

Plaintiff further maintains that UA's conduct violates its own published policies and procedures that promote academic freedom.

In his claim for declaratory judgment, plaintiff seeks a finding that UA interfered with his contract by denying him the opportunity to teach summer courses; by encouraging him to ignore the faculty manual; by considering student evaluations of him as the only criteria for evaluating his job performance and by taking numerous forms of adverse action against him; *e.g.*: issuing a warning regarding plaintiff's alleged violations of professional responsibilities; denying plaintiff summer teaching, research assignments and other privileges traditionally afforded to tenured faculty; denying plaintiff salary and cost of living increases; communicating to prospective students that plaintiff was a poor instructor; assigning plaintiff to teach two courses that were scheduled at the same time; and forwarding student evaluations to plaintiff's superiors without first allowing plaintiff an opportunity to comment upon them.

In response to these claims, UA argues that plaintiff has been the subject of numerous student complaints over the years and that his performance as a professor was, at best, average. UA maintains that these reasons form the basis for its decisions and that, at all times, it acted within its discretion and in accordance with its policies and procedures.

Central to this controversy is a May 22, 1998, memorandum issued by then-Dean Steven Hallam. (Plaintiff's Exhibit 1.) The memo was intended as a warning letter, and explained that plaintiff would be given no merit raises or summer teaching assignments until his performance improved. It lists eight specific "areas of concern" regarding plaintiff's teaching performance:

1. Your grading standards result in excessively low grades for all your students on a continuous basis.
2. You refuse to grade students' papers when you perceive there are too many grammatical errors.
3. You conduct courses in which student presentations comprise the majority or entire teaching material for the course.
4. Your evaluations are less than the acceptable standard for the College of Business Administration.
5. Students are afraid to ask questions in your class due to your demeanor and conduct, which they perceive is threatening and intimidating.
6. Drop rates for your classes exceed the typical drop rates throughout the entire College of Business Administration.
7. Your conduct on Recruitment Committees has bordered on inadequate and inappropriate.
8. Your publications have ceased.

Dean Hallam's memo also outlines plaintiff's professional responsibilities to his students, the university and his colleagues, and states, *inter alia*:

Associate Dean Jim Strong, Interim Chair Kenneth Dunning and I have carefully reviewed your performance, and all agree that this letter of warning, the withholding of merit pay and summer school instruction is warranted. We are most displeased with your teaching and professional performance.

[Cite as *Meyer v. Univ. of Akron*, 2002-Ohio-427.]

Plaintiff has disputed virtually every aspect of this memo since the time it was received. Indeed, his September 30, 1998, response to Dean Hallam consists of four pages and seventeen multi-page appendices. (Plaintiff's Exhibit 2.) Although he never filed a grievance, plaintiff did approach then-Provost Noel Leathers to change the decision. (Plaintiff's Exhibit 51.) The eight areas of concern are quoted in plaintiff's complaint, and a great deal of time was spent by the court in analyzing the memo's content both during trial and in reviewing plaintiff's post-trial brief. After review of all of the evidence and exhibits submitted on this issue, the court is compelled to agree with defendant's argument that plaintiff is essentially disputing a "judgment call" made by his academic superiors.

The law is well-settled that trial courts generally defer to the academic decisions of colleges and universities unless there has been such a substantial departure from the accepted academic norms so as to demonstrate that the committee or person responsible did not actually exercise professional judgment. *Bleicher v. Univ. of Cincinnati College of Med.* (1992), 78 Ohio App.3d 302, 308. In *Gogate v. Ohio State University* (1987), 42 Ohio App.3d 220, the Tenth District Court of Appeals cautioned trial courts to be diligent not to intrude into faculty employment determinations and not to substitute their judgment with respect to the qualifications of faculty members for promotion or tenure. The court noted that determinations on such matters as teaching ability, research and service simply cannot be evaluated solely on the basis of objective factors. *Id.* 226.

