UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ALVIN MOSBY, Plaintiff	:	
v.	:	3:98-CV-01082 (EBB)
BOARD OF EDUCATION OF THE CITY OF NORWALK, Defendant	:	

RULING ON DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW

INTRODUCTION

Plaintiff Alvin Mosby ("Mosby" or "Plaintiff") commenced this action against the Board of Education of the City of Norwalk ("Board" or "Defendant") in June, 1998. He amended his Complaint once, alleging that the Board failed to interview and appoint him to the June, 1997 Head Custodian position at Jefferson Elementary School in Norwalk on the basis of his race in violation of Title VII of the United States Code, as well as in violation of 42 U.S.C. Section 1981. Mosby further alleged that the Board had failed to provide him with equal protection under the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. Section 1983. As to Title VII, Mosby claimed both disparate treatment and disparate impact.

During the course of the trial, Plaintiff withdrew each count with the exception of disparate treatment in violation of Title VII. The jury was duly charged. After several hours of deliberations, the jury reported it was hopelessly deadlocked.

The Court gave the jury an additional charge, urging them to continue to attempt to reach a consensus. After one-half hour of additional deliberations, the jury once again reported that it continued to be hopelessly deadlocked. The Court, accordingly, ordered a mistrial and discharged the jurors. The instant Motion was timely filed thereafter.

LEGAL ANALYSIS

I. The Standard of Review

A. Federal Rule of Civil Procedure 50(a)

Because a judgment as a matter of law intrudes upon the rightful province of the jury, it is highly disfavored. The Court of Appeals for the Second Circuit has repeatedly emphasized that, when confronted with such a motion, the court must carefully scrutinize the proof with credibility assessment made against the moving party and all inferences drawn against the moving party. Luciano v. The Olsten Corp., 110 F.3d 210, 214-15 (2d Cir. 1997); EEOC v. Ethan Allen, Inc., 44 F.3d 116, 119 (2d Cir. 1994). A district court may not grant a motion for judgment as a matter of law unless "the evidence is such that . . . there can be but one conclusion as to the verdict that reasonable [persons] could have reached." Cruz v. Local Union No.3, Int'l Bhd. of Elec. Workers, 34 F.3d 1148, 1154-55 (2d Cir. 1994) *quoting* Simblest v. Maynard, 427 F.2d 1, 4 (2d Cir. 1970) *See also* U.S. v. One Parcel of Property Located at 121 Allen Place, Hartford, Connecticut, 75 F.3d 118 (2d Cir. 1996). A Rule 50

motion should be granted only "where there is such an overwhelming amount of evidence in favor of the movant that reason and fair minded [persons] could not arrive at a verdict against [it]." Cruz, 34 F.3d at 1157. Accordingly, this Court may grant a judgment as a matter of law only if this case meets these stringent standards.

II. The Standard As Applied

In order to set forth a *prima facie* case under Title VII, the Plaintiff must meet four elements: (1) that he was a member of a racial minority; (2) that he applied for an available position for which he was qualified; (3) that he was not appointed to the position; and (4) that the action occurred under circumstances giving rise to an inference of discrimination. Norville v. Staten Island Univ. Hosp., 196 F.3d 89, 95 (2d Cir. 1999).

Even viewing the evidence in the light most favorable to Mosby, the Court finds that he has not met his *prima facie* case in that he was not qualified for the job pursuant to Article XII of the Collective Bargaining Agreement (the "Agreement") between Plaintiff's union and the Board. This Article provides, in pertinent part, "When promotions are made to other than supervisory positions, they shall be made on the basis of ability, fitness and seniority. No promotion will be made if the employee applying does not meet the minimum requirements." *Id.* at p. 17.

In interpreting this section, Plaintiff himself repeatedly testified that "seniority rules." Representatives of the Board testified in like manner. Plaintiff admitted that when William Hampton, another custodian, was appointed instead of Plaintiff to a Head Custodian position in 1992, Plaintiff filed no grievance because he was aware of Hampton's seniority. Plaintiff testified that he did not file such a grievance because "seniority rules."

Similarly, Plaintiff did not file a grievance when, in 1999, one Mr. Llantin was appointed over Plaintiff to the position of Head Custodian because this individual had seniority over Plaintiff and, again, Plaintiff testified that he did not grieve this decision because "seniority rules."

Furthermore when one Allen Brown, a more junior applicant who was also African-American, was appointed to a Head Custodian position, Plaintiff did grieve this appointment because he had seniority and, as he testified yet again, "seniority rules". His grievance was sustained by the Board's Director of Personnel, a white individual.

Plaintiff's complaint is with the appointment of one William Folsom to the position of Head Custodian and that he was not even interviewed for the job. Rather, the principal interviewed the two most senior candidates, both of whom were white, and because "seniority rules", Mr. Folsom was selected for the position. There is nothing in the Agreement that mandates that a certain number of candidates be interviewed. It is beyond peradventure that Plaintiff would not have received the job in any event,

because he was third in the list of seniority. Given that, and in light of the fact that both of the individuals interviewed had greater seniority than Plaintiff, he cannot meet his burden of proof that he was "qualified" for this position within the meaning of Title VII.

Of further relevance in this matter is the uncontroverted evidence that of the ten Head Custodian positions filled within the last several years, six of them were given to African-Americans, two to Hispanics and just two to white individuals. When Plaintiff finally reached the most seniority and applied for an available position, he was named Head Custodian. Given this testimony, Plaintiff is simply unable to prove that the appointment of Mr. Folsom demonstrated an inference of discrimination.

CONCLUSION

Inasmuch as no reasonable jury could find in Mosby's favor, even drawing all inferences in his favor and against the Board, the Court finds that, under the facts of this case, Defendant's Motion for Judgment as a Matter of Law [Doc. No. 37] must be, and hereby is, GRANTED. The Clerk is directed to close this case.

SO ORDERED

_____

ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Dated at New Haven, Connecticut this ___ day of March, 2000.