Important Supreme Court Cases

The National Labor Relations Act does not mandate unions exclusively represent all employees, but permits them to electively do so. Under the Act, unions can also negotiate "members-only" contracts that only cover dues-paying members. They do not have to represent non-members, or as unions frequently *and incorrectly* refer to them, "free riders." Below are two U.S. Supreme Court Cases that have never been overturned and uphold the right to negotiate "members only" contracts.

- ***Consolidated Edison Co. vs. NLRB*, 305 U.S. 197 (1938)** – This case clarified that labor unions can negotiate contracts that do not require them to represent non-members. In the Court's decision it is stated, "**Nor did the contracts make the Brotherhood and its locals exclusive representatives for collective bargaining. On this point, the contracts speak for themselves. They simply constitute the Brotherhood the collective bargaining agency for those employees who are its members."**

- ***Retail Clerks v. Dry Lion Goods*, 369 U.S. 17 (1962)** – This is a subsequent case that affirmed the decision made by the U.S. Supreme Court in 1938. Justice Brennan delivered the opinion of the Court in this case and cited *Consolidated Edison* when he wrote, **"'Members only' contracts have long been recognized."** According to this ruling, unions represent non-members only when they act as "exclusive bargaining representatives," which requires non-members to accept the union's representation. In that case, the law requires unions to represent non-members fairly. They cannot negotiate high wages for their supporters and the minimum wage for non-members. Unions can avoid representing non-members by disclaiming exclusive representative status.