

## 12 CASE

### *Analyzing Promotion Data: Applying the 80% Rule*

Thomas L. Rutherford, human resource director of Food Chain Supermarkets, Inc., was jolted by the conversation he just had with Walter Jackson, an employee in the company's distribution warehouse. Jackson had complained that black employees were being passed over for promotions in favor of white employees who had less experience and seniority. Jackson had gone on to explain that he had resigned his position in the meat department of the warehouse because, despite his experience and job performance, he felt he would not get promoted. He explained that he had been passed over for promotion three times since he started work with Food Chain Supermarkets.

After Jackson left his office, Rutherford immediately began to investigate his claims. He called in Mark Walters, his personnel assistant, and explained to him the conversation he'd just had with Jackson. "The last thing I want on my hands is a discrimination suit," Rutherford told Mark. "I want you to get some data on promotions that have occurred in the last couple of years in our warehouse operations. Also, while you're at it, get the same information for our stores. Also, here are the names of three black employees given to me by Jackson. Pull their files and try to get any facts on what happened with their promotion requests."

Mark replied, "I don't think it will be too difficult to pull together the information, Tom, now that we have finally gotten our personnel records centralized. But I'll probably have to talk with some of the department managers and supervisors also." Rutherford suggested that he also interview the three black employees. As Mark left his office, Rutherford began to think about the company's human resource practices and Jackson's allegations.

#### BACKGROUND

Food Chain Supermarkets, Inc. is a regional chain of supermarkets located in the Midwest. Additionally, the company operates a central warehouse, bakery, and its own transportation system. Its main office, distribution center (warehouse), and a dozen stores are located in Reed County. Presently, the company employs over 1,600 people in the county. According to recent census data, Reed County's labor force is about 22 percent black. The company has plans to refurbish its stores and to open four additional stores over the next two years. Rutherford was hired in anticipation of this growth to help better manage the company's personnel needs.

The distribution center has five departments: grocery, meat, frozen food, produce, and transportation. Each department has two shifts. The starting times of various employees on the same shifts are staggered. Both receiving and shipping functions are carried out at the warehouse. Order puller, order selector, order picker, and picker are synonymous terms for the same position. A warehouse crew leader is a working supervisor who not only assigns duties but also performs the same duties as subordinates. Management positions in the stores consist of assistant produce manager, produce manager, grocery manager trainee, relief grocery manager, deli manager, relief assistant manager, assistant manager, head cashier, and assistant head cashier.

Background information on some of the key people in this situation include:

**Clifford Gemson:** Clifford Gemson was hired as a produce clerk in June 2007. He had originally applied for a management position. He had three years of grocery store management experience including six months in produce management with another company. Gemson worked in two stores between June 2007 and April 2008. On several occasions,

Gemson asked his district manager (J. Perkins) and his store manager (C. Fagen) about promotion to vacant produce manager positions. The first vacancy was filled on October 8, 2007, by Bob Watkins, a white employee. Watkins, a produce clerk, had eighteen months of experience with us. Watkins, who had no management experience, was replaced by another white employee, Sheila Wilson, on November 8, 2007. Wilson was selected on the basis of her Food Chain Supermarket experience as a produce clerk and an assistant produce manager for six months. Gemson was not considered for either vacancy.

**Roy Thompson:** Roy Thompson was hired by Food Chain Supermarket at our warehouse on September 18, 2004 as a maintenance (sanitation) employee. His duties included forklift driving, sorting damaged food, and rebuilding pallets. His prior work experience included supervisory duties and self-employment. Thompson trained a white employee of Food Chain (Neal Marcy, hired May 12, 2007) who was promoted to crew leader of the maintenance (sanitation) department on June 16, 2007. Before Marcy was hired, Thompson asked his supervisor (E. Jones) for the crew leader job to which Marcy was promoted. Jones told Thompson that he would never be a crew leader as long as he was supervisor. Jones denies saying this. According to Thompson, his supervisors had repeatedly told him that he had both excellent attendance and performance. On August 15, 2008, a junior white employee, Earl Hanes (with less company experience than Thompson), was promoted to a sanitation crew leader for the same shift and in the same department that Thompson worked. According to Jones, Hanes was better qualified because of his previous work experience.

**Leslie LeBlanc:** Leslie LeBlanc was hired by Food Chain Supermarket on July 8, 2005 as a frozen food picker. Her next position was frozen food loader. LeBlanc was trained to act as a "fill-in" crew leader, and in fact did fill in as a crew leader until Ricky Anderson, a white employee, was hired. LeBlanc trained Anderson in the duties of a "fill-in" crew leader who then assumed LeBlanc's place as "fill-in" crew leader. Anderson was offered a full-time crew leader's position, which he refused. LeBlanc was never offered this job. LeBlanc had previously informed Food Chain Supermarket management of her prior experience as a shift leader at a textile mill.

