

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2006 CA 0864**

**TOMMY WRIGHT**

**VERSUS**

**BOARD OF SUPERVISORS OF THE LOUISIANA COMMUNITY AND  
TECHNICAL COLLEGE SYSTEM**

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**On Appeal from the 19th Judicial District Court  
Parish of East Baton Rouge, Louisiana  
Docket No. 532,106 Division "I"  
Honorable R. Michael Caldwell, Judge Presiding**  
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**BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.**

**Judgment rendered February 14, 2007**

**PARRO, J.**

Plaintiff, Tommy Wright, appeals a judgment of the district court affirming the decision of the Board of Supervisors of Community and Technical Colleges (Board) to remove him from employment. We affirm.

**FACTUAL AND PROCEDURAL HISTORY**

In 1994, Mr. Wright accepted the position of Tech Prep Coordinator for the Alexandria campus of the Louisiana Technical College (LTC-Alexandria). He remained in that position until his employment was terminated effective April 13, 2005.<sup>1</sup> Mr. Wright was also an elected member of the Louisiana House of Representatives, having served in that body since 1996.

In 2004, the Board authorized an internal audit of the time and attendance of all elected officials employed by the Louisiana Community and Technical College System, including Mr. Wright. After the audit was completed, it was determined that Mr. Wright had not followed Board policy concerning the use of sick leave. Specifically, the audit demonstrated that Mr. Wright had used sick leave to be absent from his duties with LTC-Alexandria on days he was listed as present at meetings of the Louisiana legislature. As a result, the chancellor of the LTC, Dr. Margaret Montgomery-Richard, informed Mr. Wright by letter dated December 15, 2004, that he was formally charged with willful neglect of the duties of his employment and with dishonesty in the performance of those duties. Dr. Montgomery-Richard further advised Mr. Wright that she had recommended to the Board that he be removed from his employment at LTC-Alexandria.<sup>2</sup>

As established by its policies, the Board appointed a tenure hearing committee (committee) to consider Dr. Montgomery-Richard's recommendation regarding Mr. Wright. The committee held a tenure hearing on March 3, 2005, at which Mr. Wright

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<sup>1</sup> At the time Mr. Wright accepted this position, the LTC campuses were under the jurisdiction of the Board of Elementary and Secondary Education (BESE); however, on July 1, 1999, the LTC campuses were transferred from the jurisdiction of BESE to the jurisdiction of the Board pursuant to Article 8, § 7.1 of the Louisiana Constitution of 1974 and LSA-R.S. 17:4. At the time of the transfer, Mr. Wright was a tenured employee at LTC-Alexandria, and he retained that tenure after the transfer.

<sup>2</sup> Dr. Montgomery-Richard also recommended disciplinary action against two of Mr. Wright's supervisors for their failure to enforce the sick leave policy. The disciplinary action taken against those supervisors is not a part of the matter before this court.

was allowed to present evidence to rebut the charges against him. After taking the matter under advisement, the committee submitted a written determination to the Board concluding that Mr. Wright's actions were in violation of the Board's leave policy, and that those violations constituted willful neglect of the duties of Mr. Wright's employment. The committee further determined that the Board should approve Dr. Montgomery-Richard's recommendation that Mr. Wright's employment be terminated.

At its regular monthly meeting on April 13, 2005, the Board considered and ratified the determination of the committee. Mr. Wright was notified of this action by letter dated April 14, 2005. Thereafter, Mr. Wright filed a timely petition for judicial review of the Board's decision. After hearing oral argument of the matter, the district court rendered judgment affirming the Board's decision to remove Mr. Wright from his employment at LTC-Alexandria. This appeal by Mr. Wright followed.

### **DISCUSSION**

The Board is a constitutionally-created higher education board charged with the management of public vocational-technical colleges and community colleges. LSA-Const. Art. 8, § 7.1. As such, it is conferred with self-executing, exclusive administrative authority over the learning institutions within its jurisdiction. Therefore, the Board has authority to adopt rules and regulations governing the internal management of its learning institutions without legislative consent or approval. **Delahoussaye v. Board of Supervisors of Community and Technical Colleges**, 04-0515 (La. App. 1st Cir. 3/24/05), 906 So.2d 646, 649-50.

