

New Haven Register

High court holds off on bias case

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By William Kaempffer, Register Staff

NEW HAVEN — The U.S. Supreme Court has deferred deciding whether it will hear the reverse discrimination lawsuit of 20 New Haven firefighters who claim they were denied promotion because of their race.

When the high court Monday morning released orders from its last conference, the case of Ricci vs. DeStefano was not among them. A spokeswoman for the Supreme Court said Monday the case is “still pending,” and the soonest it could be considered is January.

What that means in New Haven, where both sides had anticipated having an answer by Monday, is that nothing has changed: The firefighters’ petition was neither accepted nor rejected.

“I don’t imagine it would be that much longer before we hear something,” said Rob Smuts, the city’s chief administrative officer. “We’ve waited this long. We can wait a little longer for the Supreme Court to tell us what’s going on.”

Karen Torre, lawyer for the firefighters, noted it’s not uncommon for the court to “defer action” on a petition.

“Speculating as to the reasons serves no useful purpose,” she said. “We know the extraordinary odds against all those who petition the Supreme Court and we always try to keep that in mind as we wait it out.”

This much is certain: It will be at least another month before the city knows whether it can move forward with holding new promotional exams for fire lieutenant and captain. No tests have been given since the contested ones were administered in late 2003. The firefighters also will have to wait to see if new life will be breathed into their 2004 lawsuit on a national stage.

For the plaintiffs, 19 white and one Hispanic firefighter, no news Monday, however, was good news. The high court was scheduled to consider whether to accept the case at its Dec. 12 closed-door conference, but on Friday, when the court announced cases it had accepted, Ricci was not among them. Firefighter Frank Ricci is the lead plaintiff in the case.

At the time, what that signaled was unclear: It could have meant that the court put off any decision. More likely, observers said, it meant the court had rejected the petition. But Ricci wasn't among the rejected cases Monday.

The lawsuit was filed in 2004 after results of two promotional exams were thrown out because too few minorities scored high enough to get promoted. The city argued the exams for lieutenant and captain had a disparate impact on minority firefighters and if the city proceeded with the promotions, it would open itself to potential employment discrimination lawsuits from minorities.

The 20 firefighters sued, asserting race-based politics scuttled the exams and that in doing so, the city instead violated the civil rights of the white firefighters who would have otherwise been promoted.

The case was dismissed in district court, a decision that was upheld in February by a three-judge panel of the 2nd U.S. Circuit Court of Appeals. The firefighters then petitioned to the U.S. Supreme Court.

Since then, the case has garnered national attention, at least in legal and firefighter circles.

Other judges on the appellate court, believing the one-page, unpublished order by the panel didn't do justice to a complex and potentially precedent-setting issue, lobbied to have the case heard by all 13 judges on the court. Unsuccessful, several of the judges then wrote dissenting opinions, strongly urging the U.S. Supreme Court to accept the case.

Since then, the city brought on a high-powered Boston law firm, which offered to work on the high-profile case for free, to assist its lawyers. Torre enlisted the aid of a prominent law firm in Texas.

City officials have said they would move immediately to conduct new exams, at least for the lieutenant rank, if the court rejects the petition.