
Taylor's back pay remedy and the issue of remand shall be subject to further proceedings.

II. FACTS AND PROCEEDINGS

Yauna Taylor worked as an administrative assistant in the Culinary Arts Department at the Tanana Valley Campus of the University of Alaska Fairbanks. Taylor worked for the University under a series of hiring letters that covered a portion of several school years. The last of Taylor's letters c Th 1

"lack of professionalism" "lack of responsiveness to clear expectations," and "resistance to correction action."1 But rather than rely on these reasons for termination, and in lieu of "for cause" termination proceedings, the University chose instead to simply give Taylor a notice of nonretention which they contend terminated Taylor's employment, without cause, on four weeks notice. The University paid Taylor for four calendar weeks, through May 1, 2008 in lieu of the applicable notice period.

Taylor timely grieved the nonretention. She argued that she was...3 cause t

Acting Chancellor Brian Rogers accepted Cotton's recommendation to dismiss Taylor's grievance. Taylor then appealed to University President Mark Hamilton. President Hamilton affirmed the nonretention.

President Hamilton held as follows:

By their terms, [policy 04.07.100 and Regulation 04.07.100] contain no description of the circumstances under which the University may invoke the nonretention procedures. As a result, the University has broad discretion to determine whether particular circumstances warrant discipline or whether t w

University's termination to an administrative appeal. Taylor sought de novo review of her termination and the court deferred ruling on that request. Because the court addresses Taylor's constitutional questions in this decision, de novo review is no longer necessary and will be denied. Taylor's administrative appeal of the termination is resolved by this decision. The Counts in Taylor's complaint not resolved by this decision remain in effect and shall be subject to further proceedings.

III. DISCUSSION

A. Standard of Review

Appellate courts review an agency's interpretation of its own regulations under the reasonable and not arbitrary standard. This deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue.² Accordingly, review of whether the University of Alaska complied with its own regulations is limited to a determination of whether the decision was arbitrary, unreasonable, or an abuse of discretion.³

The interpretation of a contract is a question of law over which the court exercises its independent judgment.⁴ The

² Regulatory Com'n of Alaska v. Tesoro Alaska Co., 178 P.3d 1159, 1163½ (A%a\$^a%2008) ½

³ Hunt v. UAF, 52 P.3d 739, 742½ (A%a\$^a%2002), ½ c} }' x ½ Nickerson v. Univ. of Alaska Anchorage, 975 P.2d 46, 50½ . 1½ (A%a\$^a%1999) . ½

⁴ Cassel v. State, Dep't of Ad in., 14½ P.3d 278, 283½ (A%a\$^a%2000) ½

C. Taylor Was Also Subject to Nonretention

The University's policies and regulations and Taylor's employment letter plainly establish that Taylor was also subject to nonretention. Taylor's employment letter states, "Pursuant to University Regulations

nonretention applies to Taylor as well as all University employees. But nonretention must be properly understood and applied.

D. The University Improperly Applied Nonretention to Taylor

The University improperly applied nonretention to Taylor under the circumstances of this case. Termination for disciplinary or performance reasons is "for cause" termination. And the university does not dispute that Taylor was terminated for ~~Taylor's~~ ~~disciplinary~~ ~~reasons~~ ~~at~~ ~~Taylor's~~ ~~termination~~ TayA, ternip - i

that nonretention is not limited to non-disciplinary terminations. President Hamilton relies on the absence of any subject matter limits in the language of the nonretention policy and regulation as authority for this proposition.

According to the University, employees such as Taylor are subject to nonretention at will. These employees have no property interest in their employment beyond the four week notice required by the applicable nonretention regulations. In the University's view, nonretention swallows whole all of the "for cause" rights and procedures, except for four weeks. In short, employees such as Taylor go from at-will, to at-will with four weeks notice.

This is an unreasonable interpretation of the regulations. This interpretation renders "for cause" employment rights meaningless. These critical "for cause" rights and procedures cannot be ignored and must be given greater meaning and effect than the University contends. Any view of nonretention that so expurgates "for cause" rights and procedures is necessarily

resignation, retirement, emeritus status, layoff, and financial exigency. It was subsequently renumbered and moved to 04.07.100. But its language remained unchanged. Renumbering and moving the regulation does not change its meaning. Nonretention is a nondisciplinary proceeding. It can be used by the University for financial, pedagogical, administrative, or other such reasons.⁹ It cannot be used as a substitute for disciplinary or performance-based terminations.

The nonretention policy specifically states that, "Nonretention does not reflect discredit on an employee." This language suggests that it is inapplicable to disciplinary or performance based terminations where discredit is necessarily at stake. The University relies on this "not reflect discredit" language to support the proposition that so long as the disciplinary or performance reasons for the nonretention are disregarded, suppressed, unstated, or t t w

all involved.¹¹ Because the University's nonretention regulations do not provide these procedural protections, they are inadequate. More is needed in this case where Taylor's character and capacity for employment are called into question.

The University's application of its nonretention policy and regulation is unreasonable. It disregards the fact that employees such as Taylor are "for cause" employees - they are not "at-will with four weeks notice" employees. It disregards nonretention's origins in the nondisciplinary chapters of its policies. And it disregards retentions lack all procedural protections.

Taylor is a "for cause" employee when it comes to termination for disciplinary or performance-based reasons. When Taylor is being terminated for disciplinary or performance-based reasons procedural protections of "for cause" termination apply. Nonretention is not a substitute for "for cause" termination under the circumstances in this case. Accordingly, the University's so-called nonretention of Taylor should be reversed.¹² Because Taylor has provided no authority for a University system wide injunction, Taylor's request for a

¹¹ City of North Pole v. Zabek, 934 P.2d 1292, 1298 (Ala. 1997); Nichols v. Eckert, 504 P.2d 13

system wide injunction against using nonretention should be denied.

E. Taylor Was Wrongfully Denied a Pre-termination Hearing.

The Alaska Supreme Court has consistently held that due process requires pre-termination hearings for public employees:

The United States and Alaska Constitutions prohibit state actions that deprive individuals of property without due process of law. Public employees who may be terminated only for just cause have a property interest in continued employment. *Storrs v. Municipality of Anchorage*, 721 P.2d 1146, 1148 (Alaska 1986), cert. denied, 479 U.S. 1032, 107 S.Ct. 878, 93 L.Ed.2d 832 (1987).

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be subject to further proceedings. There is some question whether Taylor's employment contract ended on June 7, 2008 or whether the "continuing" nature of the contract required more. If Taylor's employment rights ended on June 7, 2008, a duty to mitigate shall not be imposed. If Taylor's employment rights continued past that date, a duty to mitigate may be imposed.

And because of the questions concerning the continuing nature of Taylor's contract, the issue of whether this case must be remanded back to the University must also be addressed. If Taylor has employment rights that continue to this day, a remand for a "for cause" termination proceedings may be appropriate.

IV. CONCLUSION

Because nonretention may not be used for disciplinary or performance-based reasons, and University u mkh ,

v. OR ER

Accordi ngl y,

IT IS HEREBY ORDERED that University, of Alaska's nonretention of Yauna Taylor is reversed.

IT IS FURTHER ORDERED that Taylor is entitled to a judgment for back pay.

IT IS FURTHER ORDERED that the scope of Taylor's back pay remedy shall be subject to further proceedings.

IT IS FURTHER ORDERED that all causes of actions and motions not resolved by this decision shall be subject to further proceedings.

DATED thl'S  _____


