

Does Bowling Green State University Discriminate Against Religion?

Jerry Bergman, Ph.D.

Introduction

Bowling Green State University (BGSU), a state university in Bowling Green, Ohio, claims to be an equal opportunity employer that does not discriminate against persons on the grounds of religion. The 2007 university catalog states:

Bowling Green State University is committed to equal opportunity for all and does not discriminate in admission or access to, or treatment or employment in, its programs and activities on the basis of race, sex, sexual orientation, color, national origin, **religion**, creed, age, marital status, mental or physical disability, or veteran status. The Office of Equity and Diversity, 705 Administration Building, BGSU, is responsible for University compliance with Title IX, Section 504. Disability Services, 413 South Hall, is responsible for compliance with the Americans with Disabilities Act (emphasis added).

Note that this equal opportunity claim includes “religion.” I will document from court testimony taken under oath in a case upheld by the United States Court of Appeals for the Sixth Circuit that this claim is false.¹ In fact, BGSU openly practices discrimination and, in my experience, does nothing to stop this illegal behavior. I was openly terminated for reasons of religion, and when I sought help from the director of the university’s Equal Opportunity Compliance Office, Myron Chenault, he refused to do *anything* in response to my request because, in his words, he doesn’t like to have his time wasted investigating such “trivia” as religious discrimination.²

Background

I was a professor at BGSU for seven years. Each year I experienced derogatory comments about my religion, resulting in an openly hostile work environment, a fact that has

¹ *Gerald Bergman Ph.D. vs. Bowling Green State University et. al.*, Case No. 86-3031.

² Court transcript p. 666.

been extensively documented in sworn court testimony. A few examples include BGSU Professor Dr. Girona, who was both in my department and in my area of educational psychology, stated:

Specifically, it was related to me by a number of his colleagues ... that Bergman “is a religious fanatic,” “a fundamentalist,” “a born-again type,” “a member of a weird religion,” etc. and as such does not belong here. ... Probably their major concern was his active and open involvement in creationism. They were especially concerned about his involvement in creationism which they felt was an embarrassment to the university. They believe that no one knowledgeable today can reject evolution, although they admitted that, in their many conversations with Dr. Bergman on this topic, he seems to know a lot about this issue. Nonetheless, they feel strongly that he must be wrong since... scientific opinion supports evolution.³

My colleague, Dr. Charlesworth, who had an office next to mine, was well aware of the religious antagonism against me by the tenured department. In her affidavit she concluded that it was clear from her conversations with tenured faculty that the

evidence they had to support their concerns ... was pretty flimsy ... discrimination [exists] because of religious ... beliefs [and interests].... numerous times when I was in the mailroom ... certain tenured faculty read ... addresses on Jerry’s mail and giggle and make derogatory comments, especially if the mail was from a religious press or organization
.....⁴

Dr. Charlesworth testified under oath that

As to why Dr. Bergman did not obtain tenure, I believe that the most prevalent criticism by the tenured department members relates to the subject matter of his publications, especially the religious content. These criticisms are totally out of place and invalid as they amount to religious discrimination and smack of censorship.... his tenured colleagues in EDFI were also suspicious that he was bringing his religious beliefs into the classroom, a suspicion which, as far as I know, has no validity whatever. They obviously strenuously objected to his religious orientation.

. . . the department constantly made criticisms relative to Dr. Bergman’s religion ... I have heard tenured faculty in EDFI make a number of derogatory comments relative to Dr. Bergman’s religious interests and involvements. They laughed at the religious

³ Letter from Dr Girona dated May 27, 1980.

⁴ Affidavit of Dr. Charlesworth dated October 17, 1983.

publications ... and that he published in such publications ... probably a major reason that Dr. Bergman was terminated was a lack of respect for his strongly held religious beliefs, and the tenured faculty's objections to his publications on religious topics, their intolerance for diversity of opinion, and their strongly held objections to his religious involvement.⁵

BGSU Professor Gusweiler also described the religious antagonism of the faculty toward me.

