The Burger Court Opinion Writing Database

Cooper v. Federal Reserve Bank of Richmond

467 U.S. 867 (1984)

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

June 18, 1984

Re: 83-185 - Cooper, Et Al. v. FRB of Richmond

Dear John:

I join.

Regards,

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1984

No. 83-185

Cooper, et al. v. Federal Reserve Bank of Richmond

Dear John,

I agree.

Sincerely,

Bill

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1984

Re: 83-185 -

Cooper v. Federal Reserve Bank of Richmond

Dear John,

I agree.

Sincerely yours,

Byron

Justice Stevens

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 12, 1984

Re: No. 83-185-Cooper v. Federal Reserve Bank of Richmond

Dear John:

As of now, the best I can do is join in the judgment.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

'84 JUN 14 A9:40

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1984

Re: No. 83-185, Cooper v. Federal Reserve Bank of Richmond

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1984

83-185 Cooper v. Fed. Res. Bank

Dear John:

I agree with the portion of your opinion that discusses the different issues that are "actually litigated" in pattern or practice, as opposed to individual, discrimination cases. It seems to me, however, that your analysis should go one step further to determine what could--and probably should--have been litigated.

You state, on page 6: "A judgment in favor of either side is conclusive in a subsequent action between them on any issue actually litigated and determined, if its determination was essential to that judgment." Past cases have couched the test in somewhat different terms: "A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981) (emphasis added). This rule helps effectuate the policies of "reliev[ing] parties of the cost and vexation of multiple lawsuits, conserv[ing] judicial resources, and, by preventing inconsistent decisions, encourag[ing] reliance on adjudication." Allen v. McCurry, 449 U.S. 90-94 (1980).

In this case, the DC addressed the individual claims of the Cooper plaintiffs. This suggests that the district court could have addressed the Baxter plaintiffs claims as well. Instead, the court refused to allow the Baxter plaintiffs to intervene. This refusal now will lead to additional litigation and possibly inconsistent decisions.

You state on page 13: "Whether the issues framed by the named parties before the Court should be expanded to encompass the individual claims of additional class members is a matter of judicial administration that should be decided in the first instance by the District Court." Would you consider adding a footnote along the following lines:

> "The issue whether the District Court abused its discretion in denying petitioners' motion

> to intervene is not before us. It should be noted, however, that a district court should consider the court's interest in judicial economy and the parties' interest in the efficient resolution of their disputes. Although the intervention of several individual plaintiffs in a class action might prolong the case, that result usually would be preferable to separate trials for each of the individual plaintiffs following the completion of the class action suit. Intervention would avoid the duplication of efforts that inevitably results when successive lawsuits involving similar but distinct issues are tried."

It would also be helpful if you changed the statement on page 6 to read: "any issue that was, or could have been, actually litigated and determined...." In my view, the DC erred in not allowing intervention in this case, where the claims of both the Cooper and Baxter plaintiffs were similar in nature and where the same counsel were available to represent the Baxter plaintiffs. But respondent opposed petitioners' motion to intervene, and should not be heard to complain at this stage.

If you see fit to make these changes, I will be glad to join you. Otherwise, I will probably concur separately.

Sincerely,

L. Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 6, 1984

83-185 Cooper v. Federal Reserve Bank

Dear John:

I appreciate the care with which you responded to my letter.

I suppose we are simply in disagreement on the points I raised. I do think it is important to encourage District Courts, once a Title VII class action has been litigated - usually over a period of years - to retain jurisdiction to resolve the individual claims of persons properly within the class who did not elect to "opt" out. I probably, therefore, will write briefly.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 18, 1984

83-185 Cooper v. Federal Reserve Bank

Dear John:

You may recall that I advised the Conference that my brother was Chairman of the Board of the Federal Reserve Bank of Richmond when this suit was commenced in 1977. He died in 1979.

Although it was agreed that this was not cause for recusal, I have continued to have some personal reservation. Although I have participated up to this time, I believe it is not too late to have you add that I did not participate in the decision of the case. This would be true with respect to the final decision.

Sincerely,

Lewis

Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1984

Re: No. 83-185 Cooper v. Federal Reserve Bank

Dear John:

Please join me.

Sincerely,

WEW

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 13, 1984

Re: No. 83-185 Cooper v. Federal Reserve Bank of Richmond

Dear Lewis:

I read your proposed concurrence in this case with interest, and wish I felt I had enough knowledge in the "class action" area to confidently comment on it. Unfortunately, from the point of view of experience I am in worse shape than you are, because I left private practice in 1969 and you didn't leave it until 1972; class action litigation was just beginning to surface in the Arizona courts when I went to the Justice Department.

