



THE PUBLIC SECTOR

Sometimes a case is only as good as its weakest allegation

by Jonathan Holtzman

After a 12-week trial, a Contra Costa jury ruled in favor of the city of Richmond in one of the most significant employment cases of the year. The case was filed by seven African American police officers of various ranks, from sergeant to captain. They alleged they were denied promotional opportunities in the Richmond Police Department as a result of their race. They also alleged that after complaining about the lack of promotions, they were subjected to harassment and retaliation by the management of the Richmond Police Department and the Richmond City Manager's Office. A second, federal case is still pending on the retaliation claims.

The case arose shortly after the city chose an outsider — Chief Chris Magnus — to head the department. Magnus is a white Midwesterner. The African American officers asserted that virtually every action or decision affecting them was motivated by race or retaliation. Some of the allegations were highly inflammatory, including a claim that the chief made racially insensitive jokes and comments. The city claimed the comments were taken out of context.

Presenting too many allegations can convince a jury that an individual doesn't perceive reality accurately. That may have proved the officers' undoing in this case, particularly in light of evidence that the chief had a good record of promoting minorities and women.

The case was pending for five years and featured some of the most intense legal battles I've ever witnessed. One example occurred when the officers asserted (and brought the issue to the city council and the press) that an old police canine training center contained repaired sidewalks that once had the "n" word inscribed in them. Following motions and formal court orders, top layers were removed to find there were no racial comments in the concrete.

The officers' original counsel produced a DVD that was distributed throughout the community, apparently in an effort to leverage community pressure against the chief and in favor of settlement. The DVD was selectively edited to place the city in a bad light, and a court order prohibited its further distribution.

The state court judge initially assigned to the case removed himself in the middle of a dismissal

hearing, finding on his own initiative that he had become biased against the officers' counsel. Ultimately, that lawyer dropped out of the case, and new counsel was substituted in.

The risk for Richmond was considerable. First, of course, with seven plaintiffs to reinforce each others' testimony, the officers had an advantage in the "he said, she said" department. Second, the number of acts alleged to constitute discrimination or retaliation was monumental — the special verdict form alone was 40 pages long. There was a significant risk that if the jury concluded that only a few allegations were true, it could find against the city, resulting in a massive attorneys' fees award.

The attorneys who tried the case for Richmond, Art Hartinger and Geoff Spellberg, did an incredible job nailing down every last allegation. But enormous credit also goes to city officials for standing up to the very public pressure to settle the case for big dollars. It is politically hard to defend against inflammatory accusations of racism, whether or not they are true.

Chief Magnus' comments about the defense verdict were particularly apt. According to the newspapers, he said, "I feel justice was done, but I also feel we have our work still cut out for us. . . . I have no animosity toward anyone. I want us to be able to move forward."

Every claim of discrimination must be taken very seriously, and just because some allegations are unfounded does *not* mean every claim is unfounded. But there are lessons here for plaintiffs: (1) Sheer numbers of allegations can be a negative, not a positive, and (2) political pressure tactics can backfire. Plaintiffs' counsel and even settlement judges sometimes tell public agencies, in essence, "You don't want to try this case because it will put X public official in a bad light." My response: The threat of political retribution is not a reason to pay public money.

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Note: Partners at Holtzman's law firm recently served as city attorney for the city of Richmond. Firm members had some involvement with this matter but did not serve as trial counsel. ❖

