UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MARCUS PACA, Plaintiff,	:	
v.	:	No. 3:16cv1413 (DJS)
CITY OF NEW HAVEN, Defendant.	:	

RULING ON MOTION FOR SUMMARY JUDGMENT

The plaintiff, Marcus Paca ("Paca"), claims in his Third Amended Complaint ("Complaint") that the defendant, City of New Haven ("City"), terminated his employment in violation of the First Amendment to the United States Constitution, Title VII of the Civil Rights Act of 1964 ("Title VII"), the Connecticut Fair Employment Practices Act ("CFEPA"), and his employment contract with the City. The defendant City has moved for summary judgment as to all claims. For the reasons stated below, the City's motion for summary judgment is granted.

FACTS

Toni N. Harp ("Mayor Harp") was first elected Mayor of the City of New Haven in November 2013. Mayor Harp subsequently hired Paca, who had worked on her mayoral campaign, as the City's Director of Labor Relations ("Director"), effective July 1, 2014. Paca's appointment to the position of Director of Labor Relations was made pursuant to the following provisions of the Revised City Charter: "The Mayor shall appoint a secretary to the Mayor and other employees in the Office of the Mayor, who shall serve under the direction of and subject to removal at the pleasure of the Mayor." Article III, § 4(a), Revised City Charter (Doc. # 70-7, at 3). During his interview for the Director position, Paca was told there was a close relationship between the City's corporation counsel and the labor department.

As the Director of Labor Relations, Paca reported directly to Mayor Harp and was "a direct designee of the mayor speaking for the mayor on [labor relations] matters." (Doc. # 70-3, at 10, p. 31:1-3). Two other City employees reported directly to Paca: Scott Nabel, who was the human resources manager, and Joanne Courtmanche ("Courtmanche"), who was an administrative assistant reporting solely to Paca.

On February 2, 2015, Mayor Harp issued Paca a written warning for misconduct for speaking to the press about ongoing negotiations with the New Haven Fire Department union after being told not to do so. Mayor Harp removed the written warning from Paca's personnel file on August 21, 2015.

In April 2016, City Corporation Counsel John Rose ("Rose") attended a labor hearing regarding the termination of a City employee named Nichole Jefferson ("Jefferson"). During that hearing, the employee's union, Local 3144, offered into evidence several emails authored by Rose concerning Jefferson that the City considered to be privileged as attorney-client communications. Rose subsequently reported to Mayor Harp that his privileged communications had ended up in the possession of the union and that he did not know how that had happened.

A newspaper article regarding the Jefferson matter appeared in the New Haven Register on April 7, 2016. The article included quotes from some of the emails authored by Rose. After the newspaper article was published, Courtmanche told the City's Deputy Chief of Staff that she had given a flash drive to Jefferson's union in late 2015 at the direction of Paca. According to Courtmanche, this flash drive was produced by the City's IT department in response to an

information request submitted by the union that specifically asked for emails concerning Jefferson that were authored by Rose.[1]

Courtmanche and the Deputy Chief of Staff relayed this information to Tomas Reyes ("Reyes"), the Chief of Staff, who then informed Mayor Harp. Acting through Reyes, Mayor Harp requested a meeting with Paca. Prior to the meeting, Reyes advised Paca that Mayor Harp had evidence that Paca had authorized the release of the flash drive containing the Rose emails to the union. Reyes counseled Paca to be truthful in telling the Mayor what had happened. Reyes also told Paca that "John Rose had convinced her [Mayor Harp] that I [Paca] leaked the emails, and that I did it purposefully." (Doc. # 78-2, at 52, p. 116:4-6). Paca "vehemently denied that" and told Reyes that he "did not know how the union received those emails related to Nicole Jefferson." (*Id.* at 52, p. 116:6-8). Paca asked if Mayor Harp had any proof that he had authorized the release of the emails "besides what Rose is telling her" but none was ever produced or identified. (*Id.* at 52, p. 116:9).

When Mayor Harp met with Paca, she asked him how the union had obtained the emails authored by Rose. Paca initially told Harp that he didn't know how the union had obtained the emails. He then "told her that those emails could have come . . . from anywhere, including the comptroller's office, who are the people that actually put the emails together when we made requests, or when we sent requests over from the union . . . ." (*Id.* at 54, p. 118:18-22). According to Paca, staff in the comptroller's office were also members of Local 3144 and had filed grievances against the comptroller for "anti-union animus" and "harassment." (*Id.* at 55, p.