For example she testified that she

asked Dr. Campbell if there was a religious base at all to Jerry's being denied tenure.... he stated too that *he thought Jerry had belonged to a group of religious fanatics; that Jerry himself was a religious fanatic*, and he thought that *that was part of the reason he was denied tenure*, and that was one of the things he had against him
Attorney. Did he say that his religion came up at the tenure vote meeting?
Dr. Gusweiler. I asked him if that was a reason Jerry was denied tenure, and *he said, yes, that was one of the reasons ...*⁶

Dr. Remington claimed that she was aware of a

number of statements made by tenured persons in [my] ... department which clearly reveal their religious bias.... It thus seems abundantly clear that the major if not the only objection to Dr. Bergman's tenure candidacy was his religious ideology. I am aware of the politics of universities, and this is not at all surprising.⁷

BGSU professor Dr. Fyffe concluded that the "major, if not the sole, reason for Dr. Jerry Bergman's denial of tenure was his strongly held creationist and religious beliefs as evidenced by his publications in these areas. At no time did I ever find that these views were misused in his teaching responsibilities."⁸ Dr. Perry, chair of the BGSU Department of Ethnic Studies, noted that in my case my personal "religion was a major factor, if not the only factor, in ... tenure denial"⁹ Dr. DePue, a full professor at BGSU, noted that he was

⁵ Affidavit of Dr. Charlesworth dated October 17, 1983.

⁶ Deposition of Professor Gusweiler, pp. 14, 29.

⁷ Affidavit of Dr. Remington dated September 14, 1983.

⁸ Affidavit Dr. Fyffe dated February 29, 1984.

⁹ Affidavit of Dr. Perry dated September 9, 1983.

shocked to learn that Dr. Jerry Bergman had been dismissed ... because of his religious beliefs, namely his espousal of creationism. It is clear to me from reviewing information and talking to individuals about the case that Dr. Bergman, in violation of the University Charter, articles 1, and .4C, was dismissed solely because of his religious beliefs. The charter clearly specifies that tenure is to be “granted or denied” solely on the basis of ... teaching effectiveness, scholarly or creative work, service to the University ... Dr. Bergman unquestionably meets all of these criteria. Few full professors have achieved the publication, teaching and service record of Dr. Bergman. Further, he not only has completed “the terminal degree or its professional equivalent” but is currently completing his second Ph.D. The University Charter clearly guarantees academic freedom, so termination on the grounds of espousing creationism in one’s publications is surely a violation of this article. Further, to dismiss an employee because of his or her religious beliefs is illegal, and grossly contrary to human rights and the constitution¹⁰

Former FBI agent and BGSU professor Dr. Gerald Rigby also concluded after a careful investigation of my case that it reveals that a “religious-orthodoxy test for tenure” exists at BGSU:

Insofar as Dr. Bergman’s views on religious matters, be they correct or incorrect, conventional or non-conventional, majority or minority views, were taken account of by those casting tenure votes, there exists a clear case of irrelevant factors entering into that decision. I think the record speaks quite clearly to this point—such views were considered in the decision process. That constitutes a ... violation of Dr. Bergman’s rights. Apparently the Fastback, “Teaching About the Creation/Evolution Controversy,” which Dr. Bergman authored for Phi Delta Kappa, entered into the decision; at least, his expression of “creationist” views seems to have been an issue ... I have read this presentation . . . while I, too, find myself supporting the “conventional wisdom” about evolution, this little booklet is a superbly done consideration of the issues involved. I can find no fault with Dr. Bergman’s analysis and presentation; it is excellently written (as are all his publications I have been privileged to read) soundly reasoned, and eminently fair in its approach. No one could legitimately cite this as support for ... adverse judgment on Dr. Bergman’s scholarship ... the University is a forum for exploration and exchange of ideas. Even the most unacceptable ought to have a fair hearing in a University, and the advocates of all views ought to ... receive the opportunity to explore, expound, and advocate their ideas.¹¹

The extensive on site investigation by the *University Professors for Academic Order* concluded

¹⁰ Affidavit of Dr. Wallace DePue dated September 16, 1983.

