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SUPREME COURT BACKS EMPLOYEES IN REVERSE DISCRIMINATION CASE

Burr Ridge, Illinois - (June 29, 2009). The U.S. Supreme Court ruled this morning that the City of New Haven, Connecticut unfairly denied promotions to a class of white firefighters based on race. In a highly-anticipated 5 to 4 decision, the Court ruled that the City was wrong to have disregarded a promotion exam on which the white plaintiffs did well, because no African-American and only two Hispanic firefighters scored high enough to be promoted.

Several of the high-scoring white firefighters sued the City for discrimination in violation of Title VII, the federal law that prohibits employment decisions based upon race, color, religion, sex, and national origin. Title VII prohibits both intentional acts of discrimination (disparate treatment) and policies and practices that—even though “fair” in form—have a disproportionately adverse impact on minorities, regardless of any discriminatory intent (disparate impact).

The City justified its decision not to promote any firefighters to lieutenant or captain by claiming that the test results produced an unlawful “disparate impact” upon minorities, and thus subjected the City to racial discrimination claims from rejected minority candidates. Furthermore, because it threw out the entire test and denied promotion to all examinees, the City maintained that no candidates received promotions in preference to those of other races.

The Court rejected these defenses. “Fear of litigation alone cannot justify an employer’s reliance on race to the detriment of individuals who passed the examinations and qualified for promotions,” wrote Justice Anthony Kennedy for the Court’s majority. Absent a “strong basis in evidence” that the test was flawed or that there were less discriminatory alternatives for determining promotions, the Court held that City’s discarding of the test results was “impermissible under Title VII.”

“Whatever the City’s ultimate aim—however well intentioned or benevolent it might have seemed—the City made its employment decision because of race. The City rejected the test results solely because the higher scoring candidates were white,” wrote Kennedy. “Courts often confront cases in which statutes and principles point in different directions,” the opinion noted.

Employers, however, may be less adept at handling such conflicts. “Any case that holds an employer liable for discrimination in the absence of any evidence that it specifically intended to discriminate should be concern every employer,” said Christopher Lyons, a management-side, labor and employment attorney with the firm of Peters & Lyons, Ltd., in Burr Ridge, Illinois. “What’s especially troubling here is that the employer appears to have taken the action it did not out of bias, prejudice, or discriminatory intent, but because it thought the law required it. In a sense, New Haven found itself in a legal ‘Catch-22,’ and its good-faith efforts to avoid discrimination liability

ironically ended up creating such liability.” Lyons said.

The decision in today’s case, *Ricci v. DeStefano*, was highly anticipated not only because of the significant employment issues involved, but because Judge Sonia Sotomayor, President Obama’s recent nominee for Supreme Court Justice, sat on the panel of Circuit Court judges that decided the case on appeal. Today’s Supreme Court opinion reversed that lower court’s ruling.

Christopher P. Lyons. is a partner in the law firm of PETERS & LYONS, LTD. located in Burr Ridge, IL. Since 1971, the firm has concentrated its practice in representing employers in labor and employment law matters.

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