[1] According to Courtmanche a second flash drive was produced by the IT department in response to a separate union request for information and was provided to the union by Paca.

119:2-4). Paca maintains that he never authorized Courtmanche to release the flash drive to the union.[2]

Mayor Harp asked Paca what happened to the two flash drives he had been given. He responded that he couldn't open the first one and didn't know what happened to the second one. He suggested that it may have fallen into the trash. Although Paca denied releasing the Rose emails to the union, Mayor Harp did not believe him. After she met with Paca, Mayor Harp followed up with the comptroller and was advised that the IT department had produced only two flash drives and that both had been given to labor relations. Mayor Harp also spoke with the Deputy Chief of Staff, who confirmed that Courtmanche told her she had been instructed by Paca to turn the flash drives over to the union.

After meeting with Harp, Paca was out of the office for a work conference and vacation from April 13, 2016, until April 25, 2016. On April 25, 2016, Mayor Harp met with Paca and terminated his employment. During the meeting, Mayor Harp read from a script and stated, among other things, that Paca had undermined her confidence in his ability to run the labor relations department and violated her trust, that Paca or his office had caused attorney-client privileged information related to the Jefferson case to be given to the union, and that such actions had disrupted the orderly and efficient operations of the City government and her office and caused her embarrassment. Mayor Harp's stated reason for terminating Paca's employment was that she believed he had lied to her about the release of the Rose emails, and, as a result, she lost trust in him. Paca, Mayor Harp, and Rose are all African Americans.

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[2] For purposes of a motion for summary judgment, the Court is "bound to consider the facts in the light most favorable to [Paca], the non-moving party." *Simpson v. City of New York*, 793 F.3d 259, 262 (2d Cir. 2015).

Paca met his future wife, Mendi Blue ("Blue"), during Harp's campaign for mayor. The two became engaged in April 2014 and were married in September 2015. Blue held the position of Director of Labor Relations before Paca was appointed to that position. She subsequently was appointed to the position of City Director of Development and Policy.

In her position as Director of Development and Policy, Blue appeared and testified before the New Haven Board of Alders ("BOA") on March 29, 2016. At that time the BOA asked Blue to provide additional information to that body. On the following day, Martha Okafor[3] testified before the BOA. Okafor's testimony included references to the Office of Development and Policy. On April 7, 2016, Blue submitted a memorandum to the BOA in response to that body's request for follow-up information.

SUMMARY JUDGMENT STANDARD

Pursuant to Fed. R. Civ. Pro. 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." This is appropriate when "the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). But the moving party still "has the burden of showing that there is no genuine issue of fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). "A genuine issue of material fact is one that 'might affect the outcome of the suit under the governing law' and as to which 'a reasonable jury could return a verdict for the nonmoving party.'" *Noll v. IBM*, 787 F.3d 89, 94 (2d Cir. 2015) (quoting *Anderson*, 477 U.S. at 248 (1986)).

[3] According to Paca, Martha Okafor was the City's Community Services Administrator at that time.

"[I]n assessing the record to determine whether there is a genuine issue as to any material fact, the court is required to resolve all ambiguities and draw all factual inferences in favor of the party against whom summary judgment is sought." *Chambers v. TRM Copy Centers Corp.*, 43 F.3d 29, 36 (2d Cir. 1994). "'If there is any evidence in the record that could reasonably support a jury's verdict for the nonmoving party, summary judgment must be denied.'" *Kelly v. Honeywell International, Inc.*, 233 F. Supp. 3d 302, 308 (D. Conn. 2017) (quoting *American Home Assurance Co. v. Hapag Lloyd Container Linie, GmbH*, 446 F.3d 313, 315 (2d Cir. 2006)).

The Second Circuit has "repeatedly expressed the need for caution about granting summary judgment to an employer in a discrimination case where . . . the merits turn on a dispute as to the employer's intent . . . . Even in the discrimination context, however, a plaintiff must provide more than conclusory allegations to resist a motion for summary judgment." *Holcomb v. Iona College*, 521 F.3d 130, 137 (2d Cir. 2008) (citations omitted). The nonmoving party must "'go beyond the pleadings' and 'designate specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting *Celotex*, 477 U.S. at 324). "[T]he standard for determining whether the evidence [is] sufficient to sustain the submission of plaintiff's case to the jury [is] simply whether on the basis of that evidence, a factfinder could reasonably find the essential elements of a case of discrimination . . . . [E]mployers should not be held liable for discrimination in the absence of evidence supporting a reasonable finding of discrimination." *James v. New York Racing Association*, 233 F.3d 149, 154-55 (2d Cir. 2000).

