Police Officers' Right to Free Speech

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See also the U.S. Supreme Court's 2006 decision in Garcetti vs. Ceballos

Over my years as a local Lodge President, the issue of whether I could speak publicly on a given issue without being subject to disciplinary action occasionally arose. More often, a member would come to me with an issue where he or she was facing disciplinary action for something the member had said or written. How much "freedom of speech" does a police officer/employee have as it relates to his or her work place? What are the issues involved in an employee representative's ability to voice the concerns of members?

As with most issues worth discussion, there are competing interests. There is the interest of employees having a right to free speech. There is also an interest on the part of employers to be able to run their operations efficiently and effectively, without undue interference or disruption. To balance these sometimes competing interests, the courts generally protect that employee's speech which can be shown to address concerns of legitimate public interests. A police officer may well have a "constitutional right to free speech." However, that same officer does not necessarily have a constitutional right to be a police officer of a particular department while he or she exercises that right, if such speech hinders the effectiveness or efficiency of the police operation and serves no public interest. The courts do recognize that public employers, as employers, have an interest in regulating the speech of their employees that differs significantly from its interests in regulating the speech of the average citizen. Added to these interests, law enforcement agencies also have an interest in the need for discipline in the paramilitary organizational structure.

However, even recognizing these employer interests, the courts have generally protected the rights of officers to express their views, in public or private, orally or in writing. According to Will Aitchison in his text "The Rights of Law Enforcement Officers," the important case controlling the right of free speech on the part of public employees is a U.S. Supreme Court case, *Pickering v. Board of Education*, 391 U.S. 563 (1967). In this case, a school teacher had been fired for writing a letter to a local newspaper critical of his school board's policies. Initially, the Illinois Supreme Court upheld the firing on the premise that by accepting the teaching position, Pickering was obligated to not make critical statements about the school's operation. The Supreme Court rejected the Illinois court's rationale and stated, "To the extent that the Illinois Supreme Court's opinion may be read to suggest that teachers may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work, it proceeds on a premise that has been unequivocally rejected in numerous prior decisions of this Court. The theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." The Court said that the teacher could not be fired because (1) the letter concerned a matter of public interest, and (2) the letter did not create a situation that would cause a diminution of the discipline by superiors or disharmony among coworkers. Therefore, the letter was protected by the First Amendment.

Therefore, if you find yourself, or another member, being disciplined for something you have said or written, to decide if your statements are protected speech, you must determine that:

1. The statements must deal with matters of public concern.

2. Then, even if the matter is of public concern, does that public concern and interest outweigh the interest of your employer in maintaining morale, efficiency, and discipline?

Being an employee representative may also give you a bit more latitude in your exercise of free speech. However, being a Lodge leader does not give you or your statements blanket immunity. One should look at existing local laws as they pertain to the recognition of employee representatives and seek good legal counsel before taking on an issue of a controversial nature. If the matter is important enough, and your own employment may be jeopardized, you may wish to appoint an attorney or a retired Lodge member as your spokesman. (I strongly advise against any anonymous statements. They more often than not are not given much credibility, and undermine your Lodge's role as a forceful advocate and leader. They usually convey a lack of courage and conviction.) Whether as an employee representative or a private employee, public statements critical of your employer should most always concern matters of serious public concern. Further, they should generally be made only after you have gone through your employer's grievance system, chain of command, or whatever mechanism your department uses to address the issue of concern. Good faith representation and bargaining call for you to give your employer an opportunity to correct a problem before they are publicly chastised, regardless of whether such speech is protected or not. It also demonstrates good faith on your part should you later have to address the matter in court. When your speech does concern a matter of public interest, the Government then bears the burden of justifying any disciplinary action it may take as a result of that speech.

We'll look at some court cases that touch on the issue of free speech and hopefully you will see more clearly how the courts balance the free speech issue.

Relevant Court Cases

Smith v. Fruin, 28 F.3d 646 (Illinois 1994)

A Chicago detective complained to his commander about coworkers smoking in designated non-smoking areas. After several complaints, nothing was done to correct the problem. The detective then asked his commander for a new smoke-free work location. The detective also petitioned two other superiors, officials of the city's health department, and the police department's Office of Legal Affairs for a smoke-free work location. He made these requests only on his own behalf and for only his benefit.

