

A state administrative agency employs individuals on a permanent and seasonal basis. Some seasonal employees are rehired at the end of their work period, but most are not. On rare and random occasions, the agency has given seasonal employees who were not rehired a statement of reasons and an opportunity for a hearing. No statute or agency rule requires a statement of reasons or an opportunity for a hearing.

A man who was hired as a seasonal employee of the agency was not rehired at the end of his work period. The man was not given a statement of reasons or an opportunity for a hearing.

The man sued the agency in federal court, requesting a statement of reasons and a hearing.

Will the man's suit likely succeed?

- A. No, because the man has no property interest entitling him to procedural due process.
- B. No, because the Tenth Amendment reserves to the states the power to set the conditions of state employment.
- C. Yes, because the agency's procedure constituted a bill of attainder.
- D. Yes, because the agency's procedure denied the man the equal protection of the laws.

Explanation:

The man's claim invokes the Fourteenth Amendment right to **procedural due process**, which requires states to follow certain procedures when they **intentionally deprive** a person of **life, liberty, or property**. These procedures include giving persons:

- notice of the charges, proceedings, or other actions against them *and*
- a meaningful opportunity to be heard by a neutral decision-maker.

Public employees are only entitled to these procedures if they have a **property interest** in their employment. This exists when the employee (1) has an **ongoing employment contract**, (2) can only be fired **for cause**, or (3) receives **assurances of continued employment**. But since none of these conditions apply to a seasonal (ie, probationary) public employee, the man had no property interest entitling him to due process. Therefore, his suit requesting a statement of reasons and a hearing will likely fail.

(Choice B) Under the Tenth Amendment, all powers not expressly granted to the federal government by the Constitution—including the power to set the conditions of state employment—are reserved to the states. But when exercising such powers, states must comply with other constitutional provisions (eg, procedural due process).

(Choice C) A bill of attainder is a legislative act that punishes a specified person or group without a judicial trial. But since the *agency's* procedure is applied against *random* persons, it is not a bill of attainder.

(Choice D) The equal protection clause prohibits the government from treating similarly situated people differently—even unintentionally—without adequate justification. But when, as here, the government does *not* substantially impact a fundamental right or **protected class**, its actions will likely be upheld under **rational basis scrutiny**.

Educational objective:

Public employees have a protected property interest in their jobs if they (1) have an ongoing employment contract, (2) can only be fired for cause, or (3) receive assurances of continued employment. Therefore, seasonal (ie, probationary) public employees can be terminated without due process.

References

- Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 576–77 (1972) (explaining when public employees have a protected interest in continued employment).

Procedural due process

