THE SECRET OF "AT WILL" EMPLOYMENT

Music teachers fight back when employer tries to take away rights

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ALMOST ALL OF us have heard the term "at will employment." Your employer can fire you for any reason – or no reason at all – and the courts will not intervene, with only a few exceptions. One exception is where there is a specific statute, such as the civil rights laws that protect employees from discriminatory treatment. Another exception is when you have a contract with your employer that spells out exactly how you can be fired and what remedies you have access to. But most jurisdictions subscribe to the principle that without a specific agreement that says otherwise, all employment is at will. This is one the harsh realities of work life in America, a reality that places the vast majority of American workers at risk of losing their jobs at a moment's notice.

One of the great advantages a union contract provides is the prospect that workers may no longer have "at will" status. Most collective bargaining agreements contain language that permits employers to discipline or terminate their employees only if they have "just cause" to do so. Once under the protective umbrella of "just cause," workers can feel secure that their employment is not perennially at risk. It is the cornerstone of job security.

One wonders, however, how did this nationally accepted precept that employees are employed at will evolve? Legal scholars have traced the source of the "at will" doctrine to one individual's writings. The concept has its genesis in Horace C. Wood's legal treatise called "Master and Servant," written in 1877. It has been noted that Wood's treatise was not supported by the legal authority upon which it was premised, nor did it accurately depict the law as it then existed. Magnan v. Anaconda Industries, Inc., 479 A. 2d 781 (Conn. 1984). To me the title of the book speaks volumes.

Despite its faulty underpinnings, however, the "at will" doctrine spread like wildfire throughout the U.S. during the 20th century, with many courts adopting it without careful or thorough consideration. One reason for this is that the at will doctrine resonated with laissez-faire economics and freedom of contract principles that were accepted at the time. Adam Smith believed that market forces should be left to their own devices for the economy to thrive. This was supposedly true of the labor market as well. Nevertheless, the market forces of supply and demand require that there be relatively equal bargaining power between purchasers and suppliers for equilibrium to be achieved. When it comes to the labor market, there is hardly equality of bargaining power between employee and employer. It is the rare case that an employee would have comparable bargaining strength to his or her employer. Thoughtful analysis demonstrates that at will employment does not produce optimal results. The fact that labor unions have formed in this country proves this to be true.

Presently, courts are extremely reluctant to create exceptions to an employee's at will status and it doesn't seem as though this doctrine is going to be abrogated anytime soon. Thus, exceptions to at will employment status must be carefully guarded. Such was the case earlier this year when newly-hired music faculty at the Longy School of Music at Bard, a music school whose teachers were under a contract negotiated by the American Federation of Teachers, received hiring notices from the school indicating that their employment would be "at will." Though they were newly hired, the hiring notices overlooked the fact that once they passed probation these professors would be covered by a collective bargaining agreement whose terms included just cause provisions. Upon learning that these letters had been received by bargaining unit members, the AFT filed an unfair labor practice charge with the National Labor Relations Board asserting that Bard had engaged in bad faith bargaining with the union. On Jan. 1, an Administrative Judge held that Bard had committed an unfair labor practice by erroneously advising newly hired faculty members that they were employed at will, even though the school had allegedly corrected their error by sending out new letters referring to the union contract (*Longy School of Music of Bard College and Longy Faculty Union, American Federation of Teachers Massachusetts, Local 6485, 1 CA 127267, 2015*). As the AFT surely must have realized, the acquisition of just cause protection for bargaining unit members was too important a gain to permit Bard to ignore, even if it had been the result of an acknowledged mistake. A mistake that I am sure Bard will never make again.