IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DAVID L. LAWRENCE,	)	CASE NO. 3:01CV00107
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM OPINION
	)	
THOMAS HANSON et al.,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

The plaintiff in this action alleges due process violations concerning the manner in which he was demoted and subsequently was terminated. After a thorough examination of each party's objections, the supporting memoranda, the applicable law, the documented record, and the Report and Recommendation, this court adopts the recommendation of the magistrate judge to grant the defendant's motion for summary judgment.

I. PROCEDURAL POSTURE

The plaintiff, David L. Lawrence, instituted this action in the Circuit Court of the City of Charlottesville, Virginia against the Emergency Communications Center ("ECC"), its director, Thomas Hanson, and the County of Albemarle ("County"). The action was removed to this court on October 23, 2001, and, by order dated October 30, 2001, this case was referred to the Honorable B. Waugh Crigler, United States Magistrate Judge, for proposed findings of fact and for a recommended disposition. The plaintiff's motion for judgment set forth three counts, one alleging a violation of the plaintiff's due process rights enforceable under 42 U.S.C. § 1983, and two alleging state law claims for wrongful termination and for breach of contract. This court granted the plaintiff's motion for voluntary dismissal of his claims against the ECC and the County, and the state law claims

subsequently were withdrawn. The sole remaining defendant in this action is Hanson, who is alleged by Plaintiff to have denied him due process and to have retaliated against him in violation of his First Amendment rights.

In his report filed June 3, 2003 ("Report and Recommendation"), the magistrate judge recommended that an order enter granting judgment to the defendant and dismissing the case from the docket of the court. Both the plaintiff and defendant have filed timely objections to the Report and Recommendation.[1]

II. STATEMENT OF FACTS

Much of the factual basis of the dispute is uncontroverted. Plaintiff began working for the ECC in 1984. In 1997 and for all times relevant to this action, the plaintiff was employed by the ECC as a shift supervisor. Marge Thomas, a training supervisor, was the plaintiff's immediate superior. She reported to Hanson, her immediate superior and the director of the ECC.

From the time of his initial employment until May 1997, Lawrence received very strong performance reviews. In December 1997, Amy Granger, an ECC employee supervised by the plaintiff, verbally complained to Hanson about the plaintiff. At this point, Lawrence was reassigned.

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[1] The plaintiff contends in his objections to the Report and Recommendation that the magistrate judge erred in granting summary judgment to the defendant. Lawrence claims that Hanson terminated him without minimal pretermination process and that the postermination process did not cure this initial failing. In a similar vein, the plaintiff disputes the magistrate judge's *Garraghty* analysis. Finally, the plaintiff objects to Hanson's entitlement to qualified immunity. The defendant, for his part, counters the plaintiff on each point and, separately, objects to the characterization of the issue as one involving substantive, rather than procedural, due process.

The magistrate judge notes the presence of conflicting evidence concerning the details of this reassignment but concludes that these details are not relevant to the disposition of the motion. This court agrees with that conclusion.

Prior to meeting with Lawrence concerning Ms. Granger's allegations, Hanson participated in a meeting with Richard Huff, the Deputy County Executive, Mark Trank, the Deputy County Attorney, and Thomas. By order dated December 17, 2002, the magistrate judge permitted the admission of notes taken at this meeting and rejected the defendant's claim that the notes were privileged. These notes revealed that the meeting involved discussions of the manner in which Granger's complaint would be presented to Lawrence, the importance of offering Lawrence an opportunity to respond, and the steps Hanson could take to discipline Lawrence.

On December 22, 1997, Hanson and Thomas met with the plaintiff about Granger's allegations, which, by that time, had been memorialized in a six-page letter to Hanson. Here, the report of the magistrate judge lacks clarity with respect to the form in which defendant received these allegations. In his objection to the Report and Recommendation, Lawrence contends that he did not receive Granger's actual written allegations but only a summary of the allegations. This court clarifies that Lawrence received an explanation of the allegations supporting his demotion in oral, but not written, form during the December 22, 1997 meeting.

