

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1114

Cir. Ct. No. 2013CV1104

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

THOMAS LECHNIR,

PETITIONER-APPELLANT,

v.

UNIVERSITY OF WISCONSIN-OSHKOSH,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Winnebago County:
BARBARA H. KEY, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. This case stems from the nonrenewal of the employment contract of Thomas Lechnir, the long-time baseball coach at the University of Wisconsin—Oshkosh (UWO). Lechnir contends UWO’s decision not to rehire him is factually and legally groundless. We affirm.

¶2 Lechnir’s affiliation with UWO’s baseball program spanned thirty-five years, first as a student player, then assistant coach, then twenty-five years as head coach. His employment largely was governed by a three-year “rolling-horizon” contract, which provided for automatic yearly extensions without a formal renewal process.

¶3 In 2002, UWO began work on the Oshkosh Sports Complex (OSC), a facility that would serve several UWO sports programs. Baseball was not one of them. Lechnir offered to head up funding a baseball stadium, “Alumni Stadium,” that would be financially independent of the OSC. UWO agreed. In addition, the UWO Foundation agreed to cover the “carrying costs,” or capitalized interest.

¶4 In April 2010, UWO Chancellor Richard Wells advised Lechnir that his rolling-horizon contract arrangement would end on June 30, 2013, with the expiration of his then-existing contract, but he would be subject to contract renewal in the May 2012 renewal cycle. Wells told Lechnir the reason was “the significant debt created in the expansion and renovation of Alumni Stadium.”¹ The contract-change decision was not subject to appeal or grievance.

¶5 In May 2012, Wells informed Lechnir that, for “reasons ... derived from a review by your supervisor,” UWO would not be offering him a new contract. Pursuant to Lechnir’s written request, Wells explained that the nonrenewal was due to Lechnir’s inadequate performance in four areas: fundraising, student athlete retention and academic success, administrative duties, and community relations and engagement.

¹ UWO eventually replaced the rolling-horizon contracts of the athletic director and all full-time coaches with one-year fixed-term contracts.

¶6 Lechnir appealed. UWO Vice Chancellor of Student Affairs Petra Roter reiterated that his contract was not being renewed for the reasons set forth by Chancellor Wells. She told Lechnir, however, that UWO would “recommend to the Academic Staff Senate that [it] provide an ad hoc process allowing for a peer review of this decision ... using the framework of the established rules for an appeal of a non-renewal, as outlined in [UWO] faculty and academic staff handbook ACS 8.4” (ACS 8.4).

¶7 UWO named a three-member ad hoc academic staff committee to review Lechnir’s claim that the alleged deficiencies did not warrant nonrenewal. After a hearing, the committee found that he failed to meet his burden of persuasion in two of the areas: fundraising and administrative duties. It concluded that it was “not able to determine whether those two bases standing alone are sufficient reason to refuse to grant an additional contract of employment to Mr. Lechnir,” and deferred the decision to Chancellor Wells.

¶8 Wells concluded that the committee’s findings provided “ample and sufficient substantiation” for the nonrenewal decision. Wells informed Lechnir that he could petition for judicial review under WIS. STAT. § 227.53(1)(a)2m. (2013-14).² The circuit court affirmed the chancellor’s decision as supported by sufficient evidence. Lechnir appeals.

¶9 Lechnir and UWO disagree as to the posture of the case. Lechnir presents it as a standard WIS. STAT. ch. 227 review. UWO responds that as an at-

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

will employee, Lechnir does not have a right to review, despite Wells's mistaken advice that he did.

¶10 UWO fails to address ACS 8.4. ACS 8.4 provides “an opportunity ... to have a nonrenewal decision reviewed by an academic staff hearing committee” to ascertain if the decision was based on “[i]mproper consideration” of, for example, “[u]nfounded, arbitrary, or irrelevant assumptions of fact ... about work or conduct.” It then affords further review rights “[i]f the results of the reconsideration meeting are not satisfactory to the concerned academic staff member.” The process could culminate in the nonrenewal being rescinded. We therefore assume without deciding that Lechnir was entitled to review under the process UWO chose to provide.

¶11 This court reviews the decision of the administrative agency, not that of the circuit court. *Stafford Trucking, Inc. v. DILHR*, 102 Wis. 2d 256, 260, 306 N.W.2d 79 (Ct. App. 1981). A “court shall not substitute its judgment for that of the agency as to the weight of the evidence on any disputed finding of fact,” so long as the fact is supported by substantial evidence in the record. WIS. STAT. § 227.57(6); *Advance Die Casting Co. v. LIRC*, 154 Wis. 2d 239, 249, 453 N.W.2d 487 (Ct. App. 1989). “Evidence is substantial when it is relevant, probative and credible in an amount permitting a reasonable fact-finder to base conclusions on it” *Id.* at 249-50.

¶12 Wells advised Lechnir that he failed to make meaningful inroads on the approximately \$285,000 debt remaining on the baseball stadium and to follow through on particular efforts such as selling outfield signage and stadium naming rights, securing sponsorship of the batter's eye, and holding annual phone-a-thons.

¶13 The record establishes that Lechnir told the committee that he wanted to “take the lead on building and gifting the university a baseball stadium”; that UWO’s only financial contribution would be the UWO Foundation’s assistance with carrying costs; that UWO held Lechnir responsible for the approximately \$285,000 debt; that, while all contractors had been paid, UWO had paid a number of the bills and sought reimbursement from Lechnir for those it had covered; and that the fundraising plan spelled out specific ways for him to work to reduce the debt.

