

# **Cleveland Board of Education v. Loudermill**

Supreme Court of the United States, 1985.

470 U.S. 532.

## **Justice White delivered the opinion of the Court.**

In these cases we consider what pretermination process must be accorded a public employee who can be discharged only for cause.

### **I**

In 1979 the Cleveland Board of Education hired respondent James Loudermill as a security guard. On his job application, Loudermill stated that he had never been convicted of a felony. Eleven months later, as part of a routine examination of his employment records, the Board discovered that in fact Loudermill had been convicted of grand larceny in 1968. By letter dated November 3, 1980, the Board's Business Manager informed Loudermill that he had been dismissed because of his dishonesty in filling out the employment application. Loudermill was not afforded an opportunity to respond to the charge of dishonesty or to challenge his dismissal. On November 13, the Board adopted a resolution officially approving the discharge.

Under Ohio law, Loudermill was a "classified civil servant." Such employees can be terminated only for cause, and may obtain administrative review if discharged. Ohio Rev. Code Ann. § 124.34. Pursuant to this provision, Loudermill filed an appeal with the Cleveland Civil Service Commission on November 12. The Commission appointed a referee, who held a hearing on January 29, 1981. Loudermill argued that he had thought that his 1968 larceny conviction was for a misdemeanor rather than a felony. The referee recommended reinstatement. On July 20, 1981, the full Commission heard argument and orally announced that it would uphold the dismissal....

[In a companion case, Richard Donnelly, a bus mechanic for the Parma Board of Education, was dismissed because he failed an eye examination. The Commission ordered that he be reinstated, but without backpay. Loudermill and Donnelly each brought a federal action contending in relevant part that § 124.34 "was unconstitutional on its face because it did not provide the employee an opportunity to respond to the charges against him prior to removal." The district court dismissed this count for failure to state a claim, but the court of appeals reversed.]

### **II**

Respondents' federal constitutional claim depends on their having had a

property right in continued employment. *Board of Regents v. Roth* (1972). If they did, the State could not deprive them of this property without due process.

Property interests are not created by the Constitution, “they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law...” *Roth*. The Ohio statute plainly creates such an interest. Respondents were “classified civil service employees,” entitled to retain their positions “during good behavior and efficient service,” who could not be dismissed “except ... for ... misfeasance, malfeasance, or nonfeasance in office.” The statute plainly supports the conclusion, reached by both lower courts, that respondents possessed property rights in continued employment. Indeed, this question does not seem to have been disputed below.

The Parma Board argues, however, that the property right is defined by, and conditioned on, the legislature’s choice of procedures for its deprivation. The Board stresses that in addition to specifying the grounds for termination, the statute sets out procedures by which termination may take place. The procedures were adhered to in these cases. According to petitioner, “[t]o require additional procedures would in effect expand the scope of the property interest itself.” ...

This argument, which was accepted by the District Court, has its genesis in the plurality opinion in *Arnett v. Kennedy* (1974). *Arnett* involved a challenge by a former federal employee to the procedures by which he was dismissed. The plurality reasoned that where the legislation conferring the substantive right also sets out the procedural mechanism for enforcing that right, the two cannot be separated:

The employee’s statutorily defined right is not a guarantee against removal without cause in the abstract, but such a guarantee as enforced by the procedures which Congress has designated for the determination of cause. [W]here the grant of a substantive right is inextricably intertwined with the limitations on the procedures which are to be employed in determining that right, a litigant in the position of appellee must take the bitter with the sweet.

This view garnered three votes in *Arnett*, but was specifically rejected by the other six Justices....

[We think] the “bitter with the sweet” approach misconceives the constitutional guarantee. If a clearer holding is needed, we provide it today. The point is straightforward: the Due Process Clause provides that certain substantive rights—life, liberty, and property—cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. “Property”

cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process “is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in [public] employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.” *Arnett v. Kennedy* (Powell, J., concurring in part and concurring in result in part).

In short, once it is determined that the Due Process Clause applies, “the question remains what process is due.” The answer to that question is not to be found in the Ohio statute.

