

process as a result of their scores on the examination. The parties stipulated that the exam had a statistically disparate impact on women and racial minorities. The Respondent called as an expert witness the personnel officer who developed the examination. He proffered the opinions that the test had "anywhere from zero to low validity," (Second part of 2/5/75 T., P. 83), did not meet "acceptable standards of reliability," and that "if a test has no reliability, it can't have any validity." (2/20/75 T. P. 65.)

There were two people hired as a result of the selection process. One was Latin-surnamed and the other was a woman.

CONCLUSIONS OF LAW

If employment tests are shown to be discriminatory in effect against minorities or women, the employer has the burden of showing that the tests are job related. Griggs v. Duke Power Co., 401 U.S. 424, 91 S. Ct. 849 (1971); Albermarle Paper Co. v. Moody, 43 L.W. 4880 (6/25/75). While these holdings were based on Title VII of the Civil Rights Act of 1964, the same results are required by the equal protection clause of the Fourteenth Amendment where, as here, the State is the employer. Bridgeport Guardians, Inc. v. Bridgeport Civil Service Commn., 482 F. 2d 1333 (2d Cir. 1973), NAACP v. Civil Service Commn., 6 EPD 8956 (N.D. Cal. 1973); Castro v. Beecher, 459 F. 2d 725 (1st Cir. 1972); Fowler v. Schwarzwalden, 351 F. Supp. 721 (D. Minn. 1972); Western Addition Community Organization v. Alioto, 340 F. Supp. 1351 (N.D. Cal. 1972). Independent even of a showing of a disparate impact, the same requirement is imposed on the State by our decision in Kuter and North v. Wettengel and Lerman, Wisconsin State Personnel Board No. 73-152, 159 (7/3/75).

The fact that the selection process as a whole, as opposed to the specific written exam, did not have a disparate impact does not alter the result, at least where, as here, the particular exam completely excluded certain applicants from further participation in the selection process. If minorities and women were improperly screened from the final selection process, this would still constitute a violation of Title VII and the Equal Protection Clause despite the fact that a woman and a minority were eventually selected for the positions. See 29 CFR S. 1607.3:

Discrimination defined. -- The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII constitutes discrimination

42 U.S.C. S. 2000e-2 (a) It shall be an unlawful employment practice for an employer --

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin.

We must remember that violations of these provisions do not require that the discrimination be intentional. See Griggs v. Duke Power Co., 401 U.S. 424, 432, 91 S. Ct. 849, 854 (1971); Albermarle Paper Co. v. Moody, supra. Finally, we again note that pursuant to our decision in Kuter and North, the State has the burden of showing job-relatedness regardless of whether or not there is a disparate impact.

Respondent's expert witness who developed the test stated conclusively that in his opinion the test was not valid. We find nothing in the record to contradict this opinion and hence we must conclude, regardless of the allocation of the burden, that the test was not valid.

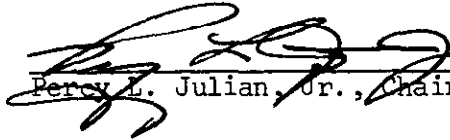
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ORDER

IT IS ORDERED that the action of the Director with regard to the written examination of May 4, 1974, be, and the same hereby is, rejected, and the matter is remanded to the Director for action in accordance with this decision.

Dated August 29, 1975.

STATE PERSONNEL BOARD


Percy L. Julian, Jr., Chairperson