

The Burger Court Opinion Writing Database

Firefighters v. Boston Chapter, NAACP

461 U.S. 477 (1983)

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

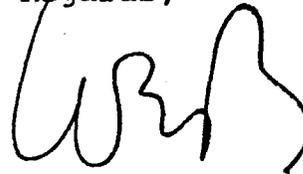
May 2, 1983

Re: No. 82-185 Boston Firefighters Union, Local
718 v. Boston Chapter, NAACP
No. 82-246 Boston Police Patrolmen's Assoc.
v. Castro
No. 82-259 Beecher v. Boston Chapter, NAACP

Dear Sandra:

I join.

Regards,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 21, 1983

Re: Nos. 82-185, 82-246 & 82-259

Boston Cases

Dear Chief,

Like Harry, I too would be willing as an alternative vote to join John and Sandra to vacate and remand these cases for reconsideration in light of the new statute.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 2, 1983

No. 82-185 et al. Boston Firefighters Union
v. Boston Chapter NAACP

Dear Sandra:

I agree.

Sincerely,
WJB / jhs
WJB, Jr.

Justice O'Connor
Copies to the Conference

WJB:jhs

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 3, 1983

Re: 82-185, 82-246 and 82-259 -
Boston Firefighters Union, Local 718
v. Boston Chapter, NAACP
Boston Police Patrolmen's Ass'n v. Castro
Beecher v. Boston Chapter, NAACP

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

HA

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 3, 1982

Re: No. 82-185 - Boston Firefighters Union v.
Boston Chapter, NAACP
No. 82-246 - Boston Police Patrolmen's
Assn. v. Castro
No. 82-259 - Beecher v. Boston Chapter, NAACP

Memorandum to the Conference

Will you please show me as out of these cases.

Sincerely,



T.M.

cc: Mr. Stevas

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 21, 1983

Re: Nos. 82-185, 82-246, 82-259 - Boston cases

Dear Chief:

After further reflection overnight, I have concluded that I would be willing, as an alternative vote, to join John and Sandra to vacate and remand these cases for reconsideration in the light of the new statute.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1983

Re: No. 82-185, Boston Firefighters Union, Local 718
v. Boston Chapter, NAACP
No. 82-246, Boston Police Patrolmen's Ass'n v. Pedro Castro
No. 82-259, Beecher v. Boston

Dear Sandra:

I agree with your per curiam.

Sincerely,



Justice O'Connor

cc: The Conference

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

To Comp Room 4:00

From: Justice Blackmun

Circulated: JUN 27 1983

- No. 82-185, Boston Firefighters Union, Local 718 v. Boston Chapter, NAACP, et al. Recirculated: _____
- No. 82-246, Boston Police Patrolmen's Association, Inc. v. Castro, et al.
- No. 82-259, Beecher, et al. v. Boston Chapter, NAACP, et al.

The motion of respondents to relax costs is denied.

JUSTICE BLACKMUN, dissenting.

In 1981, the city of Boston decided to lay off hundreds of firefighters and police officers. By statute, Massachusetts requires that civil service layoffs occur in the order of reverse seniority. Mass. Gen. Laws Ann. ch. 31, §39 (West). Many minority members of Boston's police and fire departments had been hired only recently pursuant to consent decrees by which Boston agreed to increase the proportion of minorities in the departments in order to remedy its past discriminatory hiring practices. As a result, layoffs under the statutory last-hired, first-fired policy would have reduced significantly the minority representation in the two departments.

Respondents obtained an order from the United States District Court for the District of Massachusetts enjoining Boston from laying off personnel pursuant to the statutory policy to the extent that such layoffs would reduce the percentage of minority police officers and firefighters below the level obtained before the layoffs began. The United States Court of Appeals for the First Circuit affirmed. 679 F.2d 965 (1982). After the Court of Appeals' decision, Massachusetts enacted legislation providing Boston with

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: JUN 29 1983

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

BOSTON FIREFIGHTERS UNION, LOCAL 718,
82-185 *v.*
BOSTON CHAPTER, NAACP, ET AL.

