

University Has Right to Control “Fraternal Warfare”

It is not uncommon for faculty members to disagree with administrators on any one of a variety of matters concerning the university. In some cases, disagreements occur between faculty in the same department. Such disputes can become a distraction from the primary obligations of the faculty to teach and to conduct research. At some point, a university official must take steps to bring the disagreement to some resolution. When the university takes such action, the faculty member may feel that his or her rights to academic freedom have been violated and may look to the judicial system for vindication of those rights. How will a court balance the competing interests of academic freedom on the one hand and of efficient and orderly operation of the university on the other? A recent federal case provides an insight into that balancing process.

In *Webb v. Board of Trustees of Ball State University*, 167 F.3d 1146 (7th Cir. 1999), the court faced a rather extreme example of fraternal warfare in the university’s criminal justice and criminology department. A tenured professor served as department chair from 1991 to 1996 and alleged that the university administration plotted against him from the beginning of his term. The problem reached dramatic proportions in 1994 after the professor filed a sexual harassment complaint against another faculty member on behalf of a student. Instead of firing the accused faculty member as the department chair desired, the university recommended a reprimand. The department chair responded by accusing the administration of “ethical lapses” and by charging other members of the department with improprieties.

The pattern of charges and countercharges escalated to the point where the department chair presented a 225 page “indictment” of the department faculty to the Board of Trustees, blaming everyone but himself for a variety of improper acts. By this time three members of the department faculty had resigned. A committee appointed by the president to resolve the internal dispute recommended personnel changes. In response to these recommendations, the department chair, with the support of an untenured assistant professor, filed a series of discrimination complaints with the EEOC, none of which were found to have any merit.

In 1996, the remaining faculty of the department notified the president that the department chair no longer had their support and should be replaced. At the same time, the assistant professor who had supported the department chair failed to receive tenure. The president appointed a new chair, but the former chair refused to assist in the transition. To make matters even worse, a staff member began accusing the new chair of improper conduct. She was transferred to another department without loss of benefits.

When the new chair published the teaching schedule for the upcoming academic year, both the assistant professor and the former chair, to no one’s surprise, objected to

their assignments. The former chair claimed the assignments were retaliatory. The assistant professor's claim became moot because her therapist certified that she was clinically depressed and unable to teach. When a satisfactory resolution of the matter could not be reached, the former chair, the assistant professor, and the staff member all filed suit seeking an injunction against the university, claiming that their respective free speech rights had been violated.

An evidentiary hearing on the complaint took six days. At the close of the evidence, the trial judge denied the request for an injunction. The complaining parties appealed the decision of the trial court. As in the case of any request for injunctive relief, the issues on appeal were whether the plaintiffs would suffer irreparable harm if the injunction did not issue and whether the plaintiffs could demonstrate a substantial likelihood of success on the merits of their retaliation claim. The court concluded that neither issue could be resolved in the plaintiffs' favor.

In reaching this conclusion the court enumerated several important rules regarding the balance to be struck between the university's rights and the employee's rights. First, the court recognized that the university has the freedom "to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study." The court noted that all of the complaining parties were still employed and receiving their pay and that the university's prerogative to set teaching assignments deserved some protection from judicial interference when the plaintiffs could not show any pecuniary loss.

The appeals court also noted the disruptive effect of the plaintiffs' action on the teaching and scholarship of the department. The university was, according to the court,

. . . entitled to insist that members of the faculty (and their administrative aides) devote their energies to promoting goals such as research and teaching. When the bulk of a professor's time goes over to fraternal warfare, students and the scholarly community alike suffer, and the university may intervene to restore decorum and ease tensions.

The case of the former chair suffered a further damaging blow from evidence that during the time he prepared a book-length manuscript detailing his complaints he did not publish a single article or other scholarly work.

Of course, this case is unique in the scope of the disagreement within a department, but the guiding principles followed by the court in deciding the case apply to a wide variety of situations. Courts are reluctant to intervene in academic decisions made in good faith where a complaining party suffers no pecuniary loss. In addition, courts recognize the need and interest of a university to maintain the efficiency of its operations.

Therefore, both administrators and faculty should take some comfort from the *Webb* decision because principles articulated there give university officials broad discretion in handling academic matters.

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