



Interview—You May Be Fired

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Jeff Jagodzinski was the thirty-third football coach in Boston College history.¹ Jagodzinski inked a five-year deal with Boston College in 2007 and replaced Tom O'Brien, who left for North Carolina State.² Jagodzinski previously spent a brief time at Boston College in 1997 and 1998 as an offensive coordinator and line coach. Since 1999, until his return to Boston, he was tight-ends coach, offensive line coach, and offensive coordinator for the Atlanta Falcons and Green Bay Packers.³

In both of his two seasons at Boston College, Jagodzinski coached the Eagles to a first place finish in the ACC's Atlantic Division. In 2007 the Eagles went 11-3 including a victory over Michigan State in the Champs Sport Bowl. This past season, Boston College finished 9-5 after losing to Vanderbilt in the Gaylord Hotels Music City Bowl.⁴ During his tenure, the Eagles were ranked as high as No. 2 in the national rankings in 2007 and were a combined 20-8.⁵

Jagodzinski was told by Boston College Athletic Director, Gene DeFilippo, that he would be fired if he interviewed for the New York Jets head coaching vacancy. On January 6, 2009, he met with Jets officials anyway. On January 7th, DeFilippo fired Jagodzinski.⁶ As one commentator noted, "DeFilippo gave Jagodzinski his first head-coaching job. Gave him a five-year contract. In return, he asked for five years of loyalty. After only two years, Jags took that fateful interview."⁷

In the big money world of college coaching where contracts are treated like toilet paper, can a university tell a coach who he can talk to regarding their career during the term of their contract? It all depends upon the contract.

A college coach's contract handles the issue of whether or not the coach can have discussions with other universities or teams during the term of the contract in several ways, including:

1. Silence. The contract is silent and does not contain a non-compete, notice, or university approval provision relative to discussions or negotiations with other universities during the term of the contract.

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¹ *Boston College Terminates Employment of Football Coach Jeff Jagodzinski*, THEACC.COM, Jan. 7, 2009, <http://www.theacc.com/sports/m-footbl/spec-rel/010709aaa.html>.

² Eric Avidon, *It's Official: Jagodzinski Out at BC*, ENTERPRISENEWS.COM, Jan. 7, 2009, <http://www.enterpriseneews.com/sports/x376745596/It-s-official-Jagodzinski-out-at-BC>.

³ *Jeff Jagodzinski – Boston College Football*, BOSTONCOLLEGERIVALDS.COM, <http://bostoncollege.rivals.com/viewcoach.asp?Coach=1926> (last visited Feb. 20, 2009).

⁴ Avidon, *supra* note 2.

⁵ Howard Ulman, *BC Fires Jagodzinski After Coach Met With Jets*, SEACOASTONLINE.COM, Jan. 8, 2009, <http://www.seacoastonline.com/articles/20090108-SPORTS-901080432>.

⁶ Avidon, *supra* note 2.

⁷ Bob Molinaro, *Firing of BC Coach Exposes 'Flawed' System*, HAMPTONROADS.COM, Jan. 9, 2009, <http://hamptonroads.com/2009/01/firing-bc-coach-exposes-flawed-system>.

2. Prior Approval Clause. The contract contains a prior approval clause; that is, the coach must first obtain the consent or approval of the Athletic Director before having discussions with other universities. Examples of prior approval clauses include:

a. Tommy Bowden – former head coach at Clemson University.

University Approval Required Prior to Negotiation with Other Schools: “The parties agree that should another coaching opportunity be presented to Coach or should Coach be interested in another coaching position during the Term of this Agreement, Coach must notify the Athletics Director of such opportunity or interest and obtain permission from the Athletics Director before any discussions can be held by Coach with anticipated coaching position principals.”⁸

b. Tommy Tuberville – Auburn University.

Prospective Employment by Coach or Auburn: “Unless notice has been given to Coach by Auburn of his termination, neither Coach nor any person or entity acting at or under his express authority shall under any circumstances discuss or negotiate directly or indirectly his prospective employment with any other institution of higher learning or professional athletic team without notice to the Director of Athletics and the express permission of Auburn, which shall not be unreasonably withheld. Unless notice has been given by Coach to Auburn of his termination of this Agreement, neither the President nor the Athletic Director of Auburn or any person or entity acting at or under their express authority shall discuss or negotiate directly or indirectly Auburn’s prospective employment of any other person as Head Football Coach of Auburn without notice to Coach.”⁹

c. Francisco J. Martin – Kansas State University. The coach must give notice of discussions with other prospective employers.

