

The Burger Court Opinion Writing Database

Sheet Metal Workers v. EEOC

478 U.S. 421 (1986)

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 24, 1986

RE: No. 84- 1656 - Local 28 v. EEOC

Dear Bill:

I join your dissenting opinion.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 25, 1986

Local 28 v. EEOC, No. 84-1656
Local 93 v. City of Cleveland, No. 84-1999

Dear Lewis:

Enclosed, at long last, are draft opinions in these two cases. I am, of course, especially interested in any suggestions you might have on how to improve either of them. I apologize for the length of the opinion in Local 28, but it seemed to me necessary to lay out both the facts of the case and the legislative history of the statute in some detail in order properly to dispose of the issues presented.

Sincerely,

WJB, Jr. /dk

Justice Powell

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

From: Justice Brennan

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTER-
NATIONAL ASSOCIATION AND LOCAL 28 JOINT
APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION ET AL.

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

[May —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court.

In 1975, petitioners were found guilty of engaging in a pattern and practice of discrimination against black and Hispanic individuals (nonwhites) in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000e *et seq.*, and ordered to end their discriminatory practices, and to admit a certain percentage of nonwhites to union membership by July of 1982. In 1982 and again in 1983, petitioners were found guilty of civil contempt for disobeying the District Court's earlier orders. They now challenge the District Court's contempt finding, and also the remedies the court ordered both for the Title VII violation and for contempt. Principally, the issue presented is whether the remedial provision of Title VII, see 42 U. S. C. 2000e-5(g), empowers a district court to order race-conscious relief that may benefit individuals who are not identified victims of unlawful discrimination.

I

Petitioner Local 28 of the Sheet Metal Workers' International Association (Local 28) represents sheet metal workers employed by contractors in the New York City metropolitan area. Petitioner Local 28 Joint Apprenticeship Committee

STYLISTIC CHANGES THROUGHOUT.
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To: The Chief Justice
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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.

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

[June —, 1986]

JUSTICE BRENNAN delivered the opinion of the Court.

In 1975, petitioners were found guilty of engaging in a pattern and practice of discrimination against black and Hispanic individuals (nonwhites) in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, and ordered to end their discriminatory practices, and to admit a certain percentage of nonwhites to union membership by July 1982. In 1982 and again in 1983, petitioners were found guilty of civil contempt for disobeying the District Court's earlier orders. They now challenge the District Court's contempt finding, and also the remedies the court ordered both for the Title VII violation and for contempt. Principally, the issue presented is whether the remedial provision of Title VII, see 42 U. S. C. 2000e-5(g), empowers a district court to order race-conscious relief that may benefit individuals who are not identified victims of unlawful discrimination.

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PP. 1, 18, 57

To: The Chief Justice
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From: Justice Brennan.

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

**LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.**

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

[June —, 1986]

JUSTICE BRENNAN announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III, and VI, and an opinion with respect to Parts IV and V in which JUSTICE MARSHALL, JUSTICE BLACKMUN, and JUSTICE STEVENS join.

In 1975, petitioners were found guilty of engaging in a pattern and practice of discrimination against black and Hispanic individuals (nonwhites) in violation of Title VII of the Civil Rights Act of 1964, 42 U. S. C. § 2000e *et seq.*, and ordered to end their discriminatory practices, and to admit a certain percentage of nonwhites to union membership by July 1982. In 1982 and again in 1983, petitioners were found guilty of civil contempt for disobeying the District Court's earlier orders. They now challenge the District Court's contempt finding, and also the remedies the court ordered both for the Title VII violation and for contempt. Principally, the issue presented is whether the remedial provision of Title VII, see 42 U. S. C. 2000e-5(g), empowers a district court to order race-conscious relief that may benefit individuals who are not identified victims of unlawful discrimination.

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

JUN 28 1986

MEMORANDUM TO THE CONFERENCE

Re: Local 28 v. EEOC, No. 84-1656

I am changing the second to the last sentence on page 57 of the latest draft of my opinion in this case to read as follows: "Five members of the Court agree that in this case, the District Court did not err in evaluating petitioners' utilization of the apprenticeship program...." In light of the length of the opinion and the relatively minor nature of this change, I will not be recirculating another draft reflecting this change.