After the detective made his complaint to the Office of Legal Affairs, he was given what he felt was an unusual assignment. He was assigned to an unmarked car and directed to investigate sex crimes from 9:00 a.m. to 5:00 p.m. every day. No one was assigned to fill the detective's position when he was off-duty. The detective said the assignment was merely retaliation for his complaints about smoking. A newspaper article was written which questioned the usefulness of the assignment. Shortly thereafter, the Department abolished the assignment, claiming the publicity had ruined the undercover effort.

The detective sued, claiming the Department had violated his First Amendment rights by assigning him to a punishment detail for his smoking complaints. A lower court decision denied the Department's motion for judgment without trial. This decision was overturned by the appeals court. The court in overturning the decision noted that for speech to be protected, it must be on a matter of public concern. Although the court recognized that the issue of second-hand smoke was a matter of public concern, it found that the detective's complaints addressed not changes in his department's work environment, but only in his own workplace. Therefore, because the detective was only speaking for himself, the speech was not of public concern, and, as such, was not protected.

Therrien v. Hamilton, 849 F.Supp. 110 (Massachusetts 1994)

Therrien was a police officer and the president of the local police union. As the union president, he often appeared in the press criticizing police policies and elected officials. During Hamilton's election campaign for Mayor, Therrien became very outspoken about the condition of the police station and over non-union police working downtown assignments. Hamilton was elected Mayor and allegedly he had an assistant city attorney ask police supervisors to tell him if Therrien's work was unsatisfactory or if he did anything worthy of getting fired. The supervisors passed these inquiries along and expressed concern that Hamilton was going to fire Therrien at the first chance he had. Therrien sued Mayor Hamilton for civil rights violations, claiming that the conversation between the city attorney and the police captains had

chilled his right to speak freely. The court granted the Mayor a judgment without trial reasoning that, in fact, Therrien had not been fired and was still expressing his opinions in the press. Therefore, Therrien had not been deprived of his freedom of speech. The court also found that it was within the Mayor's authority to fire Therrien if he did anything worthy of such action.

Lesher v. Reed, 12 F.3d 148 (Arkansas)

Lesher worked for the canine section of the Little Rock Police Department. He had donated a dog to the Department with a written agreement that he would be able to reclaim the dog if it became unfit for police work. However, after the dog bit a child, the Department did not allow Lesher to reclaim the dog and had it destroyed. Lesher made several complaints to the media. He was then transferred out of the canine section. Lesher sued, claiming the Department had violated his constitutional rights, claiming his transfer was in retaliation for his complaints.

The court dismissed the First Amendment claim and was upheld upon appeal. The court stated that to sue for a violation of freedom of speech, the public employee must first show that the speech touched on a matter of public concern. In this case, the court ruled that Lesher's complaints were personal and not protected speech.

Schnabel v. Tyler, 630 A.2d 1361 (1993)

After an armed robbery of a gas station, the owner was allegedly encouraged by a police officer to complain about deficiencies in the investigation of the crime. Subsequently, the owner did attend a city council meeting and criticized the town's Chief of Police, Schnabel.

Schnabel, angered by the criticism, launched an internal investigation to determine which police officer had encouraged the complaint. His investigation focused on Police Officer Tyler. Tyler was called into the Chief's office and questioned at length. When Tyler refused to answer questions without his attorney present, the Chief suspended him.

The following day, Tyler came back to the Chief's office with his attorney. After first denying he had spoken to the gas station owner for fear of being fired, he admitted he had talked with her.

Subsequently, Tyler filed a notice stating he intended to sue both Chief Schnabel and the town. He made statements on television and in a local newspaper and wrote a letter to the editor critical of Chief Schnabel and claiming racism in the department. Schnabel then sued Tyler for defamation. Tyler countersued, claiming false imprisonment, intentional infliction of emotional distress, abuse of process, and free speech and equal protection violations. Tyler alleged further that the Chief had continually harassed him by making him do clerical work, having him document a daughter's illness for which he missed work, and having him guard an unrestrained and often violent prisoner.

