

issue of disparate impact. The case focuses on an area of active litigation in employment discrimination—the validity of employer skill and knowledge tests for hiring and promoting.

CASE 20.2

Ricci v. DeStefano
557 U.S. 557 (2009)

Fighting Fire with Stats

FACTS

In 2003, 118 firefighters in the city of New Haven, Connecticut, took examinations to qualify for promotion to the rank of lieutenant or captain. Promotion examinations in New Haven (City) were infrequent, so the stakes were high. Exam results determined which firefighters would be considered for promotions during the next two years, and their order for consideration. Many firefighters, including Frank Ricci, studied for months, at considerable personal and financial cost.

The examination results showed that white candidates had outperformed minority candidates. Seventy-seven candidates completed the lieutenant examination—43 whites, 19 blacks, and 15 Hispanics. Of those, 34 candidates passed—25 whites, six blacks, and three Hispanics. Eight lieutenant positions were vacant at the time of the examination, which meant that the top 10 candidates were eligible for an immediate promotion to lieutenant. All 10 were white. Subsequent vacancies would have allowed at least three black candidates to be considered for promotion to lieutenant.

Forty-one candidates completed the captain examination—25 whites, eight blacks, and eight Hispanics. Of those, 22 candidates passed—16 whites, three blacks, and three Hispanics. Seven captain positions were vacant at the time of the examination. Nine candidates were eligible for an immediate promotion to captain—seven whites and two Hispanics.

Following a briefing on the exam results, the mayor and other local politicians opened a public debate on the results that turned rancorous. The firefighters argued that the test results should be discarded because the results were discriminatory. Some firefighters threatened a discrimination lawsuit if the city made the promotions on the basis of the tests. Other firefighters said the exams were neutral and fair, and they, in turn, threatened a discrimination lawsuit if the city, relying on the statistical racial disparity, ignored the test results and denied promotions to the candidates

who had performed well. In the end, the city took the side of those who protested the test results. It threw out the examination results. Mr. Ricci and others filed suit.

The federal district court found that there was discrimination against the white and Hispanic firefighters, and the city (respondents) appealed. The appellate court reversed the district court's decision.² The firefighters (petitioners) appealed to the U.S. Supreme Court.

JUDICIAL OPINION

KENNEDY, Justice

The City's actions would violate the disparate-treatment prohibition of Title VII absent some valid defense. All the evidence demonstrates that the City chose not to certify the examination results because of the statistical disparity based on race—i.e., how minority candidates had performed when compared to white candidates. As the District Court put it, the City rejected the test results because "too many whites and not enough minorities would be promoted were the lists to be certified." Without some other justification, this express, race-based decision making violates Title VII's command that employers cannot take adverse employment actions because of an individual's race.

Whatever the City's ultimate aim—however well intentioned or benevolent it might have seemed—the City made its employment decision because of race. The City rejected the test results solely because the higher scoring candidates were white. The question is not whether that conduct was discriminatory but whether the City had a lawful justification for its race-based action.

Allowing employers to violate the disparate-treatment prohibition based on a mere good-faith fear of disparate-impact liability would encourage race-based action at the slightest hint of disparate impact. A minimal standard could cause employers to discard the results of lawful and beneficial promotional examinations even where there is little if any evidence of disparate-impact discrimination. That would amount

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