The Seniority System Exemption in Title VII: International Brotherhood of Teamsters v. United States

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THE SENIORITY SYSTEM EXEMPTION IN TITLE VII: INTERNATIONAL BROTHERHOOD OF TEAMSTERS v. UNITED STATES

The primary objective of Title VII of the Civil Rights Act of 1964 is to prohibit discrimination based on race, color, religion, sex, or national origin by employers and labor organizations. One provision of the title provides an exemption for seniority systems meeting certain criteria. Three years after the title's effective date, the District Court for the Eastern District of Virginia in *Quarles v. Philip Morris, Inc.*, narrowly interpreted this exemption. The *Quarles* interpretation was accepted by a great majority of commentators and federal courts. Last Term, however, the Supreme

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2. *Id.* § 2000e-2(a) makes it an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual’s race . . . or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race.
3. Civil Rights Act of 1964, § 703(c), 42 U.S.C. § 2000e-2(c) (1970 & Supp. V 1975), forbids a union (1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race . . . ; (2) to limit, segregate, or classify or fail to refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual or employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual’s race . . . ; or (3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.
4. *Id.* § 703(h), 42 U.S.C. § 2000e-2(h) (1970). Section 703(h), which is the focus of this commentary, provides: Notwithstanding any other provision of this subchapter, it shall not be an unlawful practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges or employment pursuant to a bona fide seniority system, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin.
6. See text accompanying notes 14-35 infra.
Court in *International Brotherhood of Teamsters v. United States* rejected the rule. This note will detail the distinction between the *Quarles* and *Teamsters* interpretations of the exemption and will evaluate each in view of the legislative history, the language of the section itself, and prior Supreme Court cases.

The employer in *Quarles v. Philip Morris, Inc.*, a tobacco manufacturer, divided his operations into four departments: (1) green leaf stemmery; (2) prefabrication; (3) fabrication; and (4) warehouse shipping and receiving. This employer had pursued a discriminatory hiring and promotion policy. By the time this discrimination suit was brought, the employer had largely racially integrated the four once wholly segregated departments. However, in the lower paying, less desirable departments of prefabrication and stemmery, workers were still primarily black, and in the preferred departments of fabrication and warehouse shipping and receiving, workers were still primarily white.

Quarles, a minority employee in the prefabrication department, sought a transfer to the warehouse and receiving department. Two methods of transfer were available: a limited quota system for minorities and a simple letter of intent or desire to transfer written by the employee. The latter method, which Quarles rejected, subjected the employee to loss of the seniority accumulated in the lower department upon transfer: Seniority would be based on only the amount of time in the new department, rather than on the total number of years with the company. Quarles argued that this de facto discrimination deprived him of the opportunity to obtain a better position and higher pay and

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10. While not labeled a quota nor resembling it in every facet, this method may be considered a quota because it allowed the transfer of only four minority employees from the prefabrication department every six months, in contrast to the opportunities for transfer for a white employee. For a detailed discussion of the available modes of transfer, see id. at 512-13.
therefore violated title VII.\(^{11}\) He brought suit against the union because the collective bargaining agreement contained the seniority system which incorporated the employer's promotion policies.\(^{12}\) Defendant union relied on the exemption for seniority systems in title VII which excludes from the Act's proscriptions any classifications based on a "bona fide seniority . . . system . . . provided that such differences are not the result of an intention to discriminate because of race."\(^{13}\)

**FORMULATING THE Quarles Rule**

Writing for the Quarles court, Judge Butzner framed the issue as "whether the restrictive departmental transfer and seniority provisions of the collective bargaining agreement are intentional, unlawful employment practices because they are superimposed on a departmental structure that was organized on a racially segregated basis."\(^{14}\) The district court conducted a three-part analysis of the issue. It first balanced the respective rights and expectations of white and minority employees. The legislative history indicates that the Act is to have "prospective," not "retrospective," application.\(^{15}\) The

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11. *Id.* at 514. Quarles argued that, notwithstanding the absence of discriminatory language in the collective bargaining agreement, its effect was to limits his seniority solely as a result of his race. *Id.* at 513-15. See also Gould, *Employment Security, Seniority and Race: The Role of Title VII of the Civil Rights Act of 1964*, 13 *How. L.J.* 1 (1967).

12. For a case outlining the rationale for union responsibility and liability under title VII, notwithstanding the seniority exemption, see Robinson v. Lorillard Corp., 444 F.2d 791 (4th Cir. 1971).

13. 42 U.S.C. § 2000e-2(h) (1970) (This portion of the section is hereinafter referred to as the intent proviso).


15. Rachlin, *Title VII: Limitations and Qualifications*, 7 B.C. INDUS. & COM. L. REV. 473, 478 (1966). During Senate debate on H.R. 7152, which was to become the Civil Rights Act of 1964, Senators Clark and Case, the bipartisan captains of the bill, issued the following frequently quoted memorandum:

> Title VII would have no effect on established seniority rights. Its effect is prospective and not retrospective. Thus, for example, if a business had been discriminating in the past and as a result has an all-white working force, when the title comes into effect the employer's obligation would be simply to fill future vacancies on a nondiscriminatory basis. He would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier.

Interpretative Memorandum of Title VII of H.R. 7152 Submitted Jointly by Senator Joseph S. Clark and Senator Clifford P. Case, Floor Managers (April 8, 1964), reprinted in 110 CONG. REC. 7212, 7213 (1964) [hereinafter cited as Interpretative Memorandum].
Act was intended only to alter discriminatory conditions arising in the future, while not disturbing the status quo. This intention evolved from balancing the right of minorities to nondiscriminatory employment against the right of white employees to maintain the status quo. Judge Butzner noted, however, that the interest of nonminorities in their seniority status did not amount to a vested, indefeasible right. Therefore, in applying a balancing test to employee rights, white employees' seniority expectations were subject to modification by the legal rights of other workers, that is, the minority employees' rights to nondiscriminatory employment. Where the seniority system restricted the minority employees' freedom to transfer to a higher position only because of originally discriminatory hiring, the expectations of the nonminorities were held noncontrolling.

