CLEAVEN A. JOHNSON, JR. *v.* BOARD OF EDUCATION OF THE CITY OF NEW HAVEN ET AL.
(SC 18893)

Rogers, C. J., and Palmer, Zarella, Eveleigh, McDonald and Vertefeuille, Js.

Argued September 17—officially released October 22, 2013

William F. Gallagher, with whom, on the brief, were *Max F. Brunswick* and *Josephine Smalls Miller*, for the appellant (plaintiff).

Warren L. Holcomb, for the appellees (defendants).

Opinion

PER CURIAM. The plaintiff, Cleaven A. Johnson, Jr., brought the present action alleging wrongful termination against the defendants, the Board of Education of the City of New Haven, the City of New Haven (city), Reginald Mayo, the Superintendent of Public Schools for the city, and Deborah Speese-Linehan, the plaintiff's supervisor. The plaintiff, who worked as an in-school drug education prevention worker, was terminated from his employment when the federal grant that funded his position expired. Subsequently, the plaintiff brought this action alleging that the defendants retaliated against him, in violation of his rights under the first amendment to the United States constitution, by terminating his employment because he made certain statements concerning a promotion and salary increase awarded to another employee.

A jury returned a verdict in favor of the defendants and the plaintiff appealed to the Appellate Court, claiming, inter alia, that the trial court improperly excluded evidence of a "recall provision" contained within the collective bargaining agreement (agreement) between the city and the union representing the plaintiff, the New Haven Management & Professional Management Union, Local 3144, Council 4, AFSCME, AFL-CIO, on the ground that such evidence was irrelevant to the plaintiff's cause of action. The plaintiff had sought to show that the defendants' refusal to recall him to fill a vacant drug education prevention worker position in accordance with the agreement demonstrated that his employment was terminated because of his comments concerning the other employee rather than for the pretextual reason offered by the defendants, namely, the expiration of the federal grant. The Appellate Court disagreed with the plaintiff's evidentiary claim and affirmed the judgment of the trial court. *Johnson* v. *Board of Education*, 130 Conn. App. 191, 193–94, 23 A.3d 68 (2011). The Appellate Court noted that, because the recall provision did not guarantee the right to be recalled every time a position became available, the defendants did not violate the agreement by failing to recall the plaintiff to fill the vacant position. Id., 204–205. The court concluded that the recall provision was, therefore, irrelevant to the plaintiff's first amendment claims because it did not tend to make it more or less likely that the plaintiff was laid off as a result of his comments regarding the other employee. Id., 205–206.

We granted certification on the following question: "Did the Appellate Court properly affirm the trial court's exclusion of the recall provision in the plaintiff's employment contract as irrelevant?" *Johnson* v. *Board of Education*, 303 Conn. 907, 908, 32 A.3d 961 (2011).

After examining the entire record on appeal and considering the briefs and oral arguments of the parties,

we have determined that the appeal in this case should be dismissed on the ground that certification was improvidently granted.

The appeal is dismissed.