WJB

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

July 1, 1986

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

o. Bryant

MEMORANDUM TO THE CONFERENCE

Held for No. 84-1656, Local 28 v. EEOC; and No. 84-1999,
Local 93 v. City of Cleveland;
No. 84-1936, City of South Bend v. Janowiak

Because of a disparity between the percentage of minorities in its population and the percentage of minorities in its fire department, the Board of Public Safety of the City of South Bend appointed a task force to design and implement a plan to improve minority recruitment. The task force concluded that the fire department's hiring tests were reasonable, but recommended that the Board adopt a preferential hiring plan favoring minorities, so that the percentage of minorities in the fire department reflected the percentage of minorities in the city's population. The Board adopted an affirmative action program under which the department would use separate lists to rank minority and non-minority applicants who achieved a certain base score on the hiring test, and a three member panel would recommend to the Board the number of applicants to be hired from each list. Pursuant to this program, the city hired four minority and one non-minority applicant for fire department positions.

Respondent, a white male who ranked second on the non-minority applicant list, sued the City alleging race discrimination under both Title VII and the Constitution. The district court granted summary judgment for the City, concluding that neither Title VII nor the Constitution prohibited the adoption of an affirmative action program designed to remedy statistical disparities in the work force. The Court of Appeals reversed, holding that the City's affirmative action programs violated both Title VII and the Equal Protection Clause of the Fourteenth Amendment because they were not based upon findings of past discrimination. The court reasoned that evidence of a statistical disparity between the percentage of minorities employed in the Department and the percentage of minorities within the city's population did not constitute a finding of past discrimination.

This case does not directly implicate issues decided in either Local 93 or Local 28. The Court of Appeals struck the City's affirmative action program because it was not, in the court's view, supported by adequate findings of past discrimination. At least with respect to respondent's Constitutional claim, this is an issue we discuss extensively in

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Supreme Court of the United States
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July 1, 1986

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Held for Nos. 84-1656 Local 28 v. EEOC and 84-1999, Local 93 v. Cleveland:
No. 85-492, Devereaux v. Geary

Petitioners, five non-minority members of the Metropolitan District Commission (MDC) police force, contend that CAI erred in affirming the District Court's dismissal of their suit for failure to state a claim after finding petitioners' attempt to intervene in the case of Culbreath v. Dukakis untimely.

In 1974, in Culbreath, minority State employees brought suit against various Massachusetts officials, alleging historical and ongoing discrimination in the hiring and promotion practices of the State Civil Service in violation of Title VII. In 1979 the parties entered into a consent decree in which the defendants acknowledged past discriminatory practices and which provided goals, to be in effect from 1979 - 1987, for the appointment and promotion of minorities.

In 1984, the instant action was brought by five white male police lieutenants against the Commissioner of the MDC and against the Superintendent of the MDC police force. Petitioners challenged the promotion of a black officer under the provisions of the consent decree. Petitioners contended that they all had scored higher on the competitive exam administered to determine promotion eligibility than the black officer had and that the consent decree had denied them the opportunity to be considered for that promotion because of their race, in violation of the Fourteenth Amendment and of 42 U.S.C. §1981.

Because CAI has held that consent decrees may not be collaterally attacked in suits such as petitioners', the District Court chose to treat petitioners' complaint as a motion to intervene in Culbreath. The court found that the only potentially meritorious basis for such belated intervention was petitioners' allegation that Firefighters Local Union No. 1784 v. Stotts, 467 U.S. 561 (1984) had worked a material change in Title VII law which warranted reconsideration of the provisions of the consent decree. Petitioners argued that Stotts stood for the propositions that consent decrees may not exceed the limitations placed on courts' authority to award judicial relief contained in §706(g) of Title VII and that §706(g) prohibits the award of race-conscious relief that benefits individuals who were not the

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7A13

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

July 1, 1986

MEMORANDUM TO THE CONFERENCE

Held for Nos. 84-1656, Local 28 v. EEOC and 84-1999, Local 93 v. Cleveland:
No. 85-999, United States v. Paradise

The procedural history of this case is somewhat complicated. The essential facts are as follows. In 1972, the NAACP brought a class action against the Alabama state trooper force alleging that the force had engaged in discriminatory hiring and promotion practices in violation of the Fourteenth Amendment and 42 U.S.C. §§1981 and 1983. The United States was made a party plaintiff and Mr. Paradise was permitted to intervene on behalf of a class of black plaintiffs. The District Court (then Chief Judge Frank Johnson) found that the trooper force had engaged in a blatant and continuous pattern and practice of discrimination in hiring. He found that in the 37 years of the history of the patrol that there had never been a black trooper. Pet. 3a. The court concluded that defendants had violated the Fourteenth Amendment and enjoined them from engaging in discriminating on the basis of race and ordered them, inter alia, to hire one black trooper for each white trooper hired until blacks comprised 25% of the force. The defendants appealed and CA5 affirmed.