16. Although Judge Butzner did not use "balance test" terminology, he compared the importance of the interests. In addition, many commentators have noted the absence of absolutes in the legislative history and language of the title and specifically, of § 703(h). See, e.g., Rachlin, supra note 15, at 479-82, where the author states that Senator McClellan's attempt to insert "solely" into the phrase in § 703(h) which reads "result of an intention to discriminate" was rejected. Instead, a mere showing of mixed intentions suffices to remove the seniority system from the exemption of § 703(h). Mr. Rachlin also points out the language of the exemption which restricts its protection to "bona fide" systems, id. at 480-81; though this term is not clearly defined, its use must somehow limit the scope of the section. See also Note, Title VII, Seniority Discrimination, and the Incumbent Negro, 80 HARV. L. REV. 1260 (1967) [hereinafter cited as Note, 80 HARV. L. REV.]:

Senator Dirksen never explained what his proviso [which later became § 703(h)] was intended to mean; Senator Humphrey felt that it clarified the "present intent and effect" of Title VII without narrowing its application. But, however one reads the Dirksen proviso, it does not seem possible to interpret it as providing a blanket exemption for all differences in treatment resulting from seniority arrangements set up before Title VII . . . . The proviso does not expressly refer to such preexisting systems, but to all "bona fide" systems. . . . [E]ven though a discriminatory system of this type might be termed "bona fide," certain "differences" in treatment authorized by the system will "result" from the discriminatory intention which entered into its establishment. These differences must, therefore, fall outside the scope of the Dirksen proviso's protection.

Id. at 1272-73 (footnotes omitted). Implementation of the statute, therefore, appears subject to balancing the interests of the parties in each case. For an excellent discussion of the vagueness in the language and legislative history of § 703(h) and in the title in general, and for the theory that any such ambiguity in the language of the section was an intentional manifestation of the balancing test to be applied in seniority cases, see Gould, supra note 11, at 20-23.

18. Id.
19. Id. at 517.
20. Id. at 520.
Secondly, Judge Butzner found that the comments in the legislative history condemning a retrospective application of the Act applied only to "bumping" white employees to give minority employees a job. He noted an important distinction between bumping a white employee to give his job to a discriminatee and allowing minorities to obtain future promotions on the basis of number of years employed. He further observed that by allowing minority employees to transfer and retain company seniority commensurate with the number of years employed, no reverse discrimination was perpetrated against the nonminorities. No white employee was being bumped, as might have occurred if plaintiff Quarles had never been hired and the court had ordered his immediate hiring. Therefore, the effect of this title VII remedy would not constitute "retrospective" application of the Act because the seniority system's post-Act effects perpetuated the original discrimination. The court in Quarles summarized the legislative intent: "It is . . . apparent that Congress did not intend to freeze an entire generation of Negro employees into discriminatory patterns that existed before the act."

Continuing the second part of its analysis, the court in Quarles noted that the "plain language of the act condemns as an unfair practice all racial discrimination affecting employment without excluding present discrimination that originated in seniority systems devised before the effective date of the act." Thus, it determined that neither the language nor the legislative history of the Act proscribed the remedy of retroactive seniority in this and in similar cases.

21. See note 15 supra and accompanying text.
23. Reverse discrimination may be characterized as "accelerat[ing] the advancement of Negroes simply because of their race." Note, 80 HARV. L. REV., supra note 16, at 1271-72.
24. See Quarles v. Philip Morris, Inc., 279 F. Supp. 505, 516 (E.D. Va. 1968). The distinction drawn by the Quarles court has been noted by other courts and observers as having a solid foundation in reason and legislative history. See, e.g., Gould, supra note 11, at 20; Note, 80 HARV. L. REV., supra note 16, at 1259. The major concern evidenced during the debates on H.R. 7152 was abhorrence of reverse discrimination. Quarles v. Philip Morris, Inc., 279 F. Supp. 505, 516 (E.D. Va. 1968). But, for example, in Quarles, and later in International Bhd. of Teamsters v. United States, 431 U.S. 324 (1977), "Negro workers [did] not seek to wrench away the contractual rights which whites [had] already earned. They [were] attempting to acquire rights of their own which could make the competition for better jobs more meaningful." Gould, supra note 11, at 21.
26. Id. at 515 (emphasis added).
The third part of the court's analysis considered the effect of section 703(h) on de facto discrimination. It stated that this section does not purport to bar all relief from discriminatory seniority systems, only from those "bona fide seniority [systems which] . . . 'are not the result of an intention to discriminate.'"27 The Quarles court held that a "departmental seniority system that has its genesis in racial discrimination is not a bona fide seniority system."28 The court then indicated that the discrimination at issue resulted from the employer's intentionally discriminatory hiring and promotion practices.29 This rendered the seniority system's classifications "'the result of an intention to discriminate,'"30 and therefore outside the scope of the exemption to section 703(h).

In essence, the Quarles rule provides that seniority systems which perpetuate pre-Act discrimination are not bona fide and therefore not protected by section 703(h).31 The court based its ruling on several findings. First, it used a balancing test to determine that the seniority expectations of white employees must be subjected to modification by the rights of minority employees to equal economic opportunity.32 Second, the court recognized a distinction between granting minority employees full company seniority for the years employed and bumping white employees to give minority employees jobs:33 Only the latter is proscribed as a retrospective application of the Act.34 Finally, this exemption for seniority systems is not available where a system preserves past discrimination de facto, even if it is not de jure discriminatory.35 Moreover, an original discriminatory intent by the employer ren-

27. Id. at 517 (quoting Civil Rights Act of 1964, § 703, 42 U.S.C. § 2000e-2(h) (1970)). The company and the union had defended by asserting that discrimination has resulted from a long-abolished employer policy of segregation and was therefore irremediable by title VII. "This point is crucial to the defendants' case. It is based upon the proposition that the present consequences of past discrimination are outside the coverage of the act." Id. at 515. Judge Butzner rejected the defendants' argument. See id.
28. Id. at 517.
29. Id.
31. Id. at 518. Justice Stewart summarized Quarles as "'the view that § 703(h) does not immunize seniority systems that perpetuate the effects of prior discrimination.'" International Blvd. of Teamsters v. United States, 431 U.S. 324, 346 n.28 (1977).
32. See notes 15-20 supra and accompanying text.
33. See notes 21-26 supra and accompanying text.
34. See notes 27-30 supra and accompanying text.
ders the seniority system the result of an intention to discriminate, and thus not immunized by section 703(h).

THE Quarles PROGENY: TREATMENT IN THE COURTS OF APPEALS

The courts of appeals, following Quarles, amplified it with independent reasoning. The following cases comprise a representative sampling of the circuits. The facts in each case are, for purposes of this inquiry, indistinguishable from those in Quarles.

