

CIRCUIT COURT BRANCH, STATE OF WISCONSIN
GRANT COUNTY

SABINA BURTON,

Petitioner,

v.

THE BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM

Respondent.

PETITION FOR JUDICIAL REVIEW

Sabina Burton, by and through her attorneys, Bernardo Cueto, Esq., of WISLawyer, LLC, and Kara Amouyal, Esq., of The Blake Horwitz Law Firm, Ltd. (application for *pro hac vice* pending), hereby petitions this court pursuant to Wis. Stat. §§ 227.52 and 227.53 for judicial review of The Board of Regents of the University of Wisconsin System's final decision to terminate Sabina Burton, and states as follows:

CHALLENGED DECISION

1. On June 8, 2018, The Board of Regents of the University of Wisconsin System issued an order that Petitioner be dismissed from her position as an associate professor in the University of Wisconsin at Platteville ("UW-Platteville") Department of Criminal Justice and that her tenure be revoked. The order is attached as Exhibit A.

PARTIES

2. Petitioner is a former tenured associate professor in the UW-Platteville Department of Criminal Justice. Her address is 5768 Maple Glen Lane, Platteville, Wisconsin 53818.

3. Respondent is the governing body for the University of Wisconsin School System. Respondent's principal address is 1860 Van Hise Hall, 1220 Linden Drive, Madison, Wisconsin 53706.

JURISDICTION AND VENUE

4. Petitioner is a resident of Grant County, Wisconsin.
5. Grant County Circuit Court is the proper venue for this action as specified in Wis. Stat. § 227.53(1)(a)(3).
6. The termination order is a final agency action subject to judicial review under Wis. Stat. § 227.52 and 227.53.

BACKGROUND FACTS

Complaints and Grievances Procedures

7. As mandated by University of Wisconsin System Administrative Code (UWS) Ch. UWS 6, prior to the events described herein, UW-Platteville created legitimate policy for handling complaints and grievances (hereinafter "legitimate complaints and grievances procedures").
8. The legitimate complaints and grievances procedures dictates that when a grievance is filed, a hearing will be held within 20 days. The legitimate complaints and grievances procedures do not state any time period in which a grievance must be initiated.
9. However, as more fully described below, Petitioner was repeatedly denied her rights under the legitimate complaints and grievances procedures based on a so-called "Complaints and Grievances Hearing Procedures" that was not ratified by the UW-Platteville Faculty Senate. The failure to ratify those procedures made those "procedures" invalid.

10. The grievances for which Petitioner was denied her rights to a hearing dealt with the subject matter for which Petitioner was terminated. Had Petitioner been given her due hearings, the UWS Ch. 4 complaint against her, described below, could not have been brought or sustained.

Sexual Harassment Incident

11. The decision to terminate Petitioner stemmed from a series of events dating back to 2012.

12. In October of 2012, Petitioner was informed by a UW-Platteville student that the student was sexually harassed by a male professor.

13. Petitioner brought the matter to the attention of the administration.

14. When confronted, the professor accused of sexual harassment claimed that he was merely performing a "breach experiment," in which he engaged in anti-social behavior, in order to gauge the response of the student.

15. The professor did not have required approvals to conduct such experiments on students.

16. A grievance committee found that the professor's "egregious" actions undermined his competence to teach research methods ethically; that he "lacks even a fundamental understanding of structural sexism;" and considered his apology to the class to be "slut-shaming."

17. Petitioner observed that the accusations of sexual harassment were handled inadequately by the administration at UW-Platteville.

18. Due to Petitioner bringing the harassing behavior to the attention of UW-Platteville administration, she began to face retaliation, including Chair Caywood and Dean Throop suddenly withdrawing support for a grant that Petitioner was working to procure.

Grievance against Dept. Chair Caywood

19. In April 2013, Petitioner filed a grievance against her department chair, Dr. Caywood, alleging retaliation for Petitioner's involvement in the sexual harassment incident.
20. In April 2013, a hearing was conducted. The grievance committee found that Petitioner's department chair seriously mishandled the student complaint and recommended that Dean Throop write a letter which "tries to restore Dr. Burton's professional reputation."
21. Department Chair Caywood admitted that the incident was "sexual harassment" and that he had handled the matter "poorly."
22. In July of 2013, Petitioner filed a grievance against Aric Dutelle for his part in the retaliation, but a hearing was never held. This violated the legitimate complaints and grievances procedures.

