

Police hit with bias decision Two officers may be due ‘millions’

By Scott J. Croteau

WORCESTER — Two black city police officers should be named sergeants retroactively to 1993 because they were not promoted in what the Massachusetts Commission Against Discrimination described as a longstanding practice of racial bias in the 1990s, according to a decision this week by the commission.

What the officers’ lawyers described as millions of dollars was also ordered to be paid to both men as part of the decision.

Officers Spencer Tatum and Andrew Harris have both been in the department since 1980 and 1987, respectfully, and both passed the sergeant’s exam in 1992 and 1994. They filed separate complaints with MCAD in September 1994 claiming the city was racially biased by not promoting them.

After multiple hearings and stints in Superior Court, the case was eventually moved back to MCAD. On Wednesday, the commission ruled in favor of the officers. The city has 30 days to appeal.

City Manager Michael V. O’Brien said last night that he intends to evaluate all options with legal counsel.

“As to my tenure as city manager, we have made tremendous strides in diversifying our Worcester Police Department,” he said, giving credit to the police chief and community partnerships that have collaborated on outreach, mentoring and other efforts to encourage minorities to take the civil service examination.

Those efforts, along with assisting minority candidates in studying for the tests “have resulted in a much more diverse department over the past eight years,” Mr. O’Brien said. “This is cited as a tremendous positive by the MCAD.”

Besides the retroactive promotions, MCAD ordered that both men receive lost wages and other benefits. They are also to receive back-pay damages based on the pay differential between the applicable rate of pay for sergeants from Nov. 23, 1993, to the present, with interest of 12 percent per year from the date the complaints were filed.

The lawyer for both men, Harold Lichten of Boston, said that amount is in the millions of dollars. MCAD said both officers should receive \$25,000 in damages with the same interest of 12 percent per year.

Mr. Lichten hopes the city sits down with his clients and an amicable solution can be reached. A protracted legal fight would be a disappointment, he said. Both men are getting closer to retirement as well.

“It would be a shame that they never become the sergeants they should have been,” he said.

Officer Harris testified to MCAD officials that after filing his complaint, other officers retaliated against him by interfering with his radio transmissions and other actions. Officer Tatum testified he became depressed and frustrated after not being promoted, and those feelings caused the end of his marriage.

Discussed throughout the decision is the “PAR 10” option, a special certification that could have been used by the city to foster diversity and racial parity on the department. It also discusses the past administration’s strict use of promotions based on test score.

“We conclude that the City has failed to produce sufficient evidence of the reason for its failure to apply for and use PAR.10, a long-standing affirmative action tool under the civil service law, to promote Harris and Tatum, two qualified minority officers, during a three-year period when over half of all sergeant positions — thirty in total — were vacant and filled in strict rank order exclusively by white officers,” the decision reads.

It notes the appointing authorities involved were former city managers William Mulford and Thomas Hoover.

The decision further states the administration from at least 1988 to 2000 did a disservice to the city’s diverse community by not promoting minority officers.

Under the current administration, a handful of minority officers have been promoted to sergeant, something for which Mr. Lichten credited the city.

“They have done a good job of that,” he said. “The problem is the use of the test.”

He said the current exam used to promote remains the problem, and many large cities need to adapt a better exam that tests all of an officers’ ability, experience and background. The current exam, created by the Massachusetts Human Resources Division, has two parts — an education and experience component, which accounts for about 20 percent of the overall score, and a written test component of about 80 multiple-choice questions.

Officers Tatum and Harris are among a group of African-American and Hispanic police officers challenging the latter part of that exam in a civil rights case in U.S. District Court. Mr. Lichten was expecting a decision in that case.

Minority officers, for some reason, don't score as well as white officers on the exam, the lawyer said.

A multi-faceted exam would better test all officers to see if they could serve well as a sergeant, he contends.

MCAD has also directed the city's Police Department to conduct anti-discrimination training and provide the commission a list by gender, race and rank of all superior officers employed by the department at any time from 2001 to the present. The list must include date of promotion and information about the list used and rank of the officer on those lists.