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Judge rules Boston police exam discriminated against minorities



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By **Shelley Murphy** GLOBE STAFF NOVEMBER 17, 2015

A federal judge ruled Monday that the city of Boston discriminated against minorities by using a 2008 promotional exam to select police lieutenants that was slanted in favor of white candidates.

In an 82-page opinion, US District Judge William G. Young wrote: “This is a profoundly important case, one that evokes the finest of our nation’s aspirations to give everyone equal opportunity and a fair shot.”

Boston police promoted 33 sergeants to the rank of lieutenant, including five blacks, over the last six years based on their scores on the 2008 civil service exam.

Young concluded that the written portion of that exam had a “racially disparate impact” and that the multiple-choice questions were not sufficiently job-related.

The written questions focused on a candidate's ability to read, understand, interpret, and explain material in written form, yet skipped over critical skills and abilities, including reasoning, judgment, and ability to counsel subordinates, the judge found.

Young wrote that the test was not reliable for ranking candidates and "a high score on the 2008 exam simply was not a good indicator that a candidate would be a good lieutenant."

The ruling comes 10 months after another federal judge rejected a similar suit filed by minority officers from police departments throughout the state, including Boston, who alleged that the 2005 and 2008 sergeants' promotional exam was discriminatory. That case is now being weighed by a federal appeals court.

Meanwhile, Young has asked the city of Boston and the plaintiffs to try to reach an agreement concerning an appropriate remedy for the 10 sergeants who filed the suit in 2012, including one who was promoted to lieutenant in 2013 and another in 2014.

Harold L. Lichten, one of the lawyers for the plaintiffs, said, "It really calls into question the way they make promotions and hopefully they will take it to heart and utilize new methods."

Lichten said he will be seeking promotions and monetary damages for his clients.

Lieutenant Michael McCarthy, a spokesman for the department, said Boston police are reviewing the decision to determine their next step.

"The commissioner is committed to diversifying the ranks," said McCarthy, adding that Commissioner William B. Evans has a command staff that is 50 percent minority, but efforts to diversify the lower ranks are restricted by civil service requirements that were designed to prevent cronyism.

The state's Human Resources Division develops civil service exams, then compiles eligibility lists based on the test results.

“Where you land on that list is a direct consequence of how well you prepare for it,” McCarthy said.

Municipalities must make selections based on rank order and can only bypass a candidate for limited reasons, such as a history of disciplinary infractions.

Municipalities may develop their own promotional exams, with the state’s pre-approval, but have to assume the costs.

The 2008 civil service exam that Boston police relied on to promote sergeants to lieutenant comprised a written test of 100 multiple-choice questions, which constituted 80 percent of the final score, and an education and experience rating. Candidates had to score at least 70 on the written test to advance to the education and experience review.

Ninety-one sergeants took the 2008 exam, including 25 blacks, one Hispanic, and 65 whites. The passing rate was 69 percent for minorities and 94 percent for whites.

Five blacks were elevated to lieutenant, but Young noted that none would have been promoted if the eligibility list from the 2008 exam had expired in three years as is customary. The list was extended for several more years because of pending litigation over allegations that the sergeants and lieutenants exams were discriminatory.

The judge heard testimony from Evans and his predecessor Edward F. Davis, and a number of specialists during a 10-day bench trial earlier this year.

The Boston Police Department administered a new promotional exam in 2014, which was developed by a consultant firm at a cost of more than \$1.6 million, according to Young’s opinion. The written portion of the lieutenants exam accounted for a third of the grade and candidates were also assessed on their experience and education.

However, minorities did not fare better than they did on the 2008 civil service test, according to McCarthy.

Currently, about 90 percent of the Boston Police Department's lieutenants are white, 75 percent of the sergeants are white, and 85 percent of the captains are white, McCarthy said. Yet, 65 percent of the department is white.

"It comes down to: We're trying," said McCarthy, adding that the department has brought back the cadet program to attract more minorities and diversify the lower ranks.

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