By memorandum dated January 16, 1998, Hanson demoted the plaintiff and suspended him for five days without pay. This written memorandum presented Hanson's findings with particular attention devoted to each allegation made by Granger.

Pursuant to the Albemarle County Grievance Policy, which was applicable to the ECC, Lawrence challenged his demotion. This policy has five steps. Hanson himself was involved in the

first two steps of this review and upheld the decision at each of these two stages. The third level of review was conducted by Huff, the Deputy County Executive, who also affirmed the demotion. Although no proceedings were conducted at the fourth step, the parties have not raised this omission as an issue in the case. The fifth step involved a panel hearing, at which both parties were represented by counsel and were afforded the opportunity to introduce exhibits and cross-examine witnesses. By a two-to-one vote, the panel affirmed the demotion and issued its decision through a letter dated January 20, 1999.

Some two months prior to this final stage of review of the plaintiff's demotion, Hanson terminated Lawrence's employment at a meeting on October 2, 1998. During the meeting, the plaintiff was presented with reasons for the termination and was given the opportunity to respond or to provide any facts or information on his behalf. While noting that he needed some time to absorb the information adequately, Lawrence made a brief statement disputing some of the allegations and notifying his employer that he would appeal the decision. Again, the plaintiff initiated the grievance policy and proceeded seriatim through the five steps. (The fourth stage involved the review of the County Executive.) At the fifth and final stage of the process, which involved an adversary proceeding at which exhibits were introduced and witnesses were cross-examined by the plaintiff's counsel, the three-member panel upheld the decision.

The employer's representative on both the termination and the demotion panels was Patrick Mullaney, Albemarle County Director of Parks and Recreation. The plaintiff does not dispute the manner in which the grievance panels were chosen. However, there is some question as to whether Huff, who participated at an earlier stage of the proceedings, had conversations with Mullaney

concerning the presentation of evidence. Mullaney had no recollection of any such conversation with Huff but could not deny that it had taken place.

III. STANDARD OF REVIEW

According to § 636(b)(1)(C), this court "shall make a de novo determination of those portions of the report . . . to which the objection is made." 28 U.S.C. § 636(b)(1)(C) (2000). The magistrate judge correctly stated that a party is entitled to summary judgment when the pleadings and discovery show that there are no genuine issues as to any material fact, and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "[S]ummary judgment ... is mandated where the facts and the law will reasonably support only one conclusion." *Hawkins v. PepsiCo, Inc.*, 203 F.3d 274, 279 (4th Cir. 2000) (quoting *McDermott Int'l, Inc. v. Wilander*, 498 U.S. 337, 356 (1991)). If the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party, then there are genuine issues of material fact. *See Anderson*, 477 U.S. at 248. All facts and inferences shall be drawn in the light most favorable to the nonmoving party. *See Food Lion, Inc. v. S.L. Nusbaum Ins. Agency, Inc.*, 202 F.3d 223, 227 (4th Cir. 2000).

IV. DISCUSSION

A. First Amendment Retaliation Claim

This court turns first to the plaintiff's First Amendment retaliation claim, with respect to which the magistrate judge recommended that the court grant judgment as a matter of law to the defendant. Because the plaintiff elected to file no response to the defendant's arguments respecting this claim, informed the magistrate judge that he was offering no response to that portion of the defendant's

motion for summary judgment, and did not object to the magistrate judge's recommendation,[2] the court adopts the recommendation of the magistrate judge. *See Anderson*, 477 U.S. at 256 (noting that once a motion for summary judgment has been filed, the nonmoving party "may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial"); *see also Celotex Corp. v. Catret*, 477 U.S. 317, 322-23 (1986).

B. Due Process Claim

Having dispensed with the First Amendment claim, the court next turns to the plaintiff's due process claims. The plaintiff raises these claims with respect to both the demotion and the termination proceedings.

1. Statute of Limitations

The magistrate judge recommended that this court deny the defendant's motion for summary judgment on the ground that plaintiff's cause of action is barred by the applicable statute of limitations. This court agrees with the magistrate judge's conclusion that there are genuine issues of material fact concerning the timing of the plaintiff's cause of action. Furthermore, neither party has objected to the conclusion of the magistrate judge with respect to this particular issue. Accordingly, the defendant's motion for summary judgment on this ground is denied.