Grievance against Throop – Violation of policy – Appointment of chair

23. In November of 2013, Petitioner filed a grievance against then Dean Elizabeth Throop alleging that Throop's appointment of Dr. Michael Dalecki as interim department chair violated school policy.
24. A hearing was conducted. The grievance committee agreed with Dr. Burton and found that Dean Throop violated policy by appointing Dr. Dalecki as interim chair of the department.

Grievance against Dr. Dalecki

25. In August of 2014, Petitioner filed a grievance against Dr. Dalecki alleging continued retaliation for Petitioner's complaints regarding sexual harassment and retaliation at UW-Platteville.
26. In violation of legitimate complaints and grievances procedures, Petitioner was never afforded a hearing to address her grievance.

Dean Throop's Letter of Direction – Petitioner's grievances to address the letter

27. In October of 2014, Dean Throop issued a Letter of Direction to Petitioner. Among other charges, the letter admonished Petitioner for sending Chancellor Shields an email on October 2, 2014, advising him that Interim Chair Dalecki was abusing her; that a hearing for her grievance against him was past due; and requesting an investigation into her allegations of abuse.
28. The Letter of Direction was placed in Petitioner's personnel file.
29. Petitioner objected to the characterizations of her actions in the Letter of Direction as factually inaccurate and misleading.
30. In an effort to prove that the Letter of Direction was factually inaccurate and misleading, Petitioner filed a grievance. Petitioner was not afforded a hearing on the matter within the proscribed time pursuant to the legitimate complaints and grievances procedures.
31. In April of 2016, Petitioner attempted to reinstate her grievance regarding the Letter of Direction. Again, she was denied a hearing on the matter in violation of the legitimate complaints and grievances procedures. The stated reason for the denial was a 300-day window that did not exist in the legitimate complaints and grievances procedures.

Petitioner's Grievance Against Deborah Rice

32. In April of 2016, Petitioner attempted to file a grievance against Deborah Rice, a member of the Criminal Justice Department at UW-Platteville, for various harassments based on Petitioner's national origin (German), physical disability (severe ulcers), and (perceived) mental disability.
33. In violation of the legitimate complaints and grievances procedures, Petitioner's grievance was denied without hearing.

Chancellor Shields' Letter of Direction

34. In June 2016, Chancellor Shields issued a letter of direction to Petitioner in which he admonished her for, among other things, informing her chair that she had received veiled death threats.
35. The letter also admonished Petitioner for writing an email on May 3, 2016 to Mr. Fairchild, chair of the grievance committee, in which Petitioner informed him that the university was past the deadline for holding her requested grievance hearing and re-iterated her request for a hearing.
36. The Shields letter of direction heavily relied on the Throop letter of direction for its basis.

Dr. Solar's Complaint

37. In November of 2016 Dr. Solar, a faculty member in the Criminal Justice Department filed a complaint against Dr. Burton.
38. This document was hidden from and withheld from Dr. Burton for over a year.
39. Dr. Burton finally received the document a few hours before the final appeal hearing and requested adjournment of the hearing for valid claim of surprise per UWS 4.06(1)(j). Her request was denied.

CHAPTER UWS 4 COMPLAINT, INVESTIGATION AND CHARGES

Throop/Gormley Complaint

40. In December of 2016 and pursuant to Ch. UWS 4.02, Interim Provost Throop and Interim Dean Melissa Gormley filed a complaint with Chancellor Dennis Shields against Petitioner seeking her dismissal from the university.
41. The complaint included unredacted copies of the transcripts that Petitioner was accused of publishing.

42. The complaint used the same verbiage and evidence that was in Solar's hidden complaint.

43. The complaint sought Petitioner's dismissal for, among other things, audio recording an open department meeting that was chaired by Dean Gormley.

