

Judge Finds Racial Bias In Recruiting By Fire Dept.

By DIANE CARDWELL

New York City used tests that discriminated against black and Hispanic applicants to the Fire Department and had little relation to firefighting, a federal judge in Brooklyn ruled on Wednesday, dealing a blow to the administration of Mayor Michael R. Bloomberg.

"These examinations unfairly excluded hundreds of qualified people of color from the opportunity to serve as New York City firefighters," wrote Judge Nicholas G. Garaufis of Federal District Court in Brooklyn, referring to two tests administered in 1999 and 2002.

The ruling came in a lawsuit brought by the Justice Department in 2007 after a federal complaint by the Vulcan Society, an association of black firefighters, led to an investigation into the Fire Department's hiring practices.

The judge said he would determine later what remedies to require of the city. They could include payment of lost wages, retroactive seniority for some minority employees and affirmative action hiring. Noting that the court had ruled against the city in past decades in lawsuits brought over its hiring practices, Judge Garaufis wrote that even as the city's black and Hispanic population had increased, "the overwhelmingly monochromatic composition of the F.D.N.Y. has stubbornly persisted."

Like firefighting forces in several other big cities, New York's has remained disproportionately white, despite pressures and efforts to diversify. According to the city's Law Department, at the end of May, roughly 3 percent of the 11,529 firefighters were black, and about 6 percent were Hispanic. Federal census estimates put each group at roughly 27 percent of the city's population.

"If there was any doubt that the city did have problems with its hiring process, it's now been decided that in fact they do," said Darius Charney of the Center for Constitutional Rights, one of the lawyers for the plaintiffs. "Now it's hard for them to argue that they in fact

are not discriminating."

But city lawyers argue that the suit covers only tests no longer in use, and that their recent efforts to integrate the department are bearing fruit.

"Through extensive and persistent outreach, the F.D.N.Y. increased the number of minorities who took and passed the firefighter exams," Georgia Pestana, chief of the Law Department's labor and employment division, said in a statement.

Since the city began administering a new test in January 2007, the statement noted, racial minorities now comprise 38 percent of the candidates on the passing list; 33 percent of the top 4,000 on that list, who are most likely to be offered a job; and a third of the most recent graduating class of probationary firefighters.

It is unclear how a recent United States Supreme Court decision in a case from New Haven will shape efforts to determine a remedy. In that case, the court found that white firefighters who scored well on a promotional exam on which black firefighters had fared poorly were subjected to racial discrimination when the city threw out the results.

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Additionally, the court found that the possibility of a lawsuit from minority firefighters was not enough to justify ignoring the test results. That will make it harder for employers to discard results in the future, even if they have a disproportionately negative effect on members of a given racial group.

Last week, when Mr. Bloomberg testified at Senate confirmation hearings for Sonia Sotomayor, President Obama's Supreme Court nominee — who had joined a federal appeals court decision on the New Haven case that the Supreme Court ruling reversed — he volunteered his thoughts, saying that he disagreed with New Haven's approach.

"I really do believe that that's a better way to solve the diversity problem, which does affect an awful lot of fire departments around this country," he said, "rather than throwing out tests and thereby penalizing those

who passed the test."

Judge Garaufis addressed the Supreme Court decision in his ruling, arguing that the New Haven case did not raise the legal question that the New York case did: whether the city's use of the exams "actually had a disparate impact upon black and Hispanic applicants for positions as entry-level firefighters."

Lawyers for the city did not say whether they would appeal the decision or seek a settlement, but if the ruling holds, the city could end up paying tens of millions of dollars, Mr. Charney said. The administration faces another phase in the suit to determine whether the discrimination was intentional, which could open the door to paying damages.

Lawyers for the plaintiffs said they hoped that the city would negotiate, and take the opportunity to diversify the force.

"I think this has the potential to very quickly change the demographics of the Fire Department, which has been something that's been a long time coming," said Dana Lossia, a lawyer for the Vulcan Society. "Really what this decision says is, the exams you were using don't pick the best-qualified people. What they really don't do is pick the people who would best protect the city."

Despite efforts to diversify, a force that remains overly white.

