

1990 WL 136751

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United States District Court, E.D. Louisiana.

James HOWLEY
v.
CITY OF NEW ORLEANS, et al.

CIV. A. No. 73-629.
|
Sept. 19, 1990.

alleged violation of the decree. Howley does not allege that he is a member of the class of police officers the decree was intended to protect. Moreover, the time for objections to the decree from those harmed by it has long since passed. However, Howley seeks to enforce not challenge the decree. Yet, he has no standing to do so because the decree affords permanent status captains, applying to be majors, no protection from the competition of probationary status captains.

The provision of the decree on which Howley seeks to rest his complaint reads, in relevant part:

VIII.

MINUTE ENTRY

SEAR, District Judge.

Probationary Period at Supervisory Ranks

All persons who are promoted within the NOPD shall complete the normal probationary period as provided under the rules of the CSC.

ORDER

*1 Petitioner James Howley alleges that he is a New Orleans police captain, who has completed a probation period and achieved permanent status. Petitioner asserts an intention to sit for a September 6, 1990 examination for applicants to the position of police major.¹ Howley complains that the City of New Orleans' alleged admission of police captains on probationary status to the exam for promotion to major violates the consent decree entered in *Williams v. City of New Orleans* (No. 73-629, May 26, 1987). He alleges injury in his reduced chances, as a permanent status police captain, of being promoted to major. He also seeks to restrain the City from promoting any individuals to major who have not completed their probationary periods and achieved permanent status.

Howley's motion to reopen this matter is denied. Even making the dubious assumption that a plea of "reduced chances" of receiving a promotion constitutes injury-in-fact, Howley lacks standing to complain of the

(Consent decree at 19) This section does not speak to a probationary police supervisor's eligibility to sit for promotional examinations. Eligibility for promotion examinations is governed by the decree provision immediately prior, entitled "Eligibility to Sit for Promotional Examination." (Consent decree at 17) This section lists who may sit for the examinations for promotion to sergeant, lieutenant and captain. For each, only members who have achieved permanent status in the otherwise eligible ranks may take the exams. Yet, the provision governing eligibility to sit for promotional examinations pointedly avoids listing any restrictions on who may sit for exams for promotion to the rank of major. Eligibility for promotion examinations for this single, and very high, supervisory rank is instead left to the discretion of the City. Furthermore, the fact that the decree leaves open the question of whom among the lower ranks may sit for majors' examinations supercedes and invalidates any claim that Section VIII of the decree prevents the City from actually promoting a probationary status captain.

Howley, a permanent status captain, can find no protection in the decree, in his bid for police major, from the competition of probationary status captains. Thus, my

ruling that Howley lacks standing, because the decree does not run in his favor (Fed.R.Civ.P. 71), serves as well to indicate that Howley's claim is substantively without merit.

*2 Accordingly, petitioner's motions to reopen administratively closed Civil Action No. 73-629, for expedited hearing, and for relief under Fed.R.Civ.P. 70

and 71 are DENIED.

All Citations

Not Reported in F.Supp., 1990 WL 136751

Footnotes

- ¹ No affidavits or other documentation were submitted to support the allegations of fact made in the body of the petition, with the exception of a copy of a New Orleans Civil Service notice that applications were being accepted for the position of police major. The notice lists as minimum qualification, the achievement of permanent or probationary status as a police captain.