

Insights, News & Events

KEEP (SOME) OPINIONS TO YOURSELF: COURT DECISION REMINDS SPORTS EXECUTIVES THE IMPORTANCE OF DOCUMENTATION DURING HIRING PROCESS

Insights
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A recent federal appeals court decision demonstrates to employers in the sports industry the value of documenting conversations and notes made during the hiring process – and serves as a critical warning about how easily an innocent (but unfortunate) comment could be taken out of context to spell doom in a lawsuit. The November 18 decision from the Seventh Circuit Court of Appeals in *Reinebold v. Bruce* upheld the dismissal of an age discrimination claim filed by an applicant for a university’s head baseball coach position, relying upon the good notes taken by hiring personnel during the candidate’s interview. What can your organization learn from the decision, and how can you avoid the potential misstep that almost came back to bite the team?

Hiring Managers Took Solid Notes on Rejected Baseball Coach Candidate

In 2017, Indiana University South Bend (IUSB) was in search of a new head baseball coach. Out of the 94 applications received, 56 year-old Joel Reinebold and 31 year-old Doug Buysse were two of 11 candidates selected for a first-round phone interview.

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Four members of the eight-person hiring committee interviewed Reinebold by phone. Athletic Director Steve Bruce and Assistant Athletic Director Tom Norris served on this committee. Each member was left unimpressed. One member even noted that it was the worst interview he experienced. Another committee member wrote the following comments during Reinebold's interview: "Doesn't know how to deal with professors"; "Has no plan to develop kids"; "Thinks it's a good opportunity but can't say why"; and "Doesn't have a well thought philosophy."

One of the hiring committee members, reacting to their impression that Reinebold was looking to coast at this stage of his career, wrote that he believed Reinebold was "looking for a retirement job." It was this innocent comment that raised a red flag down the road and could have spelled trouble for IUSB.

Ultimately, the committee members unanimously agreed that they would not extend an in-person interview to Reinebold. Buysse, on the other hand, impressed the committee members. They gave him an in-person interview, and later offered him the position of head coach. Buysse is now entering his fourth season coaching the IUSB Titans.

Rejected Candidate Strikes Out at Appeals Court

In 2018, Reinebold sued IUSB, Bruce, and Norris for age discrimination under various federal statutes. After some initial legal maneuverings, the only claims that survived were age discrimination allegations against Bruce and Norris. The two remaining defendants argued that Reinebold failed to show that he was intentionally treated differently from other similarly situated candidates (like Buysse) or that he was treated differently because of his age. The lower court agreed with these arguments and dismissed the case, and after Reinebold appealed the decision, the Seventh Circuit Court of Appeals just affirmed the dismissal on appeal on November 18. A quick analysis of the decision shows where the team did well and where some improvements could be made.

Strike One

First, the Seventh Circuit recognized that, up until the candidates' phone interview, both Reinebold and Buysse were treated the same. They both applied for the same job, they both qualified for the job, and they both were granted phone interviews. Reinebold argues that he must have been discriminated against because was "objectively more qualified for the job than Buysse." However, it is once the two candidates underwent their phone interviews that their respective performances cause them to no longer be similarly situated.

Strike Two

Second, the Seventh Circuit noted that testimony from Norris' barber wasn't enough to convince the court to resurrect the appeal. During the hiring process, Norris spoke with his barber on several occasions about IUSB's search for a new head baseball coach. Once Buysse was hired, Norris told his barber that he was excited about hiring Buysse because he was a "younger guy" and would be a "better fit for the kids..." At no point, however, did Norris mention that he didn't hire Reinebold because of his age.

Foul Tip Strike Three

As for the "looking for a retirement job" note left by the hiring committee member, the court ruled that note was simply a "stray remark" made alongside a number of other notes directly related to Reinebold's performance during the interview. If anything, it was a description of Reinebold and not his age. There was no indication from the notes themselves, nor from testimony from the member himself, that Reinebold's age was a factor in the hiring decision. There was also no evidence that the member shared his notes with other committee members. Therefore, the court ruled that "these notes are indicative of the reason Reinebold was eliminated as a candidate after his phone interview," not any evidence of age bias by the hiring committee.

Practice Pointers

This case provides valuable insight to sports industry employers of the value of documenting and taking notes of the formal and informal conversations made during the hiring process. Written notes taken contemporaneously at the same time as events during the hiring process will be worth their weight in gold if the hiring decision is later challenged in court. They will put the court in the mind of the key decisionmakers at the time the critical choices are made, and they can present solid evidence that job-related and non-discriminatory reasons were behind the hiring (and non-hiring) decisions.

However, such advice does not come without warning. It is not advised to document *every* thought or opinion that comes to mind during the hiring process. As seen in this case, the committee member's "looking for a retirement job" note could have easily been misinterpreted by the court. It was raised by Reinebold as a potential issue, and arguably a more liberal court could have deemed that the committee member was taking Reinebold's age into consideration during the hiring process. Although the Seventh Circuit dismissed such an argument as "purely speculative" in this case, it is important to train your hiring managers to only take objective notes during the hiring process to avoid raising eyebrows, and avoid documenting anything that could potentially raise issues related to protected classes. Have your hiring managers consider how any of their comments could be misinterpreted by a court scrutinizing them at a later point.

Conclusion

We'll continue to monitor developments affecting sports organizations and provide helpful updates as warranted. To ensure you stay up to speed, make sure to subscribe to receive [Fisher Phillips Insights](#) directly to your inbox. If you have questions, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Sports Practice Group](#).

