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Catherine R. Locallo, *Robbins Schwartz* [http://www.rsnlt.com] , Chicago
312-332-7760 | E-mail Catherine R. Locallo [mailto:clocallo@robbins-schwartz.com]

CBA Provision Clearly Rebutted At-Will Employment Presumption for IT Employee

In *Cheli v. Taylorville Community School District,* 986 F.3d 1035 (7th Cir. 2021), the Seventh Circuit held that the employer school district violated former employee Joshua Cheli's due-process rights when it terminated him without "reasonable cause." The "reasonable cause" language, coupled with other procedural language relevant to termination, was set forth in a collective-bargaining agreement (Master Agreement) that the school district was a party to, and which covered certain positions, including the position Cheli held. The Seventh Circuit determined that the "reasonable cause" language created a protected property interest for which Cheli was entitled to due process.

Relevant Background Facts

Cheli worked as a computer systems administrative assistant at the school district for four years. 986 F.3d at 1036. Cheli's position was covered by the Master Agreement, which includes an article titled "Discipline or Dismissal" that states in full:

> **8.1 An employee may be disciplined, suspended, and/or discharged for reasonable cause. Grounds for discharge and/or suspension shall include, but not be limited to, drunkenness or drinking or carrying intoxicating beverages on the job, possession or use of any controlled and/or illegal drug, dishonesty, insubordination, incompetency, or negligence in the performance of duties.**
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> **8.2 A conference with the employee shall be held prior to any suspension and/or discharge.**
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> **8.3 An employee shall have the right to a representative of his/her choice in any meeting which may result in suspension and/or discharge.**
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> **8.4 A written explanation for the suspension and/or discharge shall be given the employee so affected.**
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> **8.5 Upon initial employment with Taylorville Community Unit School District #3, non-certified employees will serve a one hundred twenty (120) day probationary period. During the period, the probationary non-certified employee will be an at-will employee. If the employee's work is deemed unsatisfactory by the Administration and the Board during this period, the Board, at its discretion, may terminate the employment.** 986 F.3d at 1037 –1038.

The school district also had a Policy Manual that incorporated the Master Agreement and included a provision titled "Employment At-Will," which stated:

> **Unless otherwise specifically provided, District employment is at-will, meaning that employment may be terminated by the District or employee at any time for any reason, other than a reason prohibited by law, or no reason at all. Nothing in School Board policy is intended or should be construed as altering the employment at-will relationship.**
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> **Exceptions to employment at-will may include employees who are employed annually, have an employment contract, or are otherwise granted a legitimate interest in continued employment. The Superintendent is authorized to make exceptions to employing non-licensed employees at-will but shall maintain a record of positions or employees who are not at-will.** 986 F.3d at 1038.

On September 25, 2018, with about 25 minutes notice, Cheli was asked to meet with school district administration. During the meeting, Cheli was informed that his employment was being terminated because a female student alleged that he had sexually harassed her three weeks ago. Cheli denied the allegations but was told that the decision was made. The termination decision was memorialized by the Board of Education at a meeting held on October 9, 2018. A notice of termination was issued to Cheli after the Board meeting, which stated that "[t]he basis or grounds for discharge include[d] incompetence." 986 F.3d at 1037. The notice indicated that there was a written report stating the reasons for discharge, but it was not provided to Cheli. *Id.*

Consequently, Cheli filed a lawsuit against the school district alleging that it violated his procedural due-process rights under the Fourteenth Amendment by terminating him without a pre-deprivation and a postdeprivation hearing. 986 F.3d at 1038. The district court dismissed the case, finding that the facts Cheli alleged were "insufficient to permit a reasonable inference that [Cheli] ha[d] a constitutionally protected property interest in his continued employment with [the District]." *Id.* An appeal to the Seventh Circuit followed.

The Seventh Circuit's Decision

In Illinois, a person has a protected property interest in his or her job only when he or she has a legitimate expectation of continued employment based on a legitimate claim of entitlement. 986 F.3d 1035, citing *Moss v. Martin,* 473 F.3d 694, 700 (7th Cir. 2007). Further, there is a presumption in Illinois that "an employment relationship without a fixed duration is terminable at will." 986 F.3d at 1039, quoting *Duldulao v. Saint Mary of Nazareth Hospital Center,* 115 Ill.2d 482, 505 N.E.2d 314, 317 – 318, 106 Ill.Dec. 8 (1987). The presumption "can be overcome by demonstrating that the parties contracted otherwise." 986 F.3d at 1039, quoting *Duldulao, supra,* 505 N.E.2d at 318. Accordingly, "[t]o show a legitimate expectation of continued employment, a plaintiff must show a specific ordinance, state law, contract or understanding limiting the ability of the state or state entity to discharge him." 986 F.3d at 1039, quoting *Moss, supra,* 473 F.3d at 700. Most often, this is shown through language that termination will only be "for cause." *See Cromwell v. City of Momence,* 713 F.3d 361, 364 (7th Cir. 2013). A collective-bargaining agreement with such a provision could create a property interest for due-process purposes. *See, e.g., Brock v. Roadway Express, Inc.,* 481 U.S. 252, 95 L.Ed.2d 239, 107 S.Ct. 1740, 1747 (1987).

Here, the Master Agreement expressly stated that an employee could be terminated for only "reasonable cause." *Cheli, supra,* 986 F.3d at 1040. The Seventh Circuit rejected the school district's argument that this language meant that it had the option to terminate for reasonable cause but that it was not required. *Id.* The Seventh Circuit found that the school district cannot terminate employees like Cheli without first satisfying the "reasonable cause" condition in the Master Agreement. 986 F.3d at 1041. To hold otherwise, would mean that the language would be treated as surplusage. *Id.* "A court will not interpret a contract in a manner that would nullify or render provisions meaningless, or in a way that is contrary to the plain and obvious meaning of the language used." 986 F.3d at 1042, quoting *Thompson v. Gordon,* 241 Ill.2d 428, 948 N.E.2d 39, 47, 349 Ill.Dec. 936 (2011).

The Seventh Circuit also relied on other provisions in the Master Agreement to further support its determination that Cheli had a property interest for due-process purposes. 986 F.3d at 1037.The provisions included the distinction that probationary employees could be terminated at the Board's "discretion," as well as the fact that non-probationary employees must be afforded a conference, a right to a representative, and a written explanation of the school district's decision. *Id.* The case was remanded to the district court for further proceedings. 986 F.3d at 1047.

To avoid claims such as this one, employers need to be cognizant of adhering to due-process protections, including notice of the issue and an opportunity to be heard before a decision is made on continued employment. In addition, employers should clearly read any relevant collective-bargaining agreements, contracts, or policies to ensure that they are following any established procedures for discipline or termination.

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