DISCUSSION

A. First Amendment Right to Intimate Association Claim

Paca claims the City terminated his employment in retaliation for conduct of his wife in violation of his First Amendment right to intimate association. The City responds that Paca's Complaint alleges he was terminated in retaliation for the exercise of his own constitutional right of privacy rather than that of his wife. The City also maintains that Paca has failed to produce any evidence that Paca's wife engaged in protected conduct that could provide a basis for a retaliation claim by him.

Count One of Paca's Complaint simply states that "[b]y terminating Plaintiff's employment, New Haven deprived Plaintiff of his rights of privacy and association under the First and Fourteenth Amendments to the U.S. Constitution." (Doc. # 37, at 5, ¶ 15). That Count also incorporates previous paragraphs of the Complaint, however, including paragraphs containing allegations regarding Paca's wife, Mendi Blue ("Blue"). (*Id.* at 4, ¶¶ 17-19). Although Count One is not as clear as it could have been, the Court finds it sufficient to put the City on notice that Paca is claiming his termination was related to actions taken by his wife.

In *Roberts v. United States Jaycees*, 468 U.S. 609, 617-18 (1984), the Supreme Court recognized a constitutionally protected right to associate with others in certain intimate relationships. One of the relationships entitled to this constitutional protection is marriage. *Id.* at 619. Such relationships "must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme." *Id.* at 617-18.

"Though the matter is not free from doubt, we think a spouse's claim that adverse action was taken solely against that spouse in retaliation for conduct of the other spouse should be

analyzed as a claimed violation of a First Amendment right of intimate association." *Adler v. Pataki*, 185 F.3d 35, 44 (2d Cir. 1999). In *Adler*, the plaintiff, who had been a state employee, alleged that his employment was terminated in retaliation for a lawsuit filed against the state by his wife. The Second Circuit reasoned that "[i]f the First Amendment accords an individual some right to maintain an intimate marital relationship free of undue state interference, Adler's claim properly invokes the protection of that Amendment. His claim is grounded on the most intimate of relationships, marriage, and warrants an appropriately high degree of protection." *Id.* The Court went on to conclude that summary judgment was not warranted as to the plaintiff's First Amendment intimate association claim because he had "presented substantial evidence that his wife's lawsuit, not his politics, was the basis for his discharge." *Id.* at 45. The substantial evidence Adler presented included a demonstration that his wife's lawsuit "was receiving media coverage unfavorable to the Pataki administration," as well as evidence that "[o]ne of [Adler's] supervisors, in the weeks before his discharge, reportedly mentioned his wife's litigation and the embarrassment it was causing state officials" and "a memo, issued a week before his firing, declaring that there would be no further dismissals within his department." *Id.*

As discussed above, Paca's Complaint can be construed as alleging that his termination was related to actions taken by his wife. In opposing the City's motion for summary judgment he argues more specifically that he was terminated in retaliation for a memo his wife had submitted to the BOA on April 7, 2016 in her role as Director of Development and Policy. In the Additional Material Facts section of his Local Rule 56(a)2 Statement, Paca states that his wife (Blue) testified before the BOA on March 29, 2016, regarding her office's progress and results. He states further that Martha Okafor, the City's Community Services Administrator, testified before the BOA the following evening and "made various references to Ms. Blue's office and the

process of obtaining grants in the city." (Doc. # 78-1, at 18-19, ¶ 28). Paca then asserts the following:

> On April 7, 2016, Ms. Blue submitted a memorandum to the BOA disclosing that Okafor sought grants without the required involvement of the Office of Development and Policy, and that she outsourced grant writing services worth more than $100,000 to Farnam Associates without following the bidding process described in the New Haven City Charter. Ms. Blue had repeatedly reported Okafor's failure to follow the bidding process and failure to utilize her office for assistance with grant writing to various administration officials during the previous two years. (Exh. 1, at pp. 41-44, 158; Exh. 15, ¶ 18-19).

(Doc. # 78-1, at 19, ¶ 29). According to Paca, Jim Farnam of Farnam Associates "is a political supporter of Mayor Harp's and has made financial donations to all three of her mayoral campaigns." (*Id.* at 20, ¶ 36).

