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Judge Blocks 'Discriminatory' Police Dept. Promotion System

By **Alexis Shanes**

Law360 (April 23, 2021, 2:18 PM EDT) -- A federal judge has barred a Maryland county police department from using a long-standing promotion system that Black and Hispanic officers say has slowed or prevented their advancement, saying the officers were likely to win their legal challenge.

U.S. District Judge Theodore Chaung granted a partial preliminary injunction Wednesday to the Hispanic National Law Enforcement Association, United Black Police Officers Association and 13 current and former Prince George's County Police Department officers. The December 2018 suit names the county and four individual authorities.

The injunction won't stop the department from administering allegedly discriminatory promotional tests this month, but it requires authorities to have a new promotion system in place by October.

The department "has been aware of the significant disparities in promotion rates based on race dating back at least to 2012 but has done virtually nothing to address them," Judge Chaung said in Wednesday's opinion.

While Prince George's County, population 909,000, is 64% Black and 20% Hispanic, its police officers are 43% Black and 11% Hispanic, according to the opinion. Officers are disproportionately white, even more so at higher ranks in the department, and earn promotions by taking written tests and skills assessments, depending on their rank.

In response to the plaintiffs' January bid to enjoin administration of the tests, a move that would bar those scheduled for this month and invalidate those hosted last September, the police department said the injunction was based on an "entirely new" legal theory. The court disagreed.

"The fact that plaintiffs' current motion seeks injunctive relief that is more narrowly focused on one aspect of the many forms of defendants' allegedly discriminatory conduct ... does not alter this conclusion," Judge Chaung said. "Defendants' actions during the course of this case have reflected an understanding that discrimination in the promotion process is an issue raised by the complaint."

The court also found that the Black and Hispanic officers named in the suit could realistically be harmed by the system going forward. At least four are eligible to seek promotion this month, although it's not clear whether they will actually take the test.

The plaintiffs are pursuing an equal protection claim under the 14th Amendment, not a disparate impact claim under Title VII, according to the opinion. As such, they had to show discriminatory intent as well as disparate impact to prevail.

A plethora of statistics showed the skills assessment, a requirement for promotion to the highest ranks, was the primary place where Black and Hispanic officers lost ground against white colleagues, according to the opinion.

In one case, three white officers who had not even taken the promotional exam were promoted ahead of three Black officers who had, suggesting discrimination, the court found.

Judge Chaung also noted that the department was fully aware of the disparities but didn't rectify them. Authorities also received statistical reports as early as 2012 showing the disparities, according

to the opinion.

The department convened groups in 2017 and 2020 to address discrimination, but neither issued recommendations about the promotional system, the court found.

Further, the department has long failed to discipline officers accused of racially charged misconduct, Judge Chaung said. It did not reprimand some officers who targeted Black colleagues and civilians with vile slurs, including the N-word, and when it hosted an implicit bias training, many white officers walked out without consequences, according to the opinion.

Joanna Wasik, an attorney with the Washington Lawyers' Committee for Civil Rights and Urban Affairs, praised the order in a Thursday statement.

"The court has directed the county to address the entrenchment of white officers in command positions and to reform a promotion system that has allowed officers guilty of discrimination to rise through the ranks," Wasik said. "This decision is an important step to begin to fix the discriminatory practices at PGPD and make sure that there is an inclusive process for deciding on the right officers to lead the force."

In a Friday statement, Prince George's County said it "welcomes" the court's order requiring the parties to choose an independent expert to review the department's promotion system.

"The county and the department are committed to ensuring that their professionally developed promotion system continues to result in the promotion of the best qualified officers — of all races, ethnic groups, and backgrounds — who shoulder the tremendous responsibility of providing law enforcement services," the county said in the statement.

The plaintiffs are represented by Dennis Corkery, Joanna Wasik and Tristin Brown of the Washington Lawyers' Committee for Civil Rights and Urban Affairs; Adam Pergament, Danait Mengist, James Feeney III, Kaitlin Robinson, John Freedman, Mei Wah Lee, Peter Grossi Jr. and Preston Smith of Arnold & Porter Kaye Scholer LLP and Deborah Jeon of the American Civil Liberties Union of Maryland Foundation.

The county is represented by Craig Thompson, Christine Carey, Christine White, Courtney Sullivan, Doreen Martin, Karel Mazanec, Kenneth Thompson, Kurt Fischer, Lauren Stocks-Smith, Matthew Alsip, Robert Ames, Robin Burroughs, Todd Horn, Vincent Verrocchio and William King of Venable LLP, and in-house attorney Andrew Murray.

The case is Hispanic National Law Enforcement Association NCR et al. v. Prince George's County et al., case number 8:18-cv-03821, in the U.S. District Court for the District of Maryland.

--Editing by Vincent Sherry.

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