With respect to plaintiff's request for a declaratory judgment that UA interfered with his contract, or for an award of

monetary damages on that claim, the court notes that the key element of intentional interference with contractual relations is interference by someone who is not a party to the contract. *Garg v. Venkataraman, et. al.* (1988), 54 Ohio App.3d 171, syllabus, paragraph two. Similarly, a cause of action for tortious interference with contract will not lie against a supervisory employee acting within the scope of his duties. *Anderson v. Minter* (1972), 32 Ohio St.2d 207. Since the contract at issue in this case is between plaintiff and UA, and the decisions complained of were made by agents or employees of UA who were unquestionably acting within the scope of their employment, plaintiff is not entitled to either declaratory judgment or monetary damages on his interference with contract claims.

Further, with respect to plaintiff's claims for violation of due process and equal protection, it is another well-settled rule of law that this court is without jurisdiction to determine such issues. *Burkey v. S. Ohio Correctional Facility* (1988), 38 Ohio App.3d 170. Therefore, the claims premised upon constitutional violations must be denied.

Based upon the forgoing analysis, the court concludes that plaintiff's complaint is essentially one for breach of contract.

Thus, the pivotal issue in this case is whether Dean Hallam violated any of UA's published policies and procedures when he issued the warning letter and made the decision to withhold plaintiff's merit raises and summer teaching assignments.

For purposes of evaluation leading to salary adjustment or merit raises, the College of Business Administration's (CBA) Policies and Procedures Manual (Plaintiff's Exhibit 65), at

Section 1.06.01 reads, in pertinent part: "In consultation with each Department Chair, the College Dean shall establish guidelines regarding minimum proportions which each Department *** may allocate to reward teaching, intellectual contribution and service."

Section 1.06.01(1) provides, in pertinent part: "Individual faculty members may be allocated salary adjustments based on the evaluation of their performance by their Department Chair. The amount of such adjustment may be limited by a college maximum amount established by the Dean. Zero salary adjustments are also possible."

Regarding merit raises, Section 1.06.01(2) provides, in pertinent part: "*** If any faculty member's performance is judged by the Chair and Dean to be so unsatisfactory in one or more categories as to detract from the College's mission and the AACSB mandate for continuous quality improvement, then the salary adjustment for all categories may be reduced to zero."

The court finds there has been no deviation from the above-referenced policies in this case. Dean Hallam's May 22, 1998, memo makes clear that his judgment of plaintiff's performance was discussed with and supported by both Kenneth Dunning, the interim department chairperson, and Associate Dean James Strong. The memo contains detailed reasoning for the evaluation. While plaintiff vehemently disagrees with that reasoning, the evidence fails to establish "a substantial departure from accepted academic norms" or that the individuals involved failed to "actually exercise professional judgment." See *Bleicher v. University of Cincinnati College of Medicine*, and *Gogate v. Ohio*

State University, supra. Moreover, the matter was reviewed, at plaintiff's behest, by then-Provost Leathers and no changes were made to Dean Hallam's evaluation or decisions. At trial, Dr. Leathers gave clear and credible testimony in which he stated that he believed Dean Hallam's decisions to be reasonable and that he had found no cause to overturn them.

Turning to summer teaching assignments, UA's Faculty Manual, Bylaws and Regulations, (Plaintiff's Exhibit 56) contains the following provision at Section 3359-20-032(B)(5)(a): "[f]aculty loads during the summer and interim sessions are determined by the department chair and dean of the college after consultation with individual faculty members." It was also made clear, in a May 13, 1998, memorandum to CBA faculty issued by Associate Dean James Strong (Plaintiff's Exhibit 35), that "[s]ummer teaching is a privilege and not a right, and may be awarded on the basis of each faculty member's demonstrated commitment to advancing the mission of the college." The court finds it is implicit in both these policies that the discretion of the department chair and college dean are tantamount. Finding no evidence that such discretion was exercised arbitrarily or capriciously by either individual in this case, the court concludes that plaintiff cannot prevail on any of his claims that are premised upon this issue.

In his claim for injunctive relief, plaintiff seeks reinstatement to the employment status he held prior to May 1998, with no loss of summer employment, salary increases or other privileges. Plaintiff also alleges that the reduction in salary coupled with the "false statement" regarding his failure to

assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

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