

Employment Discrimination

Professor Perna

December 10, 1994

QUESTION II

Assume that you are the law clerk for U.S. District Court Judge James Docket. Judge Docket has recently concluded a Title VII trial that was not tried to a jury. The following facts were either stipulated or proven to the Judge's satisfaction. The Judge wants you to draft an opinion deciding the case for his review. The stipulated and proven facts are as follows:

Mary Robertson, an African-American woman, was hired in 1987 by the Independent School District #3 as a teacher assigned to the Martin Luther King, Jr., elementary school. District #3 is governed by an elected board which (during all relevant times) was composed entirely of white middle aged men. The Superintendent of the District #3 during the period was a white male by the name of Thompson.

At the time she was hired, Robertson had only "provisional" teacher certification from the state department of education and she continued as "provisionally" certified throughout her employment by District #3. While Robertson was originally hired on a one year contract for the 1987-1988 school year, her contract was renewed for both the 1988-1989 and 1989-1990 school years. However, in the spring of 1990, Robertson learned that she would not be renewed for the subsequent year.

The non-renewal decision was the result of two decisions made by the School Board. The first was a decision to consolidate two schools (the Martin Luther King School and the Thomas Jefferson School) and reduce the overall number of the teaching staff. The decision was due to a shrinking student enrollment in the School District. Although the King facility (whose student population was thirty (30%) percent African- American) was two years newer than Jefferson (whose student population was only five (5%) percent African-American), the Board announced that the "traffic patterns" made it more economical to transport King students to Jefferson than vice versa and clearly outweighed the advantages of the newer King facility.

Second, the consolidated elementary school (which would be named King-Jefferson) required 15 fewer teachers than the two schools had employed separately. The Board decided that this reduction in force would come entirely from the non-tenured teachers on the two faculties. Of the 200 teachers in the two schools, 150 were tenured. As a result, 15 of the 50 non-tenured teachers had to be dismissed.

The Board left the decision concerning which teachers to dismiss to the discretion of the school superintendent, Thompson. Thompson first selected the principal of the new consolidated school. He chose E.H. Howard, a white male, who had 20 years of teaching experience and 8 years of experience as a principal, all at Jefferson. The former principal of King, Albert Johnson, was then named the vice-

principal of the consolidated school. Johnson is an African-American male who had 17 years of teaching experience and 10 years of experience as principal, all at King. Thompson then consulted with both Johnson and Howard as to the qualifications of each non-tenured teacher.

Despite outstanding teacher evaluations from Johnson, Robertson was not chosen by Thompson for renewal. At her "exit interview", Thompson told Robertson that he was sure that she was a good teacher, although he discounted Johnson's ratings "quite a bit" because "AL (Johnson) is a bit too lenient with his people." However, Thompson assured Robertson that the basic reason she was not renewed was because she tailed the state Initial Teacher Certification Test and, therefore, was still only provisionally certified. While passing the test was necessary for "permanent" certification, there is no state limit on how long a provisionally certified teacher can teach. Robertson and 19 others from the non-tenured group lacked permanent certification. Of those 20, 11 were African-American and 9 were white.

Of the non-tenured teachers chosen for renewal, none had teaching evaluations nearly as high as Robertson's. Even among the tenured teachers, very few had teaching evaluations as high as hers.

The racial breakdown of the King, Jefferson and consolidated faculties is as follows:

School	Total	White Tenured	Black Tenured	White Non Ten	Black Non Ten
King	100	40	30	20	10
Jefferson	100	70	10	12	8
Consolidated	185	110	40	28	7

Judge Docket asks that you draft an opinion deciding the case. **Analyze Fully.**