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# THE DISAPPEARANCE OF A DINOSAUR: REASSIGNMENT CLAUSES ARE LOSING THEIR FOOTING IN COLLEGE COACHES' CONTRACTS

MARTIN J. GREENBERG\* & BRANDON LEIBSOHN\*\*

## I. INTRODUCTION

In his first four years of coaching, Todd Hoffner (Hoffner) had become one of the most highly regarded football coaches in NCAA Division II.<sup>1</sup> He reinvigorated the football culture at Minnesota State University-Mankato—formerly Mankato State University—(Minnesota State) with unparalleled accomplishments on the field.<sup>2</sup> Playing in Division II of the Northern Sun Intercollegiate Conference, Minnesota State had only one winning season in its thirteen previous years prior to Hoffner’s taking over as head football coach.<sup>3</sup> Hoffner’s success came overnight as he helped guide the football team to three division titles and one conference championship.<sup>4</sup> The team’s overall record during these four years (34–13) gave Hoffner the highest winning percentage of any football coach in the school’s history other than Fred Just, who had only coached six games.<sup>5</sup> Based on these achievements, Minnesota State had become one of the better Division II football programs in the country.

All of the positivity surrounding the Mavericks football program came to a halt with the news that Hoffner was criminally charged in August of 2012 for his activities relating to child pornography.<sup>6</sup> In the course of receiving technical

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<sup>1</sup> See *2014 Football Coaching Staff*, MINN. STATE UNIV. MAVERICKS, <http://www.msumavericks.com/coaches.aspx?rc=501&path=football> (last visited Dec. 2, 2014).

<sup>2</sup> See *id.*

<sup>3</sup> *Minnesota State Football Year-By-Year*, MINN. STATE UNIV. MAVERICKS, <http://msumavericks.com/sports/2013/2/20/FB%20Year-By-Year.aspx> (last visited Dec. 2, 2014).

<sup>4</sup> *2014 Football Coaching Staff*, *supra* note 1.

<sup>5</sup> *Minnesota State Football Year-By-Year*, *supra* note 3.

<sup>6</sup> Associated Press, *Todd Hoffner Arrested for Child Porn*, ESPN (Aug. 21, 2012), [http://espn.go.com/college-football/story/\\_/id/8290633/minnesota-state-coach-todd-hoffner-arrested-](http://espn.go.com/college-football/story/_/id/8290633/minnesota-state-coach-todd-hoffner-arrested-)

support for his university-issued cell phone, the university uncovered videos that appeared to be pornographic in nature of Hoffner's children and turned them over to the police.<sup>7</sup> Minnesota State placed Hoffner on paid leave on August 17, 2012, pending the outcome of his criminal trial.<sup>8</sup> Hoffner was eventually cleared of these charges, as his motion to dismiss for lack of probable cause was granted.<sup>9</sup> The court ruled that although there were videos of Hoffner's children exposed, Hoffner never had any intent to have them perform any sexual acts, nor did he commit any sexual abuse of his children.<sup>10</sup>

Despite this favorable ruling for Hoffner, Minnesota State determined that Hoffner would no longer be the university's head football coach, and he was suspended for twenty days without pay,<sup>11</sup> prior to being reassigned to the position of Assistant Athletic Director for Facilities Development in conjunction with a reassignment clause in his coaching contract.<sup>12</sup> Hoffner's contract was also subject to Article 31 of the IFO Master Agreement, which was collectively bargained for between the Minnesota State College and University Board of Trustees and the Inter Faculty Organization (IFO).<sup>13</sup> Article 31 of the IFO Master Agreement stated that "[n]o member of the bargaining unit will be assigned out of unit work without his or her consent. . . . A faculty member may be transferred to another department/program within a university by agreement of the faculty member and the President, after consultation with the affected departments."<sup>14</sup>

Instead of coaching his team to football victories, Hoffner's new responsibilities included helping to develop a Master Facility Plan for the university's athletic facilities.<sup>15</sup> Hoffner was reassigned to his new position despite having limited experience in assessing athletic facility needs.<sup>16</sup> Essentially, Hoffner was forced to either accept his new position, and forego his once promising

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suspicion-possessing-child-porn.

<sup>7</sup> State v. Hoffner, No. 07-CR-12-3126, at \*2 (Minn. Super. Ct. Nov. 30, 2012).

<sup>8</sup> Press Release, Minn. State Univ. Mankato, Aug. 21: Univ. Statement (Aug. 22, 2012), available at <http://www.mnsu.edu/news/read/?id=1345652305&paper=topstories> [hereinafter Press Release].

<sup>9</sup> See generally *Hoffner*, No. 07-CR-12-3126 (Minn. Super. Ct. Nov. 30, 2012).

<sup>10</sup> *Id.* at \*13.

<sup>11</sup> Larry Oakes, *Mankato Coach Is Told He'll Be Moved to Assistant Athletic Director*, STAR TRIB., <http://www.startribune.com/local/185117081.html> (last updated Dec. 29, 2012).

<sup>12</sup> Press Release, Minn. State Univ. Mankato, Dec. 28: University Statement (Dec. 28, 2012), available at <http://www.mnsu.edu/news/read/?id=1356752094&paper=topstories> [hereinafter Hoffner Reassigned].

<sup>13</sup> See MINN. STATE COLL. & UNIV. BD. OF TR. & THE INTER FACULTY ORG., IFO MASTER AGREEMENT MNSCU 17, 113 (2009–2011).

<sup>14</sup> *Id.* at 113.

<sup>15</sup> Hoffner Reassigned, *supra* note 12.

<sup>16</sup> See generally *2014 Football Coaching Staff*, *supra* note 1.

coaching career, or resign and hope to gain employment with another university. Hoffner took the desk job in the interim, but appealed the reassignment decision on the basis that the university did not have cause to reassign him from football head coach to his new job without his consent.<sup>17</sup> On May 6, 2013, almost five months after being reassigned, Hoffner was fired by Minnesota State based on the negative publicity the university had received and the violation of university policy not to use university-issued cell phones for personal use.<sup>18</sup> Instead of commencing a lawsuit, Hoffner filed a labor grievance under his IFO Master Agreement and demanded arbitration.<sup>19</sup>

It took Hoffner until January 29, 2014 to obtain new employment, when Hoffner was hired as the Head Football Coach at Division II Minot State University (Minot State).<sup>20</sup> Three months after becoming the Head Football Coach at Minot State, the arbitration decision was released. The arbitrator found that Minnesota State had wrongfully reassigned and terminated Hoffner from the university.<sup>21</sup> Minnesota State had to reinstate Hoffner as Head Football Coach with a contract extension of two years and repay Hoffner the money it withheld during his twenty day unpaid suspension, plus back pay and interest.<sup>22</sup> Hoffner decided to return to Minnesota State as its Head Football Coach, but not without controversy.<sup>23</sup> The Minnesota State football team boycotted practice for two days following Hoffner's reinstatement and have since begrudgingly accepted Hoffner as their new coach and begun partaking in spring football activities.<sup>24</sup> Hoffner replaced his former assistant, Aaron Keen, who had compiled a 13–1 win-loss record in 2012 and took the Mavericks to the second round of the NCAA DII Tournament.<sup>25</sup>

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<sup>17</sup> *Hoffner Fights for His Coaching Job*, CBS MINN. (Jan. 3, 2013), <http://minnesota.cbslocal.com/2013/01/03/hoffner-fights-for-his-coaching-job/>.

