[Cite as *Nnazor v. Cent. State Univ.*, 2016-Ohio-3151.]

REGINALD NNAZOR Plaintiff v. CENTRAL STATE UNIVERSITY Defendant	Case No. 2015-00202 Judge Patrick M. McGrath Magistrate Holly True Shaver DECISION

{¶1} On March 4, 2016, defendant filed a motion for summary judgment pursuant to Civ.R. 56(B). With leave of court, plaintiff filed his response on April 4, 2016. On April 8, 2016, defendant filed a motion for leave to file a supplemental memorandum in support of its motion, and a motion for leave to file the same, which is GRANTED. The motion for summary judgment is now before the court on a non-oral hearing pursuant to L.C.C.R. 4(D).

{¶2} Civ.R. 56(C) states, in part, as follows:

{¶3} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor." *See also Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

{¶4} On November 3, 2010, defendant sent plaintiff a letter offering him the position of Dean of the College of Education, effective January 3, 2011. (Plaintiff's Exhibit A.) The letter states that plaintiff's initial salary would be $94,000; that he would serve at the pleasure of the Board of Trustees; and that his duties would include overseeing the functions of the College of Education. The letter further states that upon acceptance of the offer, plaintiff would be referred for a "tenured faculty appointment as a full professor of education. The faculty Collective Bargaining Agreement governs faculty appointments, tenure and rank. Pursuant to the Collective Bargaining Agreement, your faculty appointment will be based upon the recommendation of the Department Chairperson in consultation with the faculty of the Department." The letter advises that acceptance of the offer would be effectuated by signing it and returning it to Provost and Vice President for Academic Affairs, Juliette Bell, within seven working days. Plaintiff signed the offer letter on November 5, 2010.

{¶5} On December 3, 2010, plaintiff wrote a letter to Bell, wherein he stated that he had accepted the offer of the position of Dean, and requested to be granted tenure as Full Professor of Education. (Plaintiff's Exhibit 5.) Plaintiff began his employment with defendant on January 3, 2011. On February 25, 2011, defendant's Board of Trustees approved "the award of tenure and faculty status at the rank of Professor of Education for [plaintiff] as part of his appointment to the position of Dean of the College of Education effective March 1, 2011." (Plaintiff's Exhibit 6.)

{¶6} On May 29, 2014, Charles Wesley Ford, Jr., Provost and Vice President for Academic Affairs, asked plaintiff to resign from his position as Dean of the College of Education under threat of action being taken to remove him from the position. (Complaint, ¶ 4.) That same day, plaintiff acknowledged that he intended to submit his letter of resignation by May 30, 2014, to be effective June 30, 2014, but requested an opportunity to discuss his adjusted salary and pay schedule. (Complaint, ¶ 5.) On May 30, 2014, plaintiff tendered a resignation letter to Dr. Ford. (Defendant's Exhibit C.)

The letter states, in part: "I would like to resign my position as Dean of the College of Education effective June 30, 2014 to assume active role as tenured Full Professor of Education effective July 1, 2014." (*Id*.) Plaintiff's request to discuss his adjusted salary and pay schedule was not granted. (Plaintiff's answers to defendant's first set of interrogatories, #13.)

{¶7} On June 23, 2014, defendant issued plaintiff a letter stating: "We are pleased to reaffirm your tenured appointment as Professor of Professional Education effective Fall 2014. This is a nine month appointment which begins on August 7, 2014. The base salary is $63,000. The university will pay you $5,250.00 per month for July and August 2014. * * * We know that our offer represents an important professional decision for you. Please contact the Chair of the Professional Education Department to clarify the department's expectations and to discuss your professional activities, course assignments, syllabi, textbook orders and office space. * * * In addition to teaching and scholarship, we expect all faculty to advise students, to participate in University activities, and to be active in public service and other services as discussed in the Collective Bargaining Agreement. Criteria for reappointment, tenure, and promotion focus on all of these elements." (Plaintiff's Exhibit C; Defendant's Exhibit D.) Plaintiff did not sign the letter. (Complaint, ¶ 5.) Under the agreement between defendant and the American Association of University Professors, Central State University Chapter, effective September 1, 2011 through August 31, 2014 the minimum salary for a professor was $63,000. (Complaint, ¶ 7.)

