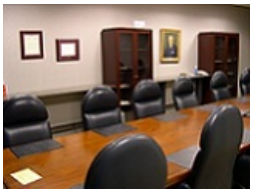
WAS EMPLOYEE ENTITLED TO PRE-TERMINATION HEARING BEFORE SCHOOL BOARD?



A maintenance mechanic working at a school district in Ottawa, KS, for almost 25 years was terminated for poor work performance. He brought action against the men who fired him – his supervisor and the district superintendent – claiming that he should have been allowed a hearing with the School Board prior to his termination. The man had been hired in 1984 and undertook numerous positions, including supervisory roles and promotions. In 2008, his immediate supervisor informed him that his employment was being terminated and that the School Board had already approved the decision. The superintendent reiterated the Board's approval a week later. Since the Board had okayed his firing, the former employee did not believe that he could file a grievance. Here's the clincher – though the exact date of the Board's approval of the termination could not be determined, it was most definitely after the time that the supervisor and superintendent had spoken to the employee. The man sued his former superiors, claiming a violation of 42 U.S. Code § 1983 – that he had been deprived of his property interest in continued employment without due process of law. The district court, however, granted summary judgment in favor of the defendants, stating that he did not have a protected property interest in continued employment because he was an at-will employee, meaning that he could be fired at any time and for whatever reason. The plaintiff appealed, abandoning a second claim of age discrimination. Appellate judges, in their decision, relied heavily on the School Board's Classified Staff Handbook. The handbook provided provisions on grievances, terminations and suspensions. That plaintiff's argument supported an implied-contract right. He believed that he had a right to a pre-termination hearing before the Board. He substantiated his claim by noting three provisions in the handbook: the superintendent can suspend an employee until the Board resolves said suspension; the Board can terminate an employee "at any time, with or without cause"; and an employee can file a complaint with a supervisor and appeal the supervisor's

decision to the superintendent, who has the final decision. None of the provisions specifically reference such a hearing with the Board. The plaintiff argued that the provisions were "ambiguous" – asserting that, since the Board has the power to terminate and an employee can challenge a termination by filing a grievance, there is an implication of a final appeal with the Board. The U.S. Court of Appeals dismissed this argument, since two of the provisions were for suspensions and grievances but not terminations. The provision concerning the Board's decision to terminate, with respect to an employee's at-will status, states exactly that – that the Board can fire an employee at any time, even without a pre-termination hearing. The plaintiff had signed 23 separate employment agreements, so he was well aware of his position as an at-will employee. Appellate judges did not believe that the express employment contract was ambiguous and that it clearly negated the man's implied-contract theory and arguments. The district court's ruling was consequently affirmed.