

Court of Claims of Ohio

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THE AMERICAN ASSOCIATION OF
UNIVERSITY PROFESSORS,
MEDICAL COLLEGE OF OHIO
CHAPTER, et al.

Case No. 2005-02672

Judge Joseph T. Clark
Magistrate Holly True Shaver

Plaintiffs

MAGISTRATE DECISION

v.

THE MEDICAL COLLEGE OF OHIO

Defendant

{¶1} Plaintiffs brought this action alleging breach of contract. The issues of liability and damages were bifurcated and the case proceeded to trial on the issue of liability.

{¶2} Plaintiffs¹ are faculty members at defendant's university.² For a number of years prior to the 2004-2005 academic year, defendant provided a dependent tuition benefit (DTB) to its faculty members whose dependents were enrolled in a state college or university. A maximum benefit of \$4,600 per year was paid directly to the state college or university for each eligible dependent.

{¶3} On March 22, 2004, the finance and audit committee of the board of trustees voted to approve a recommendation to the board to eliminate the DTB in the 2004-2005 budget. (Joint Exhibit D, Page 6395.)

{¶4} On March 24, 2004, Amira Gohara, M.D., provost and dean of the school of medicine, sent an e-mail to all faculty advising that the DTB would be eliminated effective July 1, 2004. Dr. Gohara explained in the e-mail that the recommendation to discontinue

¹Plaintiff, The American Association of University Professors, Medical College of Ohio Chapter (AAUP), is a voluntary, unincorporated association comprised of a number of defendant's faculty members. The named plaintiffs, James Trempe, Thaddeus Kurczynski, Paul Lehmann, and Denis Lynch, are also faculty members at defendant's university.

²Defendant was formerly known as Medical College of Ohio (MCO).

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the DTB was presented to and approved by the board of trustees during its March 22, 2004 meeting. On May 24, 2004, the board of trustees approved contract renewals for faculty. On June 28, 2004, the board of trustees approved the proposed 2004-2005 budget. (Joint Exhibit F, Page 6437.)

{¶5} Plaintiffs assert that the board of trustees did not take any formal action to eliminate the DTB at its March 22, 2004 meeting. Plaintiffs further assert that the minutes from the March 22, 2004 and June 28, 2004 meetings do not show that any vote was taken to specifically eliminate the DTB. Plaintiffs argue that they are entitled to recover the DTB for the 2004-2005 academic year and any subsequent academic years until the DTB is formally eliminated. Plaintiffs alternatively assert that defendant committed a breach of employment contracts when it eliminated the DTB after the faculty contracts for 2004-2005 had been executed.

{¶6} Paul Lehmann, a professor in the department of medical microbiology and immunology, testified that he received the DTB in the 2003-2004 academic year for two of his children. Lehmann stated that he learned in April 2004, via e-mail, that a decision had been made to eliminate the benefit. Lehmann explained that in the 2004-2005 academic year, three of his children were enrolled in college, and that the elimination of the DTB had a “massive effect” on his income. Lehmann stated that the elimination of the DTB was the stimulus to begin an AAUP chapter at defendant’s university, and that the AAUP is a national organization that represents faculty with the goals of preserving academic freedom and protecting faculty rights.

{¶7} According to Lehmann, he expected to have faculty discussion and participation before the DTB could be eliminated. Lehmann testified that he was given little notice of the change and that he was required to sign his employment contract before the DTB was eliminated. Lehmann asserted that the board violated Article 1(D) of the faculty rules and regulations, in that the faculty should have had the opportunity to participate in the determination of policies and procedures governing such areas as benefits. He also

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stated that the minutes from the finance and audit committee meeting do not show that the board of trustees ever approved a recommendation to eliminate the DTB. (Joint Exhibit D, Page 6395.)

{¶8} James Trempe, a professor in the department of biochemistry and cancer biology, testified that in the 2003-2004 academic year, he received the DTB for his son who was attending Kent State University. Trempe also learned of the elimination of the benefit via e-mail. Trempe testified that the MCO chapter of the AAUP came into being in the late summer of 2004 and that he was president of defendant's chapter. He also testified that Thaddeus Kurczynski and Denis Lynch were members of the AAUP.

