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NEIMAN VS. YALE UNIVERSITY

Educational institutions should adopt internal procedures for addressing disputes in faculty and student handbooks. In certain circumstances, if these procedures are not followed, the faculty member or student may be foreclosed from later seeking relief in a court of law. That is the significance of *Neiman v. Yale University*, a recent Connecticut Superior Court case. In *Neiman*, the Court dismissed a former Yale University (“Yale”) faculty member’s legal challenge to her denial of tenure because she failed to follow the internal grievance procedures provided in Yale’s faculty handbook. Wiggin & Dana’s William J. Doyle and Peter M. Wendzel successfully represented Yale in the *Neiman* case.

Factual Background

In 1995, Susan Neiman, an Associate Professor in Philosophy without tenure, requested that Yale consider her for a tenured position. By a narrow margin, a Yale advisory committee voted not to recommend her for tenure. Neiman decided to leave Yale and accepted employment at another institution without requesting that Yale reconsider its decision denying her tenure. Yale, however, had in place a process for her to do so, if she desired. In Yale’s faculty handbook, a faculty member who “believes he or she has been treated in an unfair or discriminatory manner in connection with a decision about reappointment or promotion” or “believes he or she has been treated in a manner inconsistent with University policies on reappointment or promotion” may avail him or herself of these procedures. Neiman, nevertheless, sued Yale, alleging that the University failed to follow its own procedures, resulting in the denial of tenure and her suffering damages as a result of this denial.

Her lawsuit raised three claims: breach of contract, breach of the implied covenant of good faith and fair dealing and negligent misrepresentation. Ironically, all of these claims either directly or derivatively arose from the very faculty handbook, whose internal grievance procedures she had ignored. In two separate rulings, issued

on September 17, 2002 and October 29, 2002, a Connecticut Superior Court decided that it lacked jurisdiction over all of Neiman's claims and dismiss her lawsuit in its entirety.

The September 17, 2002 Ruling

In the first ruling, issued on September 17, 2002, the Court dismissed Neiman's breach of contract and breach of the implied covenant of good faith and fair dealing claims. It is settled law that courts lack subject matter jurisdiction over claims brought under a statute or pursuant to a collective bargaining agreement, when the complainant fails to first exhaust the administrative procedures provided under that statute or that collective bargaining agreement. No Connecticut appellate court, however, had ever applied this "exhaustion" doctrine to the administrative remedies provided in a faculty handbook. Nevertheless, this Court applied the doctrine to Neiman's two contract-based claims, ruling that the failure to exhaust the internal grievance procedures provided in the Yale faculty handbook deprived Neiman of the right to litigate these claims in court.

In Connecticut, as is the case in other jurisdictions, the "exhaustion" doctrine exists to give courts the benefit of the institution's knowledge and experience as to whether a decision was fair and to relieve courts of deciding issues that may be satisfactorily resolved through an internal grievance procedure.¹ The *Neiman* case presented this precise situation. The faculty handbook detailed the procedures for handling a complaint about the promotion process at Yale. Neiman did not follow these procedures, even though, as the Court noted, "it would have been helpful to the court to have the individuals and committees most familiar with the procedures for tenure appointments to make determinations as to the compliance or non-compliance with those provisions." Moreover, "[i]f, in fact, Neiman successfully challenged the tenure decision through Yale's internal grievance procedure, the matter would have been resolved without this lawsuit." Thus, under these circumstances, it was wholly consistent with Connecticut law to apply the "exhaustion" doctrine here.

It was also consistent with just plain common sense to apply the "exhaustion" doctrine. Neiman based her breach of contract and implied covenant of good faith and fair dealing claims on the faculty handbook.² She alleged that the terms and conditions of the faculty

¹ See *Johnson v. Statewide Grievance Committee*, 248 Conn. 87, 95-96 (1999).

² Indeed, the Court recognized the validity of this position, noting the recent Connecticut Supreme Court decision in *Craine v. Trinity College*, 259 Conn. 625, 655 (2002), where the court ruled that:

handbook created a binding contract between her and Yale and that Yale breached this contract when it denied her tenure. She specified the various sections of the faculty handbook that Yale allegedly disregarded in rendering its decision. Neiman, however, did not want to follow the *same* faculty handbook's provisions for addressing a dispute over the denial of tenure. Thus, the Court rightly precluded Neiman from asserting some rights provided under the faculty handbook, while ignoring others, such as the procedure for challenging any unfair treatment in the tenure process.

Accordingly, the Court ruled that both the breach of contract claim and the implied covenant of good faith and fair dealing claim should be dismissed because Neiman failed to request that Yale reconsider its tenure decision before suing in court.

The October 29, 2002 Ruling

The Court's September 17th ruling did not dismiss Neiman's lawsuit in its entirety. Neiman's negligent misrepresentation claim remained viable after this ruling. Under this claim, Neiman alleged that Yale promised not to consider her viewpoints regarding philosophy as a basis for determining whether she should be granted tenure and that she had relied on these representations to her detriment when Yale denied her tenure. In its September 17th ruling, the Court ruled that this claim was not based on the faculty handbook and therefore subject to the exhaustion doctrine as were the contract claims. Yale moved for the Court to reconsider this ruling. The Court did and then dismissed this final claim in a ruling issued on October 29, 2002.

In this second ruling, the Court concluded that Neiman's negligent representation claim should have suffered the same fate as her contract-based claims. Her negligent representation claim was based on and "inextricably" intertwined with the decision to deny Neiman tenure. In order to succeed on this tort-based claim, Neiman first would have to prove that there was a flaw in the tenure decision-making process, the same route necessary to proving her contract-based claims. Since Neiman could not proceed with her contract-based claims because she failed to avail herself of Yale's internal grievance procedure, she also could not proceed with a tort-based claim wholly contingent upon these contract-based claims. The "exhaustion" doctrine had to apply with equal force to both types of claims. This decision, like its September 17th ruling, was consistent with the decisions of other Connecticut

"A faculty manual that sets forth terms of employment may be considered a binding employment contract."

courts as well as other jurisdictions.

Implications of the *Neiman* case

The full impact of *Neiman* may not be clear in Connecticut unless and until this State's appellate courts decide whether internal grievance procedures promulgated by educational institutions are subject to the "exhaustion" doctrine and, if so, when and for which claims. In any event, given the emerging trend in Connecticut and other jurisdictions, it is certainly in the best interests of educational institutions to adopt internal grievance procedures to resolve disputes with faculty members as well as students. Such procedures may mitigate, if not eliminate, the time and expense of defending a claim in a court of law.

This document is not intended to constitute legal advice. If you have any questions about this case or this issue, please contact your regular Wiggin & Dana attorney or any of the following: William J. Doyle at (203) 498-4400, Peter M. Wendzel at (860) 297-3700 or John G. Zandy at (203) 498-4400.