

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Frank Ricci, et al.,  
*Plaintiffs,*

v.

John DeStefano, et al.,  
*Defendants.*

Civil No. 3:04cv1109 (JBA)

December 2, 2009

RULING AND ORDER ON MOTION TO STAY [Doc. ## 170, 172]

Eight putative intervenors have moved this Court to stay all promotions by the City of New Haven (the “City”) from the recently certified eligibility lists derived from the 2003 promotional examinations for the ranks of Lieutenant and Captain within the New Haven Fire Department (“NHFD”) until the Court rules on their motion to intervene to challenge the validity of the examination process. As discussed below, because the United States Supreme Court decision remanding this case required remedial promotion of eligible Plaintiffs, and because the remaining limited scope of this case is unrelated to any other promotions or testing validity, the motion to stay will be denied.

On June 29, 2009 the Supreme Court ruled in *Ricci v. DeStefano* that the Plaintiffs were “entitled to summary judgment on their Title VII claim,” 129 S. Ct. 2658, 2681 (2009), pursuant to which this Court entered judgment in their favor and ordered promotion of 14 of the Plaintiffs who were undisputedly due promotions based on the results of the 2003 promotional examinations (Order dated Nov. 24, 2009 [Doc. # 168]). The Court specified the eight plaintiffs to be promoted to the rank of Lieutenant and the six plaintiffs to be

promoted to the rank of Captain. (*Id.*) The Order made no mention of and has no impact or effect on any other potential promotions.

Gary Tinney, Linda D. Cohens, Bernard McNeil, Rodney Patterson, Sr., Anthony Reese, Curtis Tolson, David Tyson, and Anthony Wells (the “Movants”), eight New Haven firefighters, seek to stay any promotions, including those ordered by the Court. (Mot. Stay [Doc. ## 170, 172].) The Movants assert that the 2003 promotional examinations are “*not* valid,” “cannot ever *be* validated,” and “have never been subjected to scrutiny.” (*Id.* at 1–2.) They argue that the Court should stay its November 24th Order until their claim that “the test itself may be flawed” under a disparate-impact analysis is considered by this Court on the merits (*id.*), because they “could be irreparably harmed” financially and by “the loss of future opportunities within the [NHFD]” given that “there are limited promotional slots available” (*id.* at 3).

Underpinning the Movants’ argument is their misapprehension of the limited scope of both this remanded case and the November 24th Order. Whether the Movants could demonstrate the City’s liability for a disparate impact of the 2003 examination process in violation of Title VII, and hence entitlement to equitable relief, are questions beyond the ken of what remains to be addressed in this case. Of the Plaintiffs before this Court, 14 are undisputedly entitled to remedial promotions for what the Supreme Court held was the City’s racially disparate treatment of them in violation of Title VII. It is unknown at this time whether any other Plaintiffs are entitled to remedial promotions. These remedial

promotions are not subject to challenge on the basis that the testing that produced the eligibility lists are legally flawed. Necessarily, therefore, the claims raised by the Movants are directed to vacancies in the Lieutenant and Captain ranks of the NHFD remaining *after* the City makes the remedial promotions ordered. Any disparate-impact challenges to the City's plans for any remaining vacancies is not a matter within the remaining scope of this case.

Since the Supreme Court's decision has effectively removed these remedial promotions from challenge, the Movants cannot show any possibility of success on claims challenging the legality of those promotions or that they will be irreparably injured in a legally cognizable way by them. *See Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Mohammed v. Reno*, 309 F.3d 95, 100 (2d Cir. 2002). Moreover, since legal challenges to any other promotions fall outside the remaining scope of this case, the Movants otherwise fail to show entitlement to a stay.

Accordingly, the Movants' Motions to Stay [Doc. ## 170, 172] are DENIED.

IT IS SO ORDERED.

/s/

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Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut this 2d day of December, 2009.