{¶9} Alan Marco, a professor of anesthesiology, testified that he was the president of the faculty senate for the 2004-2005 academic year. Marco explained that the official purpose of the faculty senate was to serve as an advisory body, and that the faculty senate was specifically invited to the board of trustees meetings.

{¶10} Marco stated that he attended a budget meeting in the late spring of 2003 where elimination of the DTB was discussed but further stated that no action was taken at that time. Marco also learned about the elimination via the March 24, 2004 e-mail. In response to faculty concerns, a special meeting of the faculty senate was held on March 31, 2004; as a result, Marco drafted a letter to President Jacobs. (Joint Exhibit J.) Marco was not eligible for the DTB when it was eliminated.

{¶11} William Earl McMillen testified that he was special assistant to the president of the university from 2003 to 2005 and that he served as secretary of the board of trustees from 1996 to August 2005. McMillen testified that the minutes of the March 22, 2004 board of trustees meeting show that the finance and audit committee recommended elimination of the DTB to the board of trustees; that he was present at the meeting and that no one spoke against eliminating the DTB; and that the finance and audit committee approved the recommendation to eliminate the DTB. (Joint Exhibit G, Page 6.) McMillen added that the

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elimination of the DTB had been discussed in prior meetings and that it was expensive for the university and difficult to justify.

{¶12} David Huey, CPA, testified that he was appointed to the board of trustees in 2000. Huey also testified that he was a member of the finance and audit committee and that he had attended the March 22, 2004 board of trustees meeting. Huey stated that the elimination of the DTB was discussed at the meeting in the larger context of cuts that were necessary in order to achieve a balanced budget. Huey was concerned that the DTB would be considered “out of line” to keep as a benefit when staff cuts were being made to balance the budget. Huey stated that the minutes of the March 22, 2004 board of trustees meeting show that the finance and audit committee voted to approve the recommendation to eliminate the DTB in the new budget.

{¶13} Lloyd Jacobs, M.D., testified that he became president of the university in November 2003. Jacobs stated that during the search process for his position, he was made aware that the university was not in a strong financial position, and that the search committee and the board of trustees expected the incoming president to “turn around” the university’s financial situation. Jacobs testified that the preparation of the budget was a significant aspect of his job.

{¶14} Jacobs testified that the finance and audit committee was charged with the task of examining the budgets that he had proposed in order to obtain approval from the board of trustees. Jacobs testified that he first became aware of the existence of the DTB when he was hired because he had a son in college at the time and he had received the benefit for six months. Jacobs recommended elimination of the benefit because it was a “very narrow benefit” in the sense that a relatively small number of faculty members were eligible to receive it. In addition, Jacobs stated that the DTB generated an expense to the university of approximately \$400,000 per year.

{¶15} Jacobs further testified that after the finance and audit committee had approved his proposal to eliminate the DTB, a line item of approximately \$400,000 was

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removed from the 2004-2005 budget. Jacobs testified that the 2004-2005 operating budget was approved at the board of trustees meeting on June 28, 2004, which is reflected in page 6437 of the minutes of the meeting. (Joint Exhibit F.)

{¶16} Defendant asserts that plaintiff, AAUP, does not have standing to bring this cause of action. In Ohio the doctrine of standing generally requires that litigants establish, at a minimum, a real interest in the subject matter of the suit. *State ex. rel. Dallman v. Court of Common Pleas* (1973), 35 Ohio St.2d 176, syllabus. “Standing requires demonstration of a concrete injury in fact, rather than an abstract or suspected injury.” *State ex. rel. Consumers League of Ohio v. Ratchford* (1982), 8 Ohio App.3d 420, 424. Associational standing is valid if the members of the association would have standing as individuals, the interests advanced by the association in support of standing are relevant to the association’s purpose or goals, and individual participation by association members is not required. *Ohio Academy of Nursing Homes, Inc. v. Barry* (1987), 37 Ohio App.3d 46.