In 1975, the District Court found that defendants had artificially restricted the size of the trooper force in order to frustrate the 1972 order. Based on this finding, the court enjoined the defendants from artificially restricting the size of the force for the purpose of delaying or frustrating achievement of the goal of having blacks comprise 25% of the trooper force.

In 1977, plaintiffs returned to the District Court seeking supplemental relief in the face of defendants' recalcitrance. In 1979, the parties entered into a partial consent decree in which they explicitly recognized the continuing effect of the courts 1972 and 1975 orders. Pet. 9a. The defendants also agreed, with respect to promotions, to develop within one year a promotion procedure that would be fair to all applicants and that would have little or no adverse impact on blacks seeking promotion to corporal. Id.

In 1979, one year after the deadline contained in the consent decree, defendants moved the District Court for approval of a proposed new promotion procedure. Both the plaintiffs and

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Supreme Court of the United States
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July 1, 1986

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Held for No. 84-1656, Local 28 v. EEOC:
No. 85-1085, Afro-American Police Ass'n v. United States;
No. 85-1404, United States v. Afro-American Police Ass'n

The Justice Department brought suit in 1973 against the City of Buffalo, alleging that the City's Police and Fire Departments were engaged in a pattern or practice of discrimination against blacks, women, and Hispanics in violation of Title VII and the Fourteenth Amendment. The District Court found that the City had unlawfully discriminated against female and minority applicants for police and firefighter positions, that the hiring tests and selection procedures used by the City had a racially disproportionate impact and were not job-related, and that the police department had discriminated against blacks in terms and conditions of employment. The court set interim hiring goals of 50% for minorities in the Police and Fire Departments and 25% for women in the Police Department. These temporary goals were to remain in effect until the percentage of minorities in the Police Department was equal to the percentage of minorities in the City's labor force, or until valid, nondiscriminatory selection procedures were developed and implemented and the court determined that interim goals were no longer appropriate. The Court of Appeals affirmed these goals, noting that "the proven violations were serious and ... little or no progress ha[s] been made in remedying them." However, the Court of Appeals struck a provision in the District Court's decree requiring the City to achieve the "long-term goal" of having the percentage of minorities in its Police and Fire Departments reflect the percentage of minorities in the City's work force. The court reasoned that "[t]here is no requirement, either constitutional or statutory, that each identifiable group of employees should exactly reflect the racial or sexual composition of the work force."

In 1985, the Justice Department moved for modification of the District Court's orders, contending that the interim hiring goals were rendered unlawful by this Court's decision in Firefighters v. Stotts, 467 U.S. 561 (1984). The City did not oppose this motion, but the Afro-American Police Association, along with several black applicants and police officers, intervened to oppose the Department's motion. The District Court denied the Government's motion, and the Court of Appeals affirmed. Both sides have filed certiorari petitions in this

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

July 1, 1986

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Held for No. 84-1656, Local 28 v. EEOC; and No. 84-1999,
Local 93 v. City of Cleveland
No. 85-1129, Johnson v. Transportation Agency, No. 85-1129

Petitioner has been employed by respondent Santa Clara County Transportation Agency since 1967. In 1979, when respondent announced an opening for a road dispatcher, Johnson and eight others applied the position. Johnson, with a score of 75, tied for second on an examination given by a two-member oral board; Diane Joyce, the only female applicant, placed fourth with a score of 72.5. Like Johnson, Joyce was a long-time agency employee with relevant work experience. Agency employees conducted a second, departmental oral board for applicants who had passed the first examination, and unanimously recommended Johnson for the dispatcher position. Joyce ranked third after the interview; however, the Agency Director appointed Joyce to the dispatcher position pursuant to the Agency's voluntary, non-collectively bargained affirmative action plan. The plan established a long-range goal for the Agency to attain a work force whose composition in all major job classifications approximated the distribution of women, minorities, and handicapped persons in the County labor force. The plan stated that women had traditionally been underrepresented in the relevant job classifications and recognized an extreme difficulty in increasing the representation of women in skill-craft positions. At the time the plan was implemented, none of the Agency's 238 skill-craft positions was held by a woman.

