

Oklahoma Federal Court Denies Summary Judgment to Employer on Professor's Allegations He Was Denied Tenure After Reporting Inappropriate Facebook Posts by Fellow Professors

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A federal court in **Oklahoma** recently denied summary judgment to **Northeastern State University**, finding that a professor's discrimination and retaliation claims, among others, could proceed to trial. The professor, **Dr. Leslie Hannah**, was appointed chair of his department in 2009. The previous assistant chair, Dr. Brian Cowlshaw, was ineligible for the chair position pursuant to the University's nepotism policy (his wife, Dr. Bridget Cowlshaw, was a professor in the department). During that period, Dr. Brian Cowlshaw posted the following comment on his Facebook page:

"Brian Hammer Cowlshaw /salutes in NSU's direction / Good luck with that, then!
[translation: I won't be entering the 'election' for department chair, because what I offer, no one wants] Good luck! / salute!"

Then in response to a comment, he wrote:

"There will be an 'election' the first week of February. They're making a f*****g indian chair."

In 2010, Drs. Brian and Bridget Cowlshaw, and another professor, Dr. Donna Shelton, made disparaging comments on Facebook after Dr. Hannah scheduled a department meeting to be held outdoors by the river. In response to a post by Dr. Bridget Cowlshaw about not looking forward to the beginning of the academic year, Dr. Shelton wrote:

"Wonder if they sell body armor for use under regalia..."

In response to a post by Dr. Brian Cowlshaw about the camping trip, Dr. Bridget Cowlshaw wrote:

“Nah, our chair will bring all the handbaskets we need. He’s probably woven them himself.”

In response to a post about whether anyone attended, Dr. Bridget Cowlshaw wrote:

“Maybe they were all eaten by wolves.”

Dr. Hannah reported the posts to the University. The University found that the posts were inappropriate, and reprimanded the professors. Dr. Bridget Cowlshaw entered into a settlement agreement with the University whereby she resigned.

In 2011, Dr. Hannah reported to Human Resources: “I think the time has come for me to leave NSU. This seems to be an unsafe place for American Indians. I will be submitting my resignation . . .” He then did not resign his position, but he did resign as department chair.

Dr. Hannah ultimately submitted his application for tenure and early promotion when he became eligible in late 2012. The committee that reviewed his application consisted of seven people, including Dr. Brian Cowlshaw and Dr. Shelton. The vote regarding Dr. Hannah was split 3/3 with one abstention, with Dr. Brian Cowlshaw and Dr. Shelton voting to deny the application. Thereafter, in early 2013, the University’s Dean reviewed the committee’s findings and denied Dr. Hannah’s application, stating that Dr. Hannah had “polarized the Department and displayed hostility toward other faculty and staff.” The Dean later stated that, while he was aware of past conflicts in the department, he was unaware of the inappropriate Facebook posts. Dr. Hannah filed a complaint with the University, and the University placed Dr. Hannah on administrative leave with pay for the remainder of his contract.

Dr. Hannah filed suit, including for discrimination and retaliation. The University brought a summary judgment motion. With respect to the discrimination and retaliation claims, the University’s main argument was that there was no causal connection between the Facebook posts in 2009 and 2010 and the denial of Dr. Hannah’s tenure in 2013.

The court was unconvinced that the passage of time between the Facebook posts and the denial of tenure defeated causation, stating: “Two years is not a significant amount of time. It is more than plausible and rather likely that after two years, Dr. Cowlshaw and Dr. Shelton still held some animosity toward Dr. Hannah for his reporting their Facebook posts, which resulted in their reprimands and possibly in the resignation of Dr. Cowlshaw’s wife.”

The *Hannah* case is another reminder for employers regarding the importance of implementing a good social media policy and training all employees to abide by it. Training employees not to make inappropriate posts in the first place trumps effective corrective action once the employer becomes

aware of such posts. Although in *Hannah*, the University's initial response to the inappropriate posts was sufficient, the fact that the professors had made the posts in the first place played a key role in precluding the University from prevailing on summary judgment during later litigation.

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