In a jury trial, the court found in favor of Tyler. The appeals court affirmed this decision, finding that Tyler had proved all of his counterclaims. Further, the Court found that Schnabel had violated Tyler's First Amendment rights. The evidence had shown that Schnabel had retaliated against Tyler for Tyler's public criticism. Also, the jury was correct in finding that Tyler's speech did address "important matters of public concern" and, as such, his speech was protected.

Oladeinde v. City of Birmingham, 963 F.2d 1481 (1992)

Birmingham Police Officer Oladeinde had spoken out against wrongdoing in the Birmingham Police Department. She filed suit against the city, the Mayor and police officials, claiming that they had violated her free speech rights by retaliating against her and other whistleblowers and depriving them of their property interests in their jobs. All those sued moved for immediate dismissal.

The Court dismissed the property interest claim and the claim against the Mayor. However, the court found evidence indicating that police officials had deprived Oladeinde of her First Amendment rights and returned the case for trial.

Evans v. City of Indianola, 778 F.Supp. 333 (1991)

Several radio dispatchers and police officers spoke out publicly about their concerns over job security, disciplinary problems, lack of trust in the department, tension and internal spying by off-duty police officers. They also sought to oust the police chief. Subsequently, several community meetings were held and these issues were discussed. The mayor and city aldermen refused to accept the Chief's resignation and instead fired the dispatchers and demoted two police officers. The employees sued on the grounds that the city had violated their First Amendment right to free speech.

The court granted the city's motion to dismiss the case without a trial. It noted that the employees themselves had admitted that their concerns about job security, disciplinary matters and internal spying were not matters of public concern. Therefore, the court dismissed the suit, stating that for speech to be protected by the First Amendment it must involve matters of public concern.

Further, this is a case where the morale and efficient operation of the Department had to be considered by the Court as it made its decision. Given the nature of the complaints and that the Chief of Police was personally the subject of much of the employees' criticism in this small department, the city might also have been successful in making a case that the disruption of the effectiveness of the Police Department caused by the employees' speech outweighed the employees' interest in the public airing of their concerns even if the court found that their speech had addressed matters of public concern. It may well have found that their public concerns were not important enough to be protected speech. Conversely, the employees in this case may have prepared their case better by establishing stronger connections between their complaints and matters of public concerns. For instance, they may have been able to make the case that the Department disciplinary procedure was causing officers to be afraid to do their jobs, putting public safety in jeopardy.

This case clearly points to the need to be prudent in your assertion of your free speech rights. Again, if you are called upon to take on a controversial issue, make sure your public statements are framed so as to address the public concerns surrounding the issue as well as your members' concerns. You might want to check and see if an issue is of interest to your barber, the clerk at the corner store, or your neighbor--most anyone who is not a police officer. Finally, check with competent legal counsel if there is any doubt.

The court also noted in this case that merely calling a press conference and airing one's personal concerns in public does not cause that personal concern to automatically rise to one of public interest.

Chico Police Officers' Association v. City of Chico, 283 Cal Rptr. (1991)

This is a great case for FOP Lodges and others who are recognized employee representative organizations.

The Chico Police Officers' Association is the recognized exclusive bargaining representative for the law enforcement employees of the City of Chico, California. They publish an association newsletter, the "Centurion," which is written to voice the thoughts and concerns of the association's members.

A copy of the "Centurion" was posted on a bulletin board within the Chico Police Department that by agreement was reserved for posting association materials. The newsletter was also mailed to local newspapers. In the newsletter was an article by the Association's President, Officer Moore, which was critical of the department's management. That same day, the Chief of Police revoked the association's right to use the bulletin board and, after an internal investigation, placed a written reprimand in Moore's personnel file, charging Moore with violating departmental policy.

