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Contracts -- Employment at Will: Contractual Remedy for Discharge Motivated by Bad Faith, Malice Or Retaliation -- Monge v. Beebe Rubber Co.

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CASE NOTES

Contracts—Employment At Will: Contractual Remedy For Discharge Motivated By Bad Faith, Malice, Or Retaliation—*Monge v. Beebe Rubber Co.*[1]—Plaintiff, Olga Monge, a general factory worker, was hired by defendant Beebe Rubber Company in September, 1968, under an oral contract of employment at will. The contract included neither a specific term of employment nor any restrictions on the power of the employer to terminate the contract. Plaintiff worked for defendant under this contract for approximately one year. At that time, defendant terminated the contract, on the asserted justification that plaintiff had been absent from work for three consecutive days without calling in.[2] Monge brought an action against Beebe Rubber Company for breach of the oral contract of employment,[3] alleging that during her employment she was continuously harassed by defendant's foreman, a man known by company management to use his position to force his attentions on female employees under his authority, because she had refused to accept a date with him. She alleged that this hostility, which was condoned if not shared by defendant's personnel manager, was the real reason for her discharge.[4]

Trial by jury resulted in a verdict for plaintiff in the amount of $2,500.[5] Defendant appealed to the Supreme Court of New Hampshire. HELD: termination by the employer of a contract of employment at will, if motivated by bad faith or malice, or based on retaliation, constitutes a breach of the employment contract entitling the employee to lost wages.[6] The court based its holding on public policy considerations drawing an analogy between its own decision and recent judicial modification of the tenancy at will relationship in property law.[7] Bad faith termination by the employer of the contract

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[1] — N.H. —, 316 A.2d 549 (1974).

[2] 316 A.2d at 551.

[3] Id. at 550. Although plaintiff was a union member at the time of her discharge, she did not seek a union hearing to appeal the discharge. Generally, an employee who fails to exhaust the grievance procedures established under a collective bargaining agreement will not be allowed to resort to the civil courts in an action for wrongful discharge. However, this requirement applies only when the employee sues on a right which is incorporated in the collective bargaining agreement. Jorgensen v. Penn. R.R., 25 N.J. 541, 556-60, 138 A.2d 24, 32-35 (1958); Payne v. Pullman Co., 13 Ill. App. 2d 105, 111-12, 141 N.E.2d 83, 86 (1957); See also Annot., 72 A.L.R.2d 1439 (1960). Since Monge sued on a right which was not incorporated in the collective bargaining agreement, her failure to initially exhaust the grievance procedures of the union did not bar her resort to the civil courts. But see 316 A.2d at 553 (dissenting opinion).

[4] 316 A.2d at 550.

[5] Id. at 550.

[6] Id. at 551.

[7] Id. at 551. The court specifically referred to Kline v. Burns, 111 N.H. 87, 276 A.2d 248 (1971), in which the court allowed a cause of action for breach of an implied warranty of habitability in residential leases, 111 N.H. at 92, 276 A.2d at 251-52; and to Sargeant v. Ross, — N.H. —, 308 A.2d 528 (1973), in which the court imposed tort liability on a landlord for

of employment at will was not, the court concluded, in the best interests of the economic system or of the public good.[8]

This New Hampshire decision represents the first judicial or legislative attempt to impose a general limitation on the employer's power, unrestricted at common law, to terminate a contract of employment at will. Although both courts and legislatures have previously enumerated specific reasons for which the employer may not terminate the at will relationship, no such general limitation has ever been previously imposed.[9] This note will: examine the history of the employment at will relationship; analyze the court's holding; and finally, consider whether the decision represents a sound advancement of the law governing employment relationships.

During the nineteenth century, the employer's workshop was his castle. Contracts of employment for an indefinite term, and for permanent or lifetime employment, were presumed to be contracts for employment at will,[10] and as such could be terminated by the employer at any time and for any reason.[11] The employee was entitled neither to notice before termination[12] nor to an explanation of the reasons for the termination.[13]

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the death of a child caused by the landlord's negligent design or construction of an outdoor stairway, although the stairway was not considered a "common stairway." 308 A.2d at 535.