<sup>18</sup> See Richard Meryhew, *Former Mankato Football Coach Todd Hoffner Fired by School*, STAR TRIB. (May 8, 2013), <http://www.startribune.com/local/206609951.html?refer=y>.

<sup>19</sup> See *id.*

<sup>20</sup> George Schroeder, *Todd Hoffner Returns to Coaching Ranks at Minot State*, USA TODAY (January 30, 2014), <http://www.usatoday.com/story/sports/ncaaf/2014/01/30/college-football-minot-state-todd-hoffner-mankato/5058561/>.

<sup>21</sup> Dan Nienaber, *Update: Arbitrator Rules Hoffner Should Be Rehired*, MANKATO FREE PRESS, [http://www.mankatofreepress.com/news/local\\_news/article\\_824b34cd-f404-5b09-b748-5cb80425a4d3.html](http://www.mankatofreepress.com/news/local_news/article_824b34cd-f404-5b09-b748-5cb80425a4d3.html) (last updated Sept. 2, 2014) (The seventy-two page arbitration decision by Arbitrator Gerald Wallin was posted by the Bureau of Mediator Services and was obtained by the Mankato Free Press before it was removed almost immediately from the website.).

<sup>22</sup> See *id.*

<sup>23</sup> Associated Press, *Mankato Players Will Practice Friday*, ESPN, [http://espn.go.com/college-football/story/\\_/id/10798853/minnesota-state-mankato-mavericks-return-wrongly-fired-coach-todd-hoffner](http://espn.go.com/college-football/story/_/id/10798853/minnesota-state-mankato-mavericks-return-wrongly-fired-coach-todd-hoffner) (last updated Apr. 17, 2014).

<sup>24</sup> *Id.*

<sup>25</sup> Curt Brown, *April 11: Dismissed MSU-Mankato Football Coach Wins Ruling*, STAR TRIB.,

Hoffner's reassignment and ultimate firing serves as a prime example of the misuse of reassignment clauses in coach contracts. The purpose of this Article is to examine the issues related to the utilization of reassignment clauses in college coaches' contracts. Part II of this Article will define what a reassignment clause is and provide sample clauses that have been used in recent college coaches' contracts. Part III of this Article will examine the case law surrounding reassignment clauses to illustrate that such clauses may constitute constructive discharge and a breach of contract and expose a university to liability if the university invokes such clauses. Part IV of this Article will re-examine reassignment clauses in light of the liability surrounding their use. Part V of this Article will look at a practical application of the use of a reassignment clause. Finally, Part VI of this Article will conclude that reassignment clauses should never be placed into coaching contracts, as they prevent both the universities and coaches from resolving their differences in an appropriate manner.

## II. DEFINING REASSIGNMENT IN COACHING CONTRACTS

Given the escalation of coaching salaries, universities have continued to employ reassignment clauses in their contracts with their coaches. The reassignment clause is a maneuver that universities use to keep a coach at the university in positions other than as head coach of the sports team without directly firing the coach. Instead of being the head coach of the team, the coach is placed into another position within the athletic department or another position within the university commensurate with the education and experience levels of the coach.<sup>26</sup> If the coach decides to reject the reassigned position, then the university can terminate the coach's contract and be excused from paying the remaining monies owed to the coach that have yet to be earned.<sup>27</sup> By forcing the coach into taking another position, the university seeks to put the burden on the coach to determine whether a working relationship can coexist despite the potential ill will resulting from the reassignment.<sup>28</sup> This tactic has been used by universities to limit their liability for additional benefits and liquidated damages that coaches would typically be entitled to collect pursuant to termination without cause clause provisions of their contracts.

Based upon a current review of numerous college coaches' contracts for a

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<http://www.startribune.com/local/254776931.html> (last updated Apr. 11, 2014).

<sup>26</sup> Martin J. Greenberg, *College Coaching Contracts Revisited: A Practical Perspective*, 12 MARQ. SPORTS L. REV. 127, 164 (2001).

<sup>27</sup> *Id.* at 165.

<sup>28</sup> *See id.*

number of college conferences, the popularity and use of a reassignment clause has somewhat diminished and been overtaken by well-drafted and negotiated termination without cause clauses in the event of the early termination of the coach by the university. However, reassignment clauses continue to be utilized in college coaching contracts.

The following examples of reassignment clauses in recent coaching contracts serve to illustrate the type of language that is used by universities to limit their liability:

MARK HELFRICH—University of Oregon: “The University’s intent is for Coach to serve as the head coach of the intercollegiate football team throughout the Term of this Agreement. However, Coach understands that the University retains the right to assign Coach to other positions with different duties during the Term of this Agreement (Reassignment). Should such Reassignment be under consideration, University shall consult with Coach and seek Coach’s Input at least thirty (30) calendar days before a Reassignment is made. In no event, however, will Coach be assigned to a position that is not, in University’s sole good faith judgment, consistent with his education, expertise or experience, nor will Coach’s Guaranteed Salary be reduced during the Term of this Agreement. If University reassigns Coach and Coach refuses to accept such reassignment, University must terminate this Agreement pursuant to the terms and conditions for termination by University set forth in Section 6.2 below.”<sup>29</sup>

BRUCE WEBER—Kansas State University: “KSA and the University retain the right to assign Coach to other positions with different duties during the term of this Agreement. If the University or KSA makes such a decision to reassign Coach and Coach refuses to accept such reassignment, then Coach’s employment shall terminate pursuant to Section 4.01 of this Agreement. At any time during the term of this Agreement, Coach may be placed on administrative leave with pay at the discretion of KSA and/or University. If Coach is placed on administrative leave with pay at any time during his employment, he agrees that he will not accrue any additional vacation leave during the administrative leave period.”<sup>30</sup>

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<sup>29</sup> Univ. of Or., Emp’t Agreement ¶ 2.2 (Jan. 20, 2013) [hereinafter Helfrich Contract].

<sup>30</sup> Kan. State Univ., Kan. State Univ. Men’s Basketball Head Coach Agreement art. 3, § 1(b) (Mar.

DOUG MARTIN—New Mexico State University: “Head Coach agrees that Athletics Director may, at any time and without cause or the necessity of any hearing, reassign Head Coach to other positions with different duties than those as Head Coach of University’s Men’s Football program, without reduction in Head Coach’s wages and benefits specified in Section 3 only. Any such reassignment shall be consistent with Head Coach’s education, training and work experiences. Benefits set forth in Section 4, if any, shall terminate effective upon reassignment unless otherwise agreed upon by the parties. If Head Coach is reassigned, and accepts such reassignment, the liquidated damages provision set forth in Paragraph 12 above shall have no further force or effect for the remaining term of this Agreement.

In the event that Head Coach is reassigned from the position of Head Coach of the University’s Men’s Football program during the term of this Agreement and he obtains other employment, or refuses to accept the reassignment and to perform the duties to which he may be reassigned, Head Coach shall be deemed to have resigned his employment, and waived his right to any pre-termination, post-termination, or any other administrative or other hearing, and as of the date Head Coach ceases his duties or Head Coach refuses to accept reassignment or perform the duties to which he is assigned, all of University’s obligations to Head Coach under this Agreement shall cease and University shall incur no liability for any loss of wages or benefits (except for wages and benefits earned to the date of such constructive resignation), or for any consequential damages as a result of lost collateral business opportunities or other benefits, including any perquisites or income resulting from activities such as, but not limited to, camps, clinics, media appearances, apparel or shoe contracts, or consulting relationships, or for any other damages whatsoever that may ensue as a result of such constructive resignation.”<sup>31</sup>

ANTHONY LEVINE—University of Houston: “Your performance will be subject to periodic review by the Director of Ath-

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30, 2012).

