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TITLE: May 1992: The Catholic Church and Termination of Employment

AUTHOR: Mary Angela Shaughnessy, SCN, J.D., PhD

SOURCE: *NCEA Notes v.25:5*

PUBLISHER:

YEAR:

PAGES: 52-54

MAY 1992

THE CATHOLIC CHURCH AND TERMINATION OF EMPLOYMENT



The Catholic Church has long been an advocate of worker's rights. The encyclical *Rerum Novarum* stated unequivocally that employers must guard the human rights of their employees. Like any other employer, however, the Catholic Church has found itself the defendant in lawsuits brought by employees. Catholic school educators may find a discussion of some pertinent cases and points of law helpful.

Catholic school employees do not enjoy constitutional rights, but they do have rights. Administrators must honor the provisions of the contract with the teacher or be able to give a legitimate reason for breaking the contract. Courts will scrutinize the contract to ensure that its provisions have been followed.

Tenure Questions

In most dioceses, tenure does not appear to exist. One exception would be dioceses with unions. A 1979 Supreme Court decision, *NLRB v. the Catholic Bishop of Chicago*, held that Catholic schools did not have to allow union representation. Unions that were in place in Catholic schools before this ruling were not affected by it.

Historically, private sector employment was said to be at will and private sector employers generally may hire and fire whom they please. Recent case law in private industry suggests that courts may be moving away from absolute at-will employment. One can usually dismiss employees for no reason or for a good reason, but not for a bad reason (e.g., discrimination).

Dismissal at will may not be an option if a school has a policy whereby a teacher can expect continuing employment after a given number of years. Even if no policy exists, *de facto* tenure could be held to exist if an expectation of continuing employment is documented (e.g., teachers in a Catholic institution are routinely offered contracts after a given number of years of employment). Although no court has yet held that Catholic schools can be compelled to reinstate wrongfully terminated teachers, courts have ordered Catholic schools to pay damages to teachers whose contracts were breached. (See *Dolter v. Wahlert*, 483 F.Supp. 266, N.D. Iowa 1980).

Breach of Contract

One example of an allegation of breach of contract is presented by the 1973 case of *Weithoff v. St. Veronica School*, 210 N.W. 2d 108 (Michigan). A teacher was terminated after her marriage to a priest who had not been dispensed from his vow of celibacy in the church. The plaintiff had signed a contract of employment that bound her to observe the "promulgated" policies of the sponsoring school. A policy requiring teachers to be practicing Catholics had been adopted by the governing body, but the policy was filed and never published to teachers. The court held that the teacher could not be held responsible for meeting the demands of the unpromulgated policy.

In *Bischoff v. Brothers of the Sacred Heart*, 416 So.2d 348 (1982), a newly hired teacher, whose contract was canceled when the principal discovered that the plaintiff had divorced and remarried without obtaining an annulment of the first marriage, brought suit. The court ruled in favor of the school; the contract contained no loopholes.

Unemployment Case

Cases in which dismissed Catholic school employees allege they were unfairly denied unemployment benefits are on the rise. In *Holy Name School v. Retlick*, 109 Wis.2d 381, a Catholic school appealed a circuit court order that directed that a teacher whose employment contract was not renewed because she married a divorced man who had not obtained an annulment was entitled to unemployment benefits. The school allowed the teacher to finish the year after contracting the marriage and the principal even suggested to the teacher that she live with the man rather than contract an illicit marriage. The court recognized the right of the school to hold teachers to a moral code, but found that school officials had not been reasonable in their conduct.

In the 1989 case, *Bishop Carroll High School v. Commonwealth of Pennsylvania*, 557 A.2d 1141, a high school teacher informed his principal that he was cohabiting with a divorced woman whose previous marriage had not been annulled. After being discharged, the teacher filed for unemployment and the school contested. The court ruled that the teacher effectively waived any constitutional or statutory requirements when he signed the employment contract.

Thus, the Catholic Church, like any religious organization, can determine the discipline it requires of both its members and employees. People who do not wish to live in accordance with church teachings are not compelled to act against their desires. They simply cannot act as they wish and continue as church employees.

In a 1989 Rhode Island case, *St. Pius X Parish Corp. v. Murray*, 557 A.2d 1214, resembling the *Retlick* case, a different decision was reached. The teacher had informed school officials in April that she intended to contract a marriage outside the church. School officials allowed her to finish teaching for the remainder of the academic year, but did not offer her a contract for the next year.

The court ruled that the school's action in permitting her to finish the school year prohibited officials from calling the nonrenewal of her contract a "discharge." In still another unemployment compensation case, *Bishop Leonard Regional Catholic School v. Unemployment Compensation*, 593 A.2d 28, a 1991 Pennsylvania court heard the arguments of a Catholic grade school that a teacher's actions

in marrying a divorced man was disqualifying willful misconduct because it was in violation of a school policy that forbade teachers to publicly reject official teaching, doctrines, or laws of the Catholic Church. [Note: In the past 15 years, courts have shown an increasing willingness to allow Catholic institutions to hold employees to the rules of the Catholic Church governing behavior, as long as the expectation and requirement of following those rules is made clear in a written contract or policy statement.]

The above cases involving Catholic institutions illustrate that administrators cannot hide behind the First Amendment's separation of church and state guarantee as a cover for any actions they wish to take. The courts have made it clear that they do have jurisdiction over the elements of a contract made with a religious entity, particularly on nondoctrinal issues.

(Readers desiring discussion of documentation and reporting issues in employment termination should consult the author's column in the November 1990 issue of *NCEA Notes*.)

Although the Catholic Church is not bound by all the employment constraints that oblige the public sector, officials are expected to be fair in the development of employment policies. The church's own teachings and documents demand just treatment of all employees.

Recent Developments

A Florida public high school and its officials were found liable in the wrongful death of a student who fell through a skylight on the school roof while posing with other students for a yearbook photograph. Evidence indicated that a single teacher was responsible for the supervision of 30 students on the roof and that the teacher herself was posing for the photograph.

The court concluded that the conduct of school officials was negligent and the proximate cause of the student's death. The reasonable person standard required extraordinary care in the supervision of students on a roof. Further, the court held that severe injury, including death, was foreseeable in the situation. The court ruled that the potential danger warranted, at minimum, (a) instructions to students about the layout of the roof, (b) clear warnings about the danger of being on a roof, and (d) instructions to students on the exact procedures to follow. Absent these three factors, the court ruled that the school was liable for the fatal injury sustained by the student. (See *Dade County School Board v. Gutierrez*, 592 So.2d 25, 1991.)

This case illustrates the very real dangers present in school activities. Administrators should ensure that no student activity is undertaken unless dangers have been assessed, foreseeable injuries discussed, and appropriate instructions given. Parental permission should be sought for out-of-the-ordinary situations such as the one in this case. Finally, administrators should weigh carefully the benefits and risks of an activity before permitting it. *JP*