Local Rule 56, which governs summary judgment motions, provides in part that "[e]ach statement of material fact by . . . an opponent in a Local Rule 56(a)2 Statement . . . must be followed by a specific citation to (1) the affidavit of a witness competent to testify as to the facts at trial, or (2) other evidence that would be admissible at trial." L. Civ. R. 56(a)3. Paca's factual assertions relating to the April 7, 2016 memorandum, contained in paragraph 29 of his Additional Material Facts, cite to two exhibits attached to his Second Amended Memorandum of Law in Opposition to Summary Judgment, Exhibits 1 and 15. Exhibit 15 is a copy of the operative Complaint in this action, Paca's Third Amended Complaint. When a motion for summary judgment has been filed, "we go beyond the paper allegations of the pleadings, which were enough to survive the common law demurrer. The time has come . . . to put up or shut up. Accordingly, unsupported allegations do not create a material issue of fact." *Weinstock v. Columbia University*, 224 F.3d 33, 41 (2d Cir. 2000) (internal quotation marks and citation omitted). A plaintiff's Complaint does not constitute "evidence that would be admissible at trial" as required by L. Civ. R. 56(a)3.

Exhibit 1 is a partial transcript of Paca's deposition. Local Rule 56 requires parties "to cite to specific pages when citing to deposition or other transcripts." L. Civ. R. 56(a)3. In paragraph 29 of his Additional Material Facts section, Paca cites to pages 41-44 and 158 as evidence supporting his factual assertions about the April 7, 2016 memorandum. On pages 41-44 of the deposition transcript, Paca testified that he had no firsthand knowledge regarding what happened at the March 29, 2016 BOA hearing at which his wife testified, that he only heard things from other people about the testimony given by Martha Okafor the next day, that he has never read the memorandum his wife submitted to the BOA on April 7, 2016, but has spoken to her about it, and that he believes his wife told him she submitted the memo because the BOA wanted an explanation about certain matters dealing with her department.

On page 158 of the transcript, Paca was asked what the basis is for his claim that he was terminated because he was married to Blue. He responded as follows: "That there wasn't any reasonable cause for my termination, but that the mayor was upset with Mendi's memo to the Board of Alders that exposed contractual wrong-doing on the part of another one of her senior-level staff." (Doc. # 78-2, at 73, p. 158:15-18).

Paca claims there is a genuine factual dispute as to whether his termination resulted from his wife's submission of a memorandum to the BOA in which she disclosed that grant writing services worth more than $100,000 had been improperly outsourced to a political and financial supporter of Mayor Harp. The evidence Paca relies upon to support that claim, as cited in his Local Rule 56(a)2 Statement, is insufficient to establish that Blue submitted a memo to the BOA in which she disclosed improper outsourcing of grant writing services to one of Mayor Harp's supporters, much less that such a memo was the reason his employment was terminated. Paca's vague reference at his deposition to the memo's exposure of contractual wrong-doing on the part

of another one of Mayor Harp's senior-level staff does not constitute "substantial evidence that his wife's [conduct] . . .was the basis for his discharge." *Adler*, 185 F.3d. at 45. Accordingly, the City's motion for summary judgment is granted as to the First Amendment right to intimate association claim.

B. Breach of Contract Claim

Paca claims the City breached its employment contract with him by not adhering to the progressive discipline policy set forth in the applicable Employee Handbook ("Handbook"). The City argues that Paca's breach of contract claim fails because the Handbook did not give rise to a binding contract, there was no breach of the Handbook, and the disciplinary provision of the Handbook did not apply to Paca as a mayoral appointee.

Paca received a copy of the Handbook when he interviewed for the position of Director of Labor Relations and the Handbook was also referenced in the City's June 30, 2014 letter offering him that position. One of the sections in the Handbook is designated "Ethics in City Government" and states that "Article XXXVII of the City Charter establishes a code of ethics for all City officers, employees and officials whether elected or appointed, paid or unpaid." (Doc. # 70-15, at 4). One of the subsections of the "Ethics in City Government" section is captioned "Discipline and Work Rules" and states that "[i]t is the responsibility of all City of New Haven employees to observe the policies, rules and regulations of the City. Violations of these standards, as well as non-performance of duties, will lead to disciplinary action up to and including termination." (*Id.*). Another subsection, "Disciplinary Process," provides that:

> Disciplinary action can occur at any time during the employment process in response to inappropriate behavior, absenteeism, violation of work rules or poor job performance.