### III

... We have described “the root requirement” of the Due Process Clause as being “that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest.”<sup>1</sup> This principle requires “some kind of a hearing” prior to the discharge of an employee who has a constitutionally protected property interest in his employment. *Board of Regents v. Roth*; *Perry v. Sindermann* (1972).... Even decisions finding no constitutional violation in termination procedures have relied on the existence of some pretermination opportunity to respond. For example, in *Arnett* six Justices found constitutional minima satisfied where the employee had access to the material upon which the charge was based and could respond orally and in writing and present rebuttal affidavits.

The need for some form of pretermination hearing, recognized in these cases, is evident from a balancing of the competing interests at stake. These are the private interests in retaining employment, the governmental interest in the expeditious removal of unsatisfactory employees and the avoidance of administrative burdens, and the risk of an erroneous termination. *See Mathews v. Eldridge* (1976).

First, the significance of the private interest in retaining employment cannot be gainsaid. We have frequently recognized the severity of depriving a person of the means of livelihood. While a fired worker may find employment elsewhere, doing so will take some time and is likely to be burdened by the questionable

---

<sup>1</sup> There are, of course, some situations in which a postdeprivation hearing will satisfy due process requirements. See *Ewing v. Mytinger & Casselberry, Inc.* (1950) [(due process satisfied where drug manufacturer could bring an after-the-fact tort suit against the federal government for seizing allegedly misbranded vitamins)]; *North American Cold Storage Co. v. Chicago* (1908) [(holding that due process did not require notice and a hearing prior to food inspector’s seizure of rotten food)].

circumstances under which he left his previous job.

Second, some opportunity for the employee to present his side of the case is recurringly of obvious value in reaching an accurate decision. Dismissals for cause will often involve factual disputes. Even where the facts are clear, the appropriateness or necessity of the discharge may not be; in such cases, the only meaningful opportunity to invoke the discretion of the decisionmaker is likely to be before the termination takes effect.

The cases before us illustrate these considerations. Both respondents had plausible arguments to make that might have prevented their discharge. The fact that the Commission saw fit to reinstate Donnelly suggests that an error might have been avoided had he been provided an opportunity to make his case to the Board. As for Loudermill, given the Commission's ruling we cannot say that the discharge was mistaken. Nonetheless, in light of the referee's recommendation, neither can we say that a fully informed decisionmaker might not have exercised its discretion and decided not to dismiss him, notwithstanding its authority to do so. In any event, the termination involved arguable issues,<sup>2</sup> and the right to a hearing does not depend on a demonstration of certain success.

The governmental interest in immediate termination does not outweigh these interests. As we shall explain, affording the employee an opportunity to respond prior to termination would impose neither a significant administrative burden nor intolerable delays. Furthermore, the employer shares the employee's interest in avoiding disruption and erroneous decisions; and until the matter is settled, the employer would continue to receive the benefit of the employee's labors. It is preferable to keep a qualified employee on than to train a new one. A governmental employer also has an interest in keeping citizens usefully employed rather than taking the possibly erroneous and counterproductive step of forcing its employees onto the welfare rolls. Finally, in those situations where the employer perceives a significant hazard in keeping the employee on the job,<sup>3</sup> it can avoid the problem by suspending with pay.

#### IV

The foregoing considerations indicate that the pretermination "hearing," though necessary, need not be elaborate.... In general, "something less" than a full evidentiary hearing is sufficient prior to adverse administrative action. *Mathews*

---

<sup>2</sup> Loudermill's ... explanation for the false statement is plausible in light of the fact that he received only a suspended 6-month sentence and a fine on the grand larceny conviction.

<sup>3</sup> In the case[] before us, no such danger seems to have existed.... Petitioner concedes that Loudermill's job performance was fully satisfactory.

*v. Eldridge*. Under state law, respondents were later entitled to a full administrative hearing and judicial review. The only question is what steps were required before the termination took effect....

Here, the pretermination hearing need not definitively resolve the propriety of the discharge. It should be an initial check against mistaken decisions—essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action. The essential requirements of due process, and all that respondents seek or the Court of Appeals required, are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement.... To require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee....