The association filed suit, claiming that the City and the Chief of Police had violated Moore's and the Association's lawful exercise of free speech. The association requested that the court order the removal of the written reprimand from Officer Moore's personnel file and that the parties cease interfering with the rights of Moore and the Association. The court granted the Association's motion and the appeals court affirmed the decision. The court stated in analyzing the case that whether a public employer has rightfully disciplined an employee for the employee's speech requires that the court look at the balance between the employee, as a citizen, being able to comment upon matters of public concern and the interests of the state, as the employer, in promoting efficiency and discipline. In this case, Moore's comments addressed issues of public concern--the benefits of unionization and the lack of confidence in the management of the police department. The court stated that the city had failed to demonstrate that the newsletter had done any harm to internal discipline or efficiency. Without evidence of actual harm, the city's interest did not outweigh Moore's and the Association's interests in being able to speak freely on such matters.

Plymouth Police Brotherhood v. Labor Relations Commission, 630 N.E.2d 599 (Mass. 1994)

This case raises a good point in that it will show you the wisdom of keeping FOP communications, to the greatest extent possible, confined to FOP communications tools. What may be appropriately transmitted via your Lodge newsletter may cause you problems when transmitted over the Department's e-mail system. In this case, Abbott, the police union president, sent an e-mail message using the Department's computer. The message dealt with an unresolved bargaining issue pertaining to hepatitis B vaccinations. In the message, he referred to the city's bargaining team as "pigs, cheats and liars." (As a bargaining tactic, I would not generally recommend this kind of language ever being used to refer to the bargaining team of your city, especially in any official or written form. From a professional standpoint, good bargaining calls for respect and good faith to be demonstrated by all parties. Personal attacks do not demonstrate respect and good faith. From a "rubber meets the road" perspective, if you have made a good argument on a close issue and are making progress, one sure way to kill that progress is to call the persons you are negotiating with "pigs, cheats and liars." We all let our frustration get the best of us from time to time; however, it is not good. Keep such outbursts to a minimum. In those cases where the frustration does overcome your judgment, an apology is often a way to get an issue moving again. Everyone appreciates a little well-placed humility.) The message was ultimately printed and posted on the union bulletin board located in the station locker room. Subsequently, the chief of police notified Abbott that he was being suspended for 5 days for insubordination and conduct unbecoming, even though the Chief acknowledged that Abbott was addressing a collective bargaining issue. The union filed an unfair labor practice complaint with the Labor Relations Commission. The Labor Commission dismissed the complaint as did the trial court and the appeals court. The appeals court ruled on the issue of whether Abbott's conduct was "protected, concerted action" as defined in the state's collective bargaining law. The court said that "an employee may not act with impunity even though he is engaged in a protected activity." His rights must be balanced with the department's right to maintain order. The commission and courts noted that Abbott's derogatory comments were not made in the heat of negotiations, but after a time to reflect about his thoughts. Therefore, the commission found and the courts affirmed that the suspension was not a result of Abbott's protected activity, but as a consequence of insubordinate remarks.

This case may seem in some respects to be in direct conflict with the Chico case above. However, there were some subtle, but important, differences. In Chico, the statements were about the issues, not the personalities, involved. Point one: stick to the issue. In Chico, the items were printed in the association's newsletter, not on the Department's computer. The court recognized that one of the reasons for an association newsletter is to address these types of issues. It is not so obvious that this is the purpose of the Department's computer. Point two: "God, bless the child that has his own." Use your own communications tools when possible. Also, if you must address persons, as stated above try to stick to specific differences. Terms such as "liars" and "cheats" do little to settle differences and can harden those with whom you must bargain.

Hansen v. Soldenwager, 19 F.3d 573 (11th Cir. 1994)

In this case, officer Hansen was giving testimony during a deposition in the criminal prosecution of a former police officer. During his testimony, Hansen criticized the prosecution of the case, calling it

ridiculous and stupid. He was also critical of the investigating officers and the management of the police department. Upon hearing of Hansen's statements, the Chief of Police ordered an internal affairs investigation which resulted in a recommendation by the Chief to terminate Hansen. The city manager reduced the disciplinary recommendation to a five day suspension. Although Hansen admitted his conduct was unprofessional, he filed a grievance challenging the suspension which was ultimately dismissed by the police personnel director. Hansen then filed suit, alleging that the Chief of Police and the internal affairs investigators had violated his free speech rights. The trial court denied a motion to dismiss the case without trial. However, the appeals court did dismiss the case.