> Normally, discipline will be administered in accordance with the principles of progressive discipline. Progressive discipline provides for increasingly serious disciplinary measures. However, the severity of any disciplinary action is dependent upon the nature of the offense.
>
> In some situations, employee behavior is so serious that immediate termination is warranted. If the City's investigation of the situation reveals that the employee committed what it determines to be a serious offense, then termination without progressive discipline may be required.
>
> Progressive discipline may include oral warnings, written warnings, suspension without pay and termination.

(*Id.* at 5).

Although the City argues that the disciplinary provisions of the Handbook did not apply to Paca as a mayoral appointee, those provisions are included under the general heading of "Ethics in City Government" which were established "for all City officers, employees and officials whether elected or appointed, paid or unpaid." (*Id.* at 4). The Court finds that there is a genuine factual dispute as to the applicability of the disciplinary provisions of the Handbook to Paca.

The City also contends that that "the Employee Handbook did not create a binding contract" that required progressive discipline. (Doc. # 70-1, at 15). At least one other court has found language comparable to that in the Handbook too indefinite to establish contract rights: "Significantly, the manual neither defines nor gives examples of what is a 'serious offense.' This vagueness falls far short of the specificity necessary for a contractual offer . . . ." *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W. 2d 853, 857 (Minn. 1986). In Connecticut, however, "even though the relevant statements in the defendant's personnel manual certainly could have been interpreted as noncontractual . . . in the absence of definitive contract language . . . the determination of what the parties intended to encompass in their contractual commitments is a question of the intention of the parties, and an inference of fact . . . properly to

be determined by the jury." *Owens v. American National Red Cross*, 673 F. Supp. 1156,1166 (D. Conn. 1987) (internal quotation marks omitted). *See also Gaudio v. Griffin Health Services Corp.*, 249 Conn. 523, 532 (1999) (internal quotation marks omitted) ("It is firmly established that statements in an employer's personnel manual may . . . under appropriate circumstances . . . give rise to an express or implied contract between employer and employee."). The Court will proceed on the basis that with regard to the Handbook, "the determination of what the parties intended to encompass in their contractual commitments" is also a material fact as to which there is a genuine dispute. *Owens*, 673 F. Supp. at 1166.

Even if it were assumed that the Handbook gave rise to an enforceable contract, however, a question remains regarding the viability of Paca's contract claim. "Assuming that a jury would find that the Employee Handbook could give rise to a contract, there is still the question of whether any rational jury could find that that contract had been breached by [the defendant] when it dismissed the plaintiff." *Id.* In considering this question, the Court takes note of certain undisputed facts. Paca admits that his position, Director of Labor Relations, was a mayoral appointment, that he reported directly to Mayor Harp, and that he was a "direct designee of the mayor speaking for the mayor" on labor relations matters. (Doc. # 78-1, at 2, ¶ 7). He also admits Mayor Harp had been advised that he had authorized the disclosure of the Rose emails to the union, that neither Mayor Harp nor her Chief of Staff believed him when he denied authorizing the release of the emails, and that Mayor Harp told him she was terminating his employment because she believed he had lied to her about the release of the emails and she had lost trust in him.

The Court concludes that no rational jury would find that the Handbook provisions regarding the disciplinary process had been breached with regard to Paca's termination. The Handbook provides in part that:

> In some situations, employee behavior is so serious that immediate termination is warranted. If the City's investigation of the situation reveals that the employee committed what it determines to be a serious offense, then termination without progressive discipline may be required.

(Doc. # 70-15, at 5). Since Paca reported directly to Mayor Harp and spoke for her on labor relations matter, it was imperative that she trust him in his appointed position. The information provided to Mayor Harp indicated that Paca had authorized the release of the Rose emails to the union. Her belief that he lied to her when he subsequently denied authorizing the disclosure of the emails clearly undermined her trust in him and gave her cause to conclude that he had committed a serious offense that required immediate termination. Consequently, the City's motion for summary judgment is granted as to the breach of contract claim.

C. Title VII/CFEPA

Paca also claims he was terminated on the basis of his race and color in violation of Title VII and CFEPA. The City responds that Paca has failed to satisfy the standard applicable to discrimination claims and so those claims fail as a matter of law.

