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Notice of Judgment

June 19, 2009

Docket Number: 2008 - CA - 2540

Glenn Moffett, Alvin Brossette, Jr. and H. Sherman Vogel
versus

State of Louisiana Through the Board of Supervisors for the
University of Louisiana System and/or Board of Trustees for
State Colleges and Universities

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You are hereby served with a copy of the opinion in the above-entitled case. Your attention is invited to Rule 2-18. Rehearing of the Uniform Rules of Courts of Appeal.

I hereby certify that this opinion and notice of judgment were mailed this date to the trial judge, all counsel of record, and all parties not represented by counsel as listed above.


CHRISTINE L. CROW
CLERK OF COURT

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 CA 2540

GLENN MOFFETT, ALVIN BROSSETTE, JR., AND H. SHERMAN VOGEL

VERSUS

**THE STATE OF LOUISIANA THROUGH THE BOARD OF SUPERVISORS
FOR THE UNIVERSITY OF LOUISIANA SYSTEM AND/OR BOARD OF
TRUSTEES FOR THE STATE COLLEGES AND UNIVERSITIES**

Handwritten initials: HMC, JW, and JHP

Judgment Rendered: JUN 19 2009

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On Appeal from the Nineteenth Judicial District Court
In and For the Parish of East Baton Rouge
State of Louisiana
Docket No. 514498

Honorable Timothy E. Kelley, Judge Presiding

* * * * *

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* * * * *

BEFORE: PARRO, McCLENDON, AND WELCH, JJ.

McCLENDON, J.

The plaintiffs appeal a district court judgment that affirmed an agency decision upholding their termination and dismissed their petition for review with prejudice. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2002, the plaintiffs, Drs. Glenn Moffett, Alvin Brossette, Jr., and H. Sherman Vogel, were instructors at Northwestern State University of Louisiana (University) in Natchitoches. On October 30, 2002, Louisiana's Legislative Auditor issued a special investigative report regarding the continuing education department at the University and irregularities it discovered in the department involving the plaintiffs. The plaintiffs were informed that they would be terminated based on the report and that each had the right to a hearing prior to his termination. The plaintiffs elected to have a hearing. They were notified of the charges against them and were advised of the hearing date. On February 11-12, 2003, a peer committee of seven faculty members conducted the hearing on the charges brought against the plaintiffs and, on February 13, 2003, concluded that the conduct of the plaintiffs constituted malfeasance and mismanagement of University programs and affairs. The appeals committee concurred with the proposed action of the University to terminate the plaintiffs' employment.

Thereafter, the president of the University reviewed and accepted the committee's decision and informed the plaintiffs that their employment at the University would terminate on March 31, 2003. The president also informed the plaintiffs that they had the right to appeal their termination to the Board of Supervisors for the University of Louisiana System (Board). The plaintiffs elected to appeal to the Board. By letter dated March 31, 2003, the Board informed the plaintiffs that the grievance committee of the Board, at its meeting of March 28, 2003, reviewed their appeal of the University's decision and that the recommendation of the committee, approved by the Board, was to affirm the

action of the University, deny the plaintiffs a hearing, and dismiss them from the University.

The plaintiffs appealed the Board's determination by filing the present petition in the district court against the State of Louisiana, through the Board of Supervisors for the University of Louisiana System and/or Board of Trustees for the State Colleges and Universities, seeking a review of the Board's decision. The plaintiffs asked for a reversal of their terminations, full back pay, restoration of benefits, expungement of their records, and damages. Following a hearing on April 20, 2007, the district court affirmed the agency ruling and dismissed the plaintiffs' petition with prejudice by a judgment signed on July 15, 2008. The plaintiffs now appeal to this court, asserting that they were denied due process at the administrative level and also on appeal.

DISCUSSION

The Board of Supervisors for the University of Louisiana System was created by Article VIII, Section 6, of the Louisiana Constitution.¹ State universities governed by the Board, including Northwestern State University of Louisiana at Natchitoches, comprise the University of Louisiana system. LSA-R.S. 17:3217. The Board is authorized to adopt rules and regulations necessary or proper for the government of the universities comprising its system. LSA-R.S. 17:3351A(12). See **Barnett v. Board of Trustees for State Colleges and Universities**, 00-1041, p. 5 (La.App. 1 Cir. 6/22/01), 809 So.2d 184, 188.