Petitioner's Suspension, Ban from Campus, Initiation of Ch. UWS 4 Proceedings

44. In January of 2017, Chancellor Dennis J. Shields issued a letter to Petitioner informing her of the above-described Ch. UWS 4 complaint. The letter informed Petitioner that the allegations in the complaint, if true, could lead to her termination.

45. The letter also informed Petitioner that she would be suspended pending investigation of the complaint and that she was banned from entering campus.

46. With this letter, Chancellor Shields published the same unredacted transcripts that Petitioner is accused of publishing.

Investigation by Dr. Petra Roter

47. Due to the above-described complaint and pursuant to UWS Ch. 4, Chancellor Shields assigned Dr. Petra Roter to conduct an investigation regarding the allegations against Petitioner.

48. The investigation consisted of interviews with Petitioner, Dean Throop, Dr. Michael Dalecki, Dr. Patrick Solar, Dr. Cheryl Banachowski-Fuller, Dr. Staci Strobl, Dr. Mary Rose Williams and HR Director Janelle Crowley.

49. With the exception of Petitioner, every witness interviewed by Dr. Roter was adverse to Petitioner. With the exception of Petitioner, every witness interviewed by Dr. Roter lacked credibility for a variety of reasons.

50. After the interviews, Dr. Roter delivered a report to Chancellor Shields (hereinafter "the original Roter report").

51. After receiving the original Roter report, Chancellor Shields disseminated a document labeled as the Roter report (hereinafter “the Roter report”).
52. Although the Roter investigation was purportedly limited to fact-finding and was not to draw conclusions, the Roter report accused Petitioner of violating professional ethics, university policy, and State and Federal laws.
53. The investigation report contains false statements of fact and omits material facts.
54. The Roter report includes unredacted transcripts of the same recordings that Petitioner was accused of publishing.
55. In the resulting hearings before the Appeal Panel, Petitioner was never given a chance to cross-examine Dr. Roter or to challenge the contents of the Roter report.
56. After her termination and pursuant to Wis. Stat. 227.45(5), Petitioner requested opportunity to compare the Roter report (delivered by Chancellor Shields) with the original Roter report (delivered to Chancellor Shields). Her request was denied.
57. Statements in the contested Roter report are oft cited in the hearing panel’s recommendation, in UW-Platteville’s briefs supporting Petitioner’s dismissal and in the Board’s dismissal decision and order.

Informal Meeting

58. In March of 2017 and as required by Ch. UWS 4.02(1), Chancellor Shields offered to meet with Petitioner prior to making a decision regarding filing charges. However, he stipulated that his attorney, Deputy General Counsel for the University of Wisconsin System Administration Jennifer Sloan Lattis, would be in attendance.

59. The presence of the Chancellor's attorney nullified the requirement that the meeting be "informal", rather than "formal". Petitioner therefore declined this formal meeting but repeatedly requested an informal meeting.

Chancellor's Statement of Charges

60. In March of 2017, Chancellor Shields issued a statement of charges to dismiss Petitioner.

In the charges, Chancellor Shields cited public disclosure of confidential information, harassment, and involving students in administrative disputes.

61. Chancellor Shields wrote in his statement of charges "*You have discussed your personnel concerns during class when they had no relevance to the course topic.*" This was an unsupported material false statement.

62. As part of his statement of charges, Chancellor Shields published unredacted transcripts of the same recordings that Petitioner was accused of publishing.

63. His charges included a copy of the Roter report that he identified as "Dr. Petra Roter's report." Petitioner contests the authenticity of the Roter report.

64. Chancellor Shields' statement of charges for dismissal was not accompanied by a legitimate statement of the appeal procedures available to Petitioner as required by Ch. UWS 4.02.

65. Instead, Chancellor Shields erroneously instructed Petitioner to deliver her request for appeal to the Faculty Senate. Ch. UWS 4.04, however, requires the request to be addressed to the chairperson of the standing faculty committee created under Ch. UWS 4.03 (the 9-member Appeals Commission).