<sup>31</sup> N.M. State Univ., Emp’t Agreement for Doug F. Martin ¶ 14 (Mar. 1, 2013).

letics and subject to reassignment within the University's Athletics Department for the remainder of the contract. In the event of such reassignment, the compensation for the performance of such reassigned duties and responsibilities will be equal to the full-annual base salary reference above, payable in monthly installments for the remainder of the contract term so long as you remain employed by the University."<sup>32</sup>

SEAN KUGLER—University of Texas El-Paso: "Throughout the Term of this Agreement, Coach shall use his best full-time energies, efforts, and abilities for the exclusive benefit of the University. It is understood by the Parties, however, that at the discretion of the Athletic Director, Coach may be removed from the duties and responsibilities as Head Football Coach and reassigned to other duties and responsibilities within the Athletic Department. In the event of such reassignment, beginning on the date of such reassignment, Coach's total compensation for the performance of such reassigned duties and responsibilities shall be the Base Salary in effect at the date of reassignment, which salary is listed on Section 6.A.(1) of this Agreement. The University's obligations under Section 6.B. shall terminate upon reassignment at the University's sole discretion. Upon cessation of his coaching duties and responsibilities, Coach shall voluntarily relinquish all appointments on NCAA or athletic conference committees, subcommittees and/or councils of any nature if so requested by the University. If the University exercises its right to reassign Coach and the coach refuses to accept such reassignment, the University may terminate this Agreement pursuant to Section 7.A."<sup>33</sup>

TERRY BOWDEN—University of Akron: "The parties acknowledge and agree that the University retains the right to assign the Coach to other positions without reduction in salary. The University shall confer with the Coach regarding any such reassignment at least thirty (30) days in advance of the effective date of reassignment. In no event, however, will the Coach be assigned to any position which is not consistent with his education and experience or which may reasonably be considered a

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<sup>32</sup> Memorandum of Understanding Offer from Renu Khator, Chancellor and President, Univ. of Houston, to Anthony M. Levine, Head Football Coach 3 (Dec. 22, 2011).

<sup>33</sup> Univ. of Tex.-El Paso, Head Coach Emp't Agreement § 4(E) (Jan. 1, 2013).

demotion or embarrassment. If the University makes such a decision to reassign the Coach, consistent with the provisions of the previous sentence, and the Coach refuses to accept such reassignment, then the University may terminate this Contract with no further liability to the Coach, except that the Coach will be entitled to have his health insurance plan and life insurance plan paid by the University until he is employed full-time elsewhere; provided, however, that such obligation shall not exceed one (1) year from the date of termination. The Coach is required to mitigate University's obligations under this Section V(I) by making reasonable and diligent efforts to obtain a coaching or other comparable employment position as soon as practicable following such reassignment. After Coach obtains new employment, Coach's obligations with respect to the re-assigned position shall cease and the University's obligation under this Contract, including but not limited to the financial obligations of this section and/or any liquidated damages obligations, shall cease, except as otherwise provided in this section (IV)(I)."<sup>34</sup>

JOHN COSGROVE—University of Maine: “Coach shall manage and supervise the Sports Team, and perform such other duties in the intercollegiate athletic program of the University as may be reasonably assigned. The University reserves the right to reassign Coach to another position or to duties other than as coach of the Sports Team, while retaining the salary and benefits stated herein. Any such reassignment will be to a position commensurate with Coach's skills, qualifications and abilities and the needs of the Athletic Department.”<sup>35</sup>

ROBERT MURPHY—Eastern Michigan University: “Employee shall manage and supervise the University's Men's Basketball Team (‘Team’), and perform such other duties in the intercollegiate athletic program of University as may be assigned. University reserves the right to reassign Employee to duties other than as Employee of the Team, while retaining the salaries and benefits stated herein.”<sup>36</sup>

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<sup>34</sup> Univ. of Akron, Emp't Contract § V(I) (Aug. 7, 2012).

<sup>35</sup> Univ. of Me., Coaching Emp't Agreement ¶ 1.3 (July 1, 2013).

<sup>36</sup> E. Mich. Univ., E. Mich. Univ. Athletic Coach Emp't Agreement ¶ 1.3 (Apr. 25, 2011).

A well-drafted reassignment clause in a college coach's employment contract will contain some or all of the following elements:

1. The university retains the unfettered right to reassign the coach throughout the term of the coach's contract.
2. The right to reassign relates to terminating the coach in his current position as head coach and assigning the coach to other positions with different duties at the university.
3. The university will consult with the coach to discuss such reassignment and receive the coach's input and possibly consent.
4. The reassigned position will be consistent with the coach's education, expertise, or experience.
5. The amounts of continued compensation will be defined, which normally involves the guaranteed salary and not outside income, perquisites, talent fees, and bonuses.
6. The reassignment clause will address whether the newly assigned position has the same term as the unexpired term of the coaching contract.
7. If the coach refuses to accept the reassignment, the university has the right to terminate the coaching contract without any further financial responsibility.
8. In the event the coach accepts reassignment, the liquidated damages clause of the contract, normally part of a termination without cause provision, should be of no further force and effect.

These examples illustrate the various types of protection that universities seek against liability if they decide to reassign their coaches. Accordingly, it is important to understand how these clauses have been legally interpreted and enforced and what remedies the coaches have if these clauses are used improperly or challenged legally.

### III. REASSIGNMENT IN ACTION: CASE LAW - COACHES DISPLACED FROM COACHING DUTIES

By permitting the use of a reassignment clause in a coaching contract, coaches subject themselves to being transferred to different positions within their institutions. Universities have used these clauses to reduce negative publicity surrounding their athletic programs, to lessen the responsibilities of their employees, and to remove the blame if a coach ends up resigning rather than continuing in the new position. Thus, it is not unusual for the coach to resign

from the university following the reassignment because of a deteriorating relationship between the university and coach, the loss of prestige as a result of the reassignment, and the diminished job responsibilities that come with his new position. Following the resignation, a coach may sue the university to either collect damages for wrongful discharge or for specific performance to regain his head coaching job.

#### A. *Establishing Constructive Discharge*

When an employee with a personal services contract with his employer is reassigned to another position, the employer has to be aware of the potential employee claims of constructive discharge and breach of contract. Specifically, constructive discharge is the equivalent of firing the employee because the employee's reassigned position comes with a demotion, reduction in compensation, or loss of job responsibilities. The United States Supreme Court has set the standard for constructive discharge and requires an answer to one fundamental question: "Did working conditions become so intolerable that a reasonable person in the employee's position would have felt compelled to resign?"<sup>37</sup>

The case of *McLaughlin v. Union-Leader Corp.* was one of the initial cases discussing the issue of constructive discharge.<sup>38</sup> In *McLaughlin*, an advertising manager of a newspaper, whose contract called for him to "have the title of Advertising Manager" and be compensated \$1,000 per month, was placed on an indefinite leave of absence when the newspaper acquired its competitor and decided to place its competitor's advertising manager in charge of both newspapers.<sup>39</sup> The court concluded that the newspaper's "right to assign the plaintiff's duties and responsibilities does not extend to the point where the assignment would constitute in effect a virtual replacement and demotion."<sup>40</sup> Moreover, the court declared that such a demotion could be inferred when an employee's benefit from working in a specific position is "the acquisition of skill or reputation."<sup>41</sup>

In addition to constructive discharge, employees may also attempt to assert a breach of contract claim. As the *McLaughlin* court notes, "[I]n commercial employment an employee may have been promised a place of dignity and privilege, so that it is a breach of contract, and an essential one, to reduce him to an inferior status."<sup>42</sup> The same "virtual replacement and demotion" factor utilized

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<sup>37</sup> Pa. State Police v. Suders, 542 U.S. 129, 141 (2004).

