

City Settles Discrimination Lawsuit By Black And Latino Officers

by {ga=ejgoodman}

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Â A long anticipated trial over discrimination at the New York City Police Department was averted when the Latino Officers Association, the City of New York and the department reached a settlement shortly before the trial was scheduled to begin.

The lawsuit, commenced in 1999 by 22 individuals and the association, was certified as a class action three years later by Judge Lewis A. Kaplan of the United States District Court for the Southern District of New York. The class includes all African-American and Hispanic police and certain civilian employees of the New York Police Department from 1995 on.

Charging that the police department violated their city, state and federal civil rights, the plaintiffs alleged a hostile work environment where they were subjected to derogatory remarks, racist graffiti on lockers and similar conduct which was often tolerated by superiors. One of the worst problems was retaliation against officers who complained, according to the plaintiff's lead counsel, Richard Levy, who said the officers became "outcasts in many precincts." The plaintiffs also alleged disparate and discriminatory application of disciplinary rules and procedures. The lawsuit maintained that disciplinary charges were brought against blacks and Hispanics more often than against white officers and that more convictions were returned and more serious penalties were imposed for departmental convictions resulting in transfers, denials of benefits, suspensions and terminations. The charges against the officers ranged from rudeness to murder. Most fell into a generic category of conduct prejudicial to the NYPD.

Statistics relied on by plaintiffs indicate that when civilian charges against police officers originated at the Civilian Complaint Review Board, an independent non-mayoral agency cited for comparison purposes, disparities based on race or ethnicity were minor or non-existent. In complaints filed by the public, blacks were charged at the same rate as whites; the figures for Hispanics were slightly more. However, when charges originated internally at the New York Police Department, overall disparities increased enormously with blacks and Hispanics much more likely to be charged than their white counterparts.

Similarly, when departmental trials were held, blacks were much less likely to be acquitted and have their charges dismissed, than whites. In fact, if the case, Latino Officers Association against City of New York and NYPD, had gone forward, the plaintiffs expected to prove that blacks were 60 percent more likely and Hispanics 30 percent more likely to be found guilty at departmental trial than whites. In terms of overall dispositions, charges against whites were more often dismissed, or resulted in findings of not guilty, while African-Americans and Latinos were far more often found guilty. In addition, when findings of guilt were handed down, blacks

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and Hispanics were terminated from the police force with greater frequency than white officers, who received lesser penalties.

If the settlement is approved by the court as expected, the class, which includes approximately 12,000 members, and their lawyers, will share a monetary settlement of \$26.8 million of which 20 million is dedicated to claims and two million to administration. A panel is to be created to decide how many of the Hispanic and African-American members of the police force who served since 1995 may be eligible to share in the settlement and to what extent. It is not known how many claims will be submitted, or how many members will "opt out" and settle, litigate or withdraw their own cases. Claims may also be filed for lost benefits, but there are no provisions for reinstatement of individuals whose employment was terminated. The awards can range from \$3,500 to \$400,000.

In addition to the monetary provisions, the settlement includes an injunction against discrimination by the police department. While the defendants do not admit any wrongdoing, they accept that the police department is enjoined from discriminating based on race, color, national origin or ethnicity in the future. "The injunction outweighs individual recoveries," said lawyer Richard Levy. "It opens the door to a new day when black and Latino cops are not mistreated."

The settlement also requires the establishment of a review unit to analyze the NYPD's disciplinary process regarding discrimination and retaliation and whether African American and Latino/Hispanic members of police service are being investigated, charged or penalized in a discriminatory manner. The proposed order which is being submitted to Judge Kaplan for his approval and signature details the steps the police department will take to establish procedures to prevent discrimination.

All members of the certified class can apply for awards from the fund which is to be held by the New York City Comptroller; payment is to be administered by the Special Masters Kenneth Feinberg and Peter Woodin. Mr. Feinberg also heads the federal program of compensation to families of victims of the September 11th attacks. According to plaintiffs' attorney Richard Levy, "the case would not have settled without the Special Masters. We couldn't have achieved the results," he said. "But Feinberg had immediate access to Mayor Bloomberg, Police Commissioner Kelly, and Mike Cardozo [Corporation Counsel]. No one would meet with us at this level before."

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Emily Jane Goodman is a New York State Supreme Court Justice