

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office
33 Whitehall Street
New York, New York 10004
(212) 336-3620

Charging Parties

Theodore Coleman (520-2012-00744)

[REDACTED]

Jon McCollum (520-2012-00742)

[REDACTED]

Roland Stephens (520-2012-00743)

[REDACTED]

Respondent

New York City Police Department
One Police Plaza, Room 1406
New York, NY 10038

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue on behalf of the Commission the following determination on the merits of the subject charges filed under Title VII of the Civil Rights Act of 1964. Respondent is an employer within the meaning of Title VII; all requirements for coverage have been met.

Charging Parties, individually and collectively, allege that, because of their race, black, Respondent failed to promote them from Detective Level 3 to Detective Level 2 even though they were eligible and were as qualified as white detectives who were promoted. All three worked in the Intelligence Division.

Detective Coleman entered the Department in 1992 and became a Detective 3, the initial level, in 2001. Even though he had the highest performance ranking, he was not recommended until he had nine years of service and not actually promoted until the following year, just months before his retirement. Detective McCollum entered the Department in 1992 and became a Detective 3 in 1996. He did not receive a promotion to Detective 2 for 16 years, until 2012. Detective Stephens entered the Department in 1991, became a Detective 3 in 1999 and joined the Intelligence Division in 2001. He was made Detective 2 in 2013, 12 years later.

All three Charging Parties earned evaluations of 4.5 or 5, 5 being the highest rating, virtually throughout their careers and had unblemished records. They assert that white detectives with records no better than theirs, and in some instances worse, were promoted through a system influenced by favoritism, nepotism, and other non-merit factors, including and resulting in racial bias.

Respondent denies discriminating against the Charging Parties or against black detectives in general. Its defense rests on a number of factors including that most allegations address actions outside the 300-day statute of limitations. Respondent describes the promotion system as entirely discretionary: there is no examination testing employees' qualifications for moving up the detective ladder, and there are no provisions in the Collective Bargaining Agreement addressing eligibility or process. More generally, Respondent cites traditional promotion criteria – the individual's record, evaluations, education, etc. – and points out that persons with exceptional skills or credentials, such as language abilities or working in high-profile cases, might receive additional consideration. Respondent also acknowledges that the Department is frequently directed by outside officials to reward certain individuals with a promotion for service that is exceptional in some way. Respondent has submitted a "rough analysis" showing that white detectives were promoted after about 4.7 years on average while black detectives were promoted after 5.7 years. The discrepancy is attributed to these special considerations. It is not known what group and what time period this "rough analysis" covers and the explanation is entirely hypothetical.

On the contrary, EEOC's investigative analysis of promotion figures over the years reveals that the shortfall of blacks is sustained and not based on individual circumstances, and also demonstrates that the spread between whites and blacks is considerably broader than what the Respondent has acknowledged. The total number of promotions each year is relatively small compared with the number of detectives in each grade, and varies from year to year depending upon budget allocations. In a seven-year period, about 100 detective promotions occurred within Intel, roughly three quarters of which were from Detective 3 to Detective 2. Analysis and comparison of the promotees' time in grade up to their promotions reveals that blacks as a group served as Detective 3 nearly two years longer than whites (roughly seven years for whites vs. nine years for blacks). Separate analyses year by year confirm these differences.

Consistent with this pattern, the Charging Parties served longer at the lower level than those who were promoted in the same year. In 2012, Detective McCollum's white colleagues averaged about five years before promotion while the blacks as a group averaged nearly ten years. In 2013, Detective Stephens and other blacks averaged twelve years in the lower grade while whites averaged slightly over six years. The comparison of averages for 2011, Detective Coleman's year, reveals that seven whites averaged only four years as Detective 3 while the three blacks served for six.

A further analysis supports the conclusion that black detectives do not receive equal treatment in promotion. About 40 became Detective 3s in 2007; of these, 16 have been promoted to Detective 2 to date. Half the whites have been promoted but only one of the four blacks has risen to Detective 2.

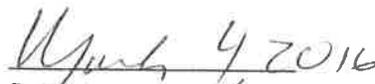
Based on the above analysis, it is clear that Respondent's defense, that the promotion system is fair and inclusive and that any shortfall in the black participation rate is attributable to unspecified individual circumstances, does not withstand scrutiny. In fact, Respondent's wholly subjective and secret process operates without any structured guidelines. Detailed analysis of the materials made available substantiates the conclusion that the three Charging Parties, and black detectives in general, received lesser and later opportunities for promotion consistent with their qualifications.

This determination is final. Section 706(b) of Title VII requires that if the Commission determines that there is reasonable cause to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practice by informal methods of conference, conciliation and persuasion. Having determined that there is reasonable cause to believe that the allegations made by the Charging Parties are substantially true, a representative of this office will be in contact with each party in the near future to begin the conciliation process. Enclosed is a letter outlining the proposed terms of conciliation.

Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. Where the Respondent declines to enter into settlement discussions, or where the Commission's representative for any other reason is unable to secure a settlement acceptable to the Office Director, the Director shall so inform the parties in writing and advise them of the court enforcement alternative available to the Charging Parties and the Commission.

On behalf of the Commission:


Kevin J. Berry
District Director


Date