The court stated that the act of providing testimony, itself, does not provide an absolute shield protecting anything an employee might say. The court ruled that the speech must be balanced against the need of the department to maintain order and discipline. To be protected, Hansen's free speech interest must outweigh the department's interest. In this instance, Hansen admitted his speech had been unprofessional. He had ridiculed both fellow officers and his superiors. The court said that it was reasonable for the Chief of Police to believe that Hansen's speech had threatened the efficiency and the close working relationship of the police force. Therefore, the Chief's and officers' actions did not violate Hansen's free speech rights.

The question, again, revolved around the interests served by the officer's speech and how they balanced against the interests of the department. Hansen's fate might have been different if he had been revealing information regarding an issue of police corruption or the like that was an issue of genuine public concern. However, Hansen's speech did not touch on such an issue. He was venting personal opinions and appears to have been speaking about personalities and not issues.

Lach v. Lake County, Indiana, 621 N.E. 2d 357 (Ind. App. 3 Dist. 1993)

Lach was a lieutenant for the Lake County Sheriff's Department. He wrote two letters that were published in the local newspaper supporting the opponent of the incumbent sheriff. He also made critical remarks of the job that the current sheriff was doing. As a result, the sheriff charged Lach with misconduct and Lach received from the county's merit board a 20 day suspension. Upon appeal, the trial court upheld the suspension. However, the appeals court overturned the decision. The appeals court analyzed the case using a three prong test. First, the court examined whether the employee was speaking on a matter of public concern. The court determined that Lach was speaking on such an issue, attempting to educate the public regarding candidates for public office. In fact, he was involved in an open debate, his letter having been in response to others printed in the newspaper. Second, the balance test—the court must weigh the interests of the employee being able to speak on public issues against the interests of the employer who is responsible for running an efficient office. Here, the court ruled that there was no proof which demonstrated that the efficiency of the sheriff's office had been diminished in any way by Lach's comments. Conversely, Lach put on testimony that his comments had not affected the department's operations. Third, the court had to determine if the discipline was, in fact, a result of the employee's speech. Lach was able to show that the suspension was a result of his letters. Therefore, the court ruled that county had failed to carry its burden and ruled in favor of the deputy.

This case may have been decided differently if the county had been able to demonstrate that Lach's speech had caused tension within the ranks of its 28-man sheriff's department. However, it also demonstrates the subjective nature of free speech cases and the importance of speaking about matters of public concern.

Botchie v. O'Dowd, 432 S.E.2d 458 (S.C. 1993)

Botchie and O'Dowd both attempted to be appointed interim sheriff after the death of the incumbent. O'Dowd gained the appointment and soon thereafter fired Botchie, claiming that Botchie was unable to accept the role reversal. Botchie sued, claiming among other violations that O'Dowd had fired him as a result of his exercise of free speech. The trial court dismissed all of Botchie's claims without trial. However, the appeals court sent the case back to the lower court to hear the free speech issue. The appeals court used a two prong test to analyze this issue. The court found that Botchie's speech

concerned matters of both public and private concern and, as such, was subject to limited protection. Further, the appeals court found that there had been no evidence produced to demonstrate that Botchie's speech had in any way adversely affected the morale or effectiveness of the sheriff's department. Therefore, the case was sent back for trial.

The case did note that deputy sheriffs in South Carolina serve at the sheriff's pleasure, and that sheriffs are prohibited from compromising their statutory authority to discharge deputies at their discretion. However, as we will see later in Adkins v. Miller, although statutes can mandate that an employee be considered at-will, they cannot codify illegal terminations.