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[2] In his objections to the Report and Recommendation, the plaintiff does claim that the magistrate judge erred in finding that the complaint raised a separate claim. The court disagrees. The plaintiff's complaint states that the defendant's actions "were taken in direct violation of the Plaintiff's right to free speech and association . . ." and directly follows this allegation with the claim that these actions "*also* violated the Plaintiff's due process rights." (Emphasis added.)

2. Qualified Immunity

In response to the plaintiff's § 1983 claims, the defendant has raised the defense of qualified immunity. "To defeat [a] claim to qualified immunity, [the plaintiff] must demonstrate that [the defendant] violated one of his constitutional rights, that the violation was clearly established at the time of the event, and that a reasonable official would have known that the conduct was a constitutional violation." *Mills v. Steger*, No. 02-1153, slip op. at 5 (4th Cir. May 14, 2003) (citing *Henderson v. Simms*, 223 F.3d 267, 271 (4th Cir. 2000)).

With respect to the first prong of this analysis, the plaintiff has alleged a violation of his due process rights. The court clarifies that the plaintiff's claim sounds in procedural due process. The plaintiff has not alleged, nor could he maintain the allegation, that the particular policy is substantively unfair, unreasonable, or without legitimate justification. Certainly, the state qua employer has a valid interest in a policy that establishes legitimate standards for the demotion and dismissal of employees for a variety of reasons. Here, the plaintiff does not contest the underlying illegitimacy of the law but rather its particular application to the defendant.

To conclude that Lawrence's due process rights were violated, the court must find that he had a property interest in continued employment and that the County's procedure for the termination of his employment was not consistent with due process. As a preliminary matter, the court will assume, as did both the defendant and the magistrate judge, that the plaintiff possessed a property interest in his continued employment with the ECC. *Morris v. City of Danville*, 744 F.2d 1041, 1047 (4th Cir. 1984). The court then must determine whether the plaintiff was deprived of this property interest without due process. Generally speaking, procedural due process requires that the individual be

afforded some form of notice and hearing. *Bowens v. N.C. Dep't of Human Res.*, 710 F.2d 1015, 1019 (4th Cir. 1983). "The particulars of notice and hearing 'must be tailored to the capacities and circumstances of those who are to be heard.' " *Id.* (quoting *Goldberg v. Kelly*, 397 U.S. 254, 268-69 (1970)).

The question then becomes whether the notice and hearing provided to the plaintiff were adequate. More particularly, in this case, the plaintiff is challenging the adequacy of the predeprivation component of the demotion and termination processes. The Fourth Circuit Court of Appeals has interpreted the Supreme Court's decision in *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985), to require limited pretermination process when a full hearing is provided following the deprivation. *Garraghty v. Jordan*, 830 F.2d 1295 (4th Cir. 1987). "[A] tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Crocker v. Fluvanna County Bd. of Pub. Welfare*, 859 F.2d 14, 17 (4th Cir. 1988). The court of appeals has observed that the principal objective of the pretermination process is to provide an initial check against mistaken decisions. *Id.* Thus, "[d]ue process does not mandate that all evidence on a charge or even the documentary evidence be provided, only that such descriptive explanation be afforded as to permit [the plaintiff] to identify the conduct giving rise to the dismissal and thereby to enable him to make a response." *Linton v. Frederick County Bd. of County Comm'rs*, 964 F.2d 1436, 1440 (4th Cir. 1992). "Such a hearing 'need not be elaborate' and 'need not definitively resolve the propriety of the discharge.' " *Holland v. Rimmer*, 25 F.3d 1251, 1258 (4th Cir. 1994) (citing *Buschi v. Kirven*, 775 F.2d 1240, 1255 (4th Cir. 1985)).