**Walter Jackson:** Walter Jackson was employed by Food Chain Supermarket on April 14, 2004 at the warehouse in the meat department. (Milk, dairy products, and meat are in the same department.) Jackson's job duties prior to April 2008 included milk picking, unloading, and forklift driving. In the spring of 2008, a crew leader told Jackson that he was up for promotion to crew leader in the department. Terry Gibson, a white employee, received the job on June 7, 2008. Gibson was initially hired on January 11, 2004, resigned February 5, 2004, and was rehired November 3, 2004. Jackson had more company and departmental experience than Gibson. However, he was never considered for the position. Gibson's prior duties were solely picking meat and Jackson had supervised Gibson when Jackson served as "fill-in" crew leader prior to Gibson's promotion. The supervisor asserted that Gibson had broader departmental experience than Jackson. Since that time, two other employees in the meat department with less seniority and experience have been promoted over Jackson.

## HUMAN RESOURCE PRACTICES

When Rutherford was hired four months ago, the president had explained that because of the physical dispersion of the stores, human resource policies were decentralized with a great deal of responsibility placed on the district managers. Promotion recommendations and decisions were made by supervisors of the different departments in the warehouse. In order to be

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promoted to a warehouse crew leader, an employee had to be on the same shift and in the same department as the opening. The factors utilized in promotion decisions at the warehouse were character, integrity, good sound morals, correct attitude, and initiative. The company felt that the supervisor was in the best position to judge whether or not an employee was promotable. There was no system for employees to apply for promotions. Written performance evaluations were limited to office employees, merchandisers, and store managers. At the retail stores, store supervisors made promotion recommendations to the district manager. Promotions were limited to persons recommended by the store managers. The district managers agreed with the store managers 90 to 95 percent of the time. The district manager decided who would be promoted, transferred, demoted, hired, or terminated for all positions up to the department head. Job vacancies were not routinely posted. Employees could be transferred from store to store as needed.

Rutherford recalled a conversation he recently had with one of the district managers, Joe Perkins: "We really don't need to post jobs since each district manager is usually aware of openings in his or her district and which employees are ready for promotion. Further, an employee doesn't have to ask in order to be considered for a promotion. Although we don't have a written evaluation system, the job performance of an employee is conveyed by word of mouth from one level of supervision to another."

#### **TWO WEEKS LATER**

Rutherford received the reports and data prepared by Mark on promotions within the warehouse and stores for the past two years (see Exhibit 1.20). Mark also prepared summaries of what had happened to Jackson and the other three black employees mentioned by Jackson. As Rutherford began reading through the report, he wondered what changes would be needed at Food Chain Supermarket in order to create equal opportunities for all employees. He never wanted to have another conversation like the one he had with Jackson two weeks earlier.

#### **QUESTIONS**

1. Analyze the table in Exhibit 1.20. What conclusions do you reach? Is there evidence of discrimination in promotion decisions?
2. Do you believe that Gemson, Thompson, LeBlanc, and Jackson were discriminated against?
3. What are some of the potential disadvantages of a "word of mouth" promotion system?
4. What should Rutherford do now?
5. What kinds of policies can the company design to better integrate minorities into management positions?

**EXHIBIT 1.20 Report on Promotion Rates**

TO: T. L. Rutherford, Director of Human Resources  
 FROM: Mark Walters, Human Resource Assistant  
 RE: Promotions

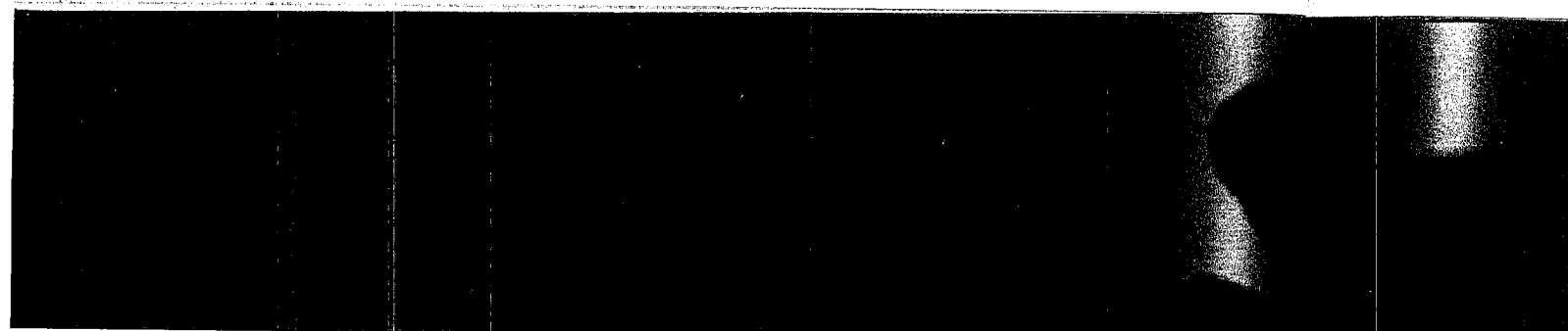
I have collected the data you requested on promotion rates at our warehouse and stores for the last two years (see table). I have also summarized what I learned about the Jackson situation and the other three promotion cases he mentioned.