Johnson challenged that Agency's failure to promote him to the road dispatcher position, in favor of a less qualified woman, solely as a violation of Title VII. The District Court found that Johnson would have been promoted but for his sex, and concluded that the Agency's refusal to promote him violated Title VII. The court rejected the agency's contention that its actions had been taken pursuant to a valid affirmative action plan, since, in the court's view, the Agency's plan was permanent and designed to maintain a particular balance in the work force. The court also suggested that the plan did not have a valid remedial purpose, since the Agency had not shown that it had discriminated against women in the past.

The Court of Appeals reversed. Applying the standards we announced in United Steelworkers of America v. Weber, 443 U.S. 93

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Supreme Court of the United States
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CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

Teague

MEMORANDUM TO THE CONFERENCE

Cases held for No. 84-1656, Local 28 v. EEOC; and No. 84-1999, Local 93 v. City of Cleveland:
No. 85-1345, J.A. Croson Co. v. City of Richmond, No. 85-1345

In 1983, the City of Richmond adopted a Minority Business Utilization Plan which requires all contractors to whom the City awards construction contracts to subcontract at least 30% of the dollar amount of the contract to minority business enterprises, unless the requirement is waived. The City Council adopted the Plan based on evidence that although minority groups made up 50% of the City's population, only .67% of the City's construction contracts for the five-year period from 1978-1983 were awarded to minority businesses. By its own terms the Plan was "enacted for the purpose of promoting wider participation by minority business enterprises in the construction of public projects." It automatically expires in June of 1988, approximately five years after its effective date.

Petitioner, a nonminority plumbing contractor, was the only bidder on a contract to install plumbing fixtures at the City Jail. Petitioner sought a waiver of the 30% minority business requirement, claiming that the five or six minority suppliers it had contacted were either unqualified, or had failed to respond to its inquiries. There was some evidence before the District Court than petitioner had failed to respond to requests for specifications submitted by two of these minority suppliers. In any event, the City's contract officer denied petitioner's waiver request, since at least one minority supplier, Continental Metal Hose, was available to perform the work. Petitioner again requested a waiver, contending that Continental's bid was substantially higher than those submitted by other subcontractors. Petitioner submitted documents showing that if it were required to subcontract with Continental, the contract price must be increased by \$7663.16. The City denied petitioner's request to raise the contract price, and for a waiver, and informed petitioner that it had decided to rebid the project. Petitioner then sued the City in federal court, challenging the Plan as void under state law and the Fourteenth Amendment.

The District Court, after a bench trial, declared the Plan valid, and the Court of Appeals affirmed. For purposes of this

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

From: **Justice White**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTER-
NATIONAL ASSOCIATION AND LOCAL 28 JOINT
APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION ET AL.

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

[June —, 1986]

JUSTICE WHITE, dissenting.

As the Court observes, the general policy under Title VII is to limit relief for racial discrimination in employment practices to actual victims of the discrimination. But I agree that § 706(g) does not bar relief for nonvictims in all circumstances. Hence, I generally agree with Parts I through IV-D of the Court's opinion. It may also be that this is one of those unusual cases where nonvictims of discrimination were entitled to a measure of the relief ordered by the District Court and affirmed by the Court of Appeals. But Judge Winter, in dissent below, was correct in concluding that critical parts of the remedy ordered in this case were excessive under § 706(g), absent findings that those benefiting from the relief had been victims of discriminatory practices by the union. As Judge Winter explained and contrary to the Court's views, the cumulative effect of the revised affirmative action plan and the contempt judgments against the union established not just a minority membership goal but also a strict racial quota that the union was required to attain. We have not heretofore approved this kind of racially discriminatory hiring practice, and I would not do so now. Beyond this, I am convinced, as Judge Winter was, that hold-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 27, 1986

Re: No. 84-1656 - Local 28 of the Sheet Metal
Workers' International Association and Local
28 Joint Apprenticeship Committee v. Equal
Employment Opportunity Commission, et al.