In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), the Supreme Court established the structure within which courts analyze employment discrimination claims. "The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination." *Id.* at 802. A plaintiff may do this by showing that: (i) he is a member of a protected class; (ii) he was qualified for his position; (iii) he was subject to an adverse employment action; and (iv) the adverse employment action occurred under circumstances that give rise to an inference of discrimination. *See Terry v. Ashcroft*, 336 F.3d

128, 138 (2d Cir. 2003). A plaintiff's burden in establishing a prima facie case is "minimal." *Byrnie v. Town of Cromwell Board of Education*, 243 F.3d 93, 101 (2d Cir. 2001).

If a plaintiff is capable of meeting his initial burden, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for taking the adverse employment action. *McDonnell Douglas*, 411 U.S. at 802. If the employer advances a legitimate, nondiscriminatory justification for taking that action, the plaintiff is afforded the opportunity to show that the proffered reason for the adverse action was a pretext for prohibited discrimination. *Id.* at 804. "[A] plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false, may permit the trier of fact to conclude that the employer unlawfully discriminated." *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 148 (2000). "This is not to say that such a showing by the plaintiff will *always* be adequate to sustain a jury's finding of liability. . . . For instance, an employer would be entitled to judgment as a matter of law if the record conclusively revealed some other, nondiscriminatory reason for the employer's decision, or if the plaintiff created only a weak issue of fact as to whether the employer's reason was untrue and there was abundant and uncontroverted independent evidence that no discrimination had occurred." *Id.* Thus, the salient question is "whether the evidence offered can reasonably and logically give rise to an inference of discrimination under all of the circumstances." *Charron v. City of Hartford*, 356 F. Supp. 2d 166, 170 (D. Conn. 2005). Claims made under CFEPA are likewise subject to the *McDonnell Douglas* framework. *See Feliciano v. Autozone, Inc.*, 316 Conn. 65, 73 (2015).

Prima Facie Case

The City does not suggest that Paca failed to satisfy the first three prongs of a prima facie case under *McDonnell Douglas*, i.e., that he is a member of a protected class, was qualified for

his position, and suffered an adverse employment action. Rather, the City argues that Paca has failed to show that his termination occurred under circumstances that give rise to an inference of discrimination. Paca responds that he has established an inference of discrimination on the basis of race and color by showing that similarly situated Caucasian employees were not terminated.

"A plaintiff may support an inference of race discrimination by demonstrating that similarly situated employees of a different race were treated more favorably." *Norville v. Staten Island University Hospital*, 196 F.3d 89, 95 (2d Cir. 1999). "[W]here a plaintiff seeks to establish the minimal prima facie case by making reference to the disparate treatment of other employees, those employees must have a situation sufficiently similar to plaintiff's to support at least a minimal inference that the difference of treatment may be attributable to discrimination." *McGuinness v. Lincoln Hall*, 263 F.3d 49, 54 (2d Cir. 2001). "To be 'similarly situated,' the individuals with whom [the plaintiff] attempts to compare [him]self must be similarly situated in all material respects." *Shumway v. UPS*, 118 F.3d 60, 64 (2d Cir. 1997).

Paca identifies six other City employees he claims were similarly situated to him in all material respects: former Chief of Police Dean Esserman ("Esserman"), former Superintendent of Schools Garth Harries ("Harries"), Director of Economic Development Matt Nemerson ("Nemerson"), Director of Transportation Doug Hausladen ("Hausladen"), Human Resources Director Steve Librandi ("Librandi"), and Paca's Human Resources Manager Scott Nabel ("Nabel"). The Court finds that Paca has not shown that he was similarly situated to any of these other individuals. In his position of Director of Labor Relations, Paca was a mayoral appointment who reported directly to Mayor Harp and spoke for the Mayor on labor relations matters. There is no evidence that any of the other individuals identified by Paca held a position that was comparable in terms of its close, confidential relationship with Mayor Harp.

"In order for employees to be similarly situated for the purposes of establishing a plaintiff's prima facie case, they must have been subject to the same standards governing performance evaluation and discipline . . . ." *Norville*, 196 F.3d at 96 (internal quotation marks omitted). It is undisputed that Esserman, the former Chief of Police, and Harries, the former Superintendent of Schools, had employment contracts providing that they could only be terminated for cause. Additionally, as a police chief, Esserman was entitled by state statute to written notice and an opportunity for a public hearing before he could be dismissed for "just cause." Conn. Gen. Stat. § 7-278. As the Superintendent of Schools, Harries could only be terminated for cause by the Board of Education. The facts demonstrate that Esserman and Harries were not subject to the same standards governing discipline as was Paca. Consequently neither was similarly situated to him for the purposes of establishing a prima facie case of racial discrimination.

