



City of Cambridge

14
IN CITY COUNCIL

AUGUST 2, 1982

MAYOR ALFRED E. VELLUCCI

- WHEREAS: The City Council is in receipt of a letter from the Lawyers' Committee for Civil Rights, attached, seeking to make certain observations concerning the Sargents List of the Cambridge Police Department, dated October, 1981, therefore be it
- ORDERED: That the City Manager be requested to communicate with the Lawyers' Committee for Civil Rights concerning the issues raised in their letter.



LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
OF THE BOSTON BAR ASSOCIATION

294 WASHINGTON STREET • BOSTON, MASSACHUSETTS 02108 • (617) 482-1145

Steering Committee

Nicholas U. Sommerfeld, Chairman
Hugh R. Jones, Jr., Vice-Chairman

July 30, 1982

Edward J. Barshak
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Caroline B. Playter
Barbara J. Rouse
Joseph D. Steinfield
Daniel D. Sullivan
Thomas V. Urmey
John Taylor Williams
Zipporah Batshaw Wiseman

Mayor Alfred E. Vellucci
City Councillors Francis Deuhay, David Sullivan, Walter
Sullivan, Daniel Clinton, Thomas Donehy, David
Wylie, Leonard Russell and Sandra Graham
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA. 02139

City Manager Robert Healy
Cambridge City Hall
795 Massachusetts Avenue
Cambridge, MA. 02139

Acting Chief, Captain Joseph Cusack
Cambridge Police Department
5 Western Avenue
Cambridge, MA. 02139

Dear Mayor Vellucci, Councillors Duehay, Sullivan,
Sullivan, Clinton, Donehy, Wylie, Russell and
Graham, City Manager Healy and Acting Chief Cusack:

I am writing on behalf of the Cambridge Afro-
American Police Association, which we represent,
regarding the promotion process within the Cambridge
Police Department, and in particular, the selection
of sergeants from the current eligible list. We hope
that this letter will serve to initiate discussions
with you which will lead to greater opportunities for
advancement by black officers in the Department.

Based on the information with which we have been
provided, we understand that 45 officers are on the
October, 1981 eligible list for promotion to the rank
of sergeant in the Cambridge Police Department as a
result of the April 1979 examination. Of these, 5 are
black and are ranked #24, 29, 32, 40 and 44 on the list.
We also understand that there is under consideration the
promotion to sergeant of approximately 15 officers from
this list within the next few months. If this were to
occur in the manner in which it has occurred traditional-
ly, in other words, in strict rank order, all 15
promotions would be of white officers. This would

Executive Director
Judith Bernstein Tracy

Staff Counsel
Alan Jay Rom
Peggy A. Wiesenberg

*Director, Project to Combat
Racial Violence*
Robert P. Sherman

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Karen T. Horner

result in an increase in the sergeant workforce from 30 to approximately 45, of whom 3 are black, and a reduction in the representation of blacks in this rank from 10% to 6.6%. (The representation of blacks may even be less than 6.6% if, as expected, one or more of the 3 black sergeants ceases to serve in this capacity.)

There are alternatives to strict appointments in rank order from the eligible list which would provide you with the requisite flexibility to prevent this result and to ensure the continuing presence and growth of representation of minority superior officers in the Department. Although we will not suggest specific appointment methods in this letter, preferring to reserve that for discussion with you, we would like to provide you with the basis for our position. We encourage you to seriously consider these authorities and explore the options with us.

The appointment process is governed by statute M.G.L. C.31, and by Civil Service Commission Rules, in particular, Rules 11, 14 and 15. It is our reading of these provisions that leads us to conclude that the appointing authority possesses wide discretionary power to promote anyone from among the specified number of individuals certified by the Personnel Administrator. No statute or regulation requires you to make promotions in strict rank order from the list.

When names have been certified to an appointing authority under Rule 11 and the number of appointments actually to be made is n , the appointing authority may appoint only from among the first $2n + 1$ persons named in the certification willing to accept appointment...provided that when more than one appointment is being made, the first appointment shall be made from among the first three persons whose names are certified and who are willing to accept, the second appointment shall be made from among the first five persons...and so forth.

Civil Service Commission Rule 15

This Rule gives the appointing authority the discretionary power to skip over names on the certification and promote any person whose name appears on the list down to the number which is twice that of the particular appointment being made plus one.