Maxey v. Smith, 823 F. Supp. 1321 (N.D. Miss. 1993)

Maxey was a Chief of Police who had had a number of minor disagreements with the Starkville board of aldermen. Apparently questioning the Chief's ability to adequately investigate a homicide, the board of aldermen hired a private investigator to reopen a murder/rape investigation. The investigator subsequently reported that he had developed a suspect. When asked about this newspaper report, the Chief stated that he had not been privy to the investigative report because, "It is totally inaccurate, and they know I can point out inconsistencies." The board of aldermen then acted to place Maxey on administrative leave without pay. Maxey sued and requested an injunction to order the city to reinstate him as Chief of Police.

The court, in granting injunctive relief, looks at several issues. First, the court must determine if there is a substantial likelihood that the plaintiff will be successful based on the merits of the case. Second, the court looks to see that if by failing to grant the injunction, the plaintiff will suffer irreparable injury. Third, the injury suffered by the plaintiff must outweigh any threat of harm to the defendant. Fourth, the court must weigh the effects of granting an injunction on the public interest.

The court ruled in this case that Maxey would most likely be successful in establishing that his free speech rights had been violated. Also of importance, the court noted that although Maxey might be an at-will employee (there was some dispute to this issue) subject to dismissal for any reason, that even at-will employees cannot be fired for unlawful reasons. Plainly, at-will employees cannot be fired for exercising their First Amendment rights. The court also found that reinstating Maxey would have a positive affect on the Police Department, not a detrimental one. Further, the court found that the public had an interest in protecting the rights of its fellow citizens—in this case, Maxey's First Amendment rights.

Angle v. Dow, 822 F. Supp. 1530 (S.D. Ala. 1993)

Angle was a police officers who, after stopping two undercover officers while he was on routine patrol, typed a satirical memo regarding the incident that included the type of vehicle driven by the undercover officers and its license plate number. Also in the memo were comments critical of the need for the undercover operation. After jokingly sharing the memo with several officers, Angle tossed the memo in a trash can. Unfortunately, someone retrieved the memo and posted it on the bulletin board. Subsequently, Angle was charged with compromising the safety of the undercover officers and fired. Angle appealed to the county personnel board which upheld the firing. Angle sued, claiming his First Amendment right to free speech had been violated. The Chief and Mayor moved for summary dismissal, which the court granted.

The court used the usual analysis in deciding this case. It noted that a review of prior case law showed that law enforcement employees are subject to greater First Amendment restraints than other citizens since weight had to be given to the necessity of maintaining a close working relationship in a quasi-military organization. The court noted that in balancing the free speech interests of police officers with the need of their employers, police officers need not suffer a watered down version of their constitutional rights, the state's interest in regulating its police force can be compelling. The court stated that it could not substitute its judgment for that of a police department when evidence demonstrated either that someone's speech caused an actual disruption of the police operation or a reasonable likelihood of leading to such disruption. The court found that Angle's speech was not of concern to the public based on the fact that he

never attempted to address the matter in any public forum. Therefore, the matter was one of personal interest and his speech was not protected.

Pruitt v. Howard County Sheriff's Department, 623 A.2d 696 (Md. App. 1993)

Watch the use of any ethnic behavior, regardless of how innocent it may appear to be. The Pruitts, a sergeant and a major, and other officers of the Howard County Sheriff's Department, liked playing "Hogan's Heroes" and started using exaggerated German accents, military mannerisms such as heal clicks and the like, in front of other officers. The conduct somehow got reported in a local newspaper and was witnessed by the Sheriff. Administrative charges were filed, charging the officers with conduct unbecoming. The Pruitts were ultimately fired. They appealed. However, their appeals were dismissed. Here again, the court ruled that for an employee's speech to be protected, it must concern an issue of such public interest so as to outweigh any adverse affect it may have upon the interest of the employer in maintaining the public service. Here the court ruled that the speech was not of public concern. The Pruitts were not speaking to the operation of the department, but merely playing "Hogan's Heroes" in uniform. Although their joking around did not affect the operations of the department, it did damage its public image. The speech therefore was not protected by the First Amendment.

