

# The Burger Court Opinion Writing Database

## *NLRB v. Financial Institution Employees*

475 U.S. 192 (1986)

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



Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **The Chief Justice**

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 84-1493 AND 84-1509

NATIONAL LABOR RELATIONS BOARD,  
 PETITIONER

84-1493

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER

84-1509

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, ETC., ET AL.

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

[January —, 1986]

CHIEF JUSTICE BURGER, concurring.

I join the Court's opinion. I write separately only to note that the Court's action today striking down a Board action marks a significant departure from this Court's history of special deference over many years to the Board's decisions concerning the selection of an exclusive bargaining unit representative by employees. See *e. g.*, *NLRB v. A. J. Tower Co.*, 329 U. S. 324, 330 (1946); see also *NLRB v. Action Automotive, Inc.*, — U. S. — (1985).

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Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

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2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 84-1493 AND 84-1509

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER

84-1493

v.

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER

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FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, ETC., ET AL.

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

[January —, 1986]

CHIEF JUSTICE BURGER, concurring in the judgment.

I write separately to note that the Court's action today striking down a Board action is one of those rare departures from this Court's long history of special deference to the Board's decisions concerning the selection of an exclusive bargaining unit representative by employees. See *e. g.*, *NLRB v. A. J. Tower Co.*, 329 U. S. 324, 330 (1946); see also *NLRB v. Action Automotive, Inc.*, — U. S. — (1985).

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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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*WJF*

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

Nos. 84-1493 AND 84-1509

NATIONAL LABOR RELATIONS BOARD,  
PETITIONER

84-1493

*v.*

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA,  
LOCAL 1182, CHARTERED BY UNITED  
FOOD AND COMMERCIAL WORKERS INTERNATIONAL  
UNION, AFL-CIO ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER  
84-1509

*v.*

FINANCIAL INSTITUTION EMPLOYEES OF  
AMERICA, ETC., ET AL.

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

[January —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court.

The questions for decision in these cases is whether a rule of the National Labor Relations Board that requires that nonunion employees must be permitted to vote in a certified union's decision whether to affiliate with another union is consistent with the National Labor Relations Act.

I

In 1970, the Board certified the Firstbank Independent Employees Association (Firstbank) as the collective-bargaining representative of a bargaining unit consisting of the employees of petitioner Seattle-First National Bank (SeaFirst). Firstbank and SeaFirst subsequently negotiated successive collective-bargaining agreements, the most recent of which expired in 1977. In 1978, Firstbank voted to affiliate with

pp. 2, 6, 10, 11, 14, 16

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**

Nos. 84-1493 AND 84-1509

NATIONAL LABOR RELATIONS BOARD,  
 PETITIONER

84-1493

*v.*

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, LOCAL 1182, CHARTERED BY UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER

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*v.*

FINANCIAL INSTITUTION EMPLOYEES OF AMERICA, ETC., ET AL.

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

January 10, 1986

No. 84-1493) NLRB v. FIEA  
                  )  
                  ) Seattle First  
                  ) National Bank  
No. 84-1509) v. FIEA

Dear Sandra,

I will be happy to adopt both of  
your suggestions.

Sincerely,

*Bill*

Justice O'Connor

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PP 4.16

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**

Nos. 84-1493 AND 84-1509

NATIONAL LABOR RELATIONS BOARD,  
 PETITIONER

84-1493

*v.*

FINANCIAL INSTITUTION EMPLOYEES OF AMER-  
 ICA, LOCAL 1182, CHARTERED BY UNITED  
 FOOD AND COMMERCIAL WORKERS INTER-  
 NATIONAL UNION, AFL-CIO ET AL.

SEATTLE-FIRST NATIONAL BANK, PETITIONER  
 84-1509

*v.*

FINANCIAL INSTITUTION EMPLOYEES OF  
 AMERICA, ETC., ET AL.

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

[January —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court.

The questions for decision in these cases is whether a rule of the National Labor Relations Board that requires that nonunion employees must be permitted to vote in a certified union's decision whether to affiliate with another union is consistent with the National Labor Relations Act.

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In 1970, the Board certified the Firstbank Independent Employees Association (Firstbank) as the collective-bargaining representative of a bargaining unit consisting of the employees of petitioner Seattle-First National Bank (SeaFirst). Firstbank and SeaFirst subsequently negotiated successive collective-bargaining agreements, the most recent of which expired in 1977. In 1978, Firstbank voted to affiliate with

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 10, 1986

84-1493 and 84-1509 -  
NLRB v. Financial Institution  
Employees of America;

Seattle-First National Bank v. Financial  
Institution Employees of America

Dear Bill,

Please join me.

Sincerely yours,



Justice Brennan

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 9, 1986

Re: Nos. 84-1493 and 1509-NLRB v. Financial  
Institution and Seattle-First National  
Bank v. Financial Institution

Dear Bill:

Please join me.

Sincerely,

*J.M.*

T.M.

Justice Brennan

cc: The Conference

(H)

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

January 16, 1986

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Re: No. 84-1493) NLRB v. Financial Institute  
No. 84-1509) Seattle-First National Bank  
v. Financial Institute

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Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

January 21, 1986

84-1493 NLRB v. Financial Institution Employees

Dear Bill:

Please join me.

Sincerely,

*Lewis*

Justice Brennan

lfp/ss

cc: The Conference

82 JAN 25 10 40

210

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

December 23, 1985

Re: No. 84-1493) NLRB v. Financial Institution  
84-1509) Seattle-First National Bank v.  
Financial Institution

Dear Chief,

Largely because this is a statutory case, I would like to see what the majority draft says before committing myself to do a dissent.

Sincerely,



The Chief Justice

cc: The Conference

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10

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

February 19, 1986

Re: No. 84-1493) NLRB v. Financial Institution  
84-1509) Seattle-First National Bank v. Financial  
Institution

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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3

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

January 15, 1986

Re: 84-1493 - NLRB v. Financial Institution  
Employees of America  
84-1509 - Seattle-First National Bank v.  
Financial Institution Employees of  
America

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

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206

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 9, 1986

No. 84-1493 NLRB v. Financial Institution  
Employees of America  
No. 84-1509 Seattle-First National Bank v.  
Financial Inst. Emp. of America

Dear Bill,

I expect to join your excellent opinion in these cases, but I find footnote 11 troublesome and hope you will consider deleting it. The possibility that unit-wide affiliation votes may weaken the union seems to be speculative and not required to support the argument you make in text. It is also irrelevant unless the congressional policy against outside interference in union decision-making embodies a judgment that the possibility that unions would be weakened should be used as a criterion for determining when outside interference in union affairs runs counter to the NLRA.

For similar reasons, I am troubled by the last full sentence on page 16. I hope you will consider substituting a sentence along the following lines:

"The Board's rule effectively gives the employer the power to veto a union's decision to affiliate, thereby allowing the employer to directly interfere with union decision-making Congress intended to insulate from outside interference."

Sincerely,



Justice Brennan

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

January 10, 1986

No. 84-1493 NLRB v. Financial Institution  
Employees of America, Local 1182  
No. 84-1509 Seattle-First National Bank v.  
Financial Institution Employees  
of America

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Dear Bill,

Please join me.

Sincerely,

*Sandra*

Justice Brennan

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