Thus, in this situation, if you wish to promote 15 officers, 31 names would be provided to you and these would include 3 black officers (since numbers 1 and 6 on the list have been removed, one having been promoted and the other having retired). From among

these 31, you could appoint any 15 officers, including those at the bottom of this group. After making 10 promotions from among the first 21 candidates, the first black candidate (ranked number 24 but actually 22nd on the list available for promotion) could be reached. This is because the 11th promotion would be made from among the first 23 on the list; the 12th from the first 25; the 13th from the first 27; the 14th from the first 29; and the 15th from any of the 31 names certified by the Personnel Administrator. Thus, it would be possible to promote all three black candidates who were certified among the first 31 candidates on the eligible list.

Pursuant to M.G.L. C. 31 §27, you would, of course, have to provide reasons for such selections to the Personnel Administrator, but this statute does not set forth what reasons are acceptable or required. Preferences of the appointing authority for one officer as opposed to another, as well as affirmative action considerations, would seem to be appropriate reasons within §27.

Civil Service Commission Rule 14 provides you with additional discretionary power in promotions under the provisions of an affirmative action plan. This Rule applies if the Personnel Administrator has made a written determination that the appointing authority has previously engaged in discriminatory hiring or promotion practices on the basis of race, color, sex or national origin in contravention of equal employment opportunity requirements. The Personnel Administrator may then certify "in addition to names certified in accordance with Rule 11, the names of a like number of individuals who are members of the protected group and are on an eligible list for such position, in order of their standing." Once names have been certified from the protected group in accordance with Rule 14, the appointing authority may, under Rule 15.4, promote from among the number of applicants specified in Rule 15 and a like number from the protected group. The appointing authority may choose from among 2n+1 applicants in each of the two groups.

The advisability of exercising this kind of discretion, and by so doing promoting black officers, rather than excluding them from advancement, is underscored by case law and other authority. Under the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq., a selection device is discriminatory if it chooses applicants in a racial pattern significantly different from that of the applicant pool. Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975). When a ranking system is used to select individuals for a job, courts have looked at the applicants' actual chance for selection based on their position in the ranking, rather than just the pass-fail statistics, to determine the validity of the selection process. United States v. City of Chicago, 549 F.2d 415 (7th Cir. 1979); Pina v. City of East Providence, 492 F. Supp. 1240 (D.R.I. 1980); and Williams v. City and County of San Francisco, 483 F. Supp. 335 (N.D. Ca. 1979). Moreover, the ranking system itself may be invalid

if a manifest relationship between a candidate's position on the eligible list and that individual's ability to perform the duties of police sergeant cannot be shown. Pina, supra; Louisville Black Police Officers' Organization, Inc., et al. v. City of Louisville, ___ F. Supp. ___ (W.D. Ky. 1979), 21 E.P.D. ¶30,329.

Similarly, the Uniform Guidelines on Employee Selection Procedure, 29 C.F.R. 1607 et seq., impose the following obligation:

....if a user decides to use a selection procedure on a ranking basis, and that method of use has a greater adverse impact than use on an appropriate pass/fail basis....., the user should have sufficient evidence of validity and utility to support the use on a ranking basis.

§5.G.

Also, if the employer makes use of cut-off scores in its testing procedure, these cut-off scores should "normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force." §5.H.

Since everyone who received a cumulative score of 77 and above on the last sergeant examination was placed on the October, 1981 eligible list, and therefore was considered qualified to be promoted, it is difficult to see why candidates assigned scores of 77 to 85 (those ranked 18-45) should be excluded from advancement and those given 86-93 (those ranked 1-17) should be promoted. As the court noted in Pina:

There is no evidence that even remotely suggests that the order or ranking establishes that any applicant is better qualified than any other applicant who qualified, within a wide range of positions. The science of testing is by no means so accurate. 492 F. Supp. 1240, 1246.

We again reiterate our request that you consider these facts and meet with us to discuss applying the flexible promotion system they support. In this way, we would hope to agree to a system which advances the role of minority officers in the Department and avoids the necessity for our initiating any formal action.

I look forward to your response and thank you for your consideration of this matter.

Sincerely,

Judith Bernstein Tracy

JBT/kh

cc: Rueben Dottin, Jr.
President, Cambridge Afro-American Police Association



City of Cambridge

14.

IN CITY COUNCIL

AUGUST 2, 1982

MAYOR ALFRED E. VELLUCCI

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ORDERED: That the City Manager be requested to communicate with the Lawyers' Committee for Civil Rights concerning the issues raised in their letter.

In City Council August 2, 1982.
Adopted by the affirmative vote of 8 members.
Attest:- Paul E. Healy, City Clerk.

A true copy;

ATTEST:-

Order # 14

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Mayor Vellucci Re: City Manager to contact
the Lawyer's Committee for Civil Rights con-
cerning the Sergeant's List of the Cambridge
Police Dept.

In City Council,

August 2, 1982

8/2/1982

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