



Is the Justice Dept. Ducking Discrimination by FDNY?

By David R. Jones
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The New York City Fire Department has been battling for decades to continue as a special preserve where racial discrimination in hiring looks to be the accepted norm. Back in 2002, the Center for Constitutional Rights filed Equal Employment Opportunity Commission (EEOC) charges against the New York City Fire Department on behalf of the Vulcan Society, the fraternal organization of black firefighters.

The charges alleged deep, pervasive hiring discrimination in hiring of people of color dating back years. The EEOC attempt at an informal resolution of the dispute between the parties failed when the city would not come to the table. So the case was turned over to the U.S. Justice Department in 2004. It, too, found the charges legitimate. The FDNY refused to meet with Justice, too, and so the department filed the lawsuit in 2007, charging that the FDNY's practices had a discriminatory impact.

After a trial in U.S. District Court, Judge Nicholas Garaufis ruled on October 4, 2011, that the FDNY's hiring practices were broadly discriminatory on the basis of race. He found that firefighter exams had a discriminatory impact and, because the FDNY knew this but continued to use the exams for years, he ruled that the discrimination was intentional. The judge ordered major reforms to be overseen by a court-appointed monitor.

Last week, the case – now called *United States v. Bloomberg* – moved to the U.S. Second Circuit Court of Appeals on appeal by the city. The city is not challenging the disparate impact finding by Judge Garaufis – only the disparate treatment finding – that the city knowingly discriminated against minorities in FDNY hiring practices.

At the appeals argument, things got strange. Despite repeated questioning, the Justice Department, the original plaintiff in the case, offered no argument either on the legality of Judge Garaufis's remedial order as it concerned disparate treatment – intentional discrimination – or on the issue of disparate treatment itself. It refused to take a position on these points. This refusal brought this comment from Circuit Judge Jon Newman: "This is your lawsuit. In your lawsuit, a judge has made a ruling which is subject to major dispute, and you don't take a position?"

We have to ask what is going on. All of a sudden the feds have nothing to say about the FDNY's long-term intentional discrimination in hiring. Is this a sop to the Bloomberg administration by arguing only unintended discrimination by the city and not taking a position on knowing discrimination? The Obama administration appears to be retreating from a legal case out of fear of reprisal from a powerful mayor. Is the Justice Department engaging in political maneuvering?

After years of legal wrangling while discrimination in hiring went on, the Circuit Court may be on the verge of sending the lawsuit back to District Court for yet another hearing. Maybe the Bloomberg administration believes that it can run out the clock and leave office with the issue still unresolved. It wouldn't have to admit that it had been wrong all along.

It is past time for the city to end this quixotic struggle and open Fire Department jobs to all New Yorkers, regardless of race or ethnicity. The fire department's hiring practices are a blot on New York City's reputation as a progressive, forward-looking place to work and live. This case is not a legacy that Mayor Bloomberg wants New Yorkers to remember after he leaves office.

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