¹¹ Affidavit of Dr. Gerald Rigby dated October 24, 1983.

that a

sheaf of affidavits and descriptive testamentary documents obtained by our investigator confirm in detail to the testimony evinced by all those interviewed; they are not contradicted significantly by the responses of Dr. Bergman's detractors. The overwhelming majority of twenty-two of Dr. Bergman's colleagues interviewed on this matter, state unequivocally that Dr. Bergman experienced the two forms of injustice indicated above.... Those who voted against Dr. Bergman and were interviewed for the research were extremely guarded, and none would defend the procedure or the attitude evidenced toward Dr. Bergman's religion during the process of the decision on his tenure.... The testimony of the three primary detractors of Dr. Bergman ... expresses clear obvious religious prejudice against Dr. Bergman as the primary motivation for their vote against him. Their conversations with our investigator confirm the same.... The Committee Chair considered all of the materials relating to this case ... with the finding that an on-site investigation has revealed evidence beyond a reasonable doubt for religious discrimination, as well as a lack of due process in tenure proceedings, and that Dr. Bergman should be immediately reinstated with tenure....¹²

And Dr. Don Carriker, a member of the College of Education when I was at Bowling Green, wrote that

Dr. Bergman is a dedicated, scholarly individual who is a highly competent teacher and well respected by both students and many of his colleagues, but not all of my colleagues shared my high opinion of him.... Tenured colleagues were frequently said to have criticized his religious beliefs and publications. It is my conclusion that he was denied tenure primarily (if not solely) because of his conservative religious beliefs . . .¹³

Dr. Buron stated that he was directly involved in the

case against BGSU, and have discussed his case extensively with ... others who are involved. ... It is clear to me ... that the only reason for Dr. Bergman being denied tenure in Bowling Green State University is his religious beliefs.... no one has questioned Dr. Bergman's outstanding scholarship; both his chairperson and Dean had high evaluations of his work. There are many other cases of discrimination at Bowling Green State University. Denial of equal opportunity, based on minority status, is widespread, and thus this case does not surprise me, although it is extremely upsetting. I have contacted and talked extensively with a number of people about Dr. Bergman's case, and thus my conclusions are based on firsthand information and documents. I am aware of a number

¹² The *University Professors for Academic Order* Report dated January 1, 1984.

¹³ Affidavit of Dr. Don Carriker dated September 12, 1983.

of statements, made by tenured faculty members of his department, which clearly reveal their religious bias toward Dr. Bergman. It thus seems abundantly clear that the major if not the only objection to Dr. Bergman's tenure candidacy was his religious and personal ideology. Thus ... I strongly encourage whatever action is necessary to rectify this inequitable situation.¹⁴

I Attempt to Respond to the Hostile Workplace

Bothered by the many comments as documented in my court case, I went to the Affirmative Action Director to attempt to rectify the situation. The office of equal opportunity openly refused to do anything to respond to the concerns that I raised. I also was very concerned that I would be denied tenure based on religion, a concern that I raised with university administrators numerous times. First, the Affirmative Action Office claimed the university could not do anything until I was actually denied tenure because, until that time, it was only supposition on my part that I would be denied. Then, when I was denied tenure, the BGSU Affirmative Action Officers claimed that they could do nothing at that point because it was too late, the event was now past.

Finally, after I was openly terminated on the basis of religion, the administrators who refused to help me claimed that they did not know of my concerns until *after* I was terminated, claiming that for this reason they could not do anything to help me. In court, both of my claims, namely that I complained about the hostile work environment long before I was terminated and that the BGSU administrators did nothing when I sought their help, were verified.