Dear Bill:

Please join me.

Sincerely,

JM.

T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

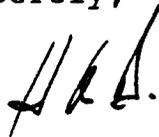
May 30, 1986

Re: No. 84-1656, Local 28 of the Sheet Metal Workers'
Ass'n & Local 28 Joint Apprenticeship Comm. v. EEOC

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 6, 1986

84-1656 Local 28 v. EEOC

Dear Chief:

Although I find this a close and difficult case, my tentative vote is to affirm. This vote is predicated primarily on the undisputed record of gross discrimination by the union over a period of at least two decades, and its intransigence in resisting every effort (including court orders) to implement appropriate remedies. (See the attached appendix).

In addition, the District Court has been remarkably flexible over the years, and, importantly for me, unlike Wygant, there is nothing before us to suggest that individual union members will have to be laid off.

In sum, it seems to me that under the circumstances of this case, the courts had little option--in the exercise of their duty to end discrimination--other than to take the remedial action before us.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 30, 1986

84-1656 Local 28 v. EEOC

Dear Bill:

I have now had an opportunity to read your opinion with some care, and appreciate your inviting me to make suggestions.

In view of the length of the opinion, there are views expressed throughout the draft that would give me trouble. Going back to Bakke, although you and I have had a good deal of common ground in affirmative action cases, we also have differed primarily as to the applicable standard - as recently evidenced in Wygant and previously in Bakke and Fullilove.

The area is a troublesome one for all of us, and I fully respect your views. I also admire the diligence and thoroughness manifested by you and your law clerks in this 57-page draft. As indicated in a separate memo to the Conference, I plan to write a brief opinion concurring in the judgment.

Sincerely,



Justice Brennan

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 30, 1986

84-1656 Local 28 v. EEOC

Dear Bill:

I will concur in your judgment, but will write separately as there are still differences between our respective views as to affirmative action plans.

Sincerely,

Lewis

Justice Brennan

lfp/ss

cc: The Conference

06/19

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

From: **Justice Powell**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.

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

[June —, 1986]

JUSTICE POWELL, concurring in part and concurring in the judgment.

I join Parts I, II, III, and VI of JUSTICE BRENNAN's opinion. I further agree that § 706(g) does not limit a court in all cases to granting relief only to actual victims of discrimination. I write separately with respect to the issues raised in parts IV and V to explain why I think the remedy ordered under the circumstances here violated neither Title VII nor the Constitution.

I

Petitioners contend that the Fund order and the membership goal imposed by the District Court and upheld by the Court of Appeals are forbidden by § 706(g) because that provision permits preferential relief only to the actual victims of unlawful discrimination. The plain language of Title VII does not clearly support a view that all remedies must be limited to benefiting victims. And although the matter is not entirely free from doubt, I am unpersuaded by petitioners' reliance on the legislative history of Title VII. Rather, in cases involving particularly egregious conduct a District Court may fairly conclude that an injunction alone is insuffi-

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
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[June —, 1986]

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From: Justice Powell

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.

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

[July 1, 1986]

JUSTICE POWELL, concurring in part and concurring in the judgment.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 27, 1986

Re: 84-1656 - Local 28 of the Sheet Metal
Workers' International etc. v. Equal
Employment Opportunity Comm'n

Dear Bill:

Please join me.

Respectfully,



Justice Brennan

Copies to the Conference

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

From: Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.

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

[June —, 1986]

JUSTICE REHNQUIST, dissenting.

Today, in *Local Number 93 v. City of Cleveland*, No. 84-1999 (REHNQUIST, J., dissenting), I express my belief that § 706(g) forbids a court from ordering racial preferences that effectively displace non-minorities except to minority individuals who have been the actual victims of a particular employer's racial discrimination. Although the pervasiveness of the racial discrimination practiced by a particular union or employer is likely to increase the number of victims who are entitled to a remedy under the Act, it does not allow us to go further than that and sanction the granting of relief to those who were not victims at the expense of innocent non-minority workers injured by racial preferences. I explain that both the language and the legislative history of § 706(g) clearly support this reading of § 706(g), and that this Court stated as much just two Terms ago in *Firefighters v. Stotts*, 467 U. S. 561 (1984). Because of this, I would not reach the equal protection question, see *ante*, at 54-56 (opinion of JUSTICE BRENNAN), *id.*, at 2-7 (opinion of JUSTICE POWELL), but would rely solely on § 706(g) to reverse the Court of Appeals' judgment approving the order of class-based relief for petitioners' past discrimination.