<sup>38</sup> *McLaughlin v. Union-Leader Corp.*, 116 A.2d 489, 489 (N.H. 1955).

<sup>39</sup> *Id.* at 491-92.

<sup>40</sup> *Id.* at 493 (citing *Marks v. Cowdin*, 123 N.E. 139 (N.Y. 1919)).

<sup>41</sup> *Id.* at 492.

<sup>42</sup> *Id.* at 493 (citing 3 CORBIN ON CONTRACTS 683 (1960)).

in the constructive discharge analysis could also constitute a breach of the parties' contract if "to the public, and to [the] defendant itself, he would be manager in name only."<sup>43</sup> Damages for the breach of contract can include the amounts the employee "would have received in addition to his contract [base] pay had both parties completely performed the contract."<sup>44</sup> The failure to pay benefits that otherwise would have been provided to the employee is a foreseeable "result of the breach for which compensatory damages may be awarded."<sup>45</sup>

Cases like *McLaughlin* have frequently been litigated, especially in relation to Title VII harassment and discrimination situations.<sup>46</sup> Yet, the standard for constructive discharge has remained consistent and has been an effective argument used against employers who reassign their employees. Accordingly, it is important for coaches to understand the concept of constructive discharge, particularly when their contracts enable their universities to reassign them. Rather than remaining in a lesser role or receiving reduced pay at the university, coaches have a remedy available to them to combat a university's use of the reassignment clause.

### *B. Reassignment Clauses for Coaches in Youth and High School Sports*

Reassignment clauses have entered into the contracts of coaches as early as the high school level. The case of *Meadors v. Arkadelphia Public Schools*<sup>47</sup> contains a typical storyline for a lawsuit at the high school level. Meadors had been the head football coach at a school within the Arkadelphia School District and was employed under an annual renewable teaching contract.<sup>48</sup> In addition to his \$37,000 salary for teaching at the school, he was also to receive \$3,000 for serving as the head football coach.<sup>49</sup> In his contract, Meadors agreed to a reassignment clause, which stated that he was "subject to transfer or reassignment at the direction of the superintendent."<sup>50</sup> Although Meadors' contract was renewed during his third year, the superintendent used the reassignment clause to reassign Meadors from the high school head football coach to the junior high school football coach.<sup>51</sup> Despite the perceived demotion, Meadors was still to

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<sup>43</sup> *Id.* (citing *Mair v. S. Minn. Broad. Co.*, 32 N.W.2d 177, 179 (Minn. 1948)).

<sup>44</sup> *Id.* at 494.

<sup>45</sup> *Id.* (citing *Johnson v. Waisman Bros.*, 36 A.2d 634 (N.H. 1944); *Davis v. New England Cotton Yarn Co.*, 92 A. 732 (N.H. 1914)).

<sup>46</sup> *See, e.g.*, *Robinson v. Sappington*, 351 F.3d 317, 319 (7th Cir. 2003); *Moore v. KUKA Welding Sys. & Robot Corp.*, 171 F.3d 1073, 1076 (6th Cir. 1999).

<sup>47</sup> 10 S.W.3d 109 (Ark. Ct. App. 2000).

<sup>48</sup> *Id.* at 110.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

receive the same salary in his new position.<sup>52</sup> However, Meadors became concerned that the new coaching position would damage his reputation in the coaching community and that he would be working increased hours, which would cause him to actually suffer economic loss in the transition.<sup>53</sup>

Instead of taking the new job in stride, Meadors sued the school district, arguing that by removing him from the head high school football coaching position and placing him on the junior high school football staff, the school district had not reassigned him, but had constructively fired him by failing to renew his contract with the protections granted to employees under the Arkansas Teacher Fair Dismissal Act.<sup>54</sup> The Arkansas Teacher Fair Dismissal Act was designed to protect teachers by requiring the school district to renew contracts under “the same terms and for the same salary” unless the superintendent notified the teacher that his contract was not going to be renewed at all or the teacher and school district agreed on a completely new contract.<sup>55</sup> The court of appeals dismissed Meadors’ claim and concluded that he had been reassigned and not constructively fired.<sup>56</sup> Specifically, the court noted that Meadors’ “salary did not decrease,” the terms of the contract remained the same in the renewed third year of Meadors’ contract, and the contract merely stated that Meadors would be a “coach” and did not specify where or what type of coach he would be.<sup>57</sup>

In *Jett v. Dallas Independent School District*,<sup>58</sup> Norman Jett had been the head football coach and athletic director for thirteen years when the principal informed him that he would be removed from his positions based on an incident involving referees and a failure to curtail negative controversies surrounding the football team. Instead of firing Jett, the school superintendent reassigned him to be a teacher at another school without the opportunity to coach or serve in any athletic capacity at the new school.<sup>59</sup> Jett filed suit against the school district arguing that he had a protected property right in his employment as coach and athletic director.<sup>60</sup> The court found in favor of the school district because Jett’s contract contained a reassignment clause that allowed the superintendent “to assign the teacher to such school as he may determine, and may from time to time assign or reassign the teacher to other schools,” and Jett had received the full salary that he was to receive for serving as coach despite not having actually

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.* at 110–11.

<sup>56</sup> *Id.* at 111.

<sup>57</sup> *Id.*

<sup>58</sup> 798 F.2d 748 (5th Cir. 1986).

<sup>59</sup> *Id.* at 752.

<sup>60</sup> *Id.* at 753.

fulfilled any of those duties.<sup>61</sup> There was no property interest in being able to coach, only to receive the economic benefits.<sup>62</sup>

However, more importantly, the *Jett* court set a standard for constructive discharge that was to be applied to coaches in future cases.<sup>63</sup> In order to be constructively discharged, the school has to make the working environment “so intolerable that the employee *reasonably* felt compelled to resign.”<sup>64</sup> Thus, even if the school intended for the coach to resign based on the perceived demotion, the school would not be liable unless it created unbearable conditions within the new position that made the coach unable to carry out his new duties.<sup>65</sup> The *Jett* court asserted that demoting or transferring a coach may, in some circumstances, constitute a constructive firing if the coach is able to show unpleasant working conditions beyond mere embarrassment or humiliation, such as racial discrimination or violations of his free speech rights.<sup>66</sup>

The case of *Covington v. Beaumont Independent School District*<sup>67</sup> illustrates how a school district can create racial discrimination, which may constitute constructive discharge and violate the Equal Protection Clause of the Fourteenth Amendment.<sup>68</sup> Following a controversial article in the local newspaper regarding the lack of African American coaches on the varsity football team, the school district reassigned two coaches, one white and one Hispanic, from the varsity coaching staff to the sophomore team coaching staff and replaced them with two African American coaches from the sophomore team.<sup>69</sup> The reassigned coaches each had provisions in their contracts, which stated that they were subject to “transfer, assignment and reassignment of positions or duties at any time during the contract term.”<sup>70</sup> Additionally, the coaches’ contracts contained a provision stating that, “If supplemental duties, e.g., coaching, are assigned, they will be compensated according to District’s supplemental schedule, but such duties create no property right, and may be terminated at any time.”<sup>71</sup>

The school district claimed that it reassigned these particular coaches based

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<sup>61</sup> *Id.* at 753–54.