{¶8} Plaintiff asserts that defendant breached his contract of employment when it unilaterally reduced his salary to $63,000. Defendant asserts that plaintiff has failed to state a claim for breach of contract.

{¶9} In order to prove breach of contract, plaintiff must prove the existence of a contract; performance by plaintiff; breach by defendant; and damages or loss as a result of the breach. *Samadder v. DMF of Ohio, Inc*., 154 Ohio App.3d 770, 2003-Ohio-5340.

The construction of written contracts is a matter of law. *Alexander v. Buckeye Pipe Line* Co., 53 Ohio St.2d 241, paragraph one of the syllabus (1978). The cardinal purpose for judicial examination of any written instrument is to ascertain and give effect to the intent of the parties. *Aultman Hosp. Assn. v. Community Mut. Ins.* Co., 46 Ohio St.3d 51 (1989). "The intent of the parties to a contract is presumed to reside in the language they chose to employ in the agreement." *Kelly v. Medical Life Ins.* Co., 31 Ohio St.3d 130, paragraph one of the syllabus (1987).

{¶10} An employment relationship with no fixed duration is deemed to be at will, which refers to the traditional rule that an employer may terminate the employment relationship at any time, for no cause, or any cause that is not unlawful. *Welch v. Finlay Fine Jewelry Corp.,* 10th Dist. Franklin No. 01AP-508, 2002-Ohio-565; *Collins v. Rizkana,* 73 Ohio St.3d 65, 67, 1995-Ohio-135. However, the terms of discharge may be altered when the conduct of the parties indicates a clear intent to impose different conditions regarding discharge. *Condon v. Body, Vickers & Daniels,* 99 Ohio App.3d 12, 18 (8th Dist.1994). The two exceptions to the employment at will doctrine are promissory estoppel, and an express or implied contract altering the terms for discharge. *Mers v. Dispatch Printing* Co., 19 Ohio St.3d 100, 103-104 (1985).

{¶11} Employer policies and oral representations can constitute evidence of an implied employment contract removing a plaintiff from the set of at-will employees. *Fennessey v. Mount Carmel Health Sys.,* 10th Dist. Franklin No. 08AP-983, 2009-Ohio-3750, ¶ 8 citing *Mers, supra.* However, plaintiff has "a heavy burden" to establish an implied contract inasmuch as he must demonstrate the existence of each element necessary to the formation of a contract including the exchange of bilateral promises, consideration, and mutual assent. *Id.* citing *Sagonowski v. The Andersons, Inc.*, 6th Dist. Lucas No. L-03-1168, 2005-Ohio-326, ¶ 14.

{¶12} Plaintiff asserts that his initial salary was for both his Dean position and his tenured professor position, and that he was never informed that if he were no longer

Dean, his salary as a tenured professor would be reduced. Plaintiff further argues that although the minimum salary for a professor was $63,000 per year, based upon his qualifications and his years of service, defendant's unilateral reduction in his salary in August 2014 was not justified. Plaintiff further argues that his appointment as tenured professor began in 2011 and that defendant's unilateral "resetting" of August 7, 2014 as a new effective date of his appointment as tenured Professor of Education breached his initial contract of employment and caused both a loss of service years and seniority. Defendant asserts that plaintiff's employment as Dean was not governed by a contract but, rather, that plaintiff was an at-will employee as Dean; that his employment as a tenured professor was governed by a Collective Bargaining Agreement (CBA); and that any dispute that plaintiff has with his current salary as a tenured professor is governed by the terms of the CBA over which this court lacks jurisdiction.

{¶13} In support of its motion, defendant filed the affidavit of Charles Wesley Ford, Jr., who states in relevant part:

{¶14} "3. As is customary for all new Deans, after beginning his employment at CSU, Dr. Nnazor was recommended to receive an award of tenure and faculty status at the rank of Professor of Education. The award of tenure and faculty status for Dr. Nnazor was granted effective March 1, 2011. * * * As is customary, the grant of tenure and faculty status was a courtesy afforded Dr. Nnazor as a result of his position as Dean, but did not require any additional duties or responsibilities. Dr. Nnazor did not serve as faculty or teach any courses during the time he served as Dean, nor was he paid as a member of the faculty during this time.

