

U.S. Supreme Court

NLRB v. WEINGARTEN, INC., 420 U.S. 251 (1975)

420 U.S. 251

NATIONAL LABOR RELATIONS BOARD v. J. WEINGARTEN, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 73-1363.

Argued November 18, 1974.

Decided February 19, 1975.

During the course of an investigatory interview at which an employee of respondent was being interrogated by a representative of respondent about reported thefts at respondent's store, the employee asked for but was denied the presence at the interview of her union representative. The union thereupon filed an unfair labor practice charge with the National Labor Relations Board (NLRB). In accordance with its construction in *Mobil Oil Corp.*, 196 N. L. R. B. 1052, enforcement denied, 482 F.2d 842, and *Quality Mfg. Co.*, 195 N. L. R. B. 197, enforcement denied, 481 F.2d 1018, rev'd, post, p. 276, the NLRB held that the employer had committed an unfair labor practice and issued a cease-and-desist order, which, however, the Court of Appeals subsequently refused to enforce, concluding that an employee has no "need" for union assistance at an investigatory interview. Held: The employer violated 8 (a) (1) of the National Labor Relations Act because it interfered with, restrained, and coerced the individual right of an employee, protected by 7, "to engage in . . . concerted activities for . . . mutual aid or protection . . .," when it denied the employee's request for the presence of her union representative at the investigatory interview that the employee reasonably believed would result in disciplinary action. Pp. 256-268.

(a) The NLRB's holding is a permissible construction of "concerted activities for . . . mutual aid or protection" by the agency charged by Congress with enforcement of the Act. Pp. 260-264.

(b) The NLRB has the "special function of applying the general provisions of the Act to the complexities of industrial life," *NLRB v. Erie Resistor Corp.*, 373 U.S. 221, 236, and its special competence in this field is the justification for the deference accorded its determination. Pp. 264-267.

485 F.2d 1135, reversed and remanded. [420 U.S. 251, 252]

BRENNAN, J., delivered the opinion of the Court, in which DOUGLAS, WHITE, MARSHALL, BLACKMUN, and REHNQUIST, JJ., joined. BURGER, C. J., filed a dissenting opinion, post, p. 268. POWELL, J., filed a dissenting opinion, in which STEWART, J., joined, post, p. 269.

Patrick Hardin argued the cause for petitioner. With him on the brief were Solicitor General Bork, Peter G. Nash, John S. Irving, Norton J. Come, and Linda Sher.

Neil Martin argued the cause and filed a brief for respondent. *

[Footnote *] Jerry Kronenberg and Milton Smith filed a brief for the Chamber of Commerce of the United States as amicus curiae urging affirmance.