In Robinson v. Lorillard Corp., the Fourth Circuit broadened the Quarles interpretation of the "intent proviso" of section 703(h). Robinson construed "intent to discriminate" to signify merely that defendant union, accused of an unlawful employment practice, "meant to do what [it] did." Therefore, because no seniority system may properly be characterized as an "accident," if it causes discrimination, it constitutes intentional discrimination that is not exempt within the meaning of section 703(h).

Thus, after Robinson, a court was not required to find intent by the employer affirmatively to discriminate and then to impute it to the union:


37. 444 F.2d 791 (4th Cir. 1971).

38. See note 13 supra and accompanying text.


40. See id.

41. One commentator emphasizes the language of § 703(h) prohibiting classifications which result from an intention to discriminate:

[I]t should be urged that the result of a past discrimination continues into the present and future, creating differences in classifications and rates of pay. Such a result is present even though there may be no present intent to discriminate. While such conduct in the past may not have been illegal at that time, no one can deny its discriminatory purpose. The statute does not say the system had to be illegal at the time it was set up; it merely makes wrongful the results of an intent to discriminate.

Rachlin, supra note 15, at 480.

42. See Note, 80 HARV. L. REV., supra note 16, at 1267.
The mere nonaccidental use of a seniority system for any purpose, which has the effect of discriminating, constituted intentional discrimination by the union. *Robinson* is in accord with the *Quarles* rule that, notwithstanding any statements in the legislative history proscribing retrospective application of the title, "relief may be granted to remedy 'present and continuing effects of past discrimination.'"43 The court in *Robinson* elaborated on the principle that all employees are entitled to the "same expectations."44 It held that the expectations of minorities are not to be sacrificed to fulfill the expectations of nonminorities.45 Rather, the court stated that where minorities have lower expectations because of the past discrimination on the basis of race, they are entitled to have these expectations heightened, even at the expense of lowering the expectations of nonminorities.46

The Eighth Circuit, in *United States v. St. Louis-San Francisco Ry.*47 dealt with both the intent requirement in the language of section 703(h) and with the legislative history of title VII, which appear to favor a "status quo" approach48 to existing seniority sys-

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44. *Id.* at 800. This doctrine has its origins in the common law rule that the union is obliged to represent fairly all employees. *Steele v. Louisiana & Nashville R.R.*, 323 U.S. 192 (1944), cited in *Quarles v. Phillip Morris, Inc.*, 279 F. Supp. 505, 518 (E.D. Va. 1968). This "duty of fair representation," *Gould, supra* note 11, at 5, has been fortified and encouraged by title VII.


46. *Id.* Modification of the seniority expectations of one group to benefit another is not without precedent. One example of such a policy has been articulated by a commentator: "Congress, in the Selective Service Act, has made the veteran's seniority statutory as well as contractual and has thus made an impact on the employment status of veterans and non-veterans alike." *Gould, supra* note 11, at 5 (citations omitted).

47. 464 F.2d 301 (8th Cir. 1972).

48. The "status quo" approach is only one of three methods by which to balance the interests to determine seniority. The other two are the "rightful place" and the "freedom now" methods. The status quo interpretation of title VII leaves intact the seniority rights of white employees and leaves unrestored the forfeited seniority of minority employees who transfer to a higher position. This results because conforming to the facially neutral seniority provision at issue does not "involve the direct application of a racial principle." *Note, 80 HARV. L. REV.*, *supra* note 16, at 1268 (footnote omitted). Thus, minorities could transfer, but in so doing would lose all seniority and become susceptible to discharge as last hired, first fired. *See id.* The "rightful place" approach is the middle ground taken by *Quarles*: "[C]ontinued maintenance of the relative competitive disadvantage imposed on Negroes by the past operation of a discriminatory system violates Title VII." *Id.* In practical terms, a remedy under this approach enables the minority discriminatee to "bid for openings in 'white' jobs comparable to those held by whites of equal tenure, on the basis of
tems. The court held that "[w]here an employer's current policy serves to perpetuate the effects of past discrimination, 'although neutral on its face, it rejuvenates the past discrimination in both fact and law regardless of present good faith.'" Thus, what was past discrimination becomes present de jure and de facto discrimination and remedying this discrimination is not tantamount to applying the Act retroactively.

Other circuits have generally reiterated the views expressed in Quarles and in the other cases mentioned above. The doctrine was so widely accepted that the Fifth Circuit, in Johnson v. Good-year Tire & Rubber Co., discouraged further belaboring of the point: "The principle of the illegality of a facially neutral seniority system superimposed on a history of employment discrimination is so well-settled that extended discussion is unnecessary." In sum, the law pre-Teamsters was as follows: Seniority systems which operated to lock-in past discrimination were not exempted from title VII by section 703(h). These systems fell outside the scope of the exemption by virtue of their intentional promulgation or by virtue of the employer's discriminatory hiring; they were not considered bona fide because of the de facto discrimination which they fostered.

his full length of service with the employer, . . . without regard to the seniority expectations of junior white employees." Id. (emphasis added). Viewed by most pre-Teamsters courts and observers as both the correct interpretation of § 703(h) and the most equitable balancing of interests, this approach enables the minority employee to bid for future vacancies in higher departments on the basis of seniority accumulated in the lower department. See, e.g., United States v. IBEW Local 38, 428 F.2d 144 (6th Cir.), cert. denied, 400 U.S. 943 (1970). Furthermore, upon transfer to the preferred department, the discriminatee retains his accumulated seniority and possesses bargaining rights junior only to those employees who had worked more years for the company. A third approach is the "freedom now" method. If, under the "rightful place" method of computing seniority, "a senior Negro would have priority over a white worker currently holding a particular job if that job were unfilled, then under 'freedom now' the Negro would be immediately entitled to it, even though this would require the displacement of the white incumbent." Note, 80 HARV. L. REV., supra note 16, at 1269. This approach has never gained great support, perhaps because it is retroactive and thus contravenes congressional intent. In addition, this "approach appears so radical and so abrupt as to foreclose any possibility of securing voluntary, if grudging, compliance with the title's requirements." Id. See generally id. at 1269-75 (thorough discussion of three approaches).