{¶15} "4. Dr. Nnazor's position as Dean was a non-faculty, administrative position in which he served for 12-months each year. He did not have a contract, nor was he subject to a collective bargaining agreement. CSU administrators, including Dean Nnazor, served at the pleasure of the President and the Board of Trustees. I served as Dean Nnazor's direct supervisor.

{¶16} "5. In May of 2014, I spoke to Dr. Nnazor regarding concerns over his performance as Dean. I then verbally asked for his resignation acknowledging that the University wanted to go in a different direction. Dr. Nnazor told me that he would resign from his position as Dean effective June 30, 2014, and would take a position as a tenured professor in the Department of Professional Education. I advised Dr. Nnazor that he would face removal from his position as Dean, unless I received his letter of resignation. Dr. Nnazor chose to resign his position as Dean of the College of Education, and submitted his formal resignation effective June 30, 2014. A true and accurate copy of Dr. Nnazor's resignation letter is attached as Exhibit C.

{¶17} "6. As indicated in his resignation letter, after the effective date of his resignation from his position as Dean, Dr. Nnazor assumed the role of a member of the faculty at the rank of professor. All faculty members at CSU are employed in accordance with a collective bargaining agreement (CBA) negotiated by the faculty union. Thus, once Dr. Nnazor assumed a position on the faculty, his employment was controlled by the CBA. By letter dated June 23, 2014, I reaffirmed that Dr. Nnazor would begin his service as a professor effective August 7, 2014. I further advised Dr. Nnazor he would be paid for his nine-month faculty appointment at a base annual salary of $63,000. A true and accurate copy of the letter I sent Dr. Nnazor is attached as Exhibit D. The salary offered to Dr. Nnazor was in accordance with the salary requirements of the CBA.

{¶18} "7. As is common practice, Dr. Nnazor was asked to sign this letter as an indication of his acceptance of the faculty position. Dr. Nnazor did not sign the appointment letter, but did begin serving as a member of the faculty in accordance with the terms contained in the letter. Dr. Nnazor was initially paid at the rate of $63,000 per calendar year for his service as a member of the CSU faculty, and since that time has received salary increases in accordance with the CBA.

{¶19} "8. Attached as Exhibit E is a true and accurate copy of the relevant provisions of the CBA that were in effect at the time Dr. Nnazor began serving as a member of the faculty. As can be seen in Article 33 of the CBA, the minimum salary of a professor in August of 2014 was $63,000, the amount that Dr. Nnazor was initially paid. A new CBA became effective on September 1, 2014. Relevant provisions of this most recent CBA are attached as Exhibit F. As can be seen in Article 33 of the current CBA, the minimum salary for professors is currently $64,500. Thus, less than a month into his new role as professor, Dr. Nnazor received a raise to an annual salary of $64,500 for his nine-month faculty appointment.

{¶20} "9. Pursuant to the terms of Article 31 of the CBA, the Department may exercise some discretion when offering potential faculty members an initial salary in an effort to recruit them to CSU. This provision did not apply to Dr. Nnazor because he already held the status of a tenured professor at CSU. Regardless, the Department Chair never requested that I appoint Dr. Nnazor at a higher salary than that required by the CBA, nor did I believe a higher salary was warranted under the circumstances.

{¶21} "10. Dr. Nnazor was paid in full in accordance with his 12-month salary of $94,000 for all the time he served as Dean. Since he began serving as a member of the faculty, he has been paid in full for his service in accordance with the CBA.

{¶22} "11. The CBA is negotiated by the faculty union and outlines the terms of employment governing all faculty members, including Dr. Nnazor. Article 47 of the CBA entitled 'Grievance and Arbitration' provides a remedy for faculty members who have complaints about the terms of their employment. The decision of the arbitrator is binding upon all parties to the CBA.

{¶23} "12. It is my understanding that Dr. Nnazor believes that he is entitled to a faculty salary that is above that required by the CBA. However, the Administration cannot unilaterally alter the provisions of the CBA upon the request of a single faculty member. More importantly, like other faculty, Dr. Nnazor will continue to receive raises

in accordance with the CBA. Thus, the longer a faculty member is employed by CSU, the higher his/her salary will be. In addition, as discussed above, certain Departments, particularly the sciences, will at times recommend a higher initial salary in order to recruit a particular faculty member. Thus, it is not uncommon for salaries to vary from Department to Department as is allowed by the CBA." (Affidavit of Ford.)

