

WHAT'S FAIR?

Should women get the same payoffs as men in pension plans? Should a city lay off firemen, in a reduction of force, strictly on the basis of seniority? The two cases are tied together by one principle. They have both been in the courts, and Jewish agencies are sharply divided on one of them.

The Supreme Court just made it official that women should get equal payments in pension plans. Such a resolution is clearly discriminatory against men *as a class*. That is to say, women as a class live longer than men as a class; and, therefore, will end up receiving a lot more pension money than men, as a class.

That doesn't seem fair, does it? On the other hand, no individual woman is guaranteed to live longer than any individual man. If she lived a shorter life than women as a class, with smaller pension payments than men, then she would be cheated, and *that* wouldn't be fair.

So the judgement of the society comes down on the side of being fair to the individual, even if it means being unfair to a class. And that's the way it should be. Our society is based on the ideal of individual rights.

Then there is the case of the financially strapped Boston fire department, which laid off workers on the basis of the last hired being the first fired. There was a lawsuit against that action on grounds that the last hired were disproportionately racial minorities. The ADL filed a statement supporting the fire department's action; the American Jewish Congress filed a statement opposing the fire department's action.

Initially, the same kind of question seems to be raised as in the case of women and pensions: what takes precedence, the individual or the class? There are times when some of us would like to see seniority systems laced with some merit evaluation --

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but among workers of roughly the same competency, it is only fair that the individual who has invested the most time in a job should have the most security.

On the other hand, minority workers have been systematically excluded from fire departments until recently. We do have a social interest in upgrading the minority *class* in this case, so that new generations of that class will have higher expectations, more motivation, fairer workplace contact. Because the Boston fire department had apparently not made such upgrading efforts, the courts had earlier ordered it to try harder. The Boston fire department did try harder, under that court order, and hired a number of qualified minority firefighters -- who, with the reduction in force, were now being laid off.

A Court of Appeals ruled that to lay off those minority workers would be a violation of the earlier court orders. In non-legal terms we were faced again with the modern conflict between therapeutic class remedy and individual rights. We can't abandon the primacy of individual rights, as it relates to seniority in this case; nor can we afford to turn our backs on the rehabilitation of previously and deliberately oppressed classes. That's why Jewish agencies were split.

In this case, the Massachusetts legislature came to the rescue, with funds to restore the size of the firefighting force -- at which point the U.S. Supreme Court happily mooted the case. Some social problems are much too difficult for the courts to solve alone, despite our modern tendency to throw all our problems at them.