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Two Black former Worcester police officers win another legal battle in decades-old discrimination case that could cost city millions

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Worcester Police Department headquarters. T&G File Photo

WORCESTER — Two Black police officers embroiled in a 26-year legal battle with the city over alleged discriminatory promotional practices have won another legal ruling in a case their lawyer estimates could cost the city as much as \$6.5 million.

“It’s really sad they’ve prolonged this,” Harold Lichten, a Boston labor lawyer who has been pursuing the case for decades, said of the city.

Lichten represents Spencer Tatum and Andrew Harris, two Black police officers who sued the Worcester Police Department in the mid-1990s alleging the city discriminated against them by bypassing them for promotions to sergeant.

Both officers retired while the case was pending, and Harris died at 61 in 2018, telling the Telegram & Gazette eight months before his death he believed he would eventually prevail.

In a Jan. 6 ruling, Worcester Superior Court Judge Peter B. Krupp upheld a scathing 2015 decision in which the Massachusetts Commission Against Discrimination ruled the city intentionally discriminated against the officers.

“The Commission’s conclusions that the city’s other justifications for using rank order promotions were little more than a smoke screen to conceal discrimination were supported by the evidence,” Krupp wrote, noting the city, from 1998 to 1991, “breached” an agreement it had forged with MCAD to promote Black or Latino officers.

Krupp’s ruling comes after the state Appeals Court remanded the case to Worcester Superior Court after invalidating a 2018 Superior Court ruling in favor of the city.

In his decision, Krupp noted the city failed to promote a single minority officer to a superior position from the mid-1980s until 2001.

“The scarcity of minority officers persisted notwithstanding a three-year agreement between the city and MCAD in 1988,” the judge wrote, in which the city had agreed to use a different process to legally promote more minorities “until such time as parity is reached.”

The lawsuit has a complicated legal history that includes multiple legal wins for both sides.

Lichten said he is astounded the city has never made a serious effort to settle the case, which has been compounding annual interest of 12% since its filing.

“This would be the largest interest award I’ve been part of,” said the 35-year labor lawyer. “Nine years ago, they could have resolved it probably for a fraction of what they’re going to end up paying.”

The city can still appeal the ruling again. Other cities, including Boston, have repeatedly appealed similar cases, though Lichten said Boston took steps that Worcester did not to try and make its promotional practices — and legal defenses — better.

A city spokesman declined to comment on the decision Friday afternoon, saying administrators had not seen it until a reporter provided them a copy. The case has been handled by an outside labor lawyer.

The disputes underlying the lawsuit are complicated but boil down to a disagreement about whether the practice the city used to promote sergeants was unfair to Black and Latino officers.

The city at all times relevant to the suit promoted officers based on how high they scored on the sergeant’s civil service exams. It has argued that since it promoted people in order of their scores, no one was discriminated against.

But Lichten argued, and Krupp agreed, that the city was well aware that Black officers tended to score lower on the tests, and that the city’s refusal to change its methods accounted to a pretext for discrimination.

Lichten also said the courts have found the multiple choice tests themselves do not even identify the best candidates because they do not account for interpersonal skills, street smarts and other leadership qualities.

Local NAACP leaders urged the city to settle the case after the MCAD ruling in 2015. It did not.

"As long as I can keep fighting this, I'm going to keep fighting it, because I know that I'm right," Harris told the T&G eight months before his September 2018 death.

When the case is eventually disposed, any money due to Harris would go to his estate, Lichten said.

Lichten said Friday that if judgment were handed down today, he estimates Harris would be owed about \$2.5 million, Tatum close to \$3 million and that attorneys fees would be about \$1 million.

Much of that money, Lichten said, is because of the annual interest.

“If the city chooses to appeal, the interest is just going to keep on accruing,” Lichten said.