A Promising Professor Backs a T.A. Union Drive and Is Rejected for Tenure

Joel Westheimer published and won the support of his department and outside reviewers. Why did NYU turn him down?

By PIPER FOGG

Joel Westheimer has run through the chain of events in his head a million times. First, he won a departmental award for research at New York University's Steinhardt School of Education, where he teaches. After that, he published a critically acclaimed book. Later, his tenure bid received unanimous backing from his department. In September 1999, he became the only professor without tenure to testify at National Labor Relations Board hearings on behalf of N.Y.U.'s graduate students, who were seeking the right to unionize. In June, he was denied tenure.

CAUSE AND EFFECT?
Joel Westheimer was a rising star at New York University. But after he backed graduate students in a union drive, he was denied tenure.

Mr. Westheimer thinks this chronology leaves room for only one interpretation, and so he has begun to prepare for legal proceedings against N.Y.U., accusing the institution of retaliating against him for his testimony before the N.L.R.B. While last March N.Y.U. became the first private university to officially recognize a graduate-employee union, the administration spent years and a significant amount of money opposing the drive. Mr. Westheimer claims the university's desire for retribution motivated the decision to deny him tenure. N.Y.U. calls his allegations a "stretch," but many of his peers in academe agree with him.
Mr. Westheimer's case comes soon after an incident of retaliation at the State University of New York at Buffalo, where a dean removed a tenured professor as head of the English department for refusing to discipline teaching assistants suspected of withholding undergraduates' grades as a protest against the size of their stipends.

Union supporters see the two cases as reflective of the price that faculty members may pay for backing graduate students in contentious conflicts with university administrations. Even if Mr. Westheimer can never prove his case, the perception that he was punished may intimidate other faculty members.

"You're always going to have a rather large silent majority of faculty. They really don't want to get involved in anything," says Andrew Ross, an American studies professor at N.Y.U. Gordon Lafer, a professor of labor, education, and research at the University of Oregon and a member of the national coordinating committee of Scholars, Artists, and Writers for Social Justice, considers administrative retaliation against pro-union professors a "big issue, and it's a kind of hidden issue." He says that SAWSJ is helping to plan a Workers' Rights Board hearing in October to address academic labor issues, including retaliation. Workers' Rights Boards enlist prominent citizens in public investigations of worker abuse. "There's a particular problem in academia because it's easy to be retaliated against but very hard to police," he says. "Tenure is famously secretive."

Mr. Westheimer, who will remain an assistant professor at N.Y.U. until the end of this academic year, stakes his claim of retaliation on his conviction that his résumé -- which, by most standards, is impressive enough -- warrants tenure. Since he first arrived at N.Y.U. in 1996, Mr. Westheimer had consistently received high evaluations from the department of teaching and learning. Many junior faculty members consider Mr. Westheimer a role model. He is a nationally recognized scholar on the role of teacher communities in education.

Mr. Westheimer has written 10 journal articles, one book chapter, and three essay reviews. His 1998 book, Among Schoolteachers: Community, Autonomy, and Ideology in Teachers' Work (Teachers College Press), has been widely cited and was greeted with rave reviews. "His book on communities is a classic in the field," says Ann Lieberman, a visiting professor of education at Stanford University. He has received N.Y.U.'s own Griffiths Award for Excellence in Educational Research.

For his first three years at the institution, the administration looked favorably on Mr. Westheimer's accomplishments. In July 1998, the dean of N.Y.U.'s education school, Ann L. Marcus, wrote to Mr. Westheimer, "I hope you have realized how important your work is to your department and our school. It is wonderful to have you with us." His department chairman, Mark M. Alter, wrote in May 1999 that he was making "excellent progress" toward tenure.
Such strong departmental support continued, Mr. Westheimer says -- until he testified before the N.L.R.B. on September 28, 1999. In the next evaluation after his testimony, his rating went down a notch, from "exceptional merit," the highest, to mere "merit."

"I was shocked when I saw the merit rating, because I had had a good year," says Westheimer. "I didn't think of it as them trying to build a record for denial of my tenure. I just let it go."

N.Y.U.'s spokesman, John Beckman, says the school does not discuss employee evaluations but adds, "If there was any change in his evaluations, it has absolutely no connection to whether or not he testified."

Soon, though, Mr. Westheimer began to get suspicious. He says, "There started to be little things that crept into letters from either the dean or my department chair. One said, there are 'some concerns about your ability or willingness to commit fully to the needs of our programs.!' Mr. Westheimer considered this admonishment from his dean -- which came with his 2000 annual review -- a slap on the wrist for his N.L.R.B. testimony.

Ms. Marcus officially denied Mr. Westheimer tenure in a letter dated June 26, 2001, but he first learned of the impending news by telephone on March 21. "In that conversation, the associate dean, Gabriel Carras, read me excerpts of the letter from the Tenure and Promotion Committee," says Mr. Westheimer. Mr. Carras told Mr. Westheimer that he would be denied primarily because of insufficient scholarship.