50. See note 36 supra.
51. 491 F.2d 1364 (5th Cir. 1974).
52. Id. at 1373. To explain this conclusion, the court in Johnson listed some of the court of appeals cases which had followed Quarles. Id. at 1373 n.27.
In following the *Quarles* rule, many of the circuits relied upon four recent Supreme Court cases. *Griggs v. Duke Power Co.* deals with intelligence tests as a condition of employment or promotion. The Court in *Griggs* found the tests illegal, notwithstanding their facial neutrality. The controlling consideration was that using the tests "operate[s] to disqualify Negroes at a substantially higher rate than white applicants." For this reason, the circuits cited *Griggs* as Supreme Court confirmation of *Quarles* in seniority cases. As in *Quarles*, discrimination in *Griggs* locked the minorities into less desirable positions. The congressional intent behind title VII was found to be clear from the language of the statute. To effectuate the Act's broad remedial purpose, the Supreme Court refused to allow a myopic approach to the Act. Instead, the date of title VII was not to be considered an unyielding barrier: The Court decided that where pre-Act practices caused present restrictions or discriminatory handicaps for minorities, it was contrary to the intent of Congress to ignore and exempt those practices from liability.

*Griggs* also found that title VII prohibits "not only overt discrimination but also practices that are fair in form, but discriminatory in operation." Thus, it is the effect which determines liability, not the facial neutrality of the system or practice nor the date of its promulgation. The courts of appeals had good cause, therefore, to consider the *Griggs* holding supportive of a broad remedial application of the title.

In 1973, the Supreme Court in *McDonnell Douglas Corp. v. Green* restated this doctrine: "[I]t is abundantly clear that Title VII tolerates no racial discrimination, subtle or otherwise." This case dealt with a black activist who claimed that his firing was racially motivated. The Court viewed the case as an opportunity to...
“clarify the standards governing the disposition of an action challenging employment discrimination.” The critical issue was, according to the Court, “the order and allocation of proof in a private, non-class [Title VII] action.”

The discriminatee in McDonnell Douglas was denied recovery because of the “seriously disruptive act” which led to his discharge. But the Court engaged in extensive discussion of the theories involved in title VII claims. Citing Quarles and Griggs, the Court emphasized that facial neutrality of an employment practice is not a bar to recovery. Quarles, like McDonnell Douglas, found a title VII violation in de facto discrimination by looking beyond the form of the employment practice to the discriminatory effect title VII was designed to eliminate.

Albermarle Paper Co. v. Moody dealt with both a seniority system and an intelligence testing program. Although the Court stressed the employment test and backpay issues, it quoted Griggs in discussing the strong remedial purpose of title VII. Albermarle held that, given a finding of unlawful discrimination, “backpay should be denied only for reasons which, if applied generally, would not frustrate the central statutory purposes of making persons whole for injuries suffered through past discrimination.” Quoting Griggs, the Court also held that employers’ “‘good intent or absence of discriminatory intent’ ” is irrelevant because the discriminatory consequence, not the motive behind it, controls.

The Court in Albermarle made several statements concerning the “prophylactic,” “make whole” nature and purpose of the title. Moreover, the federal courts found apparent support for their adoption of Quarles in this language in Albermarle. Looking

63. Id. at 798.
64. Id. at 800.
65. Id. at 806.
66. See id. at 800-06.
67. See notes 27-30 supra and accompanying text.
68. 422 U.S. 405 (1975).
69. Id. at 417.
70. Id. at 421.
71. Id. at 422-23 (quoting Griggs v. Duke Power Co., 401 U.S. 424, 432 (1971)).
72. Id. at 417.
73. Id. at 418. The Court in Albermarle asserted: “It is . . . the purpose of Title VII to make persons whole for injuries suffered on account of unlawful employment discrimination.” Id.
beyond the date of the Act, they fashioned a remedy consistent with the broad remedial spirit of the title.

Finally, in 1976, in Franks v. Bowman Transportation Co., the Court issued yet another "final word" on section 703(h). This case, like Quarles and Teamsters, concerned a seniority system. The Court in Franks declared that section 703(h) "delineates which employment practices are illegal and thereby prohibited and which are not. Section 703(h) certainly does not expressly purport to qualify or proscribe relief otherwise appropriate . . . ." The Court further held that awarding seniority retroactive to the date of the individual job application comports with title VII's "make whole" purpose. Therefore, the only purpose in the enactment of this section was to clarify the balance of interests behind the Act. As a restatement of the Act's compromise between "status quo" and "freedom now," section 703(h) does not limit section 703(c)'s prohibition of union discrimination. Intended as a reassurance that the Act would not involve bumping white incumbent employees, it refrained from granting a blanket exemption and only clarified the Act's subscription to the "rightful place" compromise.

Teamsters: HISTORY AND ANALYSIS

Writing for a seven-member majority, Justice Stewart dis-

79. Id. at 763. The Court's analysis of the merely explanatory nature of § 703(h) conforms with the remarks of Senator Hubert H. Humphrey during the debate on H.R. 7152 that the section was intended only to clarify, not restrict, the application of other title VII provisions. 110 Cong. Rec. 12,721-23 (1964).
81. Id. at 758.
83. Rachlin, supra note 15, at 473.
agreed with the courts' of appeals understanding of the issue. In *International Brotherhood of Teamsters v. United States*, he flatly rejected the arguments which had predominated virtually unchallenged for nearly ten years.

**The District Court**

*Teamsters* began as two separate federal government actions, one against the employer, T.I.M.E.-D.C., Inc., a nationwide carrier of motor freight, and the second against the International Brotherhood of Teamsters, the union representing a large number of the company's employees. The Government alleged that the company had followed a pattern and practice of discrimination in violation of title VII. The union was subsequently joined as a defendant because of the allegedly discriminatory effects of its seniority system, and the two actions were consolidated for trial in the District Court for the Northern District of Texas.

The alleged violation of section 703(c) of title VII by the union was based on the discriminatory effects which resulted de facto from the application of the seniority system incorporated into the collective bargaining agreement. The system provided for three major distinct bargaining units: line drivers, also known as over-the-road (OTR) long-distance drivers; servicemen; and city operators, composed of dockmen, hostlers, and city drivers. The OTR drivers had the highest paying, most desirable positions.

The system, operating on the basis of departmental rather than company-wide seniority, had a promotion-deterrent effect

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87. *Id.* at 328-29.
89. The applicable section of the title was § 703(a), which states in part: "It shall be an unlawful practice for an employer . . . to fail or refuse to hire or to discharge any individual . . . because of such individual's race . . . ." Civil Rights Act of 1964, § 703(a), 42 U.S.C. § 2000e-2(a) (1970 & Supp. V 1975).
similar to that in *Quarles*. The Government sought a general injunction and specific “make whole” relief for all individual discriminatees. The latter remedy would afford the discriminatees the opportunity to transfer to OTR positions with full company seniority. The Government alleged that the affected class of individual discriminatees, those entitled to some form of individual relief, consisted of all minorities who had been hired for city operations or servicemen positions instead of OTR positions.