In this case, the plaintiff received adequate pretermination notice of the charges and was afforded the opportunity to respond. At the time of the December 22, 1997 meeting, Lawrence received the reasons for his demotion. This explanation provided the content of Ms. Granger's allegations and the reasons supporting his demotion. The employer was not required to present the plaintiff with a list of written allegations. *Linton*, 964 F.2d at 1440. He was also given an opportunity to speak and to present any information on his behalf. At the termination meeting on October 2, 1998, the plaintiff was presented with both an oral and a written explanation of the reasons for his termination and was given the opportunity to speak on his behalf. For both the demotion and the termination, this predeprivation notice and opportunity to respond were followed by a panoply of proceedings, including a hearing during which the plaintiff was permitted to confront witnesses and to present evidence and was represented by counsel. The plaintiff therefore received the process guaranteed to him by the Constitution.

The allegation of bias in the posttermination process is insufficient to overcome this conclusion. At the outset of the discussion of the posttermination process, the court pauses to note that it is unclear that Hanson is responsible for any lapses in the process subsequent to the second stage of the proceedings. *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1280 (4th Cir. 1995) ("[T]he only persons who can be liable for the denial of due process are those in a position to provide constitutionally adequate process."). The court reaches the question of posttermination bias with respect to Hanson because of its relevancy to the adequacy of pretermination process. The minimal requirements of the pretermination process depend on the existence of extensive posttermination process capable of remedying any error. *See Loudermill*, 470 U.S. at 545; *Garraghty*, 52 F.3d at 1283-84. Without extensive posttermination safeguards, this court would no doubt apply a more

exacting standard to the pretermination process. Inadequacy of the posttermination process therefore may bear on the adequacy of the pretermination process.

Although the court reaches the question of bias in the posttermination process, it concludes that the plaintiff was afforded due process following his termination. " Administrative decisionmakers, like judicial ones, are entitled to a 'presumption of honesty and integrity,' and absent a showing of bias stemming from an 'extrajudicial source,' they are not constitutionally precluded from making the determination that they are directed to make by their employer." *Morris*, 744 F.2d at 1044-45 (internal citation omitted). Here, the plaintiff has not sufficiently alleged the presence of extrajudicial bias. Some communication between panel members and the participation of Hanson at several stages of the process did not deprive Lawrence of his due process right to a fair hearing. *Id.* More to the point in this case, the posttermination process does not disturb the court's conclusion with respect to Hanson's provision of pretermination notice and opportunity to respond.

Finally, the court rejects Lawrence's assertion that Hanson's bias, to the extent it was present at all, deprived him of due process. First, a discharged employee is not entitled to a pretermination hearing before an impartial decisionmaker. *Crocker*, 859 F.2d at 17; *Gray v. Laws*, 51 F.3d 426, 439 n.8 (4th Cir. 1995). Second, while due process does require the absence of extrajudicial bias, the plaintiff has not demonstrated that such bias was present here.

Finding no constitutional violation, the court concludes that it is unnecessary to proceed through the other steps of the qualified immunity analysis. The defendant's motion for summary judgment shall be granted. The court dispenses with the plaintiff's remaining objections to the extent that they have been rendered moot by the court's reasoning.

The Clerk of the Court is hereby directed to send a certified copy of this Memorandum Opinion to all counsel of record and to the pro se defendant.

ENTERED: _____
Senior United States District Judge

_____
Date

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FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DAVID L. LAWRENCE,	)	CASE NO. 3:01CV00107
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Plaintiff,	)	
	)	
v.	)	ORDER
	)	
THOMAS HANSON et al.,	)	
	)	
Defendants.	)	JUDGE JAMES H. MICHAEL, JR.

For the reasons stated in the accompanying Memorandum Opinion, it is this day

ADJUDGED, ORDERED, AND DECREED

as follows:

(1) The defendant's "Motion for Summary Judgment," filed December 4, 2002 and supplemented February 21, 2003, shall be, and it hereby is, GRANTED;

(2) The above-captioned civil action shall be STRICKEN from the active docket of the court.

The Clerk of the Court hereby is directed to send a certified copy of this Order and the accompanying Memorandum Opinion to Magistrate Judge Crigler and to all counsel of record.

ENTERED:

_____
Senior United States District Judge

_____
Date