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

From: Justice Rehnquist

Circulated: _____

Recirculated: **JUN 25 1986**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.

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

[June —, 1986]

JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE joins, dissenting.

Today, in *Local Number 93 v. City of Cleveland*, No. 84-1999 (REHNQUIST, J., dissenting), I express my belief that § 706(g) forbids a court from ordering racial preferences that effectively displace non-minorities except to minority individuals who have been the actual victims of a particular employer's racial discrimination. Although the pervasiveness of the racial discrimination practiced by a particular union or employer is likely to increase the number of victims who are entitled to a remedy under the Act, § 706(g) does not allow us to go further than that and sanction the granting of relief to those who were not victims at the expense of innocent non-minority workers injured by racial preferences. I explain that both the language and the legislative history of § 706(g) clearly support this reading of § 706(g), and that this Court stated as much just two Terms ago in *Firefighters v. Stotts*, 467 U. S. 561 (1984). Because of this, I would not reach the equal protection question, see *ante*, at 54-56 (opinion of JUSTICE BRENNAN), *id.*, at 2-7 (opinion of JUSTICE POWELL), but would rely solely on § 706(g) to reverse the Court of Ap-

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 27, 1986

No. 84-1656 Local 28 of the Sheet Metal
Workers' International Assoc.
v. EEOC

Dear Bill,

I will await further writing in this case.

Sincerely,



Justice Brennan

Copies to the Conference

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

From: Justice O'Connor

Circulated: JUN 26 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTER-
NATIONAL ASSOCIATION AND LOCAL 28 JOINT
APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION ET AL.

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

[June —, 1986]

JUSTICE O'CONNOR, concurring in part and dissenting in part.

I join Parts II-A, III, and VI of the Court's opinion. I would reverse the judgement of the Court of Appeals on statutory grounds insofar as the membership "goal" and the Fund order are concerned, and I would not reach petitioners' constitutional claims. I agree with JUSTICE WHITE, however, that the membership "goal" in this case operates as a rigid racial quota that cannot feasibly be met through good-faith efforts by Local 28. In my view, § 703(j), 42 U. S. C. § 2000e-2(j), and § 706(g), 42 U. S. C. § 2000e-5(g), read together, preclude courts from ordering racial quotas such as this. I therefore dissent from the Court's judgment insofar as it affirms the use of these mandatory quotas.

In *Firefighters v. Stotts*, 467 U. S. 561 (1984), the Court interpreted § 706(g) as embodying a policy against court-ordered remedies under Title VII that award racial preferences in employment to individuals who have not been subjected to unlawful discrimination. See 467 U. S., at 579-583. The dissenting opinion in *Stotts* urged precisely the position advanced by JUSTICE BRENNAN's plurality opinion today—that any such policy extends only to awarding

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

From: Justice O'Connor

Circulated: _____

Recirculated: **JUN 30 1986**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1656

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP COMMITTEE, PETITIONERS
v. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ET AL.

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

[July —, 1986]

JUSTICE O'CONNOR, concurring in part and dissenting in part.

I join Parts II-A, III, and VI of the Court's opinion. I would reverse the judgment of the Court of Appeals on statutory grounds insofar as the membership "goal" and the Fund order are concerned, and I would not reach petitioners' constitutional claims. I agree with JUSTICE WHITE, however, that the membership "goal" in this case operates as a rigid racial quota that cannot feasibly be met through good-faith efforts by Local 28. In my view, § 703(j), 42 U. S. C. § 2000e-2(j), and § 706(g), 42 U. S. C. § 2000e-5(g), read together, preclude courts from ordering racial quotas such as this. I therefore dissent from the Court's judgment insofar as it affirms the use of these mandatory quotas.

In *Firefighters v. Stotts*, 467 U. S. 561 (1984), the Court interpreted § 706(g) as embodying a policy against court-ordered remedies under Title VII that award racial preferences in employment to individuals who have not been subjected to unlawful discrimination. See *id.*, at 579-583. The dissenting opinion in *Stotts* urged precisely the position advanced by JUSTICE BRENNAN's plurality opinion today—that any such policy extends only to awarding make-whole relief