As I understood the case before us at oral argument, where there is a claim of "pattern and practice" discrimination the showing which must be made by the plaintiffs is something more than just isolated instances of discriminatory treatment. If the plaintiffs fail to make out this sort of claim against the defendant, they may nonetheless be entitled to a trial or hearing on a claim of individual discriminatory treatment. If I am right in thinking this--and I am not at all certain that I am--I don't think that one could invariably say that allowing the plaintiffs to intervene in the action to try their cases of individual discrimination would necessarily advance the litigation of the "pattern or practice" element of the case.

Further your affiant sayeth not.

Sincerely,

Bill

Justice Powell

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

From: **Justice Stevens**

Circulated: JUN 1 '84

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–185

SYLVIA COOPER ET AL., PETITIONERS *v.* FEDERAL RESERVE BANK OF RICHMOND

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

[June ——, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

The question to be decided is whether a judgment in a class action determining that an employer did not engage in a general pattern or practice of racial discrimination against the certified class of employees precludes a class member from maintaining a subsequent civil action alleging an individual claim of racial discrimination against the employer.

I

On March 22, 1977, the Equal Employment Opportunity Commission commenced a civil action against respondent, the Federal Reserve Bank of Richmond.[1] Respondent operates a branch in Charlotte, North Carolina (the Bank), where during the years 1974–1978 it employed about 350–450 employees in several departments. The EEOC complaint alleged that the Bank was violating § 703(a) of Title VII of the Civil Rights Act of 1964 by engaging in "policies and practices" that included "failing and refusing to promote blacks because of race." App. 9.

[1] The Bank is organized pursuant to a federal statute, 12 U. S. C. § 341, that enables it to sue and be sued, to appoint its own employees, and to define their duties.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 5, 1984

Re: 83-185 - Cooper v. Federal Reserve Bank

Dear Lewis:

Thank you for your letter.

As Harry recently explained in footnote 1 of his opinion in Migra, 82-738, the term res judicata has been used in different senses. I adopt what I think is the most accurate nomenclature. The portion of my opinion on p. 6 which you quote is a brief statement of the collateral estoppel or issue preclusive effect of a judgment. Issue preclusion only obtains if the issue was decided, and only if its decision was necessary to the judgment. Your quotation from Moitie, though it uses the word "issue," is not discussing issue preclusion, but claim preclusion. The plaintiffs in that case were attempting to relitigate a cause of action that was plainly barred under res judicata by raising an argument which could have been litigated in the prior action. This is impermissible under the doctrine of bar.

This distinction is explained in Commissioner v. Sunnen, 333 U.S. 591, 597-98 (1948), cited by Moitie, as follows: "The judgment puts an end to the cause of action, which cannot be brought into litigation between parties on any ground whatever, absent fraud or some other factor invalidating the judgment.... But where the second action between the same parties is upon a different cause or demand ... the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but 'only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.'" (citations omitted).

My statement of the point made in Moitie is encompassed by the sentences on p. 6 relating to merger and bar--i.e., a judgment on the cause of action extinguishes the claim. For purposes of this case, I thought it unnecessary to point out that once the claim is extinguished, it cannot be relitigated by raising some new argument. If you would like me to do so, I will be happy to, but it does seem unnecessary here.

With respect to your proposed footnote, I think it would be preferable not to go into the intervention motion here in detail, or express any views on its merits. It is a peripheral matter at most. You seem to be operating on the assumption in this regard that the Baxter petitioners attempted to intervene at the outset of the litigation. If that were true, then the basic question for the District Court would be how many named plaintiffs should be permitted in a class action while still keeping it manageable. There are no hard and fast rules governing that question. Had the Baxter petitioners sought to intervene at the same time as the Cooper plaintiffs, perhaps the District Court would have granted them leave to intervene. Here, however, the intervention motion by the Baxter petitioners came after the trial. This would appear to be analogous to an attempt at a "one-way" intervention condemned in the 1966 revisions of the Rules. See generally, American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974). They presumably sought to intervene because they thought their individual cases had been established during the class action. This would seem to be unfair to the defendant, however, since the defendant does not need to win on the merits of each and every testifying class member's testimony in order to prevail on the pattern and practice claim. A defendant thus might not fully litigate the issues surrounding a few class members' testimony, and instead focus on the main issue in pattern and practice cases--the statistical evidence--and of course the claims of the named plaintiffs. In fact, counsel may argue that even accepting the class members' testimony, a pattern and practice was not established. Indeed, this may be the reason trial counsel for respondent opposed the intervention motion. Because of this, it is questionable whether a District Court finding of

discrimination in favor of the testifying class members would bind the defendant. If individual claims are to be decided, then presumably the individuals should be permitted to intervene as plaintiffs at the outset of the litigation. But I think it is tautological that not all class members could be permitted to intervene--if they could, then the numerosity requirement of Rule 23 would not have been satisfied, and there should never have been a class certified.