CHAPTER UWS 4 PRE-HEARING PROCEEDINGS AND HEARINGS

Failure to Timely Conduct Hearing

66. Ch. UWS 4.04 dictates that when an appeal request is filed, a hearing shall be held within 20 days unless that time is enlarged by mutual consent or order of the hearing panel.
67. On April 19, 2017, Petitioner timely requested a hearing on the Chancellor's statement of charges. Petitioner did not consent to enlargement of the time and the panel did not issue an order enlarging the time.
68. However, the hearing was not held within 20 days.
69. The hearings on the Chancellor's statement of charges took place on May 25, 2017, September 19, 2017, and November 30, 2017.

Wisconsin Open Meetings Law Violation

70. Petitioner requested that the hearings be conducted in open session pursuant to the Wisconsin Open Meetings Law and Ch. UWS 4.06.
71. The hearing panel failed to advertise the hearings as required by Wisconsin Open Meetings Law.

Composition of the 5-member Appeal Hearing Panel

72. UW-Platteville faculty bylaws mandate that the five-member appeal hearing panel and its chair be selected by the 9-member Appeals Commission.
73. Instead, and in spite of Petitioner's protests, Dr. Laura Anderson, the chair of the UW-Platteville Faculty Senate, unilaterally selected the hearing panel and its chair.
74. Dr. Laura Anderson was not a member of the 9-member Appeals Commission when she selected the 5-member panel and its chair.

75. On May 12, 2017, Petitioner emailed Dr. Brian Peckham, chair of the 5-member Appeal Panel and co-chair of the 9-member Appeals Commission and requested the hearing panel be reconstituted in compliance with policy.

76. On May 21, 2017, Petitioner emailed the Appeal Panel directly and formally requested the panel be reconstituted.

77. Petitioner's requests that the panel be reconstituted in conformance with policy were denied.

Violation of Policy in Conducting Appeal Hearings

78. At each hearing, the Panel Chair, Dr. Hansen, stated that the hearing would be conducted according to the policies and procedures set forth in Chapters UWS 4 and UW-Platteville Faculty Handbook Chapters 6.3.12.3 and 6.3.13.

79. The procedures in UW-Platteville Faculty Handbook Chapter 6.3.12.3 is not applicable for dismissals for cause cases, per Chapter 6.3.13 of the same Handbook.

Disability Accommodation Requests

80. Since December of 2014, Petitioner has suffered from stomach ulcers; Plaintiff's condition qualifies as a disability pursuant to Section 504 of the Rehabilitation Act, 29 U.S.C. § 701. This condition and the deleterious effects on Petitioner's health are known to the Chancellor, the Board, and many other persons at UW-Platteville.

81. In May of 2017 and pursuant to her rights under Section 504 of the Rehabilitation Act, Petitioner requested that the hearings be limited to 3-hours per day to accommodate her stress related health condition. This request was denied and no alternative was given.

82. On May 25, 2017, Petitioner could not attend the hearing because of her stomach ulcers.

At the May 25, 2017, hearing, Appeal Panel Chairperson Susan Hansen noted that Petitioner was unable to attend due to illness.

83. Despite this, the panel proceeded forward with the hearing.

Inadequate Hearing Time and Inability to Cross-Examine Witnesses

84. Hearings were initially scheduled for May 25, 2017 and May 26, 2017 from 9 am to 5 pm each day, a total of 16 hours. Petitioner requested that she be given adequate time to address the charges and to cross-examine adverse witnesses.

85. At the May 25, 2017 hearing, the Chancellor presented five witnesses. Each of these five witnesses were adverse to Petitioner: Chancellor Shields, Interim Provost Throop, Dr. Strobl, Dr. Fuller and Dr. Solar. None of the witnesses were sworn in with an oath or affirmation of truthfulness. The scope of these witnesses' testimony went well beyond the Chancellor's Statement of Charges and was often highly inflammatory.

86. Due to Petitioner's absence on May 25, 2017 because of her above-described disability, Petitioner was unable to cross-examine or refute these witnesses' testimony on that date. Petitioner was never able to cross-examine Interim Provost Throop, Dr. Strobl, Dr. Fuller, or Dr. Solar.

87. As stated above, additional hearings were held on September 19, 2017 and November 30, 2017 for three hours each. Petitioner was able to attend those hearings. At those respective hearings, Petitioner was not given adequate time and was able to cross-examine only Chancellor Shields.

