

A state statute declares that after five years of continuous service in their positions all state employees, including faculty members at the state university, are entitled to retain their positions during "good behavior." The statute also contains a number of procedural provisions. Any state employee who is dismissed after that five-year period must be given reasons for the dismissal before it takes effect. In addition, such an employee must, upon request, be granted a post-dismissal hearing before an administrative board to seek reinstatement and back pay. The statute precludes any other hearing or opportunity to respond to the charges. That post-dismissal hearing must occur within six months after the dismissal takes effect. The burden of proof at such a hearing is on the state, and the board may uphold the dismissal only if it is supported by a preponderance of the evidence. An employee who is dissatisfied with a decision of the board after a hearing may appeal its decision to the state courts. The provisions of this statute are inseverable.

A teacher who had been employed continuously for seven years as a faculty member at the state university was dismissed. A week before the dismissal took effect, she was informed that she was being dismissed because of a charge that she accepted a bribe from a student in return for raising the student's final grade in her course. At that time, she requested an immediate hearing to contest the propriety of her dismissal.

Three months after her dismissal, she was granted a hearing before the state administrative board. The board upheld her dismissal, finding that the charge against her was supported by a preponderance of the evidence presented at the hearing.

The teacher did not appeal the decision of the state administrative board to the state courts. Instead, she sought a declaratory judgment in federal district court to the effect that the state statute prescribing the procedures for her dismissal violates the United States Constitution.

In this case, how should the federal district court rule?

- A. Dismiss the suit, because a claim that a state statute is unconstitutional is not ripe for adjudication by a federal court until all judicial remedies in state courts provided for by state law have been exhausted.
- B. Hold that the statute is constitutional, because the due process clause of the Fourteenth Amendment entitles state employees who have a right to their jobs during good behavior only to a statement of reasons for their dismissal and an opportunity for a post-dismissal hearing.
- C. Hold that the statute is unconstitutional, because a state may not ordinarily deprive an employee of a property interest in a job without giving the employee an opportunity for some kind of a pre-dismissal hearing to respond to the charges against that employee.
- D. Hold that the statute is unconstitutional, because the due process clause of the Fourteenth Amendment requires a state to demonstrate beyond a reasonable doubt the facts constituting good cause for termination of a state employee.

Explanation:

Deprivation of public employment

Type	Due process requirements
Termination (serious)	<ul style="list-style-type: none">• Notice of alleged misconduct• Pre-termination opportunity to respond to allegation• Post-termination evidentiary hearing
Suspension without pay (less serious)	<ul style="list-style-type: none">• Notice of alleged misconduct• Prompt post-suspension evidentiary hearing

When a state attempts to deprive an individual of life, liberty, or property, the Fourteenth Amendment requires that the state provide **procedural due process**. To determine the process due, courts **balance** the government's interest against the individual's interest. And since a **public employee** who can only be terminated for cause has a **property interest** in such employment—and termination is a serious deprivation of that interest—due process requires that the employee receive:

- **notice** of his/her alleged misconduct
- a **pre-termination opportunity to respond** to that allegation *and*
- a **post-termination evidentiary hearing** to determine if the termination was warranted.

Here, the state-university teacher had a property interest in her job because she was entitled to retain her position during "good behavior" and could only be terminated for cause. The university provided the teacher with notice and a post-termination evidentiary hearing. But since the statute precludes any other hearing or opportunity to respond to the charge, she did not have a pre-termination opportunity to respond. Therefore, the court should hold that the statute violates due process (**Choice B**).

(Choice A) Under the doctrine of administrative remedies, a constitutional claim is not **ripe** for adjudication until the plaintiff has exhausted all *administrative* remedies provided by law. But this doctrine does not require plaintiffs to exhaust all state *judicial* remedies before proceeding to federal court.

(Choice D) Due process does not require a state to prove good cause for terminating an employee. And even if a state chooses to require good cause, due process does not require the state to prove it **beyond a reasonable doubt**.

Educational objective:

When a public employee can only be fired for cause, procedural due process generally requires that the employee receive (1) notice of any alleged misconduct, (2) a pre-

termination hearing to respond to the allegation, and (3) a post-termination evidentiary hearing to determine if the dismissal was warranted.

References

- Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542–46 (1985) (explaining the process due when the government terminates a public employee who can only be fired for cause).

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