**Promotion Rates**

Unit	Year	Total Employees		Total Promotions		Promotion Rates	
		White	Black	White	Black	White Rate	Black Rate
Warehouse/Stores	2008	1,603	284	171	21	10.66%	7.39%
Warehouse/Stores	2007	1,414	291	122	27	8.62	9.27
Warehouse	2008	411	173	42	13	10.21	7.50
Warehouse	2007	223	192	18	21	8.07	10.90
Stores	2008	1,192	111	129	8	10.80	7.20
Stores	2007	1,191	99	104	6	8.73	6.10

*Note: In 2008, blacks represented 5.8 percent of 137 store promotions and 9 percent of the work force. In 2007, 94.6 percent of the managers were white and in 2006, 94.7 percent were white.*

QUESTION



## 12. CASE: ANALYZING PROMOTION DATA: APPLYING THE 80% RULE

## I. OVERVIEW:

While much of the focus has been on dealing with discrimination in initial selection decisions, in recent years there has been more attention to treatment discrimination as minorities and women seek advancement to higher positions. This case focuses on a black employee who accuses the company of bypassing black employees for promotions in favor of white employees. The case includes both qualitative and quantitative data for the students to analyze in determining whether or not discrimination has occurred. Topics covered in the case include: race discrimination; promotion policies and procedures, and centralized versus decentralized staffing policies.

## II. OBJECTIVES:

This case can be used for several purposes:

1. To illustrate the complexity involved in determining whether or not race discrimination has occurred.
2. To examine the impact of Title VII on the design and implementation of promotion systems.
3. To explore methods of assuring equal opportunity in all staffing decisions.
4. To demonstrate how poor personnel/human resource management practices contribute to allegations of unlawful discrimination.

## III. DISCUSSION:

The major issue facing Rutherford in the case is to determine whether or not black employees are being discriminated against in promotion decisions. Once a determination is made, Rutherford faces the problem of changing a basically informal promotion system to one that is more formal with less chance for bias in decisions. It is also evident that the promotion criteria are based on personality traits and not job-related factors. In fact, this may be part of the cause for the black employees' complaints. Promotion decisions are based largely on a supervisor's subjective assessment of employee performance (particularly promotions within the warehouse). Such a system makes an organization vulnerable to the type of charges it is presently facing.

As part of their analysis, students should point out the need for a valid, job-related promotion process. This would involve Rutherford's office developing job descriptions, performance standards, a formal job posting system, and a formal performance evaluation process. Job posting provides equal opportunity for all employees and creates greater openness in organization promotion decisions. They need to also re-examine the criterion that an employee had to be on the same shift and in the same department as the job opening. The rationale for this requirement is not clear. Since the skills needed to perform the jobs in each department are probably similar, the company should rely on seniority and job performance as the major criteria. There is also a need to develop a system where employees can apply for promotions. The current system of supervisors determining who gets a chance to get promoted is too restrictive. A key part of the student's analysis should focus on how Rutherford should go about implementing proposed changes. He may encounter some resistance to change because of the previous autonomy enjoyed by supervisors in making promotion decisions. Due to the geographical dispersion of the company's operations, students will have to propose a method for monitoring compliance with promotion policies. Supervisors will have to be trained in how to conduct formal employee evaluations. Finally, Rutherford will also have to consider the compatibility between the promotion systems for the warehouse and stores.

The names and dates in this case have been disguised and the facts have been abbreviated, but, in fact the case is loosely based on an actual court case. In the actual situation, black employees filed a lawsuit against the company. The District Court found in favor of the plaintiffs, but the United States Court of Appeals, Fourth Circuit reversed the lower court stating the "evidence was insufficient to sustain finding of class-wide discrimination with respect to promotions." The case was remanded back to the District Court to decide on the merits of each individual plaintiff's case. Subsequently, the District Court found in favor of the ten black employees. The standard used was disparate treatment -- each employee's situation had to be examined individually. An alternative way of presenting this case is to have a group of students "role-play" the positions in the case. One group can present the employees' position and the other side can determine how the company should respond to Jackson's allegations.

#### IV. ANSWERS TO CASE QUESTIONS:

1. Analyze the data in Exhibit 1.20. What conclusions do you reach? (Is there evidence of discrimination in promotion decisions?).