[8] 316 A.2d at 551.

[9] Blumrosen, Employee Discipline: United States Report, 18 Rutgers L. Rev. 428, 429 (1964).

[10] For cases dealing with employment for an indefinite term, see Speeder Cycle Co. v. Teeters, 18 Ind. App. 474, 478, 48 N.E. 595, 597 (1897); McCullough Iron Co. v. Carpenter, 67 Md. 554, 557, 11 A. 176, 178 (1887); Booth v. National India Rubber Co., 19 R.I. 696, 697, 36 A. 714, 715 (1897). See also 9 S. Williston, Contracts § 1017, at 129 (3d ed. 1967); Restatement (Second) of Agency § 442, at 339 (1958).

For cases dealing with permanent or lifetime employment, see Lord v. Goldbert, 81 Cal. 596, 602, 22 P. 1126, 1127-28 (1889); Arentz v. Morse Dry Dock & Repair Co., 249 N.Y. 439, 444, 164 N.E. 342, 344 (1928). See also 9 S. Williston, supra at 131 (3d ed. 1967); Restatement (Second) of Agency § 442, at 340 (1958); Annot., 35 A.L.R. 1432 (1925). This presumption did not apply if the employee could show consideration in addition to the promise to perform which would support the promise that employment would be for life or permanent. See, e.g., Carnig v. Carr, 67 Mass. 544, 547, 46 N.E. 117, 118 (1897); Annot., 35 A.L.R. 1432 (1925).

The authorities were split on whether a contract of employment at a specific amount per week, month, or year was presumed to be at will or for a specific term of one week, month, or year. In favor of the presumption that such a contract is for employment at will, see Louisville & N.R.R. v. Harvey, 99 Ky. 157, 160-61, 34 S.W. 1069, 1070 (1896); H. Wood, Master & Servant § 134 (1877). In favor of the presumption that such contracts are for employment for a specific term, see Tubbs v. Cummings Co., 200 Mass. 555, 558, 86 N.E. 921, 922 (1909); Annot., 11 A.L.R. 469 (1921).

[11] One court's formulation of the common law rule was: "All may dismiss their employe[e]s at will, be they many or few, for good cause, for no cause, or even for cause morally wrong without being thereby guilty of legal wrong." Payne v. Atlantic R.R., 82 Tenn. 401, 411 (1884), overruled on other grounds, Hutton v. Watters, 132 Tenn. 527, 179 S.W. 134 (1915).

[12] Allgood v. M. Feckoury, 36 Ga. App. 42, 43, 135 S.E. 314 (1926); O'Conner v. Hayes Body Corp., 258 Mich. 280, 282, 242 N.W. 233, 234 (1932); 9 S. Williston, supra note 10, at 130.

Many justifications have been advanced for this common law rule: (1) freedom of contract and mutuality (if the employee can quit for any reason, then the employer can discharge for any reason);[14] (2) freedom of enterprise;[15] (3) expectations of the parties;[16] and (4) fostering a climate more conducive to the industrial revolution.[17] However, in practice the rule often caused very harsh results.[18] Nevertheless, the early courts continued to apply it mechanically whenever the employment contract did not contain a specific term of employment.[19]

In contrast, under the British rule, a general or indefinite hiring was presumed to be for a one-year term during which the employee could be discharged only for cause.[20] If the employee continued to work beyond the one-year term, the courts would presume employment for an additional one-year term; only at the end of a term could the employee be discharged without cause.[21] Although this rule received some early acceptance in America,[22] it had been completely rejected by the latter part of the 19th century.[23]

The turn of the century brought the first legislative attempts to regulate the employer's power to terminate the employment at will

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[13] Brink's, Inc. v. Hoyt, 179 F.2d 355, 358 (8th Cir. 1950); Carr v. Montgomery Ward & Co., 363 S.W.2d 571, 574 (Mo. 1963).

