The Burger Court Opinion Writing Database

AT&T Technologies, Inc. v. Communications Workers

475 U.S. 643 (1986)

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

April 2, 1986

84-1913 - AT&T v. Communications Workers of America

Dear Bill:

Please join me in your concurring opinion.

Regards,

Justice William Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 27, 1986

AT&T Technologies, Inc. v. Communications Workers
No. 84-1913

Dear Byron,

Although I voted at conference to affirm in this case, after reading your fine opinion I am prepared to go along with a remand which leaves the question of contract interpretation to the Court of Appeals. However, might I suggest adding something to the opinion? I am afraid that, as the opinion now stands, the Seventh Circuit is bound to misinterpret our holding.

Much of the oral argument was spent on the meaning of "arbitrability." This was because of the Court of Appeals' (and, I suspect, other courts') confusion over what that term refers to in the context of our holding in the Steelworkers Trilogy that "arbitrability" is to be decided by the court. The Seventh Circuit reasoned that, under Article 9 of the contract, reserved management rights were not "arbitrable." Therefore, the court thought, the question whether Article 20 limited management's authority to layoff for reasons other than work shortage was one of "arbitrability." The Court of Appeals reasoned further that, while "arbitrability" is ordinarily a question for the court, deciding this question of "arbitrability" would require the court to make the same determination that the arbitrator would make if the dispute was held "arbitrable." Consequently, the Court of Appeals created its "exception" to the general rule and referred this question of "arbitrability" to the arbitrator.

The Seventh Circuit was wrong, of course. As Warrior & Gulf makes clear, the question whether Article 20 limits management's prerogatives, i.e., whether the arbitrator has power to award relief, is not the sort of "arbitrability" question that the court must decide. Rather, under the Steelworkers Trilogy, the only question for the court is whether the parties agreed to submit disputes over the meaning of Article 20 to the arbitrator; the court's entire inquiry is whether there is language in the contract which states, in effect, that "disputes as to the meaning of Article 20 are not subject to arbitration." If the contract does not contain such language, AT&T can prevail only if it adduces "the most forceful evidence" from the bargaining history that the parties intended not to submit disputes over the meaning of Article 20 to arbitration. Determining "arbitrability" in the relevant sense does not require the court even to consider which side is correct about the meaning of Article 20. Although the Court of Appeals seemed to think that Article 9 somehow alters this analysis, the whole point of Warrior & Gulf was to make clear that general management rights clauses, like Article 9, do not have this effect. Such clauses merely make clear that management is limited (and thus an

arbitrator can order management to do something) only where the contract specifically so provides. That question (whether the arbitrator has power to award relief), while in a sense a question of "arbitrability," is distinguished from the arbitrator's power to hear the case; under Warrior & Gulf, only the latter question is for the court. Thus, where there is a standard arbitration clause, a dispute as to whether a clause of the contract limits management is arbitrable unless there is a clear and forceful indication that the particular question of interpretation was not intended to be subject to arbitration.

My fear is the following: It is self-evident that the Seventh Circuit did not understand the holding in Warrior & Gulf and the distinction between the arbitrator's power to hear the case and his power to award relief. On remand, that court is certain to reason that: "we did not interpret Article 20 because we thought that such a question of arbitrability should be left to the arbitrator. But the Supreme Court has told us that we were wrong and that we must decide all questions of arbitrability. Consequently, we should have interpreted Article 20 and should have decided whether this was a reserved right of management." Such a result, of course, would be completely wrong. Moreover, it would be quite harmful. First of all, it would completely undo the Steelworkers Trilogy in the Seventh Circuit. Second, I suspect that other courts called upon to decide similar cases would look to what the Court of Appeals had done in this case and would make the same mistake.