88. Petitioner was afforded only 6 hours of hearings where she was in attendance.

Findings of Appeal Panel

89. On December 14, 2017, the Appeal Panel issued its findings and recommendations to the Chancellor. The panel found clear and convincing evidence for just cause for removal.
90. The findings of the Appeal Panel are not supported by the record, contain misleading or misstatements of fact, and do not meet the standard for “just cause”. Further, the findings of the Appeal Panel are clearly erroneous and biased, as evidenced by the use of the Roter report despite disavowing its factual importance.
91. Additionally, the Appeal Panel failed to consider and put into the record a trove of electronic documentary evidence submitted by Petitioner.
92. The findings of the Appeal Panel contained the same unredacted transcripts that Petitioner is accused of publishing.

POST-HEARINGS PROCEEDINGS

Appeal to Board of Regents

93. On February 6, 2018, Chancellor Shields wrote a letter to UW System President Ray Cross recommending the termination of Petitioner.
94. On February 21, 2018 the Board of Regents published a package to Petitioner which contained the same unredacted transcripts and the unredacted audio recordings that Petitioner was dismissed for supposedly publishing.
95. On March 16, 2018, Chancellor Shields, through his attorney, wrote a brief detailing his reasons for recommending the termination of Petitioner. In his brief, Chancellor Shields used arguments that include statements from the contested Roter Report and the May 25, 2017 hearing to recommend the termination of Petitioner.

96. On March 19, 2018, Roger Burton, on behalf of the Petitioner, filed a Statement of Exceptions to the Chancellor's brief. The Statement of Exceptions lays out a number of concerning issues with the Chancellor's brief and demonstrates that termination is not appropriate.
97. On May 10, 2018, the Board of Regents' Personnel Matter Review Committee heard oral arguments in the matter of Petitioner's termination.

Board of Regents Decision

98. On June 8, 2018 the Board of Regents issued its decision to terminate Petitioner for Just Cause. The decision by the Board of Regents did not include notice of Petitioner's right to petition for a rehearing under Wis. Stat 227.49(1) per Wis. Stat. 227.48(2).
99. The decision by the Board of Regents depends on findings of fact that are not supported by substantial evidence in the record. The findings of fact contain material misstatements that are easily disputed by documentary evidence. Further, the Board's decision quotes directly from the disputed Roter report despite disavowing its factual importance.
100. Just as the Appeal Panel did, the Board failed to consider documentary evidence submitted by Petitioner.
101. The hearing panel cited "clear and convincing evidence" as the standard of proof while the Board of Regents cited "preponderance of the evidence" as the standard. A standard of proof is not codified in Ch. UWS 4, however, Ch. UWS 7, a similar statute, sets the standard as "clear and convincing evidence."
102. The Board's findings of fact do not constitute just cause to terminate Petitioner's tenure.

FEDERAL AND STATE LAW PROTECTIONS

First Amendment

103. Many of Petitioner's statements that form the bases of the charges against her were protected by the First Amendment. Petitioner reasonably believed that in making these statements, she was trying to expose corruption and malfeasance at UW-Platteville and therefore her speech was protected.

104. In that vein, in August of 2015, Petitioner contacted Governor Walker to bring to his attention a summary of the issues about which she had been complaining. Petitioner asked Governor Walker's office to investigate potential corruption and waste of government resources at UW-Platteville.

105. Petitioner's complaint was forwarded to UW System Legal Department, eventually making its way to Dean Throop. In response, Dean Throop contacted the UW-Platteville Police Department and the Platteville Police Department to make a complaint about Petitioner. Dean Throop asked that Petitioner not be notified about these complaints; Dean Throop proceeded to notify Petitioner's co-workers that Dean Throop had filed the complaints against Petitioner.

106. The entire basis for Dean Throop's complaints against Petitioner to the UW-Platteville Police Department and the Platteville Police Department were that Petitioner had contacted the Governor's office to expose corruption and public waste.

107. During the May 25, 2017 hearing, Dr. Fuller testified that Petitioner's co-workers were scared of Petitioner and that some people had even called the police. However, Dr. Fuller did not provide any further information or context about the situation(s) in which those persons called police. Upon information and belief, when Dr. Fuller made this

testimony, Dr. Fuller was referring to Dean Throop's complaint in response to the Governor Walker letter.