[14] Coppage v. Kansas, 236 U.S. 1, 10-11 (1915).

[15] See Blumrosen, Workers Rights Against Employers and Unions: Justice Francis—A Judge for Our Season, 24 Rutgers L. Rev. 480, 481 (1970); Note, Implied Contract Rights to Job Security, 26 Stan. L. Rev. 335, 343 (1974).

[16] Blumrosen, Employer Discipline: United States Report, 18 Rutgers L. Rev. 428 (1964); Note, 14 Vand. L. Rev. 397, 398 (1960).

[17] Note, California's Controls on Employer Abuse of Employee Political Rights, 22 Stan. L. Rev. 1015 (1970).

[18] See, e.g., Clarke v. Atlantic Stevedoring Co., 163 F. 423, 423-24 (C.C.E.D.N.Y. 1908) (200 black stevedores discharged to provide jobs for white stevedores); Comerford v. International Harvester Co., 235 Ala. 376, 377, 178 So. 894, 897 (1938) (employee discharged because of employer's failure to alienate the affections of employee's wife).

[19] Lord v. Goldberg, 81 Cal. 596, 603, 22 P. 1126, 1128 (1889); Speeder Cycle Co. v. Teeters, 18 Ind. App. 474, 478, 48 N.E. 595, 597 (1897). At common law, the employee could attempt to prove that the employment contract was for a specific term, even though no such specific term was expressly stated in the contract. Evidence of prior negotiations, usages of the business, nature of the employment, and other circumstances surrounding the transaction could be introduced to show an implied term in the employment contract. E.g., Norton v. Cowell, 65 Md. 359, 362, 4 A. 408, 410 (1886). The United States Supreme Court recently affirmed this principle of implying a specific term from sources external to the employment contract in Perry v. Sinderman, 408 U.S. 593 (1972). There, the Court cited the "unwritten common law of a particular university" as such an external source. Id. at 602. *Perry* has been cited with approval as representing a flexible judicial approach to analyzing employment cases. See Note, Implied Contract Rights to Job Security, 26 Stan. L. Rev. 335, 350 (1974). This note also discusses other possible external sources from which a specific term of employment may be implied. Id. at 356.

[20] Fawcett v. Cash, 110 Eng. Rep. 1026, 1027 (K.B. 1834); Beeston v. Collyer, 130 Eng. Rep. 786, 787 (C.P. 1827).

[21] 110 Eng. Rep. 1026, 1027 (K.B. 1834); 130 Eng. Rep. 786, 787 (C.P. 1827).

[22] E.g., Adams v. Fitzpatrick, 125 N.Y. 124, 128, 26 N.E. 143, 144-45 (1891); Davis v. Gorton, 16 N.Y. 255, 257 (1857).

[23] Note, Implied Contract Rights to Job Security, 26 Stan. L. Rev. 335, 340 (1974).

relationship. Federal[24] and state[25] statutes were enacted which prohibited the employer from discharging an employee because of participation in labor union activities. However, these statutes were declared unconstitutional by the Supreme Court in *Adair v. United States*[26] and *Coppage v. Kansas*.[27]

In *Adair*, the Court held that such a federal statute was unconstitutional under the Fifth Amendment. The court concluded that the statute invaded both the right of the employer to discharge for any reason and the personal liberty of the employer and the employee to freedom of contract.[28] In *Coppage*, the Court condemned a similar state statute under the Fourteenth Amendment.[29] Both decisions reflect a rationale similar to the doctrine of mutuality: "[T]he right of the employee to quit the service of the employer for whatever reason is the same as the right of the employer for whatever reason to dispense with the services of such employee."[30]

As a result, during the early part of the twentieth century, the employee hired under a contract of employment at will was still in an unenviable position. The Supreme Court had declared that any job security for the employee may result only from bargaining between the parties to the employment contract.[31] However, few employees enjoyed sufficient bargaining power to secure such job security.[32] Consequently, the employment at will relationship continued to be heavily weighted in favor of the employer.[33]

This situation finally began to change in the 1930's. In *NLRB v. Jones & Laughlin Steel Corp.*[34] the United States Supreme Court

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[24] Act of June 1, 1898, ch. 370, § 10, 30 Stat. 424.

