

No Retaliation Claim For It Employee Fired After Criticizing School District

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Wolgast v. Tawas Area Sch. Dist. Bd. of Educ., 16-2240 (6th Cir. 05/25/17): The Court dismissed the retaliation claim of an IT employee who was terminated following comments criticizing his employer, a public school district.

BACKGROUND

Tawas Area School District Technology Support Specialist Brandon Wolgast spoke out at school district technology committee meetings, criticizing a district “one-to-one” plan to provide personal computing devices to its students. Wolgast took a critical tone, pointing out logistical difficulties with the plan. The superintendent of the district, who attended the meetings, described Wolgast as “the most negative person in the room.” A school board member who attended the committee meetings described Wolgast’s tone as “disrespectful” and stated that Wolgast had the potential to “sabotage the project.” Wolgast e-mailed the superintendent of the district, criticizing the district “one-to-one” plan and requesting a promotion and pay raise in return for overseeing the program. The district decided not to renew Wolgast’s employment contract and placed him on administrative leave for the remainder of his employment term. Wolgast initiated a federal lawsuit against the district, alleging the district retaliated against him for exercising his first amendment rights. The court rejected his claim, holding that the school district’s interests in providing efficient educational services outweighed Wolgast’s right to free speech addressing matters of public concern.

DISCUSSION

The U.S. Court of Appeals for the Sixth District upheld the district court’s decision, denying Wolgast’s retaliation claim. The appeals court explained that an employee pursuing a first amendment retaliation claim must prove 1) that he engaged in constitutionally protected speech, 2) that he suffered adverse action or the deprivation of some benefit and 3) the speech was a substantial or motivating factor in the action or deprivation. Public employees, such as Wolgast, must satisfy additional criteria: First, the employee must have spoken as a citizen, rather than as a public employee. Second, the employee’s interest in addressing the matters of public concern must outweigh the interest of the employer in promoting the efficiency of the public services it performs.

■ Speech as a Citizen

At the District Court level, the school district did not argue that Wolgast was speaking as a district employee, rather than as a citizen. Consequently, the appeals court held that the school district waived this argument and Wolgast was deemed to have spoken as a citizen.

■ Employee Interest Versus Matter of Public Concern

The appeal court held Wolgast’s comments undermined the school district’s interests in the following ways: 1) Wolgast’s comments were directed at the superintendent and individual board members, with whom Wolgast had a close working relationship; 2) Wolgast conveyed a clearly negative tone at the technology committee meetings and 3) Wolgast made negative, skeptical comments about the one-to-one plan in his e-mail to the superintendent.

In light of these facts, the appeal court held that the school district’s interest in efficiently providing educational services outweighed Wolgast’s right to speak out on a matter of public concern. The court was not swayed by arguments from

Wolgast that the one-to-one program was never implemented and that the school district decided to terminate Wolgast before reading his e-mail to the superintendent.

PRACTICAL ADVICE

Typically when a school district employee speaks about matters related to his or her employment, the employee will be speaking as a public employee rather than as a private citizen. In these situations, the employee will not have the same first amendment protection as a private citizen speaking on the same issues. However, as the Wolgast case demonstrates, a school district's interest in efficiently providing educational services will carry significant weight against an employee's right to speak regarding school district matters, even when the employee is speaking as a private citizen.

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