<sup>62</sup> *Id.* at 754.

<sup>63</sup> *Id.* at 755.

<sup>64</sup> *Id.* (citing *Kelleher v. Flawn*, 761 F.2d 1079, 1086 (5th Cir. 1985); *Junior v. Texaco, Inc.*, 688 F.2d 377, 379 (5th Cir. 1982)).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 755–56.

<sup>67</sup> 714 F. Supp. 1402 (E.D. Tex. 1989).

<sup>68</sup> *See generally id.*

<sup>69</sup> *Id.* at 1404–05.

<sup>70</sup> *Id.* at 1404.

<sup>71</sup> *Id.*

on seniority and because they were not African American.<sup>72</sup> Although the coaches did not receive any reduced salary benefits and were able to maintain their teaching positions at the school, they claimed that the school district violated their equal protection rights because they were singled out for their race.<sup>73</sup>

The court concluded that the school district was not permitted to make racial distinctions against the coaches because it had already desegregated its schools and promoted integration.<sup>74</sup> By becoming a unitary school district where the racial ratio of the faculty members was reasonable, the school district then could make employment decisions only based on objective criteria, without taking race into consideration.<sup>75</sup> The court also rejected the notion that the student-athletes would receive enhanced educational benefits based on the reassignment because removing the only non-white coach from the varsity team and replacing him with an African American did not constitute much difference in the athlete's athletic experience.<sup>76</sup> Due to the school district's misuse of the reassignment clause in the coaches' contracts, the court ordered the school district to reinstate one coach to the varsity team (the other coach did not want to be reinstated) and awarded both coaches \$5,000 in compensatory damages arising out of their mental anguish from their unlawful reassignment.<sup>77</sup>

### *C. Reassignment Clauses for Coaches in College Sports*

The concept of reassignment is similar for college coaches, except for the magnified opportunities for the university to place the coach in another position within the athletic department that does not contain coaching duties. Universities can create new positions such as what Minnesota State did with Hoffner<sup>78</sup> or find alternative means to displace their coaches from their positions.

#### 1. Interpreting Reassignment Clause Language

The case of *Monson v. State of Oregon* concerned interpreting the language of a head coach's reassignment clause to determine if the university had breached its contract with the coach in moving him to a new position.<sup>79</sup> Don Monson was the head basketball coach at the University of Oregon (Oregon)

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<sup>72</sup> *Id.* at 1405.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 1409–10.

<sup>75</sup> *Id.* at 1410.

<sup>76</sup> *Id.* at 1412.

<sup>77</sup> *Covington v. Beaumont Indep. Sch. Dist.*, 738 F. Supp. 1041, 1043 (E.D. Tex. 1990).

<sup>78</sup> Hoffner Reassigned, *supra* note 12.

<sup>79</sup> See generally 901 P.2d 904 (Or. Ct. App. 1995).

and his contract contained a provision that enabled the university to reassign Monson to another position within the university in conjunction with Oregon law.<sup>80</sup> Monson's contract reassignment clause stated that:

As authorized by statute and by authority delegated to the Chancellor and the institution presidents, *personnel may be transferred or reassigned within an institution in accordance with the staff needs of the institution* or other units. Such personnel action should not be considered sanctions for cause unless they result from actions described in OAR 580-21-325.<sup>81</sup>

Monson was earning approximately \$80,000 in annual coaching salary and had additional income through basketball summer camps on campus, sponsorship deals with Nike and Rawlings Sporting Goods, and providing content and appearances on television and radio programs.<sup>82</sup> Further, Oregon provided Monson with a membership to a local country club and two free vehicles.<sup>83</sup> Following his ninth season as head coach, Oregon decided to reassign Monson from head coach of the basketball team to head coach of the men's golf team and as a fundraiser for the athletic department.<sup>84</sup> Monson refused the reassignment and sued the university for breach of contract.<sup>85</sup> At the trial court level, Monson was awarded \$292,087.83 in damages.<sup>86</sup>

The court of appeals overturned the judgment on the basis that the university had the contractual right under Oregon law to reassign Monson in accordance with "the staff needs of the institution."<sup>87</sup> Interestingly, the court gave deference to the university and permitted the university to reassign Monson to golf coach in line with the staff needs of the institution.<sup>88</sup> The court declared that the definition of staff needs included "an evaluation of how best to make use of available staff members. That inquiry requires an assessment of the strengths and abilities of the individual staff members."<sup>89</sup> Ultimately, the court concluded that even though Monson's skill set made him incapable of leading the basketball team, as evidenced by the team's losing record and the amount of money the

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<sup>80</sup> *Id.* at 905.

<sup>81</sup> *Id.* at 908 (emphasis added by the court).

<sup>82</sup> *Id.* at 905.

<sup>83</sup> *Id.* at 906.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at 907.

<sup>87</sup> *Id.* at 909–10.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 910–11.

team was losing each year, Monson could still fulfill the duties of the golf coach.<sup>90</sup>

Unlike Monson's contract, some coaches do not have specific reassignment clauses in their contracts and courts are left to determine whether the university has the right to reassign a coach into another position within the university. In *Fleming v. Kent State University*,<sup>91</sup> an assistant football coach was reassigned to the position of Assistant to the Athletic Director despite there being no reassignment provision in the coach's contract. The university's former athletic director, who drafted the coach's contract, testified that he had never before reassigned a coach into a non-coaching position.<sup>92</sup> When the new athletic director reassigned the coach, he did so with the belief that the university could reassign the coach to a position that would suit the coach's background and experience.<sup>93</sup> Specifically, the coach's reassignment position had the duties of fundraising, maintaining the university's facilities, and marketing the school's athletic teams.<sup>94</sup> Despite the lack of a reassignment clause, the court noted that it was "reasonable under the circumstances for [the coach] to anticipate reassignment within the coaching staff but that he could not reasonably anticipate reassignment to a non-coaching position in the Athletic Department."<sup>95</sup>

Moreover, unlike in *Monson*, the *Fleming* court considered the coach's background and experience when determining if the coach was even qualified for the new position.<sup>96</sup> The court found that it was "difficult[] [to] believ[e] the duties of the newly-created administrative position match plaintiff's background and experience. Plaintiff has been a coach for 27 years and has never held an administrative position."<sup>97</sup> Accordingly, the coach's reassignment was considered a constructive discharge because the university had not previously reassigned coaches into non-coaching positions, had cancelled the free car lease that the school was to provide under the coach's contract, and did not consider the coach's skill set and background in reassigning him.<sup>98</sup> The university essentially made it obvious to the coach that he was no longer a valuable member of the university's athletic department and the court concluded that "a reasonable person would have felt compelled to resign" as the coach did.<sup>99</sup>

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<sup>90</sup> *Id.*

<sup>91</sup> *Fleming v. Kent State Univ.*, Ct. of Cl. No. 2011-09365, 2012-Ohio-6350.

<sup>92</sup> *Id.* ¶ 24.

<sup>93</sup> *See id.* ¶ 25.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* ¶ 26.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* ¶ 28.

