



High Court Limits Public Employee First Amendment Retaliation Claims

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In *Borough of Duryea v. Guarnieri*, one of several important rulings issued this week, the United States Supreme Court limited retaliation claims by public employees under the Petition Clause of the First Amendment to cases in which the employee's petition relates to matter of "public concern."

Background

The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances." The last clause, known as the "Petition Clause," has been interpreted to prohibit the government from taking adverse action against an individual merely because the individual sought access to the courts for the resolution of a legal dispute.

In this case, plaintiff Charles Guarnieri was employed as Chief of Police of the borough of Duryea, a small town in Northern Pennsylvania. After his employment was terminated, Guarnieri filed a union grievance challenging his termination. Guarnieri's grievance proceeded to arbitration, and the arbitrator ordered Guarnieri reinstated after a disciplinary suspension. Following his reinstatement, Guarnieri complained that the borough council retaliated against him for filing his grievance by issuing 11 directives instructing him on the performance of his duties. For example, the council instructed Guarnieri that he was not to work overtime without the council's express permission, that his police car was to be used only for official business, and that smoking was not permitted anywhere in the municipal building, including the police department.

The Lawsuit

Guarnieri filed suit, alleging that his grievance was a "petition" protected by the First Amendment, and that the directives issued upon his reinstatement were retaliation for his protected activity. After the lawsuit was filed, the council denied a request by Guarnieri for \$338 in overtime. The U.S. Department of Labor investigated and concluded that Guarnieri was entitled to payment. The council offered Guarnieri a check for the amount due, but he refused. Instead, he amended his complaint to allege that his lawsuit was a "petition" and that denial of his request for overtime was retaliation for filing the lawsuit.

Guarnieri's case went to trial, and the jury awarded him \$97,358 in compensatory and punitive damages. In addition, the trial court awarded Guarnieri \$45,000 in attorneys' fees. The borough appealed to the Third Circuit Court of Appeals, arguing that the lawsuit should have been dismissed because Guarnieri's petitions related only to his personal interests, and not to any matter of public



concern. While the Court of Appeals reversed the award of punitive damages, it affirmed the remainder of the judgment, holding that “a public employee who has petitioned the government through a formal mechanism such as the filing of a lawsuit or grievance is protected under the Petition Clause from retaliation for that activity, even if the petition concerns a matter of solely private concern.” The borough appealed to the Supreme Court.

The Ruling

In evaluating the plaintiff’s Petition Clause claim, the Supreme Court noted that when an employee sues a government employer under the Speech Clause of the First Amendment, the employee must show that he or she spoke on a matter of public concern. Even if the employee speaks on a matter of public concern, the speech is not automatically protected. Rather, courts must balance the employee’s right to free speech against the interest of the government, as an employer, in promoting the efficiency of the public services it performs through its employees.

Because the right of speech and the right to petition share substantial common ground, the Supreme Court held that the public concern test should also apply to Petition Clause claims. The Court reasoned that petitions, like speech, can interfere with the efficient and effective operation of government. A public employee might, for example, use the courts to pursue personal vendettas or harass members of the public. Such actions could cause a breakdown in public confidence in the government and its employees. The government must, therefore, have the authority to restrain employees who use petitions to frustrate progress. The Supreme Court further noted that unless limits are imposed on the scope of the Petition Clause, a wide range of government operations would be subject to judicial supervision, as every government action in response to a grievance could represent a potential constitutional issue.

Therefore, the Court ruled that a government employer’s allegedly retaliatory action against an employee because the employee brought a court action against the government employer does not give rise to liability under the Petition Clause unless (i) the employee’s petition relates to a matter of public concern and (ii) the employee’s First Amendment interest outweighs the interest of the government employer in promoting the efficiency of public services. A petition that involves nothing more than a complaint about the employee’s own duties does not relate to a matter of public concern and is not actionable under the Petition Clause.

Because the Court of Appeals and District Court applied the incorrect legal standard, the Court vacated the judgment of the Court of Appeals, and remanded the case for a determination as to how the above framework would apply to Guarnieri’s claims.

Insights for Employers

The *Duryea* case demonstrates that not every “petition” by a public employee will support a claim for retaliation under the Petition Clause of the First Amendment.



However, this ruling does not leave employers free to retaliate against employees who file a grievance or lawsuit, as such retaliation will still often be prohibited by state or federal law. Consequently, employers should still proceed with caution and consult legal counsel when taking adverse action against any employee who has filed a formal grievance, lawsuit, or other complaint.

More Information

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