Students should compare the promotion rates for black and white employees to determine if the promotion decisions at Food Chain resulted in adverse impact (disparate impact definition of discrimination). According to the Uniform Guidelines on Employee Selection, disparate impact occurs

when a neutral employment practice has unequal impact according to race or sex. The following formula should be used to calculate adverse impact:

Number of blacks promoted	}	Number of whites promoted
Total number of black employees		Total number of white employees
Unit	Year	Rate Comparison*
Warehouse/Stores	2008	69 percent
Warehouse/Stores	2007	107 percent
Stores	2007	69.8 percent
Stores	2008	67 percent
Warehouse	2007	135 percent
Warehouse	2008	73 percent

\*Disparate impact exists if the black promotion rate is less than 4/5 of the white promotion rate. In two cases, the black promotion rate is actually higher than the white rate. A major issue here is whether or not the data should be looked at for individual years or in the aggregate. If the data is combined for the company's entire operations (warehouse and stores) over the two-year period, the overall black promotion rate is 86 percent that of the white rate and according to the Uniform Guidelines on Employee Selection there is no evidence of adverse impact.

$$\begin{aligned} \text{Overall black rate} &= 48/575 \text{ or } 8.34 \text{ percent} \\ \text{Overall white rate} &= 293/3017 \text{ or } 9.71 \text{ percent} \\ \text{Comparison: } \underline{8.34} &= 86 \text{ percent} \end{aligned}$$

9.71

The U. S. Court of Appeals ruled that in employment discrimination suits it is preferable to examine statistical data for the time period in combined form rather than year by year. The court further pointed out that a standard deviation analysis (binomial) should be conducted using the aggregate data to rule out chance as the cause of any disparity between the two rates. (See Twomey, 1986).

n	=	total number of employees promoted
p	=	black percentage of the work force
1-p	=	white percentage of the work force
Q	=	actual number of black promotions
E	=	expected number of black promotions = np
s	=	standard deviation = square root of np (1-p)
number of standard deviations = (Q-E/s)		

Here,  $n = 341$ ,  $p = .1600$ ,  $1-p = .8399$ ,  $Q = 48$ ,  $E = np = 341 \times .16 = 54.56$ ,  $s = 54.56 \times (.8399) = 45.8289 = 6.769$ , and the number of standard deviations =  $48 - 54.56 = -6.769$

The EEOC requires that the promotion rate for the protected group be within two standard deviations of the expected rate given their proportion in the work force. Accordingly, the promotion rate in this situation meets that standard. (The promotion rate is fewer than two standard deviations below what would be expected.)

2. Do you believe that Gemson, Thompson, LeBlanc, and Jackson were discriminated against?

Since the statistics in Table 1 did not indicate class wide racial discrimination, students need to evaluate each individual case under a disparate treatment definition of discrimination. The key issue here is what part did race play in each of the cases presented? According to the McDonnell Douglas Corp. vs. Green case to establish a prima facie case the employees would have to show: (1) they were qualified for the promotion; (2) a vacancy existed; (3) despite their qualifications they were not promoted; and (4) a white employee was promoted. From the information gathered it is not clear that direct racial discrimination occurred. Further, the information is somewhat incomplete to establish the four points above. Most of the examples given seem to be due to a lack of a written, objective formal system of promotion and the absence of clearly defined promotion criteria. For example, in Gemson's case he "asked" about a promotion. There were no written policies requiring supervisors to follow through on such requests. While Gemson's total experience may have been greater, his experience at Food Chain was less than that of Watkins. The existence of vague and subjective criteria cannot by itself prove discrimination especially since there was no class wide discriminatory impact. Often students will



initially argue that the employees were discriminated against. The instructor should push the students to more carefully examine the available facts in the case.

3. What are some of the potential disadvantages of a "word of mouth" promotion system?

The disadvantages of such systems are evident from the problems Food Chain faced. A word of mouth system permits favoritism and cronyism. Qualified employees may not hear about available openings. Word of mouth systems tend to maintain the status quo.

4. What should Rutherford do now?

Several suggestions were presented earlier. First, he needs to carefully analyze the data supplied by his assistant. Once he has completed his assessment, he needs to develop a formal system for promotions in Food Chain. Regardless of whether black employees were actually being discriminated against, the company runs the risk of future problems if they continue to use their present promotion practices. Subjective decision making rules for promotions invite suspicion of unlawful discrimination and bias. Rutherford might also consider developing a voluntary affirmative action program. Given the location and relatively large black labor force in the county, it may be desirable for the company to develop a voluntary affirmative action program.

5. What kinds of policies can the company design to better integrate minorities into management positions?

Answers will vary but should probably include centralizing the promotions policies, routinely posting job openings internally, creating a formal system of performance evaluations for all employees, and allowing employees to apply for open, higher positions, rather than relying on supervisors' recommendations.