We conclude that all the process that is due is provided by a pretermination opportunity to respond, coupled with post-termination administrative procedures as provided by the Ohio statute. Because respondents allege in their complaints that they had no chance to respond, the District Court erred in dismissing for failure to state a claim. The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

*So ordered.*

**Justice Marshall, concurring in part and concurring in the judgment.**

I agree wholeheartedly with the Court's express rejection of the theory of due process, urged upon us by the petitioner Boards of Education, that a public employee who may be discharged only for cause may be discharged by whatever procedures the legislature chooses....

I write separately, however, to reaffirm my belief that public employees who may be discharged only for cause are entitled, under the Due Process Clause of the Fourteenth Amendment, to more than respondents sought in this case. I continue to believe that *before the decision is made to terminate an employee's wages*, the employee is entitled to an opportunity to test the strength of the evidence "by confronting and cross-examining adverse witnesses and by presenting witnesses on his own behalf, whenever there are substantial disputes in testimonial evidence." ... Because the Court suggests that even in this situation due process requires no more than notice and an opportunity to be heard before wages are cut off, I am not able to join the Court's opinion in its entirety.

To my mind, the disruption caused by a loss of wages may be so devastating to an employee that, whenever there are substantial disputes about the evidence,

additional pre-deprivation procedures are necessary to minimize the risk of an erroneous termination. That is, I place significantly greater weight than does the Court on the public employee's substantial interest in the accuracy of the pretermination proceeding....

**Justice Brennan, concurring in part and dissenting in part.**

[Justice Brennan joined in the portions of the Court's opinion presented above, but emphasized that where there were factual disputes, due process might "require more than a simple opportunity to argue or deny." (He also dissented from the Court's resolution of an issue not presented here, on administrative delay in *Loudermill's* case.)]

**Justice Rehnquist, dissenting.**

In *Arnett v. Kennedy* (1974), six Members of this Court agreed that a public employee could be dismissed for misconduct without a full hearing prior to termination. A plurality of Justices agreed that the employee was entitled to exactly what Congress gave him, and no more....

In these cases, ... in one legislative breath Ohio has conferred upon civil service employees such as respondents in these cases a limited form of tenure during good behavior, and prescribed the procedures by which that tenure may be terminated. Here, as in *Arnett*, "[t]he employee's statutorily defined right is not a guarantee against removal without cause in the abstract, but such a guarantee as enforced by the procedures which [the Ohio Legislature] has designated for the determination of cause." *Arnett* (opinion of Rehnquist, J.). We stated in *Roth* [that] [p]roperty interests ...are not created by the Constitution," but "stem from an independent source such as state law."

We ought to recognize the totality of the State's definition of the property right in question, and not merely seize upon one of several paragraphs in a unitary statute to proclaim that in that paragraph the State has inexorably conferred upon a civil service employee something which it is powerless under the United States Constitution to qualify in the next paragraph of the statute. This practice ignores our duty under *Roth* to rely on state law as the source of property interests for purposes of applying the Due Process Clause of the Fourteenth Amendment. While it does not impose a federal definition of property, the Court departs from the full breadth of the holding in *Roth* by its selective choice from among the sentences the Ohio Legislature chooses to use in establishing and qualifying a right.

Having concluded by this somewhat tortured reasoning that Ohio has created a property right in the respondents in these cases, the Court naturally proceeds to

inquire what process is “due” before the respondents may be divested of that right. This customary “balancing” inquiry conducted by the Court in these cases reaches a result that is quite unobjectionable, but it seems to me that it is devoid of any principles which will either instruct or endure. The balance is simply an ad hoc weighing which depends to a great extent upon how the Court subjectively views the underlying interests at stake. The results in previous cases and in these cases have been quite unpredictable. To paraphrase Justice Black, today’s balancing act requires a “pretermination opportunity to respond” but there is nothing that indicates what tomorrow’s will be....

One way to avoid this subjective and varying interpretation of the Due Process Clause in cases such as these is to hold that one who avails himself of government entitlements accepts the grant of tenure along with its inherent limitations. Because I believe that the Fourteenth Amendment of the United States Constitution does not support the conclusion that Ohio’s effort to confer a limited form of tenure upon respondents resulted in the creation of a “property right” in their employment, I dissent.