Perhaps I have written more than I should but I must confess that I really am somewhat concerned that an attempt to accommodate either or both of your suggestions may require more of an addition to the opinion than would be constructive. In short, I would much prefer to leave the opinion in its present form but surely will reconsider if I have not satisfactorily explained why I did not go into these two points more deeply in the opinion itself.

Respectfully,

Justice Powell

Copies to the Conference

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 13 1984

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 2, 6

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–185

SYLVIA COOPER, ET AL., PETITIONERS *v.* FEDERAL RESERVE BANK OF RICHMOND

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

[June ——, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

The question to be decided is whether a judgment in a class action determining that an employer did not engage in a general pattern or practice of racial discrimination against the certified class of employees precludes a class member from maintaining a subsequent civil action alleging an individual claim of racial discrimination against the employer.

I

On March 22, 1977, the Equal Employment Opportunity Commission commenced a civil action against respondent, the Federal Reserve Bank of Richmond.[1] Respondent operates a branch in Charlotte, North Carolina (the Bank), where during the years 1974–1978 it employed about 350–450 employees in several departments. The EEOC complaint alleged that the Bank was violating § 703(a) of Title VII of the Civil Rights Act of 1964 by engaging in "policies and practices" that included "failing and refusing to promote blacks because of race." App. 9.

[1] The Bank is organized pursuant to a federal statute, 12 U. S. C. § 341, that enables it to sue and be sued, to appoint its own employees, and to define their duties.

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 18 1

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83–185

SYLVIA COOPER, ET AL., PETITIONERS *v.* FEDERAL RESERVE BANK OF RICHMOND

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

[June ——, 1984]

JUSTICE STEVENS delivered the opinion of the Court.

The question to be decided is whether a judgment in a class action determining that an employer did not engage in a general pattern or practice of racial discrimination against the certified class of employees precludes a class member from maintaining a subsequent civil action alleging an individual claim of racial discrimination against the employer.

I

On March 22, 1977, the Equal Employment Opportunity Commission commenced a civil action against respondent, the Federal Reserve Bank of Richmond.[1] Respondent operates a branch in Charlotte, North Carolina (the Bank), where during the years 1974–1978 it employed about 350–450 employees in several departments. The EEOC complaint alleged that the Bank was violating § 703(a) of Title VII of the Civil Rights Act of 1964 by engaging in "policies and practices" that included "failing and refusing to promote blacks because of race." App. 9.

[1] The Bank is organized pursuant to a federal statute, 12 U. S. C. § 341, that enables it to sue and be sued, to appoint its own employees, and to define their duties.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 20, 1984

Re: 83-185 - Cooper v. Federal Reserve Bank of Richmond

Dear Thurgood:

If there are any changes that you think would improve the opinion, I would welcome them and be glad to hold the case over. I am not pushing you but just want you to know that if I can get you to join I'll do whatever I can.

Respectfully,

Justice Marshall

HAB

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 26, 1984

MEMORANDUM TO THE CONFERENCE

Hold for 83-185 - Cooper v. Fed. Reserve Bank of Richmond

83-902 - Boeing Vertol v. Edwards

A class action alleging a pattern or practice of racial discrimination in employment was commenced against petitioner in 1971. Respondent was a member of the class and testified at the trial in 1974, but was not a named party. Respondent had filed a charge of discrimination with EEOC in 1973 and filed a supplemental charge in 1975, alleging retaliation for his testimony. Petitioner prevailed in the pattern and practice class action. The District Court made specific findings regarding respondent's employment situation in its opinion rejecting the class claim. The District Court's 1977 judgment in the class action was affirmed in 1981.

In 1980, respondent received a right-to-sue letter from EEOC and commenced this individual action alleging that petitioner discrminated against him on account of his race. Petitioner prevailed in the District Court, but the Third Circuit reversed the judgment in favor of petitioner and remanded for a new trial of respondent's Title VII employment discrimination claim. The trial errors that resulted in the reversal (striking a jury demand and limiting discovery) are not challenged by the petition. Petitioner contends that the Third Circuit erred in refusing to hold that respondent's claim was barred by res judicata, or by collateral estoppel, because he was a member of a class, and testified in support of the plaintiff's class claims, that had failed to prove pattern and practice allegations against petitioner in other litigation. The Third Circuit rejected the res judicata argument for the same reasons that we reversed the Fourth

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

June 4, 1984

Re: No. 83-185 Cooper v. Federal Reserve Bank of Richmond

Dear John,

Please join me.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference