

William E. Brock, Secretary of Labor, United States Department of Labor v. Joann Shirk, Individually and Doing Business as Oregon Meat Cutting School Frank B. Shirk, Individually and Doing Business as Oregon Meat Cutting School, 860 F.2d 1545 (9th Cir. 1988)

Court of Appeals for the Ninth Circuit

Filed: November 17th, 1988

Precedential Status: Precedential

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Docket Number: 86-4121

[860 F.2d 1545](#)

29 Wage & Hour Cas. (BN 34, 110 Lab.Cas. P 35,154

**William E. BROCK, Secretary of Labor, United States
Department of Labor, Plaintiff-Appellant,**

v.

**Joann SHIRK, individually and doing business as Oregon Meat
Cutting School; Frank B. Shirk, individually and
doing business as Oregon Meat Cutting
School, Defendants-Appellees.**

No. 86-4121.

United States Court of Appeals,
Ninth Circuit.

Nov. 17, 1988.

On Remand from the Supreme Court of the United States.

Before WRIGHT, WALLACE and PREGERSON, Circuit Judges.

ORDER

1

The Supreme Court granted a petition for writ of certiorari, --- U.S. ----, 109 S. Ct. 38, 102 L. Ed. 2d 18, it vacated our judgment of December 8, 1987, Brock v. Shirk, [833 F.2d 1326](#) (9th

Cir.1987), and remanded the case to this court for further consideration in light of *McLaughlin v. Richland Shoe Co.*, [486 U.S. ----](#), [108 S. Ct. 1677](#), [100 L. Ed. 2d 115](#) (1988).

2

In Section II of our opinion, we followed the controlling precedent of this circuit in determining the meaning of the word "willful" in 29 U.S.C. Sec. 255. We relied upon *Marshall v. Union Pac. Motor Freight Co.*, [650 F.2d 1085](#), 1092 (9th Cir.1981), and *EEOC v. First Citizens Bank of Billings*, [758 F.2d 397](#)(9th Cir.1985).

Our footnote 2 observed prophetically:

3

We recognize that other circuits have questioned that definition of willful, and that the Supreme Court will likely resolve the existing conflict among the circuits. See *Brock v. Richland Shoe*, [799 F.2d 80](#) (3d Cir.1986), cert. granted [--- U.S. ----, 108 S. Ct. 63, 98 L. Ed. 2d 27] (1987). *First Citizens* is still the law of this circuit. It controls here.

4

The Court has indeed resolved the matter in *McLaughlin v. Richland Shoe Co.* We now remand the cause to the district court for appropriate reconsideration in light of that opinion.