To avoid this possibility, I think we should add a paragraph between the two full paragraphs on page 8 to explain to the Court of Appeals (and other courts) what the proper inquiry should be. Perhaps you could add something along the following lines:

> As we made clear in Warrior & Gulf, the inquiry in determining arbitrability is a narrow one. The only question for the court is whether the parties agreed to submit disputes over the meaning of Article 20 to the arbitrator. For the most part, this question depends upon whether the contract contains language expressly stating that disputes over the meaning of Article 20 are not subject to arbitration. Otherwise, the dispute is arbitrable unless the party opposing arbitration adduces "the most forceful evidence" from the bargaining history that the parties intended not to submit disputes over the meaning of Article 20 to arbitration. Determining "arbitrability" in the relevant sense does not require the court even to consider which side is correct about the meaning of Article 20. Although the Court of Appeals apparently assumed that Article 9 transformed the question of arbitrability into one requiring an interpretation of Article 20, the whole point of Warrior & Gulf was that such general management rights clauses do not have this effect. In deciding "arbitrability" in the relevant

sense, the court must keep in mind the distinction between the arbitrator's power to hear a dispute (which is for the court to decide) and the arbitrator's power to award relief because the contract contained a limitation on management's rights (which is for the arbitrator to decide). General management rights clauses like Article 9 merely make clear that management's perogatives are limited (and thus an arbitrator can order management to do something) only where the contract specifically so provides. In the face of a standard arbitration clause, a dispute as to whether management's prerogatives are limited by a clause of the contract is arbitrable absent a clear and forceful indication that the particular question of interpretation was not intended by the parties to be subject to arbitration.

Sincerely,

Justice White

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**

Circulated: APR 1 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1913

AT&T TECHNOLOGIES, INC., PETITIONER *v.* COMMUNICATIONS WORKERS OF AMERICA ET AL.

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

[April ——, 1986]

JUSTICE BRENNAN, concurring.

I join the Court's opinion and write separately only to supplement what has been said in order to avoid any misunderstanding on remand and in future cases.

The Seventh Circuit's erroneous conclusion that the arbitrator should decide whether this dispute is arbitrable resulted from that court's confusion respecting the "arbitrability" determination that we have held must be judicially made. Despite recognizing that Article 8 of the collective-bargaining agreement "is a standard arbitration clause, providing for arbitration of 'any differences arising with respect to the interpretation of this contract or the performance of any obligation hereunder,'" and that "there is no clear, unambiguous exclusion [of this dispute] from arbitration," the Court of Appeals thought that "there [were] colorable arguments both for and against exclusion." *Communications Workers of America* v. *Western Electric Co.*, 751 F. 2d 203, 206-207 (CA7 1984). The "colorable arguments" referred to by the Court of Appeals were the parties' claims concerning the meaning of Articles 9 and 20 of the collective-bargaining agreement: the Court of Appeals thought that if the Union's interpretation of Article 20 was correct and management could not order lay-offs for reasons other than lack of work, the dispute was arbitrable; but if AT&T's interpretation of Article 20 was correct and management was free to

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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4

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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

STIC CHANGES THROUGHOUT

From: **Justice Brennan**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

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To: The Chief Justice
Justice White
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Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1913

AT&T TECHNOLOGIES, INC., PETITIONER *v.* COMMUNICATIONS WORKERS OF AMERICA ET AL.

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

[April ——, 1986]

JUSTICE BRENNAN, with whom THE CHIEF JUSTICE and JUSTICE MARSHALL join, concurring.

I join the Court's opinion and write separately only to supplement what has been said in order to avoid any misunderstanding on remand and in future cases.

The Seventh Circuit's erroneous conclusion that the arbitrator should decide whether this dispute is arbitrable resulted from that court's confusion respecting the "arbitrability" determination that we have held must be judicially made. Despite recognizing that Article 8 of the collective-bargaining agreement "is a standard arbitration clause, providing for arbitration of 'any differences arising with respect to the interpretation of this contract or the performance of any obligation hereunder,'" and that "there is no clear, unambiguous exclusion [of this dispute] from arbitration," the Court of Appeals thought that "there [were] colorable arguments both for and against exclusion." *Communications Workers of America* v. *Western Electric Co.*, 751 F. 2d 203, 206–207 (CA7 1984). The "colorable arguments" referred to by the Court of Appeals were the parties' claims concerning the meaning of Articles 9 and 20 of the collective-bargaining agreement: the Court of Appeals thought that if the Union's interpretation of Article 20 was correct and management could not order lay-offs for reasons other than lack of work, the dispute was arbitrable; but if AT&T's interpretation of

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 24, 1986

84-1913 - AT&T v. Communications
Workers of America

Dear Chief,

In due course, I shall circulate a draft opinion in this case.

Sincerely yours,

The Chief Justice

Copies to the Conference

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

From: **Justice White**

Circulated: 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–1913

AT&T TECHNOLOGIES, INC., PETITIONER *v.* COMMUNICATIONS WORKERS OF AMERICA ET AL.