<sup>99</sup> *Id.*

Thus, when universities reassign coaches into new positions, courts will examine the language of the clauses, the circumstances surrounding the reassignment, the nature of the position, and the benefits the coach is set to receive in the new assignment. Unlike in *Monson*, where the court gave deference to the university in interpreting the contract language,<sup>100</sup> courts have begun to delve more deeply into the education and background of the coach prior to the reassignment being permitted. This new development serves coaches well, as it is unlikely in many cases that they possess the requisite experience or skills to succeed in many of the positions to which they are being reassigned.

## 2. Due Process Rights

In conjunction with interpreting reassignment clauses, courts have also been more willing to reassess inappropriate reassignments from coaching and athletic department positions. In *Ridpath v. Board of Governors Marshall University*,<sup>101</sup> David Ridpath was reassigned from his position as Assistant Athletic Director to the Director of Judicial Programs following an academic scandal involving student-athletes at Marshall University. Ridpath agreed to the reassignment in exchange for a raise and for the university to inform the NCAA that Ridpath's new position had no relation to the academic scandal.<sup>102</sup> The university violated its agreement when it communicated to the NCAA that Ridpath had been reassigned for his involvement in the academic scandal, which ultimately caused Ridpath significant damage to his reputation and career potential.<sup>103</sup> The court found that the university involuntarily demoted Ridpath by deceiving him into believing he would not be blamed for the scandal if he accepted the reassignment.<sup>104</sup> Ridpath had a liberty interest claim to follow his profession and the new position prevented Ridpath from having any ability to work in the field of college athletics administration and constituted a significant change in his job status.<sup>105</sup> The court found that "in a dramatic change of status equivalent to outright discharge, [Ridpath] was ousted from the University's Department of Athletics and completely excluded from his chosen field of intercollegiate athletics administration,"<sup>106</sup> which violated his liberty interests.

Further, by preventing Ridpath from communicating with the NCAA or the public regarding the allegations involving the scandal, Ridpath's due process

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<sup>100</sup> *Monson v. State*, 901 P.2d 904, 910–11 (Or. Ct. App. 1995).

<sup>101</sup> 447 F.3d 292 (4th Cir. 2006).

<sup>102</sup> *Id.* at 301.

<sup>103</sup> *Id.* at 301–02.

<sup>104</sup> *Id.* at 311.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

rights were violated because the university made false statements “connoting dishonesty and other serious character defects on his part, in the course of subjecting him to a significant demotion to a position outside his field of choice.”<sup>107</sup> The university ended up settling the case and paid Ridpath \$200,000.<sup>108</sup>

#### IV. RE-EXAMINING REASSIGNMENT CLAUSES IN LIGHT OF LIABILITY

The case law demonstrates that universities subject themselves to potential liability regarding any reassignment that they make regardless of the language used to create the clauses. Trying to force a coach into another position that does not fit his particular skill set, his level of education or experience, or threatens his reputation can be more trouble than it is worth for the university. Accordingly, universities should re-examine the use of reassignment clauses and their approach to removing their coaches from their duties in light of the repercussions that may result from their actions.

##### A. Revisiting Monson

Although the *Monson* case seemingly is a persuasive precedent for universities, it is unlikely today that a court would come to the same conclusion if it was presented with a similar case involving the reassignment clause. It is ironic that the very same attributes that made Monson unfit to be the head basketball coach at Oregon seemingly made him the perfect fit to fill the staff needs of golf coach and university fundraiser. Specifically, the *Monson* court defined staff needs as “those things that are necessary, useful, or desirable with regards to the group of staff members on which the university depends for its general operation.”<sup>109</sup> Oregon was essentially able to take Monson away from coaching basketball, the only profession he had ever had,<sup>110</sup> and turn him into a golf coach and fundraiser. Monson’s skills were clearly more suited for coaching basketball than coaching golf and to maintain Monson at his high salary, as well as to hire another basketball coach, would have cost the university much more money than simply hiring a new golf coach. Monson’s reassigned position was unlike that of the men’s basketball coach in *Garland v. Cleveland State University*,

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<sup>107</sup> *Id.* at 313.

<sup>108</sup> *MU to Pay \$200,000 to Settle Lawsuit Involving Ridpath*, HERALD-DISPATCH (Mar. 12, 2009), <http://www.herald-dispatch.com/news/x1382332376/MU-to-pay-200-000-to-settle-lawsuit-involving-Ridpath?r=mc&show=all>.

<sup>109</sup> *Monson v. State*, 901 P.2d 904, 909 (Or. Ct. App. 1995).

<sup>110</sup> See generally Press Release, State Farm Battle in Seattle, 2004 Honoree Don Monson (Sept. 1, 2004), available at <http://www.battleinseattle.com/2004/09/2004-honoree-don-monson/>.

where the coach was reassigned to Special Assistant to the Athletic Director, a position in which he would carry out duties similar to what he had done as a coach (overseeing academic compliance of student-athletes and making appearances on behalf of the university in the community).<sup>111</sup> Monson's supervisor had given him outstanding evaluations,<sup>112</sup> and the university offered no evidence in court as to why reassigning Monson from the only job he had ever engaged in to one in a completely different sport would help serve the university's staffing needs. If the university was truly concerned about meeting its staffing needs, it should have given Monson all of the available opportunities within the athletic department that needed to be filled and allowed him to help choose which position he would feel most comfortable in based on his skill set, education, and background.

This line of reasoning appears to have gained headway in cases after *Monson*, as noted in the *Fleming* case, where even if reassignment is a known possibility for the coach, the type of opportunities that the university could place the coach into become limited.<sup>113</sup> The reassignment not only must incorporate the coach's background, experience, and skill set into whatever position he is placed into, but it also has to include the perks not included in the actual base salary of the contract.<sup>114</sup> Otherwise, the university will find itself in a vulnerable position to a constructive discharge or breach of contract claim, as was the case in *Fleming*.<sup>115</sup>

#### *B. Due Process Concerns: Illustrated Through Hoffner Reassignment*

In addition to concerns arising from constructive discharge, universities must be careful in how they characterize and reassign their coaches. As illustrated in *Ridpath*, universities cannot violate their employees' due process rights and liberty interests.<sup>116</sup> The Hoffner situation described in Part I of this Article can serve to demonstrate the potential for due process violations for coaches.

Hoffner has not instituted litigation against Minnesota State for his reassignment from head football coach to the Assistant Director for Facilities Development (because of a union contract that required grievance procedure and arbitration), but if he had, he would have likely argued that his due process rights were violated. First, Hoffner would need to establish the liberty interest that he

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<sup>111</sup> See generally *Garland v. Cleveland State Univ.*, Ct. of Cl. No. 2006-04776, 2009-Ohio-2838.

<sup>112</sup> *Monson*, 901 P.2d at 910.

<sup>113</sup> See generally *Fleming v. Kent State Univ.*, Ct. of Cl. No. 2011-09365, 2012-Ohio-6350.

<sup>114</sup> See *id.* ¶ 28.