[25] Law of April 14, 1892, ch. 10, § 12943, [1926] Ohio Gen. Code Ann. 5598 (declared unconstitutional, Jackson v. Berger, 92 Ohio St. 130, 110 N.E. 732 (1915)).

[26] 208 U.S. 161, 180 (1908).

[27] 236 U.S. 1, 26 (1915).

[28] 208 U.S. at 172.

[29] 236 U.S. at 26.

[30] 208 U.S. at 174-75. During the early part of the 20th century, similar statutes as those involved in *Adair* and *Coppage* were also being declared unconstitutional at the state level. See Coffeyville Vitrified Brick & Title Co. v. Perry, 69 Kan. 297, 305, 76 P. 848, 850 (1904); People v. Marcus, 185 N.Y. 257, 261, 77 N.E. 1073, 1075 (1906); St. Louis S.W. Ry. v. Griffin, 106 Tex. 477, 489, 171 S.W. 703, 707 (1914).

[31] *Coppage*, 236 U.S. at 10-11.

[32] The only workers who had any degree of bargaining power were those who possessed specialized skills in great demand, or those who were members of labor unions.

[33] The Supreme Court was not unaware of the unequal bargaining power between the employer and the employee. However, the Court accepted this fact simply as an inevitable consequence of the freedom of contract and the private ownership of property:

> No doubt, wherever the right of private property exists there must and will be inequalities of fortune; and thus it naturally happens that parties negotiating about a contract are not equally unhampered by circumstances . . . [but] it is from the nature of things impossible to uphold freedom of contract and the right of private property without at the same time recognizing as legitimate those inequalities of fortune that are the necessary result of the exercise of those rights.

Coppage, 236 U.S. at 17.

[34] 301 U.S. 1 (1937).

upheld the constitutionality of a provision of the National Labor Relations Act[35] which prohibited the discharge of any employee because of membership in a labor union.[36] This decision represented the first significant judicial approval of a limitation of the employer's power to terminate the employment at will relationship because of some overriding interest of both employees and society. Furthermore, the decision helped to trigger a substantial increase in union membership, which afforded some degree of job security to a larger percentage of American workers.[37]

Subsequent federal statutes began to add to the list of specific reasons for which an employee could not be discharged: race, color, religion, sex, or national origin;[38] age;[39] debt;[40] for invoking the protection of the Fair Labor Standards Act.[41] Other federal statutes created categories of employees who could not be discharged without good cause: veterans returning to prior employment within 90 days of discharge from the armed services;[42] civil service employees in the executive branch of the federal government (competitive service).[43]

In some states, the courts also added to the list of specific reasons for which the employer could not terminate the employment at will relationship, by allowing a civil cause of action where the employee is discharged: for refusal to commit perjury before a state agency as ordered by the employer;[44] for participation in labor union activities;[45] or for filing a claim under the Workmen's Compensation Act.[46]

Thus, by the 1970's many specific limitations had been imposed on the common law right of the employer to terminate the employment at will relationship. However, there was as yet no general requirement of good faith or good cause for discharge. Against this

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[35] 29 U.S.C. § 158(a)(3) (1970).

[36] 301 U.S. at 49.

[37] In 1935 only 13.4% of the non-agricultural labor force was unionized. By 1945, 35.8% of the non-agricultural labor force had become unionized. U.S. Dep't of Commerce, Statistical Abstracts of the United States 229 (2d ed. 1961).

[38] 42 U.S.C. § 2000e-2(a) (Supp. II, 1972). In addition, 20 of the 50 states have enacted legislation prohibiting discharge because of race, creed, color, or national origin. For a discussion of state legislation dealing with discriminatory employment practices, see Note, The Right to Equal Treatment: Administrative Enforcement of Anti-Discrimination Legislation, 74 Harv. L. Rev. 526 (1961).