The union argued that the system was bona fide in light of its “history, intent, application, and all of the circumstances under which it was created and is maintained.” The union further alleged that any discriminatory effects of the system were “not the result of an intention to discriminate,” and that therefore the system was protected by section 703(h) and exempt from liability.

The district court in *Teamsters* found that the seniority system violated title VII because it restricted minority groups’ mobility into and within the company. Further violation by the union was enjoined.

The district court accepted the Government’s definition of “affected class,” and declared the class members, “whether hired before or after the effective date of Title VII, . . . entitled to preference over all other applicants with respect to consideration for future vacancies in line-driver jobs.” While this falls short of a “freedom now” approach in that it only concerns future vacancies

91. See text accompanying notes 10 & 11 *supra*.
93. *Id.*
94. *Id.*
95. *Id.* at 331; see *id.* at 332 n.6.
96. *Id.* at 345.
102. *Id.*
and does not bump workers, it ventures slightly beyond the "rightful place" doctrine in that the bargaining power of the discriminatees is to become superior in many instances to that of white employees with equal seniority. This results from the preference created by the district court for members of the affected class.

This class was further divided into three subclasses on the basis of degree of injury demonstrated. No retroactive seniority predating the Act was granted to any subclass. In addition, the district court issued a further limitation on its otherwise extensive relief. The right of the members of the affected class to bid for vacancies was to be subject to the prior recall rights of laid-off line-drivers, which under the collective bargaining agreements then in effect extended for three years. Thus, while providing relief for the discriminatees, the district court limited this relief by balancing the rights of the victims against those of the incumbent white employees.

The Court of Appeals

The decision of the district court was appealed by the Government to the Fifth Circuit. The court of appeals, while agreeing with the district court's conclusions, extended the lower court's ruling by eliminating the restrictions on the relief ordered by the district court. All members of what the Government defined as the affected class were held entitled to bid for future OTR vacancies on the basis of their full company seniority, even if it predated the effective date of the title. The court of appeals reasoned

104. United States v. T.I.M.E.-DC, Inc., 6 Fair Empl. Prac. Cas. 690, 694-95 (N.D. Tex. 1974), remanded, 517 F.2d 299 (5th Cir. 1975), vacated and remanded, 431 U.S. 324 (1977). Victims who had suffered severe injury were offered the opportunity to fill line-driver jobs with competitive seniority dating back to July 2, 1965, the effective date of title VII. Id. Victims in the second subclass, those who were only likely harmed but had not provided evidence of specific injury, were also given the opportunity to fill line-driver jobs, but their awarded retroactive seniority was to date back only to 1971 when the Government first commenced suit. Id. at 695. Finally, those in the third subclass, who were not shown to be harmed at all, were to be granted no retroactive seniority, but would be preferred for vacancies behind only the two higher subclasses. Id.

105. See id. at 694-95.
106. Id. at 704.
108. See id. at 317.
109. See id. at 319.
110. Id. at 319-21. This holding differed from the remedy ordered below in
that more limited relief placed unnecessary emphasis on the expectations of the incumbent white employees.

The Supreme Court

The union’s petition for certiorari was granted by the Supreme Court “to consider the significant questions presented under the Civil Rights Act of 1964.”\textsuperscript{111} The issue required a reexamination of the \textit{Quarles} rule which, Justice Stewart conceded, “has much support”;\textsuperscript{112} that is, whether “Title VII prohibits those applications of a seniority system that perpetuate the effects on incumbent employees of prior discriminatory job assignments.”\textsuperscript{113}

The Supreme Court affirmed the finding of discrimination in a “continued, built-in disadvantage”\textsuperscript{114} resulting from the seniority system:

An example would be a Negro who was qualified to be a line driver in 1958 but who, because of his race, was assigned instead a job as a city driver, and is allowed to become a line driver only in 1971. Because he loses his competitive seniority when he transfers jobs, he is forever junior to white line drivers hired between 1958 and 1970. The whites, rather than the Negro, will henceforth enjoy the preferable runs and the greater protection against layoff. Although the original discrimination occurred in 1958—before the effective date of Title VII—the seniority system operates to carry the effects of the earlier discrimination into the present.\textsuperscript{115}

However, by virtue of the language of section 703(h), and its legislative history, Justice Stewart found immunity for the union.\textsuperscript{116} The Court first considered potential precedent. The earlier Su-


\textsuperscript{112} International Bhd. of Teamsters v. United States, 431 U.S. 324, 334 (1977) (citation omitted).

\textsuperscript{113} Id. at 346. Justice Stewart, who wrote for the majority in \textit{Teamsters}, also wrote for the majority in \textit{Albemarle Paper Co. v. Moody}, 422 U.S. 405 (1975), which, several courts of appeals found, supported the \textit{Quarles} trend. See notes 68-75 supra and accompanying text.

\textsuperscript{114} International Bhd. of Teamsters v. United States, 431 U.S. 324, 344 (1977).

\textsuperscript{115} Id. at 344 n.27.

\textsuperscript{116} Id. at 348-56.
The Supreme Court in *Teamsters* rejected *Griggs v. Duke Power Co.* as inapposite, distinguishing it because *Griggs* involved an employment test and *Teamsters* involved a seniority system. Justice Stewart relied on the same legislative history which *Quarles* and its progeny had found supportive of their rulings. Yet, notwithstanding the factual distinction, the discriminatees had good cause to rely on *Griggs*; under *Griggs*, the locking-in effect of seniority systems would be a violation because it perpetuates past discrimination although its provisions apply “equally” to whites and blacks. Justice Stewart, however, found that facial neutrality rendered the seniority system bona fide in *Teamsters*. In analyzing *Griggs* and limiting it to its facts, Justice Stewart, in effect, failed to apply the spirit of that case and its interpretation of the purpose of *title VII*. Refusing to acknowledge the propriety of a narrower interpretation of section 703(h), he reasoned that the very thrust of this section was aimed at immunizing facially neutral systems like the one in *Teamsters*.