<sup>115</sup> See generally *id.*

<sup>116</sup> See generally *Ridpath v. Bd. of Gov. Marshall Univ.*, 447 F.3d 292 (4th Cir. 2006).

had similar to Ridpath. Specifically, Hoffner would assert that he had a protected liberty interest in preventing Minnesota State from communicating to the public that he was immoral and had serious character defects that were made, while also significantly demoting him through his reassignment.<sup>117</sup> In its press releases regarding Hoffner's situation, Minnesota State made statements that could be interpreted to mean that Hoffner did have serious character defects. Minnesota State stated that Hoffner had been facing possible criminal charges, but then told the public to make inquiries to the police department for further details.<sup>118</sup> The University also stated that its "top priority is ensuring the safety and well-being of its students, program participants, and the community. The University is not aware of any allegations affecting university students or program participants."<sup>119</sup> This declaration can lead to the conclusion that even though Hoffner had done nothing wrong to anyone at the University, he had done something to danger the safety or well-being of persons in the community. Hoffner felt ostracized by the University and stated that Minnesota State "wanted to cast me as the next Jerry Sandusky. You hear my name, you see my picture and you think, Sick f---. That's what I would think too. There's no coming back from that. I would have been better off if I'd shot somebody."<sup>120</sup>

On November 30, 2012, the criminal court dismissed Hoffner's criminal case and concluded that the charges against him should not have been filed, as "[t]he videos under consideration here contain[ed] nude images of the defendant's minor children dancing and acting playful after a bath. . . . That is all they contain."<sup>121</sup>

Despite having the criminal charges against him dismissed for lack of any evidentiary support, the University never clarified its statements regarding Hoffner's threat to the community. When the University reassigned him following the court ruling, it communicated only that Hoffner was to take over a new position as Assistant Director for Facility Development.<sup>122</sup> It is clear that Hoffner was significantly demoted to this position given that it was a position that was "outside his field of choice" and changed his status within the community and university.<sup>123</sup> His new office was a former storage closet that had been converted for his use, had no windows and poor reception for phone calls, and

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<sup>117</sup> *Id.* at 308–15.

<sup>118</sup> Press Release, *supra* note 8.

<sup>119</sup> *Id.*

<sup>120</sup> Eli Saslow, *Allegation Ends Coach's Career*, ESPN (May 25, 2013), [http://espn.go.com/espn/otl/story/\\_id/9308806/minnesota-state-mankato-coach-todd-hoffner-career-was-ruined-child-porn-allegation-espn-magazine](http://espn.go.com/espn/otl/story/_id/9308806/minnesota-state-mankato-coach-todd-hoffner-career-was-ruined-child-porn-allegation-espn-magazine).

<sup>121</sup> *Id.*

<sup>122</sup> Hoffner Reassigned, *supra* note 12.

<sup>123</sup> *Ridpath v. Bd. of Gov. Marshall Univ.*, 447 F.3d 292, 309–10 (4th Cir. 2006).

called for him to aid in maintaining facilities for which he had no training or aptitude.<sup>124</sup> Moreover, Hoffner was given no notice or opportunity to be heard with respect to his reassignment.<sup>125</sup>

He was coerced into accepting the new position or be in breach of his contract.<sup>126</sup> It was not until he was ultimately fired a few months into the reassigned job that he had the opportunity to arbitrate his grievances against the University.<sup>127</sup>

The decision to terminate Hoffner came from the University President, Richard Davenport, who wrote in a letter that Hoffner was being fired for improper usage of a computer owned by the University.<sup>128</sup> Specifically, Davenport claimed that Hoffner had viewed pornography and allowed a non-University employee (his wife) to use the computer.<sup>129</sup> University officials had also accused Hoffner of allowing his children to enter the locker room when staff members were undressing after games.<sup>130</sup> The arbitrator concluded that there was no direct evidence that it was Hoffner who had viewed pornography on the University computer given that the computer had been accessed by a number of students and other University employees, other than Hoffner.<sup>131</sup> Moreover, allowing his wife to use the computer was not a legitimate ground for termination and if the University was truly concerned by Hoffner's children being in the locker room after games, the University would have noted its concern to Hoffner prior to the arrest on the unfounded child pornography charges.<sup>132</sup>

Ultimately, the arbitrator found that Minnesota State's reassignment, termination, and overall handling of Hoffner was inappropriate under the circumstances. The arbitrator agreed with Hoffner that there were no serious violations of any University policy and that for the accusations made against him in its reassignment decision, the University had never taken such drastic measures against other employees.<sup>133</sup> In particular, the arbitrator ruled that the University's new job that it reassigned Hoffner was a façade, as it had never been filled prior to the reassignment, no replacement was put into place following

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<sup>124</sup> Saslow, *supra* note 120.

<sup>125</sup> See Oakes, *supra* note 11.

<sup>126</sup> See *id.*

<sup>127</sup> *Id.*

<sup>128</sup> Associated Press, *Arbitrator Rules Against MSU-Mankato*, ESPN, [http://espn.go.com/college-football/story/\\_/id/10764371/minnesota-state-mankato-wrong-fire-coach-rules-arbitrator](http://espn.go.com/college-football/story/_/id/10764371/minnesota-state-mankato-wrong-fire-coach-rules-arbitrator) (last updated Apr. 11, 2014).

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> Nienaber, *supra* note 21.

Hoffner's termination, and it was located in a shoddy office with no defined job description.<sup>134</sup> Moreover, the university blatantly over-exaggerated the negative publicity it claimed to have received after Hoffner was arrested, as there was a total of only 234 emails sent to the school about Hoffner, some of which were positive and in favor of him.<sup>135</sup> After the favorable arbitration decision granted to Hoffner, Minnesota State issued a statement saying "[a]s a general matter we can say that employers are obligated to abide by arbitration awards, whether or not they agree with their terms."<sup>136</sup>

In light of the arbitrator's decision, Hoffner chose to return as Head Football Coach at Minnesota State, but the team's players refused to practice under Hoffner.<sup>137</sup> The players boycotted practice for two days and released the following statement amidst the boycott: "Throughout this process, our voice has been silenced. It's time our voice was heard. We want information, we want answers, because this is our team. As a unit we have decided not to practice because of the changeup in the coaching situation."<sup>138</sup> This statement provides even further evidence that Hoffner was stigmatized as a result of the wrongful reassignment by Minnesota State, as Hoffner had recruited and coached many of the players remaining on the team prior to the reassignment. By refusing to practice for Hoffner, the players exhibited just how devastating the reassignment was on Hoffner's reputation and ability to mentor the players with whom he developed great relationships with during the recruiting and coaching process prior to the reassignment.

Due to the concerns raised through the reassignment of Hoffner, Davenport has asked the Legislative Audit Commission to review the University's processes and actions to ensure that it does not make similar mistakes moving forward.<sup>139</sup>

The Hoffner situation illustrates that universities choosing to exercise their reassignment clauses against their coaches must ensure that they do not stigmatize their coaches, demote their coaches, or otherwise prevent them from at least having an opportunity to be heard prior to any reassignment. Although many universities declare that they have the right to reassign to any position without

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Arbitrator Rules Against MSU-Mankato*, *supra* note 128.

<sup>137</sup> Associated Press, *supra* note 23.

<sup>138</sup> George Schroeder, *Minnesota State-Mankato Players Boycott Practice Amid Coach's Return*, USA TODAY (Apr. 16, 2014), <http://www.usatoday.com/story/sports/ncaaf/2014/04/16/minnesota-state-mankato-players-refuse-to-practice-amid-coachs-return/7789487/>.

<sup>139</sup> Alex Friedrich, *Legislative Auditor to Probe Mankato Football Coach's Firing*, MINN. PUB. RADIO NEWS (Apr. 23, 2014), <http://www.mprnews.org/story/2014/04/23/mankato-football-coach-firing>.

affording the opportunity to be heard, it would be prudent for them to give consideration as to allowing the coach at least the chance to express his interests or where he might best fit.

#### V. A PRACTICAL APPLICATION

In addition to the liability issues as noted in Parts III and IV, a practical application of a university implementing its power to reassign its coach will further illustrate the problems with reassignment clauses in coaches' contracts.