“Exclusivity of Services (b). Coach agrees that during the term of this agreement he will notify the Athletic Director or his designee of, and obtain permission prior to, any discussions by Coach, his agents or representatives, pertaining to coaching opportunities at any NCAA member institution, or any other coaching or non-coaching positions that may result in termination of his employment at the University. Likewise, Athletic Director or his designee agrees to notify Coach prior to any discussions with other coaches, their agents or representatives pertaining to head coaching opportunities in the men’s basketball program at the University.”¹⁰

3. Prior Approval Clause Subject to Time Limitations. The contract contains a prior approval clause (i.e. the Coach must first obtain the consent or approval of the Athletic Director), and also limits the time in which discussions or negotiations may take place. An example of a prior approval clause subject to time limitations is as follows:

Urban Meyer – University of Florida.

“Coach agrees that he shall not under any circumstances discuss or negotiate directly or

⁸ Employment Agreement between Clemson University and Tommy P. Bowden, at Section 13, Dec. 1, 2007.

⁹ Amended and Restated Agreement between Auburn University and Thomas Hawley Tuberville, at 6, Dec. 31, 2004.

¹⁰ Employment Agreement between the Intercollegiate Athletic Council of Kansas State University, Incorporated, Kansas State University, and Francisco J. Martin, at 5, Apr. 6, 2007.

indirectly his prospective employment with any other institution of higher learning or professional athletic team except between the final day of the regular football season and January 2 of each year in which this Agreement is in effect. Coach agrees to provide Athletic Director with written notice prior to engaging in such contract discussion or negotiation. In the final year, as specified in sub-paragraph 4A herein, he is granted permission to discuss such employment with any person or entity at any time after the final day of the regular football season. It is particularly understood that on-going rumors or media reports of such negotiations are damaging to team morale and recruiting, and therefore the parties expressly agree that time is of the essence as to the provisions of this sub-paragraph, and that the time shall be strictly construed.”¹¹

4. Notice. A notice clause requires the Coach to notify the Athletic Director of his desire to engage in discussions or negotiations with another institution during the contract term. Examples of this kind of clause include:

a. Paul H. Davis, Jr. – The University of North Carolina at Chapel Hill.

“The parties agree that Coach shall be required to notify the Athletic Director and Chancellor prior to engaging in discussions with other institutions through their representatives or agents, including discussions related to offers of administrative opportunities at other educational institutions.”¹²

b. Les Miles – Louisiana State University and Agricultural and Mechanical College.

“Unless notice has been given to Coach by the University of Coach’s termination pursuant to Section 13 of this Contract, neither Coach nor his agent shall, under any circumstances, discuss or negotiate directly or indirectly his prospective employment with any other institution of higher education or professional athletic team without giving at least 24 hours prior written notice to the Athletic Director.”¹³

c. Gregory Schiano – Rutgers, the State University of New Jersey.

Solicitation Provision. “At any time prior to the conclusion of this Employment Agreement Extension, Schiano must notify in writing the Director prior to speaking with any other university or college regarding any head coaching position.”¹⁴

d. Mark Richt – University of Georgia.

“During the term of his employment by the University and the Term, Richt shall notify the Athletic Director of any offers of employment, employment opportunities or requests for meetings or discussions with respect to possible employment opportunities before engaging in substantive discussions regarding such employment or employment opportunities.”¹⁵

¹¹ Head Coaching Agreement between the University Athletic Association, Incorporated and Urban Meyer, at 12, Apr. 20, 2005.

¹² Employment Agreement between the University of North Carolina at Chapel Hill and Paul H. Davis, Jr., at 10, Nov. 27, 2006.

¹³ Contract of Employment between Board of Supervisors of Louisiana State University and Agricultural and Mechanical College and Les Miles, at 8, Jan. 1, 2005.