117. *Id.* at 346 n.28. Although Justice Stewart, in stating what is no longer the law, relegated the *Quarles* line of cases to a perfunctory footnote, the *Quarles* interpretation and its ensuing trend should not be ignored. The *Quarles* line proves relevant in analyzing potential weaknesses in the *Teamsters* opinion. The number of courts and legal scholars adhering to the *Quarles* approach and the clarity of its reasoning erode some of Justice Stewart’s arguments.


120. See *id.* The majority in *Teamsters* found § 703(h) a bar to relief under seniority systems. Yet both seniority systems and employment tests are within the purview of § 703(h): The Court in *Griggs* had not found this section a bar to relief. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971). The practical effect of locking in minorities by seniority systems and by intelligence tests is similar, if not indistinguishable. Moreover, both practices were deemed worthy of specific recognition and limited exemption in the Act. Nevertheless, the Court in *Griggs* limited the § 703(h) exemption to cases where past discrimination would not be perpetuated. See *id.* at 430.

121. See notes 53-60 supra and accompanying text.

122. The Supreme Court in *Griggs* even used language from the *Quarles* opinion. In phrasing strongly reminiscent of the *Quarles* rule, *Griggs* held that “under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to ‘freeze’ the status quo of prior discriminatory employment practices.” *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971). See also *Quarles v. Philip Morris, Inc.*, 279 F. Supp. 505, 516 (E.D. Va. 1968).
Turning next to *Franks v. Bowman Transportation Co.*, the Court in *Teamsters* noted that the discrimination in *Franks* consisted of a post-Act refusal to hire, as distinguished from the pre-Act discrimination in *Teamsters*. Apparently relying upon this factual distinction, Justice Stewart rejected *Franks* as precedent. However, the discriminatees in *Teamsters* had justifiably found *Franks* supportive. The Court in *Franks* stated:

Certainly there is no argument that the award of retroactive seniority to the victims of hiring discrimination in any way deprives other employees of indefeasibly vested rights conferred by the employment contract. This Court has long held that employee expectations arising from a seniority system agreement may be modified by statutes furthering a strong public policy interest.

The Court further declared that the "end of ameliorating the effects of past racial discrimination is a national policy objective of the highest priority." The Court in *Teamsters* once again ignored the spirit of an earlier case, relying upon formalistic distinctions.

The issue in *Teamsters*, its predecessors, and its progeny is one of chronology and of the direction in which judges hearing title VII cases may look. A statement in the legislative history of title VII that the title was to have only prospective effect is frequently quoted. But such language has a tendency to be vague and the question remains: How far into the past can courts look to rectify current discrimination?

The seniority system is unique in that it joins the past, present, and future, and therefore deserves special treatment. Originating when the employer may have discriminated in hiring or promotion, the system has a present effect of perpetuating prior

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123. 424 U.S. 747 (1976). *See* notes 76-84 *supra* and accompanying text.
125. *See* id. at 346-47. The Court in *Teamsters* conceded that, under *Franks*, any victim of post-Act discrimination under the seniority system was entitled to relief, notwithstanding § 703(h). Victims of pre-Act discrimination which has been preserved by the seniority system were not, according to Justice Stewart, afforded a remedy by virtue of *Franks*. *Id.*
127. *Id.* at 779.
abuses by retaining the employer’s discrimination de facto. \(131\) Concepts of time, therefore, appear to require a measure of elasticity. The Supreme Court in *Teamsters*, however, ignored such considerations.

Although Justice Stewart discussed the language of *Albermarle*, \(132\) *McDonnell Douglas*, \(133\) *Franks*, \(134\) and *Griggs*, \(135\) he did not apply these cases to *Teamsters*. While the Court acknowledged that the thrust of these cases, especially *Griggs*, \(136\) seemed to mandate relief in *Teamsters*, it maintained that section 703(h) was designed to immunize seniority systems and that effect must be given to that congressional intent. \(137\)

Justice Stewart next considered the legislative history of title VII. He noted that the Department of Justice and the proponents of title VII had stated that existing seniority rights were not to be affected by the title. \(138\) Justice Stewart quoted a memorandum by Senators Clark and Case to the effect that an employer “would not be obliged—or indeed, permitted—to fire whites in order to hire Negroes, or to prefer Negroes for future vacancies, or, once Negroes are hired, to give them special seniority rights at the expense of the white workers hired earlier.” \(139\) Justice Stewart found these statements “authoritative indicators of the . . . purpose” \(140\) of section 703(h), although they did not refer to that section. The purpose of the section, according to Justice Stewart, was to placate the title’s detractors and to reassure the doubtful that the status quo, albeit discriminatory, would not be disturbed. \(141\) However, the *Quarles* line of cases had found that full company seniority, retroactive either to the date of employment or to the date of the Act,

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133. *Id.* at 348.
134. *Id.* at 346-47.
135. *Id.* at 349.
136. *Id.*
137. *See id.* at 349-52.
138. *Id.* at 350.
139. *Id.* at 350-51 (quoting Interpretative Memorandum, *supra* note 15, at 7213) (footnote omitted). Senators Clark and Case were the “bipartisan captains” responsible for title VII during the Senate debate. Bipartisan captains were selected for each title of the Civil Rights Act by the leading proponents of the *Act* of both parties. They were responsible for explaining their title in detail, defending it, and leading discussion on it. *Id.* at 351 n.35.
140. *Id.* at 352.
141. *Id.*
could be effected without violating the Clark-Case memorandum or other statements in the legislative history. Incumbent white employees were not to be fired by giving minorities the use of their full company seniority for bargaining and bidding purposes;\textsuperscript{142} "white workers hired earlier"\textsuperscript{143} than black workers were still to have greater seniority rights; and finally, neither race was to be preferred for future vacancies.\textsuperscript{144} Rather, vacancies were to be filled on a neutral basis by virtue of company seniority. Justice Stewart's opinion, however, made no mention of the availability of this remedy.

Senator Humphrey had stated that section 703(h) "merely clarifies [title VII's] present intent and effect."\textsuperscript{145} Justice Stewart found it inconceivable that section 703(h), as part of a compromise bill, was intended to vitiate the earlier representations of the Act's supporters by increasing Title VII's impact on seniority systems . . . . [T]he unmistakable purpose of section 703(h) was to make clear that the routine application of a bona fide seniority system would not be unlawful under Title VII.\textsuperscript{146}

Thus, Justice Stewart considered the import of the legislative history a strong mandate against invading the existing seniority systems. In so finding, however, he relied on the same statements of intent as those upon which the overwhelming majority of the federal courts had relied in reaching the opposite conclusion. This difference in opinion was rooted in Justice Stewart's overly broad interpretation of the sweeping legislative commentary. This is in contrast to the Quarles line which read these statements in conjunction with the purpose of title VII: to effect a delicate balance of interests. Justice Stewart found unpersuasive the opinions of the many courts and commentators which had balanced white employees' seniority expectations against the rights of the discriminatees and had found the discriminatees' rights controlling.