The University Does Nothing About My Concerns

As was clear in the court hearing from the testimony on both sides, the university's response to my complaint was to blatantly ignore my request to ensure that discrimination did not occur. The director of the university's Equal Opportunity Compliance Office, Myron Chenault, testified under oath that *he did absolutely nothing to help me* when I went to him with

¹⁴ Affidavit of Dr. Buron dated September 23, 1983.

clear evidence that religious discrimination was occurring long before I was denied tenure.¹⁵ . Nor was this a frivolous concern, as his testimony documents. Mr. Chenault even admitted that when I tried to talk with the new compliance officer, Beverly Mullins, at that time about the hostile work situation that I faced at BGSU, she told me to leave her office:

Chenault: I know she had several discussions with Dr. Bergman about this case not only at this time but at other times.

Attorney: About his religious discrimination case?

Chenault: Oh, yeah. I mean I can recall her reviewing with me at least one time her discussions with him. One particular occasion was where Dr. Bergman came in and was visibly upset and used some rather ... [strong] language ... and she asked him to leave her office.

Attorney: He was upset because he again believed that he was the object of unlawful discrimination?

Chenault: Well ... she said he was physically upset ...

Attorney: Because of his claim of religious discrimination?

Chenault: ... He was just upset ... and she asked him to leave and, you know, the secretary—I talked to her secretary. Her secretary was pretty upset. They were concerned. Bergman obviously had a problem with something happening to him.

Attorney: There were other conversations that you had with Miss Mullins regarding Bergman's belief that he was—his belief, mind you, that he was an object of unlawful discrimination?

Chenault: Yes. There were other conversations.¹⁶

Mr. Chenault noted that I used rather strong language, demonstrating my extreme frustration with the total apathy of BGSU about my real concerns over the hostile work environment and the religious hostility that I was experiencing from BGSU. Mr. Chenault also admitted that he received a communication dated October 31, 1978, that stated, "Dr. Bergman was seriously concerned about religious discrimination in his employment."¹⁷ According to Mr. Chenault's

¹⁵ Court Transcript pp 657, 660-661.

¹⁶ Court Transcript p. 662-663.

¹⁷ Court Transcript p. 659.

testimony, he did not even bother to discuss my concerns with BGSU's provost, Dr. Michael Ferrari as required,¹⁸ but he "just looked at it, said something to Beverly [Mullins, the new Affirmative Action Director referred to above] and then put it away," ignoring my attempt to prevent discrimination from occurring, a concern he testified under oath he considered, "a lot of trivia."¹⁹

For this reason Chenault did nothing about my concerns because, in his words, he did not "like to have my time wasted."²⁰ It is grossly irresponsible for someone charged with preventing discrimination and protecting the rights of minorities to not want to be bothered with "a lot of trivia" about clearly protected rights. My concerns were not trivial to me, but ended my career, my marriage, my health, and drove me into bankruptcy and financial ruin. Nor are they a "lot of trivia" to the millions of people who suffer from discrimination.

I also contacted the provost at BGSU, Dr. Michael Ferrari, for help with my concerns about religious discrimination. This attempt also turned out to be fruitless. He did nothing to prevent the religious discrimination and hostile work environment I was facing at BGSU. When I complained about this fact I was demeaned in court:

Ms. Blatt: Your Honor, we object to this question. The testimony is outside the scope of direct examination.

The Court: I am not going to limit the cross examination.

Attorney Mattimoe: You protested and told them Dr. Ferrari is a bad guy, didn't you?

Dr. Bergman: I am certain that I didn't use those words; I am certain he didn't do anything to help me: I felt he didn't do anything to respond to my concerns of religious discrimination, and I felt this is a very serious concern; and I felt he should have done something, and, as far as I am aware he didn't do anything [to respond to my concerns]²¹.

Is it honest for the university to claim that they do not discriminate on the basis of

¹⁸ Court Transcript p. 661.

¹⁹ Court Transcript p. 666.

²⁰ Court Transcript p. 666.