BOSTON POLICE PATROLMEN'S ASSOCIATION, INC.
82-246 *v.*
PEDRO CASTRO ET AL.

NANCY B. BEECHER, ET AL.
82-259 *v.*
BOSTON CHAPTER, NAACP, ET AL.

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

Nos. 82-185, 82-246 AND 82-259. Decided June —, 1983

The motion of respondents to retax costs is denied.

JUSTICE BLACKMUN, dissenting.

In 1981, the city of Boston decided to lay off hundreds of firefighters and police officers. By statute, Massachusetts requires that civil service layoffs occur in the order of reverse seniority. Mass. Gen. Laws Ann. ch. 31, §39 (West). Many minority members of Boston's police and fire departments had been hired only recently pursuant to consent decrees by which Boston agreed to increase the proportion of minorities in the departments in order to remedy its past discriminatory hiring practices. As a result, layoffs under the statutory last-hired, first-fired policy would have reduced significantly the minority representation in the two departments.

Respondents obtained an order from the United States

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 4, 1983

82-185 Boston Firefighters v. NAACP
82-246 Boston Police Patrolmen v. Castro
82-259 Beecher v. NAACP

Dear Sandra:

I will not dissent.

Sincerely,

Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 27, 1983

Re: No. 82-185 Boston Firefighters Union Local 718
v. Boston Chapter, NAACP

Dear Chief:

In the interests of trying to get the Court off dead center in this case, I am willing to vote, at least tentatively, to vacate and remand to the Court of Appeals for consideration of mootness.

Sincerely,

whr/cms

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1983

Re: No. 82-185) Boston Firefighters Union Local 718 v.
) Boston Chapter, NAACP
No. 82-246) Boston Police Patrolmen's Assoc. v.
) Castro
No. 82-259) Beecher v. Boston Chapter, NAACP

Dear Sandra:

Please join me.

Sincerely,

WM

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 2, 1983

Re: 82-185; 82-246; 82-259 - Boston
Firefighters Union v. Boston
Chapter, NAACP, et al.

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 21, 1983

Re: Nos. 82-185, 82-246, 82-259, Boston Firefighters Cases

Dear Lewis,

As I indicated earlier, I am inclined to adhere to my view that the most appropriate disposition of this case would be to vacate and remand for further consideration of the effect of the state statute and of the continued propriety of the modification of the consent decree in light of these changed circumstances.

I think this disposition is preferable for several reasons. First, as a practical matter, all of the petitioners in this case desire a remedy the effect of which is the same as vacating the decision below. The respondents expressly stated at oral argument that they would welcome an order to vacate the decision below. Of course, the petitioners would also like this Court to hold on the merits that the modification of the decree was erroneous. But given the posture of the parties, i. e., their agreement on the preferred remedy, I am not anxious to render an opinion that would appear advisory in nature. I am particularly reluctant to do so since, if the Court does not vacate and remand, I would vote secondarily to hold that the controversy is moot.

Second, vacating and remanding for further consideration of the effect of new state law seems most consistent with our general reluctance to decide a question in the first instance without the benefit of the views of the lower courts. Just last Term in Mills v. Rogers, we unanimously held that a case presenting the question whether involuntarily committed mental patients have a constitutional right to refuse treatment with antipsychotic drugs should be vacated and remanded for the First Circuit to consider the effect of an intervening state court decision on the rights of a noninstitutionalized incompetent mental patient as to involuntary treatment with antipsychotic drugs. There we noted:

"It is this Court's settled policy to avoid unnecessary decisions of constitutional issues. . . . This policy

is supported, although not always required, by the prohibition against advisory opinions.

In applying this policy of restraint, we are uncertain here which if any constitutional issues now must be decided to resolve the controversy between the parties. . . .

