result. In my view, Congress did not intend the union activities at issue to be sanctioned by the National Labor Relations Act.

The Rules on Containers, an agreement entered into between various shipowners and the International Longshoremen's Association (ILA), begin by proclaiming their intent to "preserve the work jurisdiction of longshoremen and all other ILA crafts . . ." They move on to define certain classes of containers which "shall be loaded or discharged . . . at a waterfront facility by deepsea ILA labor." Among the containers which must be so handled are those described by Rule

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p. 1

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

From: Justice Rehnquist

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NO
DATE
ON
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SUPREME COURT OF THE UNITED STATES

No. 84-861

NATIONAL LABOR RELATIONS BOARD, PETITIONER v. INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL.

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

[June 27, 1985]

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

It is not surprising that neither the opinion of the Court today, nor the body of the opinion in *NLRB v. Longshorem*, 447 U. S. 490 (1980) (*ILA I*), contains the text of the Rules that the Court is called upon to consider. Nor is it surprising that §§ 8(b)(4)(B) and 8(e) of the National Labor Relations Act are not set out in full in the body of those two opinions. For if one were to set the provisions of the Rules side by side with the provisions of the Act one could not help but conclude that the Rules are proscribed by those sections. It is only by stringing together a series of highly questionable propositions that the Court has arrived at the contrary result. In my view, Congress did not intend the union activities at issue to be sanctioned by the National Labor Relations Act.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 21, 1985

Re: 84-861 - NLRB v. Int'l Longshoremen's
Assn., AFL-CIO

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

22 JUN 21 1985

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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. 84-861 NLRB v. International Longshoremen's Assoc.

Dear Bill,

For the present, I will await further writing in
this case.

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 19, 1985

Re: 84-861 National Labor Relations Board v.
International Longshoremen's Assoc,
et al.

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

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.82 84-861 6-19-85