²¹ Court Transcript p. 253.

religion, as they did in my situation, when they ignored my repeated requests, as is documented above in the court testimony, to deal with the hostile work environment I faced? They consistently did nothing about my concerns and, in violation of Ohio law, stated or implied that the concerns of religious minorities are a waste of time? BGSU officially opposes all forms of religious discrimination, and thus, this policy is legally part of our contract.²² (the court at *Franklin v. Atkins* 409 F. Supp. 439; affirmed 512 F. 2d 1188, ruled personnel decisions at BGSU are not to be influenced in any way by the personal religious views of faculty)..

Mr. Chenault even tried to claim that he knew nothing about my concerns until after I was denied tenure and filed an EEOC claim. In his answer to the court's question, "Prior to that time [the receipt of the EEOC charge] you personally had no knowledge of any religious problem" that I was having at BGSU. Myron Chenault claimed that he was surprised when he received the EEOC charge²³ because he claimed that he knew nothing about my religious discrimination concerns until *after* I was terminated and filed EEOC charges. As I will show, his own testimony clearly contradicted this claim. Mr. Chenault admitted that the university knew even before my promotion (I was promoted just before I was terminated) that, in his words, there might be "a problem coming up," with religious discrimination and that he was provided with copies of all of the documents that BGSU Provost Dr. Ferrari received.²⁴

Thus, in view of the letter from Beverly Mullins dated October 31, 1978, marked "to Myron Chenault" that expressed my concerns relative to religious discrimination, and the many letters I sent to Dr. Ferrari, Mr. Chenault was clearly fully aware of my concerns about religious discrimination long before I filed the EEOC charges.²⁵ Dr. Ferrari admitted that he had many discussions with me about this case,²⁶ and when specifically asked about my "religious discrimination case," he answered, "I can recall her [Mrs. Mullins] reviewing with me at least

²² *Adler v. John Carroll Univ.* 549 F. Supp 652 (1982).

²³ Court Transcript p. 667.

²⁴ Court Transcript p. 648.

²⁵ Court Transcript p. 658-659, 667.

²⁶ Court Transcript p. 663.

one time her discussions with him,”²⁷ adding that he even kept a file on my case: “It was standard operating procedures after he [Dr. Ferrari] had reviewed a particular document . . . his secretary would bring it over to my secretary for my review.”²⁸

When Mr. Chenault received the religious discrimination charges filed with outside agencies, he stated, “. . . the natural question that comes to most people’s minds in that situation . . . [is] what religion would the person be.”²⁹ Is not the same question natural when one receives a memo, such as that from Beverly Mullins? His later testimony is direct and to the point; in answer to the question, “In fact, the person you supervised, Beverly Mullins, [wrote] . . . a communication in which it was brought to your attention that Dr. Bergman was seriously concerned about religious discrimination in his employment?” Chenault said, “Yes, sir.”³⁰

Mr. Chenault admitted that he received copies of the many memos on my case. Why did he ignore them? His answer to this question was he did not want to be bothered with a lot of trivia! It was his responsibility as Director of Affirmative Action to be both aware of and respond to discrimination concerns. The fact is, as documented above, he did nothing and even lied under oath, claiming that he did not know about my concerns until *after* I filed charges with EEOC. This is a serious dereliction of his duty because, as he testified, he was fully aware of my concerns but did *nothing* to address them.³¹ He had discussed them extensively with me, and a review of his calendar will reveal that I had several appointments with him long before I was denied tenure. And, obviously, what would I talk to him about except discrimination, considering my situation and his role at the university when I first contacted him?

The University Condones the Hostile Work Environment

In response to the hostile work environment, I testified that “I was rather upset, I felt [my colleagues] had no right to criticize my religious beliefs,” such as my decision to abstain from

²⁷ Court Transcript p. 662-663.

²⁸ Court Transcript pp. 648-649.

²⁹ Court Transcript p. 651.

³⁰ Court Transcript p. 659.