{¶17} At trial, Lehmann and Trempe both testified that they were members of AAUP and that they incurred a financial loss in 2004-2005 due to the elimination of the DTB. Lehmann and Trempe also both submitted “assignment forms” as exhibits.

{¶18} The assignment forms state: “I hereby assign my rights to pursue any legal action against my employer, The Medical College of Ohio, relative to my employer’s refusal to provide me the dependent tuition benefit for the 2004-05 academic year, to the American Association of University Professors, MCO Chapter, of which I am a member.” Neither Kurczynski nor Lynch testified at trial; however, the trial exhibits include an assignment form signed by Lynch. In addition, the trial exhibits include assignment forms for 14 other individuals. No assignment form is signed by Kurczynski.

{¶19} The court finds that the assignment forms do not establish whether each individual who signed a form would have been eligible for the DTB in 2004-2005. The court further finds that without each individual’s testimony, the court cannot conclude whether each individual in fact suffered a concrete injury as a result of the elimination of

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the DTB. Therefore, the court finds that AAUP has not met the requirements for associational standing.

{¶20} However, even if the court were to find that AAUP met those requirements, the court finds that plaintiffs have failed to prove by a preponderance of the evidence that defendant committed a breach of contract or a breach of any other duty it owed to them.

{¶21} As a general rule, the goal of the court in construing written contracts is to ascertain the intent of the parties, which is presumed to be stated in the document itself. See *Foster Wheeler Enviresponse, Inc. v. Franklin Cty. Convention Facilities Auth.*, 78 Ohio St.3d 353, 1997-Ohio-202; *Graham v. Drydock Coal Co.*, 76 Ohio St.3d 311, 1996-Ohio-393. Where the terms of a contract are clear and unambiguous, the court cannot find a different intent from that expressed in the contract. *E.S. Preston Assoc., Inc. v. Preston* (1986), 24 Ohio St.3d 7.

{¶22} Joint Exhibit C is a copy of a standard letter of appointment for the 2004-2005 academic year. Faculty members are required to sign a letter of appointment each year to form a binding employment contract between the faculty member and the university. The letter of appointment states, in part:

{¶23} “This appointment to the Faculty of the Medical College of Ohio as described above, cancels and supersedes any previous appointment. The nature and type of your appointment is described in the Bylaws, Rules and Regulations of the Medical College of Ohio. Your appointment is subject to and *you agree to be bound by the provisions of said Bylaws, Rules and Regulations and other actions of the Board of Trustees currently in effect, or as they may be amended or adopted from time to time.*” (Emphasis added.)

{¶24} Plaintiffs’ argument that defendant’s elimination of the DTB was somehow invalid because it occurred after the employment contracts were executed is without merit in light of the plain language of the employment contract. Furthermore, defendant’s DTB policy states: “The implementation of this policy on a continual basis shall be subject to the availability of Medical College of Ohio funding for this purpose and is subject to change at a

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regularly scheduled meeting of the Medical College of Ohio Board of Trustees.” (Joint Exhibit I, Page 2.) The court finds that the DTB policy explicitly states that its availability is subject to change as a result of any budget constraints.

{¶25} In regard to plaintiffs’ argument that proper procedure was not followed to eliminate the DTB, the court finds that plaintiffs have not proven that any procedural irregularities occurred. The court further finds that the evidence shows that on March 22, 2004, the finance and audit committee met at 2:40 p.m., and voted to approve its own recommendation to eliminate the DTB. Then, at 5:30 p.m., the board of trustees met and voted to approve a budget that did not contain an expenditure for the DTB for fiscal year 2004-2005.

{¶26} For the foregoing reasons, the court finds that plaintiffs have failed to prove any of their claims by a preponderance of the evidence and accordingly, judgment is recommended in favor of defendant.

A party may file written objections to the magistrate’s decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).

HOLLY TRUE SHAVER
Magistrate

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