[39] 29 U.S.C. § 623(a) (1970).

[40] 15 U.S.C. § 1674 (1970).

[41] 29 U.S.C. § 215(a)(3) (1970).

[42] 50 U.S.C. § 459(c) (1970).

[43] 5 U.S.C. § 7501(a) (1970).

[44] Pattermann v. International Bhd. of Teamsters, 174 Cal. App. 2d 184, 189, 344 P.2d 25, 27 (1959).

[45] Glenn v. Clearman's Golden Cock Inn, Inc., 192 Cal. App. 2d 793, 798, 13 Cal. Rptr. 769, 772 (1961).

[46] Frampton v. Central Ind. Gas Co., — Ind. —, 297 N.E.2d 425, 428 (1973).

background, the Supreme Court of New Hampshire decided *Monge v. Beebe Rubber Co.*[47]

The practical effect of the *Beebe Rubber Co.* decision is to imply into the contract of employment at will, a condition that the employer will not terminate the contract for reasons based on bad faith, malice, or retaliation. Breach of this implied condition constitutes a breach of the employment contract. The New Hampshire court suggests that in any action maintained for such a breach, the employee must prove by a preponderance of the evidence: (1) that employee was hired by the employer under a contract of employment at will; (2) that the contract was terminated by the employer; and (3) that the termination was motivated by bad faith, malice, or retaliation.[48]

The standard established by the court is one of good faith.[49] The standard of good faith is very different from the standard of good cause. Under a good cause standard, the central issue is justification for the discharge. The employee need only prove an involuntary termination of the employment contract and the burden immediately shifts to the employer to prove that he had reasonable grounds for the termination. If the jury concludes that the asserted justification is not reasonable grounds for terminating the employment contract, the employer is liable to the employee for breach of contract.[50]

Under the *Beebe Rubber* standard of good faith, in contrast to the good cause standard, the employee must prove both the involuntary termination and that the termination was motivated by bad faith in order to establish his prima facie case. Once this prima facie case is established, the burden shifts to the employer to negate the charge that he was motivated by bad faith. The employer need not justify his actions by showing that he had reasonable grounds for the termination, although such evidence would tend to show that he was not motivated by bad faith. Thus, the employer's grounds for terminating the employment contract may be entirely unreasonable, but if he did not act in bad faith there is no liability to the employee.[51]

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[47] — N.H. —, 316 A.2d 549 (1974).

[48] 316 A.2d at 551.

[49] On the surface, there would seem to be a difference between a standard of good faith and a standard which prohibits bad faith. However, in application, both standards raise the question of whether the employer acted in bad faith, and under both standards the burden is on the employee to prove such bad faith. See note 51 infra.

[50] See, e.g., Carpenter Steel Co. v. Norcross, 204 F. 537, 540 (6th Cir. 1913). Davies v. Mansbach, 338 S.W.2d 210, 212 (Ky. 1960); Heyne v. Tompkins, 89 Minn. 77, 79, 93 N.W. 901, 903 (1903); Hosking v. Hollaender Mfg. Co., 120 Ohio App. 140, 142, 175 N.E. 2d 201, 203 (1961); Tollefson v. Green Bay Packers, Inc., 256 Wis. 318, 320, 41 N.W.2d 201, 203-04 (1950).