In accordance with said authority, the Board adopted the University of Louisiana System Rules. In Chapter III, regarding Faculty and Staff, Section XV sets forth termination procedures and includes the following:

- B. Cause for Terminating Tenured Faculty. Cause for discharge, termination of contract, or demotion in rank of tenured faculty shall consist of conduct seriously prejudicial to the college or university system such as infraction of law or commonly accepted standards of morality, failure to follow proper orders, violation of institutional or Board rules and regulations, neglect of duty, incompetence, or other conditions that impair discharge of duties and the efficiency of the institution. Financial exigency

¹ Upon approval by the voters on November 3, 1998, the Board of Trustees for State Colleges and Universities was renamed the Board of Supervisors for the University of Louisiana System, effective December 4, 1998.

also constitutes cause. The foregoing enumeration of cause shall not be deemed exclusive. However, action to discharge, terminate, or demote shall not be arbitrary or capricious, nor shall it infringe upon academic freedom.

- C. Academic Dismissal Policy. Each institution shall have a written policy for due process concerning academic dismissal for tenured faculty. This policy shall provide for hearings before a committee that includes faculty members. Its findings and recommendations shall be forwarded to the chief executive officer of the university who shall make a final determination.
- D. Petition for Review. The member of the academic staff who has exhausted due process procedures at the institutional level may petition the Board within 30 days when the institution is in session for a review and no official action shall be taken by the institution until a final determination is made by the Board.

The University's Faculty Handbook provides for nonrenewal and termination of faculty in Chapter Two and, like the rules, sets forth cause for termination. The handbook also provides that the "President shall appoint a committee of faculty members who shall hear charges against the accused and forward their findings and recommendations to the President who shall make the final determination." Further, the handbook, like the rules, provides for a petition of review to the Board.

A review of the record in this matter clearly shows that the plaintiffs were given a meaningful hearing before a faculty committee of peers. They were given notice of the charges against them; notice of the date, time, and place of the hearing; the names of the witnesses the University intended to call to testify; a copy of each document to be used at the hearing; the right to compel any witness within the control of the University to appear; the right to cross-examine any witness; and the right to call their own witnesses. The hearing lasted for two days, and the plaintiffs were represented by counsel. Although the plaintiffs apparently are now, in hindsight, complaining about decisions made by their counsel in the method of proceeding in the hearing, those decisions related to strategy and did not deprive the plaintiffs of a meaningful pre-termination hearing that lacked due process.

The plaintiffs also contend that the record is incomplete in this matter because after the hearing in the district court on April 20, 2007, the court stated

that it would hold the matter open for a scheduled proffer by the plaintiffs. The proffer was to reexamine witnesses already presented at the initial hearing. The proffer was continued at the plaintiffs' request but had not been conducted when, more than one year later, the defendant presented to the district court a judgment, which was signed on July 15, 2008.

The plaintiffs' rights to due process are tempered by the court's "power to require that the proceedings ... be conducted ... in an orderly and expeditious manner, and to control the proceedings at the trial, so that justice is done." LSA-C.C.P. art. 1631. As our brethren on the second circuit have noted, the due process clauses of the Louisiana Constitution and the Fourteenth Amendment of the United States Constitution guarantee litigants a right to a fair hearing. Nonetheless, "due process" does not mean litigants are entitled to an unlimited amount of the court's time. **Goodwin v. Goodwin**, 618 So.2d 579, 583 (La.App. 2 Cir.), writ denied, 623 So.2d 1340 (La. 1993).

In this matter, we find that a year was more than a reasonable amount of time to give the plaintiffs to make their proffer. Additionally, although finding the record adequate to affirm the Board's decision, the district court agreed to give the plaintiffs time to present additional evidence before the judgment was signed to satisfy the plaintiffs' desire that they have a complete record. Thus, with or without the proffered evidence, we cannot say that the result would have been different.

Following a thorough review of the record, we conclude that the plaintiffs herein were provided a meaningful opportunity to be heard prior to their termination. The record supports the Board's decision to terminate the plaintiffs, and we find no error in the district court's dismissal of the plaintiffs' petition to review the action of the Board.

CONCLUSION

The July 15, 2008 judgment of the district court affirming the decision of the Board of Supervisors for the University of Louisiana System and dismissing the plaintiffs' petition with prejudice is hereby affirmed. Costs of this appeal are

assessed to the plaintiffs, Drs. Glenn Moffett, Alvin Brossette, Jr., and H. Sherman Vogel.

AFFIRMED.