

Right to Pre-Termination Hearing

In its Loudermill¹ decision, applicable to public employees, which the VLRB has held applicable to state employees², the United States Supreme Court held that employees with a protected property interest in continued employment are entitled to a pre-termination hearing.

Requisite elements identified by the Court in such a hearing are:

- "something less" than a full evidentiary hearing is sufficient;
- the hearing need not definitively resolve the propriety of the discharge. It should be an initial check against mistaken decisions; essentially a determination whether there are reasonable grounds to believe the charges against the employee are true and support the proposed action; and
- the employee is entitled to oral or written notice of the charges against him or her, an explanation of the employer's evidence and an opportunity to present his or her side of the story.

An employer acts in compliance with the constitutional requirements of a pre-termination hearing only by keeping an open mind and allowing the possibility of not dismissing an employee if the employee presents convincing points of disagreement with the facts or persuasive argument at the pre-termination meeting.³

Employees must be provided sufficient notice that their job is in jeopardy so that they may respond in writing or meet in person to discuss the contemplated dismissal.⁴ This notice may be adequately provided by means other than a specific

¹ 470 U.S. 532 (1985).

² Grievance of Johnson, 9 VLRB 94 (1986).

³ Grievance of Taylor, 15 VLRB 275, 280 (1992).

⁴ Grievance of Gregoire, 166 Vt. 66 (1996).

reference that dismissal is being contemplated in a letter or memorandum informing employees of the Loudermill meeting.⁵

The Board concluded that an employee's Loudermill due process rights were sufficiently protected in a case even though the employee was not told dismissal was being contemplated prior to a meeting on a particular issue, and that issue provided a basis for his subsequent dismissal. The circumstances were that the employee subsequently was told dismissal was being contemplated with respect to another issue, a meeting was held on this issue, the employee could have raised the first issue at that meeting as well as offering reasons why he should not be dismissed, and the employee ultimately was dismissed as a result of his misconduct with respect to both issues.⁶

The Vermont Supreme Court has held that the procedural safeguards mandated by the Loudermill decision apply to municipal employees and teachers in Vermont with a constitutionally protected right to continued employment, as well as state employees. The Court has held that employees may protect such procedural due process rights through filing actions in superior court.⁷

⁵ Id.

⁶ Grievance of Griswold, 18 VLRB 593 (1995).

⁷ Rich v. Montpelier Supervisory District, 167 Vt. 415 (1998). Quinn v. Grimes, 177 Vt. 181 (2004).