[51] The standard of good faith has long been applied to satisfaction employment contracts, that is, contracts in which continued employment is conditioned on the employer's

The court allowed damages equal to the plaintiff's average weekly salary multiplied by the number of weeks between the date of the discharge and the date that the suit was commenced.[52] However, the court did not allow damages for mental suffering, although the possibility was not ruled out for future cases. Although it noted the common law rule that damages for mental suffering are not generally awarded in an action for breach of contract,[53] the court based its denial of such damages in this case on the fact that the plaintiff had failed to sufficiently prove any mental suffering as a result of the breach.[54] If the plaintiff had been able to prove mental suffering resulting from the breach, an award of such damages may have been appropriate under the common law rule that such damages may be awarded in an action for breach of contract where the breach is accompanied by wilful, wanton or insulting conduct.[55] This common law requirement of wilful, wanton or insulting conduct will be satisfied in most cases by the showing of bad faith, malice or retaliatory conduct which the employee must prove as an element of the cause of action under the decision of the New Hampshire court.[56] Thus, future cases maintained under the *Beebe Rubber Co.* standard may present the type of breach of contract action for which an award of damages for mental suffering would be appropriate.

The impact of the jury in such actions for breach of an employment contract should also be noted. Arguably, most juries will tend to find for the employee wherever possible. In the instant case, the employer offered direct evidence that the employee was discharged for being absent from work for three consecutive days without calling in. The employee, apparently lacking any direct evidence as to the cause of the discharge, pointed to hostile actions by the company foreman which took place prior to the discharge

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continued satisfaction with the performance of the employee. However, his dissatisfaction must be asserted in good faith and may not be used to cover up another reason for the discharge. The employee has the burden of showing bad faith. See, e.g., Shephard v. Union Cent. Life Ins. Co., 74 F.2d 180, 181 (5th Cir. 1934); Rife v. Mote, 210 Ark. 626, 628, 197 S.W.2d 277, 280 (1946); MacKenzie v. Minis, 132 Ga. 323, 325, 63 S.E. 900, 903 (1909); Ferris v. Polansky, 191 Md. 731, 733, 59 A.2d 749, 752 (1948); Kramer v. Philadelphia Leather Goods Corp., 364 Pa. 532, 73 A.2d 385, 386 (1950).

[52] 316 A.2d at 552. Therefore, if plaintiff had waited longer before commencing her suit, she would have recovered a greater amount of lost wages. However, at common law damages for breach of an employment contract are reduced by the amount that plaintiff earned or could have earned through alternative employment. United Protective Workers of America v. Ford Motor Co., 223 F.2d 49, 52 (7th Cir. 1955); Carter v. Bartek, 142 Conn. 448, 449, 114 A.2d 923, 924 (1955); Sullivan v. David City Bank, 181 Neb. 395, 397, 148 N.W.2d 844, 846 (1967).

[53] See, e.g., Jankowski v. Mazzotta, 7 Mich. App. 483, 484, 152 N.W.2d 49, 50 (1967).

[54] 316 A.2d at 552.

[55] Parmelee v. Ackerman, 252 F.2d 721, 722 (6th Cir. 1958); McCreery v. Miller's Grocerteria, 99 Colo. 499, 503, 64 P.2d 803, 805 (1936); Emerman v. Baldwin, 186 Pa. Super. 561, 572, 142 A.2d 440, 477 (1958).

[56] 316 A.2d at 551.

and the jury accepted the inference that this hostility ultimately caused the discharge.[57] As long as the employee can show hostility by the employer prior to the discharge, many juries may be willing to accept the inference that the hostility caused the discharge.

In summary, the New Hampshire court has created a contractual remedy for an employee whose discharge under a contract of employment at will stems from the bad faith, malice, or retaliatory conduct of the employer. The discharged employee is entitled to lost wages and in many cases may also be entitled to damages for mental suffering upon proving that mental suffering resulted from the breach of contract. Direct evidence as to the motivations of the employer may not be necessary in most cases.

The final question is whether the New Hampshire decision represents a sound advancement of the law governing employment relationships. It is undisputed that the employer has a vital interest in running his own business as he sees fit.[58] This interest cannot be, nor has it been, ignored by the courts.[59] However, the employee also has a vital interest in the employment relationship which should be recognized by the court—the interest in maintaining his employment.[60] Substantial retirement benefits, incurred indebtedness, and family responsibilities are all largely dependent on continued employment.[61] In addition, discharge from one job may impair the employee's ability to secure another job, not only because of the stigma attached to involuntary discharge from prior employment but also because of the decreasing job mobility in this country over the last 50 years.[62] Finally, the psychological importance to the employee of job security cannot be underestimated.[63] At the heart of the New Hampshire decision is the question of whether these interests of the employee should also be recognized by the courts in the employment at will relationship.

