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1st Circuit: Suspension with Pay Did Not Violate Public Employee's Due Process Rights

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By Silas F. Mayberry

A University of New Hampshire professor's due process rights under the 14th Amendment to the U.S. Constitution were not violated when the university suspended him with pay, banned him from campus and took away his department chair title after he threatened another professor, according to the 1st U.S. Circuit Court of Appeals.

The University of New Hampshire (UNH) employed John Collins as the chair of the Department of Biochemistry and Molecular Biology and a tenured associate professor. On June 28, 2007, Collins received a parking ticket outside of his campus office building. Collins suspected that his colleague, Professor Stacia Sower, was the one who reported the parking violation. Inside the building where both professors worked, in the presence of other university employees and students, Collins loudly delivered an expletive-laden tirade about Sower. Specifically, he said several times that he could "kill that fucking bitch" and kicked a garbage can.

The following day, Collins was arrested by the UNH police department on charges of disorderly conduct and stalking based on his public outburst. The university placed him on a paid administrative leave, banned him from campus and suspended him from his department chair position pending an investigation.

During the investigation, Collins met with the administration and was given the opportunity to submit a letter presenting his side of the story. After considering all of the information, the university found that Collins had behaved inappropriately but not in a manner that rose to the level of creating a hostile work environment. As a result, Collins was stripped of his position as department chair and ordered to remain on paid administrative leave until he apologized to Sower in writing, completed anger-management classes and all criminal proceedings were completed.

Collins was cleared of all charges by the New Hampshire District Court approximately four months after the initial incident. He was allowed back on campus and reinstated to his faculty duties but not to his role as the department chair. He sued the university, claiming the campus ban, suspension and loss of the department chair position without a hearing before these events took place violated his 14th Amendment right to due process.

The trial court dismissed the lawsuit and the 1st Circuit affirmed. Public employees are not entitled to a pre-suspension hearing as long as they are suspended with pay and the suspension is not unreasonably lengthy or open ended, the court noted. As a result, the court found that the steps outlined for Collins to complete before reinstatement were specific and so they did not violate his due process rights.

In addition, the 1st Circuit reaffirmed that public employees must be given notice of the charges against them, a chance to respond to those allegations, and also of any sanctions that may result from the charges. Collins' conversations with the administration and the letter he submitted during the investigation were found to have met these requirements and constituted adequate due process.

Collins v. Univ. of N.H., 1st Cir., No. 10-2316 (Dec. 20, 2011).

Professional Pointer: This case clearly demonstrates the importance of giving employees accused of wrongdoing the opportunity to present their version of events during an employee relations investigation. By maintaining this practice, employers may learn facts before an adverse action is taken and it also promotes fairness of the disciplinary process. Even more importantly, especially in the case of public employers, this step may be legally required before any adverse employment action can be taken.

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