Robert Cohen, a tenured education professor at N.Y.U., says Mr. Westheimer is not only "on par with, or ahead of everyone who went up for tenure this year" in the education school, but he "definitely is ahead of most people who get tenure." Mr. Westheimer will not compare himself to his peers. Instead, he points to a statement, signed by five past presidents of the American Educational Research Association, that praises his scholarship and raises concerns about the possible retaliation by N.Y.U.

N.Y.U. administrators will not discuss the details of Mr. Westheimer's tenure case. Mr. Westheimer's allegation about the administration's motivations, though, strikes Ms. Marcus as unlikely. She says, "Clearly, he's trying everything he can to win his case and get publicity for it." She adds that N.Y.U. has a very rigorous tenure-review process. "It's sad that people are disappointed. But, it happens. I believe our committees acted in good faith."

But Mr. Westheimer is convinced that the motivation behind the university's rejection of his tenure, which overturned both the unanimous recommendation of his department and of eight outside reviewers, was purely political. The recommending examiners included Stanford's Ms. Lieberman and William Ayers, a professor of education at the University
of Illinois at Chicago. Mr. Westheimer admits, "I knew there was some risk to testifying, but I didn't think it would result in denial of tenure."

The majority of his untenured peers in his department at N.Y.U. decline to go on the record about whether retribution might have played a part in the tenure process, but they will say he got a bum deal. "It was very surprising that he didn't get tenure. The facts seem a little suspicious, but I still think the school has to be above that kind of politics," says Kendall King, an assistant professor of teaching and learning.

Brian Murfin, a former assistant professor in the science-education program, left N.Y.U. last semester to manage the office of educational programs at the Brookhaven National Laboratory. He thinks retribution "is probably a major reason" for Mr. Westheimer's rejection. "Joel definitely has everything it takes to be tenured at N.Y.U. His involvement in the graduate- student issue was directly opposite the administration. Junior faculty are under a lot of pressure to conform to, I don't want to say 'the party line,' but to the way things are done traditionally. Tenure is a very political decision."

Mr. Westheimer says he had no previous history of activism and no union ties. But, he says, "N.Y.U. is a precedent-setting case, and I felt a real responsibility to my students." He adds that "I felt a particular responsibility to speak out -- as an education professor and a specialist in the subject of teacher community -- because the administration's objection had a lot to do with the nature of the educational relationship between students and professors."

The administration's position throughout the labor talks had been that a union would damage that relationship, and Mr. Westheimer felt his experience and his research suggested otherwise. "I probably would do it again," he says, adding, "I did not foresee these extreme actions taking place."

Now, he's working with a lawyer, paid for by the United Auto Workers, the national union that organized the N.Y.U. graduate students, and is preparing to file charges against the university with the N.L.R.B.

According to union representatives, even though the campus labor movement has picked up momentum among both graduate students and professors, faculty fears are still a main obstacle to organizing, especially for professors who lack job security. "Untenured faculty, generally, I find to be very supportive of union attempts, but that is limited by their concerns about getting tenure," says Richard Moser, a national field representative for the American Association of University Professors. Mr. Moser and the A.A.U.P. take these fears seriously. At Emerson College, for example, they encouraged nontenured faculty members to limit their open support for union organizing of adjunct faculty because of the threat of a "vindictive" administration. David Rosen, an Emerson spokesman, while acknowledging the college's opposition to unionization, says he is unaware of any incidents of retaliation.
As far as how such fears apply to Mr. Westheimer's situation, Ms. Marcus is not convinced. "That seems to me a pretty big stretch," she says. "When people don't get tenure, it's obviously very upsetting." Ms. Marcus says people will simply latch on to what they can to explain it. "I guess this line of reasoning strikes a nerve with people."

Sheldon E. Steinbach thinks Mr. Westheimer's allegations are beyond far-fetched. "Sounds like an early-20th-century excuse for denial of tenure," he says. Mr. Steinbach is general counsel at the American Council on Education, which filed an amicus brief on behalf of N.Y.U. during the N.L.R.B. case. "Institutes of the sophistication and legitimacy of an N.Y.U. do not go around denying tenure to people on the grounds that they participated in a union-organizing campaign. N.Y.U. is not a robber baron."

In the wake of the N.Y.U. and Buffalo incidents, some faculty members sympathetic to the unionizing movement may continue to stay silent for fear of administrative reprisal. But some faculty leaders think that, despite the fears that Mr. Westheimer's case might raise for a nontenured scholar, more professors are going to speak out. Things are not bleak, N.Y.U.'s Mr. Ross maintains. It is a nationwide sentiment, he says, that "faculty are waking up. The number is growing."

Mr. Moser of the A.A.U.P. agrees. "The graduate-student unionization is changing the atmosphere. It's altering the environment from the bottom up." As a result, "tenured faculty members speaking out and being vocal is likely to become more of a part of academic culture," he says.

"There's safety in numbers."

From the issue dated August 10, 2001
http://www.chronicle.merit.edu/weekly/v47/i48/48a00801.htm

Copyright © 2001 by The Chronicle of Higher Education