Turning to the language of the section,\textsuperscript{147} Justice Stewart rejected the Quarles reasoning to the effect that any system which perpetuates past discrimination cannot be bona fide. The Court in

\begin{itemize}
  \item \textsuperscript{142} See note 139 supra and accompanying text.
  \item \textsuperscript{143} See id.
  \item \textsuperscript{144} See id.
  \item \textsuperscript{145} 110 CONG. REc. 12,723 (1964), quoted in International Bhd. of Teamsters v. United States, 431 U.S. 324, 352 (1977). See note 79 supra.
  \item \textsuperscript{146} International Bhd. of Teamsters v. United States, 431 U.S. 324, 352 (1977).
  \item \textsuperscript{147} See id. at 353.
\end{itemize}
Teamsters relied on two factors: the rights and expectations of white employees\textsuperscript{148} and the application of the system to whites and minorities alike\textsuperscript{149} However, the Court viewed section 703(h) as justification for ignoring statements in Griggs that "practices . . . neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices."\textsuperscript{150} Griggs also proscribed practices "that are fair in form, but discriminatory in operation."\textsuperscript{151} This same interpretation, barring de facto discrimination, was repeated in Albermarle Paper Co. v. Moody\textsuperscript{152} and in McDonnell Douglas Corp. v. Green.\textsuperscript{153} Similarly, although the Court in Franks v. Bowman Transportation Co.\textsuperscript{154} had rejected the contention that white employees' expectations are controlling,\textsuperscript{155} section 703(h) was offered as the only necessary barrier to adhering to any of the title VII precedents.

Thus, the Court held: "Those employees who suffered only pre-Act discrimination are not entitled to relief, and no person may be given retroactive seniority to a date earlier than the effective date of the Act."\textsuperscript{156} Therefore, as a result of the Teamsters holding, status quo discrimination resulting de facto from seniority systems will remain intact.

The Dissent

Justice Marshall, joined by Justice Brennan, dissented from the majority's interpretation of section 703(h).\textsuperscript{157} Justice Marshall first noted the staggering quantity of support for the Quarles view which Justice Stewart had summarily dismissed:

Without a single dissent, six Courts of Appeals have so held in over 30 cases, and two other Courts of Appeals have indicated their agreement, also without dissent. In an unbroken line of cases, the Equal Employment Opportunity Commission has

\begin{enumerate}
\item Id.
\item Id. at 354-55.
\item 422 U.S. 405 (1975). See note 71 supra and accompanying text.
\item 411 U.S. 792 (1973). See note 67 supra and accompanying text.
\item 424 U.S. 747 (1976).
\item See note 126 supra and accompanying text.
\item See id. at 377 (Marshall, J., dissenting).
\end{enumerate}
reached the same conclusion. And the overwhelming weight of scholarly opinion is in accord.\(^\text{158}\)

The dissent also noted that exemptions are traditionally given narrow interpretations:

Section 703(h) carves out an exemption from these broad prohibitions of Title VII. Accordingly, under longstanding principles of statutory construction, the Act should be given a liberal interpretation . . . [and] exemptions from its sweep should be narrowed and limited to effect the remedy intended.\(^\text{159}\)

Following the reasoning of Quarles, Justice Marshall found that the legislative history supported his contentions.\(^\text{160}\) He noted the distinction\(^\text{161}\) between bumping to favor minorities, which was intended to be prohibited,\(^\text{162}\) and granting equal bidding rights based on years of company employment.\(^\text{163}\)

In addition to finding support in the Quarles line of cases and in the earlier Supreme Court cases, the Teamsters dissent found further evidence contrary to the majority's finding that "the Congress that enacted Title VII . . . agreed to postpone for one generation the achievement of economic equality."\(^\text{164}\) According to the dissent, the majority ignored the Equal Employment Opportunity Commission's (EEOC) adherence to the Quarles approach.\(^\text{165}\) Justice Marshall cautioned: "Before I would sweep aside the EEOC's consistent interpretation of the statute it administers, I would require 'compelling indications that it is wrong.'"\(^\text{166}\)

The dissent also found that the enactment in 1972 of the Equal Employment Opportunity Act (the EEOA), amending title VII,\(^\text{167}\) derogated the majority's opinion. The dissent considered this Act an extension and reaffirmation of the broad remedial powers of title

\(^{158}\) Id. at 378-80 (Marshall, J., dissenting) (footnotes omitted).

\(^{159}\) Id. at 381 (Marshall, J., dissenting) (quoting Piedmont & N.R.R. Co. v. ICC, 286 U.S. 299, 311-12 (1932)) (citations omitted).

\(^{160}\) See id. at 382-86 (Marshall, J., dissenting).

\(^{161}\) Id. at 384-87 (Marshall, J., dissenting).

\(^{162}\) Id. (Marshall, J., dissenting).

\(^{163}\) Id. at 389 (Marshall, J., dissenting).

\(^{164}\) Id. at 388 (Marshall, J., dissenting).

\(^{165}\) See id. at 390 (Marshall, J., dissenting).


SENIORITY SYSTEM EXEMPTION

VII and a tacit approval of the Quarles progeny,\textsuperscript{168} title VII and the Quarles progeny were cited along with several supportive law review articles in the Senate and House reports on the EEOA.\textsuperscript{169} "[B]oth the Senate and House reports expressed approval of the 'perpetuation principle' as applied to seniority systems . . . ."\textsuperscript{170} Justice Marshall found this citation in the legislative history determinative because of the canon that "'when several acts of Congress are passed touching the same subject matter, subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject.'"\textsuperscript{171} However, these arguments were not even considered by the majority: The majority made no attempt to refute the dissent's assertion that both developments were determinative.

DEVELOPMENTS AFTER Teamsters

The Teamsters rule may be viewed as the antithesis of Quarles: Seniority systems which perpetuate past discrimination are bona fide, and within the purview of section 703(h), and are therefore immune from what would otherwise constitute a title VII violation. How greatly this will modify title VII law is best determined by examining several post-Teamsters developments.