Adkins v. Miller, 421 S.E.2d 682 (W. Va. 1992)

West Virginia state law provided that sheriff's deputies were only employed during the term of the sheriff. A new sheriff was elected in Boone County, West Virginia. Adkins and other employees of the old sheriff reported to work and were told to leave. The employees sued, charging their dismissal had violated their constitutional rights of freedom of speech and association under the First Amendment.

The court ruled that the U.S. Supreme Court had spoken to the issue numerous times stating that dismissals of non-civil service protected employees for political patronage reasons is illegal unless those employees hold a confidential or policy-making position. These confidants to the elected official may be terminated for political reasons. Further, no state can codify such political patronage as the West Virginia law did. This, too, is violative of the First Amendment as it would inhibit freedom of speech. The court sent this case back to trial for the lower court to determine if the employees were terminated solely for political reasons and, if so, if they were policy-making employees.

Stough v. Gallagher 967 F.2d 1523 (11th Cir. 1992)

Gallagher was elected sheriff. Stough was a Sheriff's Department captain and while off-duty he had attended a number of public functions during the election campaign and made speeches supporting Gallagher's opponent. Stough had also helped raise funds for the opponent, again while off-duty. Upon his election, Gallagher demoted Stough to sergeant and Stough sued, claiming a violation of his First Amendment right to free speech.

The Court noted that Stough's speech was clearly a matter of public concern. Further, the court found that the manner, time and place of Stough's speech showed that not only was the speech of public concern, but did not affect the efficiency of the department. His statements were made off-duty in public forums and at a time when voters were seeking information on the candidates. Therefore, the court ruled that the demotion was clearly related to Stough's protected speech. Therefore, the court denied the sheriff's request for summary judgment and set the matter for trial.

Leonard v. Fields, 791 F. Supp. 143 (W.D. Va. 1992)

Four deputies had requested that the sheriff go before the county board of supervisors and petition the board for an increase in their automobile mileage reimbursement. The sheriff was reluctant to do so. Therefore, the deputies went to the board themselves with their attorney and requested the increase. During the proceeding, one of the board members complained about the deputies' appearance and stated that such an issue should have been brought by the sheriff. When the sheriff found out about the meeting, he fired the four deputies for violating the chain of command and for going before the board without his approval. The officers sued, claiming a violation of their right to free speech. The court upheld the firing on the grounds that the issue of reimbursement of automobile mileage was an issue of personal concern.

The matter was not one of a significant enough social, political or community concern to rise to a matter of public concern. Therefore, the speech was not protected.

Howell v. Town of Carolina Beach, 417 S.E.2d 277 (NC App. 1992)

Howell was a police officer who took a leadership role in advocating the purchase of new weapons for his department. The town manager canceled the request for the new firearms. Howell then wrote a memo, which went around the department, outlining the inadequacies of the current weapon the department was using and stating that if an officer was injured due to a weapon malfunction, the town would be held liable. The town manager called Howell and the chief in and gave both an oral reprimand. However, the town manager felt Howell's behavior at this meeting was tantamount to insubordination and subsequently terminated him. Howell sued, claiming violation of his due process and free speech rights. The trial court affirmed the firings. Howell appealed.

The appeals court found that Howell's speech did relate to a matter of public concern; a malfunction of a weapon could be of danger to the public as well as a police officer. Further, the court found that the form and context of the memo was reasonable. The court sent the issue back for trial to determine if the firing was due to the memo, which would be violative, or some other reason which the town could justify.

Conclusion

As you can see, the issue of freedom of speech is not unlimited. There is a constitutional right to freedom of speech, but there is not necessarily a right to be employed by a certain agency while you exercise that right. It is important that when you speak on issues that would be seen as significant by your employer that they are also matters of public concern if you wish your statements to be protected. Also, even when the issue is of public concern, it is only protected when the value and significance of the speech outweighs any harm done to the effectiveness and working environment of the employer caused by the speech.

If you are in doubt about any issue which you as an employee representative may wish to speak on, call your lodge attorney. Sometimes you may want to have a retired member or an attorney represent your organization's views, if your employment may be jeopardized and your speech may not be protected.

Hopefully you now better understand the issues related to freedom of speech and how they affect you as a representative for your members.