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Bridgeport Board of Education v. NAEG, Local RI-200: What is the Appropriate Punishment for Actual and Perceived Threats in the Workplace?

Education Law Notes

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By Mark Sommaruga

We have all been emotionally touched by the tragedies in Columbine and Sandy Hook, not to mention workplace shootings such as those at Hartford Distributors and the Connecticut Lottery. In that context, employers (and especially school administrators) have been ever mindful of warning signs of potential violence. However, these same actors must counterbalance the need to be ever-vigilant with the rights of employees. A recent case rescinding an employee's termination highlights this tension.

In *Bridgeport Board of Education v. NAEG, Local RI-200*, 2013 WL 4873484 (Conn. Super. 2013), a school custodian (Adam Cleveland) sent a packet of written materials to various Bridgeport City officials, asserting that he had been a victim of a campaign of harassment by the School District's Operations Supervisor. Among other things, the packet contained descriptions of the Columbine and Virginia Tech shootings, along with a prediction that the harassing behavior at issue might precipitate an incident. Cleveland was terminated from his employment for violations of work rules prohibiting "physical violence, fighting or promoting a fight on city property," "behavior that disrupts the work environment to include indecent, inappropriate or immoral conduct," and "foul and abusive language directed at co-workers, visitors, clients or taxpayers."

Cleveland's union filed a grievance, asserting that Bridgeport did not have just cause for termination under the applicable collective bargaining agreement. A three-member panel of the State Board of Mediation and Arbitration ["SBMA"] agreed and determined that Cleveland's termination from employment was **not** for "just cause." The SBMA panel found that the incident constituted a "serious offense," that certain individuals had cause to fear for their lives as a result of the materials, and that under "normal circumstances" the Bridgeport Board of Education would be justified in terminating Cleveland's employment. Despite these findings, the SBMA panel noted that the applicable collective bargaining agreement provided an Employee Assistance Program ["EAP"], which permits employees to seek help if they suffer from an addiction or medical condition, and provided that management could refer an employee to the EAP on its own. Furthermore, the SBMA panel found that Cleveland's actions represented a "cry for help," and resulted from frustrations with his employment situation, as he believed that no one was available to help him. The arbitration panel did not order the reinstatement of Cleveland to his position, but rather ordered Cleveland to submit to the EAP for an evaluation and "a psychiatric work up." Only if Cleveland successfully completed the appropriate program,

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and was deemed by medical professionals to be capable of being reemployed, would he be restored to his position. If Cleveland declined to submit to the EAP program, or failed to satisfactorily complete the program, his termination would remain in effect.

The Bridgeport Board of Education filed an application to vacate the arbitration award in Connecticut Superior Court, asserting that the arbitration award was in violation of a clear public policy against violence in the workplace. In denying the application to vacate, the Court noted the fact that there may be a strong public policy against certain misconduct does **not** require an employer to terminate every employee who engages in that misconduct without regard to the facts and circumstances of a particular case; rather, "the question is whether the employee's misconduct was so egregious, that it requires nothing less than termination of the employee so as not to violate public policy." The Court lauded the SBMA for offering a "creative" middle-ground alternative between either reinstating Cleveland immediately or upholding his termination from employment. The Court found that the SBMA's approach "recognizes and respects the strong public policy involving workplace violence, while also recognizing that the parties bargained for the inclusion of an EAP program." In this factual context, and the heavy burden for a party challenging an arbitration award, the instant award was found to not violate public policy. The Court did note that a "different result might be required, had the panel confined itself only to the remedies of discharge from employment or reinstatement, and elected to reinstate the employee to his position without the need for medical clearance."

Lessons learned for employers? It is noteworthy that the Court ,as well as the arbitrators and even the union, conceded that serious misconduct did occur, and did not seek to minimize the public policy against workplace violence. Nonetheless, what appeared to be the critical factor for the Court was the arbitrators' recognition of the conduct's seriousness and the measures they required in order to provide a reasonable degree of protection before permitting the employee to return to the workplace. Simply put, when one is facing competing pressures from those claiming that a dangerous or harassing workplace demands the termination of an offending employee -- and threatening to pursue legal action against the employer in the absence of termination -- and those asserting that it would be unjust to terminate an offending employee who may simply be "misunderstood" -- and also threatening to pursue legal action -- a middle path may be to act in a Solomonic manner and propose a remedy involving serious discipline short of termination, perhaps with or as part of a "last chance" agreement, and, if possible, some means of assessing whether the employee poses a risk to the safety of his or her co-workers. Whether that is actually the most appropriate approach from a moral or policy perspective is open to debate, although when considering the potential legal ramifications, employers should weigh these competing pressures on a case by case basis.

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