Mark Helfrich (Helfrich) is the head football coach at Oregon,<sup>140</sup> home to one of the top football programs in the country. His current contract is for five years and ends on January 19, 2018.<sup>141</sup> As previously noted in Part II of this Article, Helfrich's contract contains a reassignment clause permitting Oregon to assign him to other positions with different duties during the term of his contract.<sup>142</sup> If Oregon decides to reassign Helfrich, it first must consult with him and seek his input on how he can still remain a productive and valuable member of the university thirty days prior to any reassignment.<sup>143</sup> Oregon is restricted to reassigning Helfrich into a position, based on Oregon's sole good faith judgment, which fits well with Helfrich's education, experience, and expertise.<sup>144</sup>

Moreover, Oregon cannot reduce any of Helfrich's guaranteed salary if the university chooses to reassign him.<sup>145</sup> Helfrich's contract set his annual guaranteed salary at \$1.8 million.<sup>146</sup> Thus, even if Oregon reassigns Helfrich, the university would still be responsible for paying Helfrich \$1.8 million in his re-assigned position for the duration of the contract term.

Coaching contracts are not only about guaranteed salary. The contracts provide additional income opportunities and benefits that the coach can earn through outside sources, perquisites, bonuses, and other fringe benefits by virtue of the job. Under Helfrich's contract, he is entitled to fringe benefits such as courtesy cars, a country club membership, and tickets to university sporting events.<sup>147</sup> Additionally, Helfrich can earn bonuses if the football team meets certain on-field performance<sup>148</sup> or academic standards.<sup>149</sup> Moreover, Helfrich is afforded

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<sup>140</sup> Helfrich Contract, *supra* note 29.

<sup>141</sup> *Id.* ¶ 3 § (a).

<sup>142</sup> *Id.* ¶ 2.2.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* ¶ 4.1.

<sup>147</sup> *Id.* ¶ 4.2, §§(c-e).

<sup>148</sup> *Id.* ¶ 4.3.

<sup>149</sup> *Id.* ¶ 4.4.

the opportunity to earn outside income by operating annual youth football summer camps held at the university, participating in sponsorship deals with Nike, and making media appearances.<sup>150</sup>

In the event that Oregon terminates Helfrich without cause, he is entitled to the remaining guaranteed salary for each remaining contract year, unless the football team has not won at least six games in one of three consecutive seasons while Helfrich is the head football coach, in which case, Helfrich is to receive only half of the remaining guaranteed salary.<sup>151</sup> Even if Helfrich is fired without cause, he is required to mitigate the liquidated damages by seeking other employment.<sup>152</sup>

To illustrate the difference between a reassignment and termination without cause for Helfrich, if Oregon reassigned him after year two of his contract, he would still be entitled to receive at least the \$1.8 million guaranteed salary for the remaining three years of the contract.<sup>153</sup> However, if Oregon terminated him without cause he would still receive the \$1.8 million for the remaining years, but he would have an affirmative and good faith obligation to mitigate the damages.<sup>154</sup> Ironically enough, it is in Oregon's best interests to terminate Helfrich without cause, as Helfrich's duty to mitigate the liquidated damages could potentially reduce the remaining \$1.8 million guaranteed each remaining contract year. Thus, the reassignment provision in Helfrich's contract adds little value to the university.

## VI. CONCLUSION

When a coach enters into an employment agreement with a university, the only job that he is contracting for and is qualified to take is that of being a head coach in his chosen sport. A reassignment provision is nothing more than a demotion, a termination, and a contractual way to part ways with a coach. By virtue of the miniscule number of reassignment clauses in head coaches' contracts today, one must conclude that head coaches are now aware of the problems of reassignment and have the leverage to refuse the inclusion of a reassignment clause in their contracts. As seen in the Hoffner situation, it is extremely difficult for a university to justify the reassignment and it can lead to significant legal and public relation issues when handled ineffectively.

Coaches are often required in their contracts to represent that they have special, exceptional, and unique talents, skills, and abilities to be the head coach,

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<sup>150</sup> *Id.* ¶ 4.5.

<sup>151</sup> *Id.* ¶ 6.2 §(b).

<sup>152</sup> *Id.* ¶ 6.2, §(e).

<sup>153</sup> *Id.* ¶ 2.2.

<sup>154</sup> *Id.* ¶ 6.2, §(e).

which renders the coaches' services unique. Some universities also require that the coach contractually acknowledge that if the university were to lose the coach's services prior to the expiration of the contract, the coach would be causing an inherent loss for which the university could not estimate with certainty or be fairly compensated by money.

The unique services clause alone should defeat a reassignment clause. Coaches' contracts today should have appropriate and specific language that the position of head coach is the only position for which the coach is being employed and that the coach shall not be assigned to any other position. Remember what National Football League Hall of Fame Coach Bill Parcells once said: "I came to [the] school to coach and do nothing else."<sup>155</sup>

Helfrich is a good example of the reassignment ruse. Assigning a coach to a new job that is consistent with his education, skill, and experience is difficult to interpret. The common reassignments are to positions working with the athletic director in some capacity as an assistant athletic director for facilities coordination, fundraising, or development. The coach is a coach, and a coach's employment agreement does not qualify him for a desk or administrative job. For a coach like Helfrich, if he was reassigned to the Assistant Athletic Director for Facility Development, it is difficult to comprehend how he could be paid \$1.8 million a year for a job that under normal university circumstances would pay under \$100,000 a year. Even at \$1.8 million a year, the compensation is not equivalent to the compensation that the coach would have received or had the opportunity to earn as the coach, given the lack of outside income, bonuses, talent fees, and other fringe benefits that the coach could receive by virtue of being the coach.

The main purpose of the reassignment clause for universities is to gain leverage with respect to buying out the remaining term of the coaches' contract. Essentially, the university will reassign the coach and there will be confusion or conflict with respect to the job description, salary, fringe benefits, and other compensation and perquisites available to the coach. This confusion and tension will eventually lead to a negotiated settlement between the coach and the university, with the university using the reassignment clause as leverage in such negotiations for a lesser buyout.

Reassignment puts the burden of termination on the coach, and if he fails to accept the reassignment in a job that is probably unacceptable in the first place, he is terminated, presumably for cause. Constructive discharge has been the mainstay of legal challenges to such reassignment, but breach of contract needs

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<sup>155</sup> Darren Rovell, *The Cost of Changing Coaches*, ESPN, <http://sports.espn.go.com/nfl/news/story?id=1676108> (last updated Dec. 8, 2003).

to be more closely evaluated. When the coach enters into an employment contract, it is not specifically for the guaranteed salary, but all of the possibilities and opportunities of income that the coach may generate by virtue of being the coach just strictly because of the position. Any reassignment would defeat this because the coach no longer has the esteemed position or opportunities of coach, and the assignment to a different position is nothing more than a constructive discharge and breach of contract.

Universities have a clear and more appropriate option other than the reassignment clause: draft a termination without cause provision that provides for liquidated damages for early termination of the contract and requires the coach to mitigate those damages by finding other comparable employment. The buy-out provides for a clean break for both the university and the coach and lessens the likelihood of litigation. Given this alternative and the fact that reassignment clauses are fraught with legal liability and unfairness, coaches and their agents should insist that reassignment provisions no longer be part of their contractual relationship with their universities.

Finally, as a matter of fact, coaches' contracts today should contain specific, prohibitory language that the coach is not subject to reassignment in any case.