¹⁴ Addendum to the February 28, 2006 Extension Agreement between Rutgers, The State University of New Jersey and Gregory Edward Schiano, at 17, Feb. 17, 2007.

¹⁵ Amended and Restated Agreement between the University of Georgia Athletic Association and Mark Richt, at 4, Jan. 1, 2006.

5. Notice – Athletic Director Contact. A modified notice claim may require the Coach to not only provide notice to the Athletic Director, but also to direct the potential employer to contact the Athletic Director prior to any further discussions. An example of this kind of modified notice claim follows

Bob Stoops – University of Oklahoma.

“Coach will not contact or hold discussions with any potential employer, other than through the University, regarding job opportunities without first providing notice to the Athletic Director. Additionally, if Coach is contacted by any representative of a potential employer, other than the University, regarding job opportunities, Coach will require that representative or potential employer to contact the Athletic Director prior to any further discussions.”¹⁶

6. Restrictive Covenant. If the coach’s contract contains a restrictive covenant, this may prohibit discussions or negotiation with other universities prior to the end of the contract term. An example of a restrictive covenant includes:

Lon Kruger – University of Nevada – Las Vegas.

“Recitations Regarding Employee’s Status. The parties hereby agree that Employee has special, exceptional and unique knowledge, skill and ability as a coach at the intercollegiate level, which in addition to his continued acquisition of coaching experience and reputation at UNLV, as well as Employer’s special need for continuity and competitiveness in its Men’s Basketball Program, render Employee’s services to Employer unique. Therefore, Employee acknowledges that the resignation or termination of this Employment Agreement by Employee in order to accept employment at another NCAA member institution or professional team, or without Employer’s prior consent, would damage Employer to an extent that cannot be estimated with certainty or be fairly or adequately compensated by money damages. Employee therefore agrees for himself, his agents and representatives, specifically that he and they shall not seek, discuss, negotiate for or accept other full-time employment of any nature prior to the termination date of the term of this Employment Agreement or any extension thereof without prior written consent of the Director of Athletics or his designee.”¹⁷

7. An Obligation to Notify the University of Another Coaching Opportunity and a Covenant that Failure to Notify the Athletic Director Constitutes an Event for Termination for Cause. An example follows:

a. Thomas Crean – Indiana University

i. 7.01. Other Coaching Positions.

“The parties agree that should another coaching opportunity be presented to the Employee or should the Employee be interested in another coaching position during the Term, the Employee is to notify the Director of Athletics in writing (hard copy, not electronically) of such opportunity or interest before any discussions can be held by the Employee or any agent or intermediary of the Employee with the anticipated coaching position principals.

¹⁶ Contract of Employment between the University of Oklahoma and Robert Anthony Stoops, at 3, Jan. 1, 2002.

¹⁷ Contract Extension Agreement between University of Nevada, Las Vegas and Lon Kruger, at 27, Apr. 1, 2007.

Failure to do so is a material breach of this Agreement and a reason for termination of the employment of the Employee by the University for Cause under Section 6.02.B.”¹⁸

ii. 6.02.B. “Action by the University for Cause. The University may terminate the employment of the Employee by the University under this Agreement prior to the Normal Expiration Date for Cause. The term “Cause” shall include, in addition to and as examples of its normally understood meaning in employment contracts, any of the following:... (11) “Any failure by the Employee to comply with his obligations, duties and responsibilities under Section 7.01 or any material breach of the representations and warranties of the Employee in Section 7.02.”¹⁹

iii. 6.01.B. “Effect of Termination. If the Employee terminates his employment by the University under this Agreement prior to the Normal Expiration Date in accordance with the provisions of this Section 6.01.A, the Employee shall be obligated to pay to the University the amount provided in Section 6.01.C below and all obligations of the University to make further payments and/or to provide any benefits or other considerations hereunder shall cease as of the earlier of the effective date of the termination or the end of the month in which the notice of termination is given.”²⁰

CONCLUSION

While Jagodzinski’s contract was not available for review, it has been reported that Jagodzinski was fired without cause. Athletic Director DeFilippo has said that Jagodzinski’s contract with the Jets did not violate his contract and that he would receive money remaining on his deal. These statements indicate clearly that the firing was without or not for cause.²¹

If the contract is silent and there is no prohibition against discussions or negotiations with other universities during the contract term, the University could, like Boston College, terminate the contract without cause. The university would be subject to whatever liquidated damage provision is contained in the contract, in addition to whatever mitigation of damage clause offsets the continued payment.