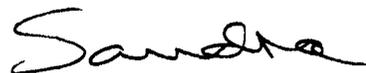
Because of its greater familiarity with the record and with Massachusetts law, the Court of Appeals is better situated than we to determine how [the intervening state decision] may have changed the law of Massachusetts and how any changes may affect this case. Accordingly, we think it appropriate for the Court of Appeals to determine in the first instance whether [the intervening state decision] requires revision of its holdings" Slip op. at 13-14 (citations omitted).

As in the Mills case, the Court of Appeals is better situated than are we to examine the effect of Mass. Gen. Laws c. 190, §25 on the continued propriety of the modification of the consent decree. In short, I feel that the policy of judicial restraint--particularly in the light of the views of the parties on the remedy of vacating--counsels in favor of allowing the lower court to consider in the first instance whether state law has mooted this controversy.

Furthermore, we are holding a case presenting the same merits issue. The petitions in Firefighters Local Union No. 1784 v. Stotts, No. 82-206, and Memphis Fire Dep't v. Stotts, No. 82-229, raise the propriety of modification of a consent decree to protect junior minority workers from layoffs. I recognize that there is one prudential concern in Stotts regarding whether the modification infringed any seniority rights at all since the collective bargaining agreement securing those rights may be void under state law. The lower court, however, did not address this state law issue and resolved the case on the federal ground. If the merits are reached in Stotts, however, the facts there present a much easier case for reversal than the present one since there was no concession of liability on the part of the employer when the original consent decree was entered. In short, I think an appropriate case for reaching the merits issue raised here will present itself soon enough without our reaching out to decide the issue in this case.

As I understand it, the effect of the current conference vote--four to reach the merits and four to either vacate or hold that the controversy is moot--would be an affirmance by an equally divided Court. Those who would affirm the case on the merits would prefer, of course, to have a disposition with precedential effect. Those who would reverse on the merits would prefer not to see the judgment below affirmed. Thus, to affirm by an equally divided Court is not a reflection of the views of most of us. Given this fact, our general policy of judicial restraint, about which I feel very strongly, and the parties' wishes, I think it is unfortunate that we cannot gather enough votes to vacate and remand.

Sincerely,

A handwritten signature in cursive script that reads "Sandra".

Justice Powell

HAK

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 2, 1983

- No. 82-185 Boston Firefighters Union, Local
718 v. Boston Chapter, NAACP
- No. 82-246 Boston Police Patrolmen's Assoc.
v. Castro
- No. 82-259 Beecher v. Boston Chapter, NAACP

MEMORANDUM TO THE CONFERENCE

Attached is a proposed form of per curiam
order to be used in these cases. Please let me know
if you have any suggestions.

Sincerely,



To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: MAY 2 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 82-185, 82-246 AND 82-259

BOSTON FIREFIGHTERS UNION, LOCAL 718,
 PETITIONER

82-185

v.

BOSTON CHAPTER, NAACP, ET AL.

BOSTON POLICE PATROLMEN'S ASSOCIATION,
 INC., PETITIONER

82-246

v.

PEDRO CASTRO ET AL.

NANCY B. BEECHER, ET AL., PETITIONERS

82-259

v.

BOSTON CHAPTER, NAACP, ET AL.

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

[May —, 1983]

PER CURIAM.

In these cases, the United States Court of Appeals for the First Circuit upheld the District Court's August 7, 1981 orders enjoining the Boston Police and Fire Departments from laying off policemen and firefighters in a manner that would reduce the percentage of minority officers below the level obtaining at the commencement of layoffs in July, 1981. 679 F. 2d 965 (1982). These orders had the effect of partially superseding the operation of the state's statutory last-hired, first-fired scheme for civil service layoffs, Mass. Gen. Laws Ann.

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 23, 1983

MEMORANDUM TO THE CONFERENCE

Cases Held for Nos. 82-185, 82-246, 82-259, Boston Firefighters Union, Local 718 v. Boston Chapter, NAACP

No. 82-206, Firefighters Local Union No. 1784 v. Stotts, et al.

No. 82-229, Memphis Fire Dep't, et al. v. Stotts, et al.

