

Labor History: Cleveland Board of Ed vs. Loudermill

By Ed Leavy

James Loudermill, like Charles Boycott and Joseph-Ignace Guillotine, is a person who has become a word. A Loudermill is a pre-disciplinary hearing for government employees who have been accused of workplace misconduct. When one of our members gets involved in the disciplinary process, I have to explain that we will have the Loudermill before the State takes any significant action – that is, any action above a letter of reprimand. Inevitably, I get a blank stare in return and have to explain what will happen. This meeting is required because of the suit James Loudermill brought against the Cleveland Board of Education nearly 30 years ago.

Loudermill was hired as a security guard by the Cleveland Board of Education in 1979. The Board subsequently determined that Loudermill had put false information on his application when he stated that he had never been convicted of a felony; Loudermill later claimed he believed his 1968 conviction for grand larceny had been a misdemeanor. The Board, without further investigation, dismissed him for providing false information on his application. Loudermill's position as a security guard meant that he was a "classified civil servant" under Ohio law; he therefore could not be fired without cause and had the right to an administrative review of his termination. The Cleveland Board of Education granted him the review and found his termination valid, but the review was held after his termination. Loudermill filed a suit in District Court arguing that the review was an unconstitutional violation of his due process rights because he was not allowed to respond to the charge against him prior to his termination.

The District Court dismissed his claim, finding that the Board had followed the statute and that the delay in reviewing the dismissal was understandable given the review board's crowded schedule. The Court of Appeals, however, determined that the Board had violated his due process rights by removing his property right to employment before he was given an opportunity to respond to the allegations against him. The case eventually ended up at the US Supreme Court.

The Supreme Court had to settle the question, "Can a state remove a civil servant's property rights before providing an opportunity for that worker to respond to the charges offered for his termination?" In an 8-1 decision, the Supreme Court concluded that the Board had violated his due process rights by hearing the review after the punishment had been levied. Due process in these cases requires that a procedure exists in which the interest of the government in removing the employee from his position is balanced against the individual's right to retain the property right of employment ("property rights" means in general that the employee can view the position as his or her own property). Writing for the majority, Justice Byron White determined that "affording the employee the opportunity to respond prior to termination would impose neither significant administrative burden nor intolerable delays." That meeting for public employees before a suspension or termination is given is now known as a Loudermill.

In our system, Loudermills are held for teachers who, because they are tenured, have property rights to the position (by contract, we get hearings for third- and fourth-year teachers with either the Superintendent or the Director of the Bureau of Human Resources, though we cannot arbitrate the decision). In most cases in which I am involved, we first have a fact-finding with HR, the administrator, the member, and me in which the teacher is asked questions about the incident. If the CTHSS then proposes either a suspension or termination, I present a defense at the Loudermill; my usual practice is to type up a defense and email a copy to the member for review before the hearing. When I am finished presenting our defense, the member is then invited to add his or her own input. The process is often stressful for the member involved, but it is much better than not getting the opportunity to respond until after the discipline has occurred. We have James Loudermill to thank for that right.