

No. 84-1656 (4)

Supreme Court, U.S.

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**In the Supreme Court of the United States**

OCTOBER TERM, 1985

LOCAL 28 OF THE SHEET METAL WORKERS' INTERNATIONAL  
ASSOCIATION AND LOCAL 28 JOINT APPRENTICESHIP  
COMMITTEE, PETITIONERS

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, ET AL.

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

SUPPLEMENTAL MEMORANDUM FOR THE  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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## SUPPLEMENTAL MEMORANDUM FOR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

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Pursuant to Rule 22.6 of the Rules of this Court, the Solicitor General files this supplemental memorandum to inform the Court of the decision of the United States Court of Appeals for the Eleventh Circuit in *Paradise v. Prescott*, No. 84-7053 (Aug. 12, 1985), and the decision of the United States Court of Appeals for the Third Circuit in *Pennsylvania v. Local Union 542, International Union of Operating Engineers*, No. 84-1614 (July 17, 1985).

In our brief in this case, we suggested that the petition be held pending disposition of the petition in *Local No. 93, International Association of Firefighters v. City of Cleveland (Vanguards)*, petition for cert. pending, No. 84-1999, in which the United States, as amicus curiae, has urged this

Court to grant certiorari.<sup>1</sup> In *Vanguards*, the United States argued that the courts of appeals have given this Court's decision in *Firefighters Local Union No. 1784 v. Stotts*, No. 82-206 (June 12, 1984), an unduly narrow interpretation by holding, among other things, that *Stotts* does not apply to consent decrees and applies only when seniority rights are abridged. Since the filing of that brief, the two court of appeals decisions noted above have come to our attention.

In *Paradise v. Prescott, supra*, a public employer and intervening non-minority employees contended that a court-ordered promotional quota exceeded the district court's Title VII remedial authority as interpreted in *Stotts*. The court of appeals "concede[d] that a superficial reading of *Stotts* supports [this] position" (slip op. 5782). However, the court stated (*ibid.* (emphasis added)): "We view [*Stotts*] as limited to its own facts." The court went on (slip op. 5782-5784) to hold (*id.* 5782-5783) that *Stotts* does not apply where a bona fide seniority system is not affected or where the challenged quota is entered under the mantle of a consent decree.

In *Pennsylvania v. Local Union 542, supra*, in which the Third Circuit affirmed an injunctive decree imposing race-conscious relief, the court held that *Stotts* did not govern, principally because a bona fide seniority system was not affected.

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<sup>1</sup>We are serving copies of this supplemental memorandum on the other parties in *Vanguards*, as well as the parties in *Orr v. Turner*, petition for cert. pending, No. 85-177, in which the United States has petitioned for certiorari and has suggested that its petition be held and disposed of as appropriate in light of this Court's disposition of *Vanguards* and *Wygant v. Jackson Board of Education*, cert. granted, No. 84-1340 (Apr. 15, 1985).

For the convenience of the Court, we have lodged ten copies of each decision with the Clerk of this Court.

Respectfully submitted.

CHARLES FRIED  
*Acting Solicitor General*

SEPTEMBER 1985