I am not sure who should write the "hold memo" on these cases. Inasmuch as I prepared the order in the Boston Firefighters cases, I am circulating a memo on the cases held for them.

In these petitions, the Union and the Memphis Fire Department challenge the modification of a 1980 consent decree on the grounds that the modification impermissibly abrogated the operation of a bona fide seniority system.

In 1974 the City of Memphis entered a consent decree with the United States in the context of a suit under Title VII, 42 U.S.C. §1981, and the Fourteenth Amendment alleging race and sex discrimination in the City's hiring and promotion practices. In the decree, the City did not admit any illegality, but agreed to specific interim hiring goals for lower level workers. The 1980 consent decree at issue here was entered in the context of a class action commenced in 1977 by respondent Stotts alleging that the Fire Department's hiring and promotion policies continued to violate Title VII, 42 U.S.C. §1981, and 42 U.S.C. §1983. Again, the City did not admit any illegality, but agreed to the establishment of specific hiring and promotional goals.

One year later, the City announced a personnel reduction in nonessential services, which was to be accomplished in accordance with the last-hired, first-fired seniority system contained in the City's memorandum of

Grant and Consolidate with No. 82-206
(memo attached)

RR

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 24, 1983

MEMORANDUM TO THE CONFERENCE

Cases Held for Nos. 82-185, 82-246, 82-259, Boston Firefighters Union, Local 718 v. Boston Chapter, NAACP

No. 82-206, Firefighters Local Union No. 1784 v. Stotts, et al.

No. 82-229, Memphis Fire Dep't, et al. v. Stotts, et al.

After I circulated the hold memorandum in these cases, I received from the Clerk's Office Respondents' Suggestion of Mootness. Respondents argue that there have been similar developments to those in the Boston Firefighters case which make this case moot. Respondents therefore urge the Court to vacate and remand for consideration of mootness.

According to respondents, who document their information only with a Memphis newspaper article, all employees previously laid off have been recalled to work. All fire officers who were temporarily demoted due to the fiscal layoffs, with one exception, have been returned to their pre-layoff rank. The one officer who has not been restored to his pre-layoff rank was unaffected by the District Court's modification because he had the lowest seniority of any officer, black or white, in his job classification. Further, the City's fiscal year 1984 budget makes provision for three new positions in this job classification, so even this one officer should be returned to his original rank eventually.

After a response has been received from the petitioners, I will circulate a supplemental memorandum to the Conference.

Sincerely,

Sandra

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 1, 1983

MEMORANDUM TO THE CONFERENCE

Cases Held for Nos. 82-185, 82-246, 82-259, Boston Firefighters Union, Local 718 v. Boston Chapter, NAACP

No. 82-206, Firefighters Local Union No. 1784 v. Stotts, et al.

No. 82-229, Memphis Fire Dep't, et al. v. Stotts, et al.

Petitioners have filed a response to Respondents' Suggestion of Mootness setting forth several reasons why this controversy is not moot.

Petitioners contend that here--unlike the Boston Firefighters case, in which the Massachusetts legislation proscribed future layoffs of the reinstated employees for fiscal reasons--there is absolutely no assurance against future layoffs in Memphis for fiscal reasons. In addition, respondents have failed to sustain their "heavy" burden, County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979), of demonstrating that there is no reasonable expectation of future layoffs.

Moreover, the District Court's orders have continuing effect; they have not expired by their own terms and impose continuing obligations on petitioners. Therefore, as the decree is presently interpreted by the District Court, any future layoffs would be controlled by the modifications.

Petitioners also point to the continuing adverse impact of the layoffs on affected employees. Although these employees have been reinstated, several collateral consequences of the layoffs remain. One effect has been to render laid-off non-minority firefighters less senior for the purpose of future job decisions and entitlements. For example, seniority is a relevant consideration in future promotion, and the loss of service time during the layoff period has impaired the affected employees' expectations of

Grant, I agree with Justice
O'Connor's memo.

RK

9/82-206
is granted,
grant +
consolidate
this one