108. Petitioner did not learn of the presence of any police reports against her until reading Dr. Fuller's testimony.

Wisconsin Whistleblower Statute

109. Petitioner's actions regarding the audios and transcripts are protected by Wis. Stat. 230.83.

110. The Board's decision and order identified no express law, rule or regulation that would prohibit Petitioner's actions, in regard to the identified audios and transcripts.

111. Petitioner was a participant of all meetings she audio recorded, she had her own permission to record the meetings and the meetings were all open meetings.

112. Petitioner recorded the audios on reasonable belief that they demonstrated mismanagement and violations of state or federal law, rule or regulation.

113. One of the identified audio recordings captured the sound of a colleague, Dr. Fuller, slapping Petitioner's leg and shushing her to keep her from speaking during the meeting.

114. Petitioner delivered the identified audio recordings to her former attorney, who provided them to the Board in 2015.

INTERESTS OF THE PETITIONER

115. Petitioner was a tenured state employee. Petitioner was receiving income and had an expectation to receive income because of her employment. Therefore, Petitioner had a 14th Amendment property interest in her job.

GROUNDS FOR REVIEW

116. The Board of Regent's order is an administrative decision under Wis. Stat. § 227.52 and subject to judicial review pursuant to the provisions of Chapter 227.
117. The Order must be reversed, set aside, vacated and/or modified, *inter alia*, for the following reasons:
- a. UW-Platteville consistently and repeatedly failed to follow its complaints and grievances procedures in such a way as to bias Petitioner and the Board of Regents failed to consider those repeated violations of policy;
 - b. The Appeal Panel failed to abide by Section 504 of the Rehabilitation Act by refusing to give Petitioner reasonable accommodations for her disability and the Board of Regents failed to consider the Appeal Panel's Section 504 violations;
 - c. The Ch. UWS 4 process was riddled with violations throughout the process in such a way as to unjustifiably taint the process and the Board of Regents failed to consider those violations;
 - d. The process of choosing an Appeal Panel and of following procedures and policies laid out in the UW-Platteville Handbook was similarly riddled with violations throughout the process in such a way as to unjustifiably taint the process and the Board of Regents failed to consider those violations;
 - e. The Appeal Panel failed to give Petitioner adequate time to address the charges against her or to cross-examine adverse witnesses and allowed the May 25, 2017 witnesses to unjustifiably and incurably bias the Appeal Panel against Petitioner and the Board of Regents failed to consider this failure and bias;

- f. UW-Platteville failed to provide Petitioner with the original Roter report in violation of Wisconsin law;
- g. The Appeal Panel, the Chancellor, and the Board of Regents quoted repeatedly from the Roter report despite its obvious bias and flaws and despite disavowing its factual importance;
- h. The Appeal Panel and the Board of Regents made findings of facts that were not supported by substantial evidence on the record and failed to consider electronic documentation submitted by Petitioner;
- i. The Appeal Panel and the Board of Regents applied an incorrect interpretation of “just cause” to terminate a tenured faculty;
- j. The Appeal Panel and the Board of Regents used shifting standards of proof;
- k. The Appeal Panel’s and the Board of Regents’ conclusions of law and finding of just cause are not supported by their respective findings of fact;
- l. The Board failed to include Petitioner’s right to petition for rehearing in its notification of decision;
- m. The Board based its dismissal decision on Petitioner’s protected activities and protected speech.

RELIEF REQUESTED

WHEREFORE, Petitioner requests judgment in her favor as follows:

1. Declaring that The Board of Regents Order is reversed, set aside, or vacated;
2. Additionally, and/or alternatively, declaring that Petitioner be offered a rehearing that fully complies with Ch. UWS 4, Section 504 of the Rehabilitation Act, her due process rights as

guaranteed by the 14th Amendment, and any other applicable laws, codes, rules, policies, and procedures; and

3. For other such relief that this Court may deem equitable and just.

Dated this 6th day of July, 2018.

Electronically signed by:

/s/Bernardo Cueto _____ .

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