Less than two months after Teamsters, the EEOC issued an Interpretive Memorandum\textsuperscript{172} to minimize Teamsters's potential effect. Eleanor Holmes Norton, Chairwoman of this Commission, introduced the memorandum by stating the Agency's determination to read the case in light of "the standard rule that exceptions to a remedial statute must be interpreted narrowly."\textsuperscript{173} This adopts the approach of the Teamsters dissent.\textsuperscript{174}

\textsuperscript{171} Id. at 393 (Marshall, J., dissenting) (quoting Tiger v. Western Inv. Co., 221 U.S. 286, 309 (1911)).
\textsuperscript{172} EEOC Interpretive Memorandum No. N-915 (July 14, 1977), EEOC COMPL. MAN. (CCH) ¶ 6500 (1977). The Teamsters decision was handed down on May 31, 1977; the EEOC Interpretive Memorandum was issued July 14, 1977.
\textsuperscript{173} SPOKESWOMAN, August 15, 1977, at 5.
\textsuperscript{174} See note 159 supra and accompanying text.
The memorandum stated that a seniority system will be adjudged bona fide only if it was instituted before July 2, 1965, and if the "evidence shows that there was no discriminatory intent in the genesis or maintenance of the system." Thus, the continuation of a system whose founding or maintenance involves discriminatory intent constitutes a violation. The intent requirement therefore is fulfilled by a present violation, rather than by a pre-Act creation of the system or pre-Act discrimination in hiring.

The heart of the memorandum is found in its guidelines for defining discriminatory intent: "Where unions or units were previously segregated, . . . when a union seniority system is in effect and the employer or union is made aware that it is locking in minorities or females, discriminatory intent will be inferred if the system is maintained or renegotiated . . . ." For example, if the system is maintained after any grievances or EEOC charges are filed against the union or employer, "discriminatory intent will be inferred," thus rendering section 703(h) immunity inapplicable. Instead of requiring a showing of active discrimination on the part of the employer in hiring or promotion or of the union in creating the seniority system, usually predating the Act, a continuing passive use of the system will remove it from the protection of section 703(h).

Representative Newton Steers, Jr., of Maryland, however, is not convinced that any interpretation of Teamsters will rectify the handicapping effect of section 703(h) on the aims of title VII. Acting presumably on the Court's statement that "[w]ere it not for section 703(h), the seniority system in this case would seem to fall under the Griggs rationale," he introduced legislation to amend section 703(h) to outlaw seniority systems that perpetuate the effects of past discrimination.

175. See EEOC Interpretive Memorandum No. N-915 (July 14, 1977), EEOC COMPL. MAN. (CCH) ¶ 6500 (1977).
176. Id. at 5003.
177. Id. (emphasis added) (footnote omitted).
178. Id. at 5004.
179. Id.
180. Id.
181. This approach comports with the prediction of the Teamster's dissent that the case need not bar relief customarily given in cases like Quarles and its progeny. International Bhd. of Teamsters v. United States, 431 U.S. 324, 377 n.1 (1977) (Marshall, J., dissenting).
182. Id. at 349.
In the months following Teamsters, the Supreme Court has continued to rely on section 703(h) to refuse to examine discrimination which predates the Act. United Airlines, Inc. v. Evans,\textsuperscript{184} a sex-based discrimination case, is one such example. Plaintiff Evans was fired in 1968 for getting married; the employer’s policy authorizing the dismissal for her marriage was subsequently invalidated.\textsuperscript{185} When United Airlines rehired her in 1972, they refused to give her retroactive seniority.\textsuperscript{186} While the Court acknowledged that the seniority system was giving “present effect to a past act of discrimination,”\textsuperscript{187} it ruled that this past act was rendered “lawful” by the tolling of the time limitation\textsuperscript{188} on actions brought under the Act. Therefore, Evans’s claim five years after the firing was not “timely.”\textsuperscript{189} In Evans, the Qua rles trend was again contravened by the Supreme Court’s avoidance of the remedial purpose of title VII. While de facto discrimination operated in Teamsters and in Evans to handicap the very victims title VII is aimed to protect, the Supreme Court used the narrow exemption of section 703(h) to immunize the discriminating party and to allow continuing violations of the title.

The Court found Franks\textsuperscript{190} relevant only to remedial issues and therefore not controlling, since Evans contained no remedy issue.\textsuperscript{191} Although Franks had held that section 703(h) does not bar an award of retroactive seniority after a violation is shown,\textsuperscript{192} Evans found no violation subsequent to the 1972 rehiring.\textsuperscript{193} Evans declared that as long as the post-1972 use of the seniority system was not intentionally discriminatory, it was bona fide and protected by section 703(h).\textsuperscript{194}

Justice Marshall, joined by Justice Brennan, again dissented in Evans for reasons similar to those espoused in his Teamsters dis-
sent. Justice Marshall's first point was that, notwithstanding the ostensibly neutral or unintentional application of the system, if Evans had been male, she would not have been fired, and would have retained the seniority which had accrued prior to 1972. The second point put forth was that the 1972 refusal to give her retroactive seniority was a present and continuing violation because it placed her at a continuous bargaining disadvantage which she would not have suffered had she been male. This resembles the approach taken in the EEOC Interpretative Memorandum.

The same reasoning applies to the minority employees in Teamsters. Had they been white, they would have been hired as OTR drivers rather than as city drivers or servicemen. Their current seniority, therefore, would date back to the onset of their company employment.

CONCLUSION

Title VII of the Civil Rights Act of 1964 was enacted to eradicate discrimination in private employment. Quarles v. Philip Morris, Inc. interpreted a provision in this title to comport with the general purpose of the Act and to infuse meaning into its ambiguous terminology. The rule of Quarles was accepted as logically persuasive by most federal courts and legal commentators. Yet the Supreme Court in Teamsters rejected the Quarles rule as an incorrect interpretation of that provision of the title.

The effect Teamsters will have on title VII is uncertain because of the EEOC's limiting memorandum. The Teamsters rule, if
strictly applied, will deprive minorities of the full economic opportunities ostensibly afforded them by title VII. However, lower courts may be loath to abandon the long-accepted Quarles doctrine and embrace wholeheartedly the Teamsters rule. Instead, if they circumvent Teamsters's full import, the case may evolve into nothing more crucial than a footnote in title VII law.

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