Pursuant to this authority, the Board adopted Policy #II.3.003, a personnel leave policy outlining the various types of leave available to its unclassified, non-civil service employees, including sick leave. According to the policy, sick leave is "leave with pay granted to an employee who is suffering with a disability which prevents him from performing his usual duties and responsibilities and who may require medical, dental, or optical consultation or treatment." The policy further provides for the usage of sick leave for all unclassified employees, in part:

1. Sick leave with pay may be taken by an employee with sufficient leave to his credit for the following:
  - a. Illness or injury which prevents performance of work duties.

- b. Medical, dental or optical consultation or treatment.
2. An employee who has taken sick leave shall file with his appointing authority a leave slip stating the cause of his absence and the amount of time taken.
3. Employees absent from work for up to 5 consecutive work days will not be required to provide a doctor's note; however, as notified by this policy, any employee absent for more than 5 consecutive work days will be required to submit a release to return to work from a registered physician. The need for written proof of short term illness, including those of 5 days or less, will be determined by the supervisor based on such things as the employee's attendance and performance record.
4. It is expected that sick leave will be used only as appropriate. Abuse of this privilege is cause for disciplinary action.
  - a. The abuse of sick leave privileges may result in sick leave sanctions and/or disciplinary action regardless of the length of absence. Such sanctions will require employees to present a medical certification for any period of absence. Sick leave sanctions may not be imposed for leave covered by the FMLA. All employees are expected to notify their supervisor when absent. Failure to do so may result in disciplinary action, including termination.
  - b. Should an employee fail to call or notify the supervisor, all hours absent will be charged as unauthorized leave without pay, unless it is shown that it was medically impossible or impractical to notify the supervisor.

The evidence introduced at the hearing demonstrated that Mr. Wright had used a substantial amount of paid sick leave during the period from January 2004 through July 2004. Specifically, the time and attendance records listed Mr. Wright as using eight hours of sick leave per day for forty days in which he also was recorded as being present at meetings of the Louisiana legislature. The evidence further demonstrated that Mr. Wright's usage of sick leave followed a pattern in which he would take three days of sick leave, followed by one day of annual leave. A further investigation of Mr. Wright's time and attendance in 2002 and 2003 indicated additional usage of paid sick leave on days that Mr. Wright was recorded as present at the legislature.

Mr. Wright contends that his usage of paid sick leave was proper. In support of this argument, Mr. Wright refers to the testimony of his licensed professional counselor, Dr. James P. Gilbert, Jr., who testified that Mr. Wright suffered from major depression and anxiety. Dr. Gilbert testified that he believed that working in the legislature was beneficial to Mr. Wright and that he had encouraged Mr. Wright to continue his work with the legislature.

In its written determination, the committee accepted Dr. Gilbert's diagnosis of Mr. Wright's condition; however, the committee noted that Dr. Gilbert stopped short of characterizing Mr. Wright's attendance at legislative meetings, instead of his attendance to his normal work duties, as a blanket treatment for Mr. Wright's depression and anxiety issues. The committee further questioned Mr. Wright's pattern of attributing three days of his weekly legislative attendance to sick leave, with the remainder attributed to annual leave. Based on the evidence before it, the committee concluded that Mr. Wright failed to demonstrate that he was suffering from an illness or injury that prevented him from performing his duties for LTC-Alexandria on certain dates, while allowing him to attend meetings of the Louisiana legislature on those same dates. Thus, the committee, and later the full Board, concluded that Mr. Wright should be removed from his employment.

A reviewing court should afford considerable weight to an administrative agency's construction and interpretation of its rules and regulations adopted under a statutory scheme that the agency is entrusted to administer, and its construction and interpretation should control unless they are found to be arbitrary, capricious, or manifestly contrary to its rules and regulations. **Delahoussaye**, 906 So.2d at 649. After a thorough review of the record in light of these principles, we find no error in the affirmation of the Board's decision by the district court. Accordingly, we affirm the judgment of the district court in accordance with Uniform Court of Appeal Rule 2-16.1(B). All costs of this appeal are assessed to Tommy Wright.

**AFFIRMED.**