¶14 Lechnir responds that he provided evidence that the total construction cost was less than UWO’s claimed figure; that he was unaware that the construction involved loans, as he thought it would proceed only as funds arrived to pay for it; and that he believed all bills had been paid. He also complains that the points in the fundraising plan were not said to be solely his responsibility. He directs us to no efforts he made in those areas, however.

¶15 The committee unanimously found that Lechnir did not persuade it that the administration’s claim of a debt owing on the project was based on unfounded, arbitrary or irrelevant assumptions of fact. The fundraising shortcomings described in the record amply support Lechnir’s nonrenewal. We may not substitute our judgment for that of the agency as to the weight of the evidence on any disputed finding of fact. WIS. STAT. § 227.57(6); *Coulee Catholic Sch. v. LIRC*, 2009 WI 88, ¶31, 320 Wis. 2d 275, 768 N.W.2d 868. Accordingly, we need not address the sufficiency of the evidence supporting either the alleged administrative duties deficiencies or other miscellaneous misconduct claims.

¶16 Lechnir raises other challenges to UWO's decision. He contends he was denied due process because, by tying his continued employment to his performance, UWO vested in him a property interest and so owed him a full due process hearing governed by the rules of evidence at which he could call witnesses. We disagree.

¶17 At-will employees do not have a property interest in continued employment. *See Vorwald v. Sch. Dist. of River Falls*, 167 Wis. 2d 549, 557, 482 N.W.2d 93 (1992). The review UWO provided Lechnir fully comported with ACS § 8.4, providing a review procedure for contract nonrenewals. Lechnir was not entitled to more.

¶18 Lechnir also asserts that the "baseless allegations" against him violated his liberty and reputational interests. This claim likewise fails.

¶19 In a public employment context, liberty comprises two interests: reputation and employability. *Nufer v. Village Bd. of Palmyra*, 92 Wis. 2d 289, 297, 284 N.W.2d 649 (1979). The reputation interest is infringed when "charges impugn one's good name, reputation, honor, or integrity in the community." *Id.* "The employability interest is infringed when the reasons for dismissal are those that would significantly undermine opportunities for future employment." *Id.*

¶20 Neither interest is implicated here. The nonrenewal decision chiefly was based on Lechnir's fundraising failings, not a character-sullying charge such as dishonesty or immorality. Further, Lechnir does not contend, nor does the record suggest, that the nonrenewal decision would significantly undermine opportunities for his future employment.

¶21 Lechnir also argues that the decision was arbitrary and capricious because Roter bore him personal animus, such that the ruling represented her will and not UWO’s rational judgment.

¶22 Roter did tell the committee that, when UWO advised Lechnir it would give him its contract decision in January 2013, her mind already was “pretty much made up” and that she told Lechnir that if she were to make a decision then and there “he would not like my answer.” She also said, however, that she nonetheless wanted to afford Lechnir “more time to attend to some of the performance issues” in hopes “he would use that additional time to move forward in a positive direction and give me a reason to give him another contract.” We fail to see how this bespeaks improper hostility. Roter’s explanation, coupled with our conclusion that Lechnir’s nonrenewal was supported by substantial evidence, satisfies us that the decision was not arbitrary and capricious.

¶23 Lechnir next claims the decision illegally punished him for filing a whistleblower complaint. *See* WIS. STAT. § 230.83. Lechnir sent Wells an e-mail indicating his intent to pursue a complaint against UWO, alleging that UWO mismanaged and wasted donor funds, diverted stadium funds to OSC,³ refused a major donor’s gift, misrepresented the remaining debt, and refused to renew his contract on the basis of false allegations.

¶24 The record does not substantiate the accusations. Roter told the committee her decision was not impacted by Lechnir’s whistleblowing but by his

³ Lechnir contended that the ballooning of carrying costs from the initial estimate of \$18,000 to \$20,000 to nearly \$88,000 showed that Alumni Stadium and OSC funds were commingled.

attitude, his refusal to acknowledge and work on performance concerns, and his insistence on doing things his way, and that, as the donor's potential gifts largely were contingent upon Lechnir's continued employment but UWO could not accept gifts with strings attached, the bulk of the gifts did not materialize. Most significantly, an independent audit revealed no wrongdoing.

¶25 Finally, Lechnir complains that the committee abdicated its role in the appeal process by deferring the ultimate decision to Wells, a necessarily biased decisionmaker, Lechnir asserts, because he authored the initial non-renewal letter. First, the committee did not abdicate its role. The academic staff rules make it clear that the extent of the committee's authority is to make a recommendation to the chancellor. The chancellor's decision is final.

¶26 Second, as chancellor, Wells naturally was privy to and communicator of the reasons for Lechnir's proposed nonrenewal. We do not accept that, after the facts were further developed, Wells would be unable to objectively review the matter and render an unbiased decision.

¶27 We are satisfied that Lechnir was properly shouldered with the burden of persuading the committee that his nonrenewal was based on an improper factor and that the committee's decision was supported by substantial evidence on judicial review. We therefore decline Lechnir's invitation to either modify the decision or remand it for further evaluation.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