³¹ Court Transcript p. 662-663, 648, 658-659, 667.

drinking alcoholic beverages.³² After I related examples of the hostile work environment I faced, as in calling me names such as belonging to a crazy religion and having co-workers laugh at the religious mail that I received, the university actually claimed that they could do nothing about the hostile work environment that I faced. BGSU's attorney John Mattimoe testified in court:

Here in a university where we have for years responded to the professor's demands for academic freedom ... **we can't do anything to them, no matter what they say ... we do not have control of the faculty in this regard.** The faculty are on a one-year contract; of course, when they have tenure, they have a right to a contract every year. ... faculty ... if they punch a student obviously we are responsible, but ... under [the] demands of academic freedom ... we have no control [over them].³³

Some of the court testimony that the university was referring to follows:

Dr. Bergman: I was rather upset. I felt he had no right to criticize my religion.

Mr. Mattimoe: Move to strike.

The Court: You're getting in hearsay. The motion to strike will be granted.

Dr. Bergman. How is it hearsay? He told it to me.

The Court: He is not here for cross examination.

Ms. Blatt: Oh, yes, all these people will be here, Your Honor.

The Court: Very well, then you may go ahead.

Ms. Blatt: Go ahead. If I may backtrack.... At this party you had refused a drink?

Dr. Bergman: My wife and I refused a drink.... Then [professor] Tom Bennett asked, "Why?"

Ms. Blatt: What did you respond to Tom Bennett?

Dr. Bergman: I said, "Well, there are several reasons." He specifically asked, "Is it because of your religion." [and Dr.] Burke said, "Oh, no, we hired a fundamentalist, and he will give us problems."³⁴

Conclusions

I now know that, instead of helping minorities, the university admitted under oath that the Affirmative Action Office actually "represents the university" *against* the rights of religious minority persons.³⁵ In other words, his office *defends* the university against people attempting to

³² Court transcript p. 43

³³ emphasis added, Court transcript p. 40-41.

³⁴ Court transcript p. 43-44.

³⁵ Court Transcript p. 15.

enforce the law. How can BGSU in any sense claim that it does not discriminate and are an “equal opportunity employer” when their so-called Affirmative Action Office actually serves to defend their discrimination, even claiming that they did not know about the problem, then admitting that they did, but did absolutely nothing about it?

In *Hooker vs. Tufts Univ.* (37 FEP 515) the court ruled that it is the court’s task to “scrutinize defendant’s evaluation ... to ascertain whether it was both procedurally fair and substantially reasonable.” Thus, courts are “forced to examine critically university employment decisions” (*Daris v. Weidner* 596 F.2d 726; 1979). The court thus is required to scrutinize the fairness and reasonableness of BGSU’s decision to determine if it was based on accurate, fair, and adequate knowledge of the professor’s performance, adequate evaluation, and followed appropriate procedures. Although BGSU claims a large degree of immunity from court scrutiny,³⁶ in the above-cited case, the court has

firmly declined to accord universities a special deference such that discrimination and privileges are rarely enforced (See *Sweezy* 569 F.2d at 176 and N.14, disclaiming *Faro v. New York University*, 502 F. 2d 1229, 1231-32, 8 FEP cases 609 (second car. 1974), and I am unwilling to do so. Thus, although I limit my scope of review to assuring that evaluation decisions made by the defendants are reasonable, I simultaneously apply a strict Title VII scrutiny to insure that those subjective decisions were somehow not infused with ... bias.”

I had once assumed that written statements, such as BGSU’s in their catalog, were honest claims and that they did not discriminate against religious minorities. In my experience, the putative affirmative action office at BGSU did nothing to support me in my effort to deal with documented discrimination and an openly hostile work environment at the university and, instead, has consistently defended the university to what they must believe is the right to discriminate. I was evidently the wrong type of minority. In other words, they will do nothing to my co-workers who are creating a hostile work environment—and only if they “punch a student” will they do something!³⁷

³⁶ Court Transcript p. 162.

³⁷ Court Transcript pp. 40-41.