The standard of good faith established by the court does not impose an unreasonable burden on the interest of the employer in running his business as he believes is best. The standard prohibits only bad faith or abuse by the employer of his power to terminate the employment relationship.[64] With such fundamental interests of the employee dependent on the conduct of the employer, it is not unreasonable to prohibit the employer from acting in bad faith. Nor

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[57] 316 A.2d at 550-51. The court stated: "The jury could draw the not so subtle inference from the evidence before it that the hostility of the defendent's foreman and connivance of the personnel manager resulted in the . . . discharge." Id. at 552.

[58] Id. at 551.

[59] E.g., *Coppage*, 236 U.S. at 19 (1915).

[60] 316 A.2d at 551. See also, Comment, 14 Rutgers L. Rev. 624, 625 (1960).

[61] See Note, Implied Contract Rights to Job Security, 26 Stan. L. Rev. 335, 361 (1974).

[62] Id. at 338; C. Brainerd, M. Herman, G. Palmer, H. Parnes & R. Wilcock, The Reluctant Job Changer: Studies in Work Attachments and Aspirations 153-57 (1962).

[63] Note, supra note 61, at 339.

[64] 316 A.2d at 551.

does the standard of good faith expose the employer to frivolous law suits whenever an employee is discharged. If the court had adopted a standard of good cause, the employee would only have to allege and prove an involuntary termination of the employment contract and the burden would immediately shift to the employer to justify the termination. The employer's failure to meet this burden would result in victory for the employee. Such a standard would certainly create a greater possibility of frivolous law suits. However, under the standard of good faith adopted by the court, the burden is on the employee to prove not only involuntary termination but also bad faith motivation. Faced with an inability to meet such a burden, it is likely that most employees will be deterred from maintaining frivolous suits against the employer. In addition, such frivolous suits could be disposed of without difficulty by a motion to dismiss.

Historically, the employment at will relationship has been heavily one sided; accommodating only the interests of the employer although the employee also has important interests at stake in the relationship. Accordingly, the New Hampshire decision in *Beebe Rubber* must be applauded as an attempt to accommodate the interests of both the employer and the employee in the employment at will relationship, without unduly burdening or seriously jeopardizing the traditional interests of the employer in running his business as he believes is best. It is strongly urged that the courts of other states follow the New Hampshire decision and incorporate this development into the common law.[65]

ALAN S. POLACKWICH

Administrative Law—Freedom of Information Act—Personal Information Exempted from Disclosure—*Wine Hobby USA, Inc. v. IRS*.[1]—Wine Hobby USA, Inc. (Wine Hobby), a Pennsylvania corporation engaged in the sale and distribution of winemaking equipment, sought from the United States Bureau of Alcohol, Tobacco and Firearms (the Bureau) a list containing the names and addresses of all persons in the Bureau's Mid-Atlantic Region who had registered with the Bureau to produce wine for family consumption.[2]

[65] No other jurisdiction has been squarely presented with the same issue as was presented in this case. However, in the case of Geary v. United States Steel Corp., — Pa. —, 319 A.2d 174 (1974), the Supreme Court of Pennsylvania refused to allow a cause of action in tort where a salesman, employed at will, was discharged for questioning the safeness of a product about to be marketed by his employer. 319 A.2d at 178. Citing Monge v. Beebe Rubber Co., Justice Roberts stated in a dissenting opinion: "This court should, in my view, fulfill its societal role and its responsibility to the public interest by recognizing a cause of action for wrongful discharge where the dismissal offends public policy." Id. at 185 (dissenting opinion).

[1] 502 F.2d 133 (3d Cir. 1974).

[2] Id. at 134. All persons who produce wine are subject to certain tax, bonding and