If a coach has discussions or negotiations with other universities in violation of a notice, consent, or approval clause (that is, the coach must first notify the University of his desire to interview for any other job opportunity or receive the consent of the Athletic Director), the University has the opportunity to terminate the coach for cause, which subject to the terms of the contract would relieve the University of any further financial responsibility.

If the contract is silent or if the coach violates a covenant of notice or prior approval clause and there is also a buyout clause for early termination by the coach, the University could be relieved of financial responsibility, and still receive the contractual liquidated damages owed by the coach for leaving early.

Following Jagodzinski, Jerry Holmes, head football coach at Hampton University was similarly let go. Athletic Director Lonza Hardy learned that Hampton was interviewing for NFL assistant coaching jobs and fired him. Athletic Director Hardy informed Coach Holmes that “we felt it was not in the best interest of the program at this critical time right before signing day to have our head coach interviewing

¹⁸ Employment Agreement between the Trustees of Indiana University and Thomas Crean, at 18, Apr. 2, 2008.

¹⁹ *Id.* at 12

²⁰ *Id.* at 11.

²¹ Avidon, *supra* note 2.

for other positions.”²²

Interviewing at other schools was one of the sticking points in the now acrimonious contract renegotiations between Mike Leach and Texas Tech University. In his prior contract Leach had no restrictions on interviewing and actually interviewed for the University of Washington job in December of 2008 without notifying Texas Tech. In subsequent negotiations for a new contract Texas Tech asked to include a clause that if Leach interviewed for another job without permission, he would be fired and a buy-out penalty would be invoked.²³ Athletic Director Gerald Myers had said “I’ve made it clear that I would not withhold permission to interview. I just want him to let me know.”²⁴

Consent not being “unreasonably withheld” opens another arena of legal issues as to which objective standards will be used to withhold permission. The Leach negotiations signify the new importance of loyalty and control in college athletics. Leach ultimately signed a new contract extension with Texas Tech that states, “Unless notice of termination of employment has been given to Coach in accordance with Articles V.A. or V.D. below, Coach shall not engage in discussions or negotiate, either directly or indirectly, concerning Coach’s prospective employment by any other employer without first providing prior written notice to the Director of Intercollegiate Athletics of such discussions or negotiations. Failure to provide such notice may be considered a material breach of this Agreement.”²⁵

Jagodzinski’s situation may give rise to future contracts that contain an absolute, locked-in no-interview clause for a fixed period of time similar to a restrictive covenant. This provision may be accompanied by an absolute obligation to coach for a definite period, regardless of back-end buyout clauses. The bottom line is, regardless of the strength of a coaching contract, the collegiate athletics is “a wild west environment that essentially allows each school and each conference to roam at will for coaching talent.”²⁶ This situation is another signal that the legal environment between universities and coaches has become more hostile, with universities willing to challenge a coach for merely seeking other job opportunities.

²² Melinda Waldrop, *Holmes Out as Pirates Coach*, DAILYPRESS.COM, Jan. 27, 2009, http://www.dailypress.com/sports/college/hu/dpspt_d1holmes_0127jan27,0,175037,story.

²³ *Report: Texas Tech, Leach Taking Break After Heated Contract Talks*, SI.COM, Feb. 6, 2009, http://sportsillustrated.cnn.com/2009/football/ncaa/02/06/texastech.leach.ap/index.html?eref=si_ncaaf.

²⁴ *Id.*

²⁵ *Leach, Tech Reach Five-Year Agreement*, ESPN.COM, Feb. 20, 2009, <http://sports.espn.go.com/nfl/news/story?id=3919674>.

²⁶ Caulton Tudor, *BC AD’s Decision Worth Noting*, NEWSOBSERVER.COM, Jan. 9, 2009, <http://www.newsobserver.com/sports/college/story/1360112.html>.

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