

Police Officer's Facebook Rants Not Protected Speech under the First Amendment, Federal Court Rules

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A 26-year veteran police officer's "venting on Facebook" about her department's decision not to send officers to attend the funeral of an officer killed in the line-of-duty in another community was not protected speech under the First Amendment, the federal District Court for the Northern District of Mississippi has ruled. *Graziosi v. City of Greenville*, No. 4:12-CV-68-MPM-DAS (N.D. Miss. Dec. 3, 2013). Granting summary judgment in favor of the employer, the court ruled that the plaintiff, who was terminated following the Facebook post, failed to establish a claim for retaliatory discharge in violation of her First Amendment rights.

Facts

Susan Graziosi served as a police officer of the Greenville Police Department ("GPD") in Mississippi for 26 years until she was terminated for posting comments on Facebook regarding the Chief of Police's decision not to authorize attendance at a police officer's funeral in a neighboring town, a little over two hours' drive away. Graziosi wrote on the Mayor of Greenville's Facebook page:

I just found out that Greenville Police Department did not send a representative to the funeral of Pearl Police Officer Mike Walter, who was killed in the line of duty on May 1, 2012. This is totally unacceptable. I don't want to hear about the price of gas . . . Dear Mayor, can we please get a leader that understands that a department sends officers [to] the funeral of an officer killed in the line of duty?

Graziosi also made other comments on Facebook disparaging the Chief of Police's leadership, including: "we had [something] then that we no longer have - LEADERS . . . If he suddenly decided we 'couldn't afford the gas' (how absurd - I would be embarrassed as a chief to make that statement)[,] he should have let us know so we could have gone ourselves;" and "If you don't want to lead, can you just get the hell out of the way."

First Amendment Claim

To prevail on a First Amendment retaliation claim, a public employee must establish that (1) she suffered an adverse employment action; (2) her speech involved a matter of public concern; (3) her interest in speaking outweighed the governmental defendant's interest in promoting efficiency; and (4) the protected speech motivated the defendant's conduct. *Gibson v. Kilpatrick*, 2013 WL 5806947 (5th Cir. Oct. 29, 2013).

Not Protected

The district court ruled Graziosi's speech was not protected by the First Amendment as it did not involve a matter of public concern. The court observed Graziosi's posts, although on a sensitive subject, were related to her own frustration regarding the Chief's decision and were not intended to help the public.

The court also ruled that even if she could establish her comments were a matter of public concern, the "ability of a police department to maintain discipline and good working relationships" was a "legitimate governmental interest" that outweighed her interest. It found Graziosi's comments disrupted the Chief's leadership within the department and could divide the department. Thus, Graziosi's comments did not enjoy First Amendment protection, and the court granted summary judgment to the police department on her retaliatory discharge claim.

Both private- and public-sector employers are affected by issues relating to social media. It is importance that employers maintain policies and procedures to address employee misconduct consistently.

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