

Justice Dept. in the Tank on FDNY Racial Discrimination?

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. Before we get to the latest chapter in this apparently never-ending battle, let's review the facts.

Back in 2002 – a decade ago - the Center for Constitutional Rights filed Equal Employment Opportunity Commission (EEOC) charges against the Fire Department on behalf of the Vulcan Society, the fraternal organization of black firefighters. The charges, followed by others filed in 2005, alleged deep, pervasive hiring discrimination in admissions testing 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. The Vulcan Society successfully moved to intervene, adding charges that the discrimination was more than just a matter of statistics; it was intentional.

Discrimination Ruled Intentional

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.

After losing one fight after another, the FDNY, backed by the Bloomberg administration, reached the desperate point of accusing Judge Garaufis of being unfair and having a "one-sided assessment of the evidence." It asked the U.S. Circuit Court of Appeals to have the judge removed from the case.

It is ridiculous for the city to react to an unfavorable ruling by Judge Garaufis by asking the Circuit Court to remove the judge, who has worked diligently on this case for five years. This is merely a move by the city to distract attention from the case itself – the FDNY's failure to make changes in its hiring practices.

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.

Strange Position by Justice Dept.

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?"

What is going on here? 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 – 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.

David R. Jones, Esq., is President and CEO of the Community Service Society of New York (CSS), the leading voice on behalf of low-income New Yorkers for over 168 years. The views expressed in this column are solely those of the writer. The Urban Agenda is available on CSS's website: www.cssny.org.

From the New York Amsterdam News
July 5 – July 11, 2012