{¶24} With regard to Plaintiff's Exhibit A, the plain language of the document shows that plaintiff was offered the position of Dean of the College of Education, to begin on January 3, 2011, at an annual salary of $94,000. Plaintiff accepted the offer by his return of the signed letter. Plaintiff served as Dean of the College of Education until he resigned from this position, effective June 30, 2014, via his resignation letter dated May 30, 2014. The term of plaintiff's employment as Dean had no fixed duration, and when he signed the offer letter, he agreed to serve at the pleasure of the Board of Trustees. Therefore, the only reasonable conclusion is that plaintiff's employment as Dean was at-will, and that he resigned from that position effective June 30, 2014. Furthermore, plaintiff's performance as Dean ceased when he resigned from that position. Accordingly, plaintiff cannot prove that he performed under a contract after any alleged breach by defendant, and any claim of breach of contract with regard to Plaintiff's Exhibit A fails as a matter of law.

{¶25} With regard to Plaintiff's Exhibit B, the plain language of the document shows that the Board of Trustees approved tenure and faculty status at the rank of Professor of Education for plaintiff as part of plaintiff's appointment to the position of Dean of the College of Education. With regard to Plaintiff's Exhibit C, after plaintiff's resignation as Dean was tendered and accepted, defendant offered plaintiff the position of Professor of Professional Education, effective Fall 2014, at a base salary of $63,000. Although plaintiff never signed the letter, he began teaching as a Professor of Professional Education in August 2014. The only reasonable conclusion is that plaintiff accepted defendant's offer of employment as Professor of Professional Education,

effective Fall 2014, at a base salary of $63,000 when he began performance, despite his lack of signature on the offer letter. Furthermore, as stated in Plaintiff's Exhibit C, plaintiff's employment as a Professor of Professional Education is governed by a CBA, which policies govern his salary. In plaintiff's answers to interrogatories, he acknowledges that he knew that the CBA would govern his position as a professor when he resigned from the Dean position: that is why he wanted to meet with the Human Resources department. (Plaintiff's responses to defendant's first set of interrogatories, #13.) Although plaintiff asserts that defendant did not grant his request for a meeting to discuss his salary, there is no language in any of the documents to show that any such meeting was required.

{¶26} With regard to plaintiff's argument that his resignation from the Dean position and his transition to professor in 2014 caused a loss of seniority or years of service, the only reasonable conclusion is that any issues of that nature would be governed by the CBA. R.C. 2743.03(A)(1) provides in part: "The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code * * *." It is well settled that "[w]hile R.C. 2743.02(A)(1) vests exclusive subject-matter jurisdiction over suits previously barred by sovereign immunity, R.C. 4117.09(B)(1) expressly allows for suits alleging violations of collective bargaining agreements to be brought in common pleas courts." *Moore v. Youngstown State University,* 63 Ohio App.3d 238, 242 (10th Dist.1989). Inasmuch as plaintiff's employment as a tenured Professor of Professional Education was subject to a CBA, R.C. 4117.09(B)(1) specifically creates a right of action over such claims and limits the jurisdiction over this suit to the common pleas courts. *Id.* Accordingly, this court has no jurisdiction over plaintiff's breach of contract claim with regard to the 2014 letter of appointment.

{¶27} In conclusion, plaintiff has failed to identify any contractual provision that defendant breached. Moreover, plaintiff has not produced evidence from which a

reasonable trier of fact could infer any implied contract. Therefore, construing the evidence most strongly in favor of plaintiff, reasonable minds could conclude only that plaintiff has failed to state a claim for breach of contract. Judgment shall be rendered in favor of defendant.

PATRICK M. MCGRATH
Judge

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REGINALD NNAZOR Plaintiff v. CENTRAL STATE UNIVERSITY Defendant	Case No. 2015-00202 Judge Patrick M. McGrath Magistrate Holly True Shaver JUDGMENT ENTRY

{¶28} A non-oral hearing was conducted in this case upon defendant's motion for summary judgment. For the reasons set forth in the decision filed concurrently herewith, defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. All previously scheduled events are VACATED. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

PATRICK M. MCGRATH
Judge

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