In order to establish that other employees were similarly situated to him, Paca also had to demonstrate that those employees "engaged in conduct similar to [his]." *Norville*, 196 F.3d at 96. Paca admits that Mayor Harp believed he lied to her about the release of the Rose emails to the union. This conduct must be considered in the context of Paca's position vis a vis Mayor Harp. As was previously mentioned, trust was an essential element of the relationship between Mayor Harp and the person who reported directly to her and spoke for her on labor relations matters. The lack of trust resulting from Mayor Harp's belief that Paca had lied to her about the release of the emails, and the ruinous effect that lack of trust would undoubtedly have on their working relationship, distinguishes his conduct from that of any of the other employees he claims were similarly situated.

On one occasion Nabel, who reported directly to Paca and not to Mayor Harp, disregarded instructions given to him by Paca. These instructions had originated with Mayor Harp and Rose. Paca subsequently told Mayor Harp that Nabel should be formally disciplined for his conduct, but Mayor Harp told Paca not to discipline Nabel. With regard to Librandi, the conduct Paca identifies as similar to his is Librandi's failure to make hiring decisions according to Mayor Harp's wishes and instructions. According to Paca, Mayor Harp asked him to intervene in this situation and Paca told Librandi he was facing discipline for not making the hiring decisions according to Mayor Harp's instructions. The Mayor subsequently told Paca not to discipline Librandi for that conduct. There is no evidence before the Court demonstrating that Librandi reported directly to Mayor Harp.

In his memorandum in opposition to the motion for summary judgment, the conduct Paca identifies as similar to his with respect to Nemerson is "poor job performance" and with respect to Hausleden is "disobeying the Mayor's clear directives about how biking policies should be implemented." (Doc. # 78, at 21). Paca does not address the specifics of the working relationship between either Nemerson or Hausleden and Mayor Harp. In any case, the Court finds that the conduct cited by Paca is not similar to lying to the mayor about a matter related to the area in which the employee reports directly to the mayor and is her spokesperson. Paca argues in his memorandum that Mayor Harp would not terminate Nemerson "for the support with the 'Jewish vote'" or Nemerson because "he would shore up the support of white voters in the City's 'whiter' neighborhoods."[4] (*Id.*). The issue under consideration here, however, is whether the conduct of these employees was similar to Paca's and the Court has found that it was not.

[4] The City argues in its reply memorandum that the "sham issue of fact" doctrine prohibits Paca from raising the Jewish and white voter claims for the first time in his affidavit opposing the

Paca has failed to show that his termination occurred under circumstances that give rise to an inference of discrimination based on race or color. Consequently he has not satisfied his initial burden of establishing a prima facie case of prohibited discrimination. The Court also notes that Mayor Harp, like Paca, is African American. While that fact is not conclusive as to the issue of discrimination, courts have recognized that "an allegation that a decision was motivated by a discriminatory animus is weakened when a decisionmaker is a member of the same protected class as the plaintiff." *Inguanzo v. Housing & Services, Inc.*, No. 12-CV-8212 (ER), 2014 U.S. Dist. LEXIS 132197, at *55 (S.D.N.Y. Sept. 19, 2014). Paca's discrimination claim is further weakened by the fact that Mayor Harp both hired and fired him. *See Grady v. Affiliated Central, Inc.*, 130 F.3d 553, 560 (2d Cir. 1997) ("when the person who made the decision to fire was the same person who made the decision to hire, it is difficult to impute to her an invidious motivation that would be inconsistent with the decision to hire").

Because Paca has not established a prima facie case of prohibited discrimination, his Title VII and CFEPA claims fail. The City's motion for summary judgment is granted as to the Title VII and CFEPA claims.

CONCLUSION

For the reasons stated above, the City's motion for summary judgment (**doc. # 70**) is **GRANTED**.

motion for summary judgment. (Doc. # 73, at 7). The Court finds it unnecessary to address this argument.

Judgment shall enter in favor of the defendant City of New Haven and the Clerk is directed to close the file.

SO ORDERED this 5th day of September, 2019.

_____/s/ DJS_____
Dominic J. Squatrito
United States District Judge