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

[March ——, 1986]

JUSTICE WHITE delivered the opinion of the Court.

The issue presented in this case is whether a court asked to order arbitration of a grievance filed under a collective-bargaining agreement must first determine that the parties intended to arbitrate the dispute, or whether that determination is properly left to the arbitrator.

I

AT&T Technologies, Inc. (AT&T or the Company) and the Communications Workers of America (the Union) are parties to a collective-bargaining agreement which covers telephone equipment installation workers. Article 8 of this agreement establishes that "differences arising with respect to the interpretation of this contract or the performance of any obligation hereunder" must be referred to a mutually agreeable arbitrator upon the written demand of either party. This article expressly does not cover disputes "excluded from arbitration by other provisions of this contract."[1] Article 9

[1] Article 8 provides, in pertinent part, as follows:

"If the National and the Company fail to settle by negotiation any differences arising with respect to the interpretation of this contract or the performance of any obligation hereunder, such differences shall (provided that such dispute is not excluded from arbitration by other provisions of this contract, and provided that the grievance procedures as to such dispute have been exhausted) be referred upon written demand of either party to an impartial arbitrator mutually agreeable to both parties." App. 21.

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

From: **Justice White**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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Justice Stevens
Justice O'Connor

From: **Justice White**

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Pp. 6, 7-9 reorganized and somewhat rewritten; stylistic

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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To: The Chief Justice
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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

Justice: I agree with a GVR limited to question I.A.

April 9, 1986

84-1913?

MEMORANDUM TO THE CONFERENCE

Case held for AT&T Technologies v. CWA

85-299 - Royal Center, Inc. v. Local Joint Exec. Bd.

In 1980, petr acquired a Las Vegas hotel and casino complex, and entered into a collective bargaining agreement with resps. The agreement provided for arbitration of "all grievances" and obligated petr to require any entity to which it might sell its business to assume the collective bargaining agreement with resps.

In 1982, petr closed the complex and terminated most of its employees. Petr then sold the complex to a limited partnership, 305 Convention Center Drive Associates ("305"). The sale contract did not require 305 to assume petr's collective bargaining agreement with resps. 305 performed extensive alterations, and reopened the complex in November 1983 as a "family arcade". Petr owns a 10% interest in 305, and operates the gaming devices in one section of the complex.

Resps filed an unfair labor practice with the NLRB, alleging that petr and 305 improperly refused to bargain, and that no bona fide sale of business had occurred to 305. The NLRB dismissed resps' charges, and the Office of the General Counsel subsequently dismissed resp's appeal.

Resps also filed suit against petr in Nevada state court, charging (1) that petr had failed to condition the sale of the complex on 305's assumption of the collective bargaining agreement; and (2) that because petr and 305 were "alter egos", 305's failure to comply with the terms of the agreement constituted a breach attributable to petr. Resps further asserted that these claims fell within the agreement's arbitration clause and sought an order compelling arbitration. Upon removal of the suit to federal court, the district court (D. Nev., Foley, J.) granted resps' motion and ordered arbitration of both claims.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 3, 1986

Re: No. 84-1913-AT&T Technologies v. Communications Workers of America

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 3, 1986

Re: No. 84-1913, AT&T Technologies, Inc. v. Communication Workers of America

Dear Byron:

Please join me.

Sincerely,

HAB.

Justice White

cc: The Conference

March 6, 1986

84-1913 AT&T v. Communications Workers

Dear Byron:

Although my join note is unqualified, I would prefer not to add the paragraph that Bill Brennan suggests. Perhaps a clarifying sentence or two may be useful.

Sincerely,

Justice White

lfp/ss

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

March 6, 1986

84-1913 AT&T v. Communications Workers

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 10, 1986

84-1913 AT&T v. Communications Workers

Dear Byron:

I am still with you.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 6, 1986

Re: No. 84-1913 AT&T v. Communication Workers of America

Dear Byron,

Please join me.

Sincerely,

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 27, 1986

Re: 84-1913 - AT&T Technologies, Inc. v.
Communications Workers of America

Dear Byron:

Please join me.

Respectfully,

Justice White

Copies to the Conference

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

March 10, 1986

No. 84-1913 AT&T Technologies v. Communications Workers of America

Dear Byron,

Please join me.

Sincerely,

Sandra

Justice White

Copies to the Conference