Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood

WEEKLY LAW RESUME™

Issue By: STEVEN D. WERTH

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Public Employer May Not Interfere With Employee's First Amendment Rights Absent Evidence that Employee's Conduct Caused or May Reasonably Cause Future Workplace Disruption

Kathleen Nichols v. Laura Dancer, et al.
Ninth Circuit Court of Appeals (September 15, 2011)

This case addresses the issue of balancing a public employee's interest in expressing his or her opinions on matters of public concern, and the public employer's interest in promoting the efficiency of the public services it performs through its employees.

Kathleen Nichols served as the administrative assistant to Jeffrey Blanck, the Washoe County School District's (the "District") general counsel. Mr. Blanck was suspended for alleged misuse of the District's funds. The District's Human Resources Director, Laura Dancer, temporarily transferred Ms. Nichols while the District decided what to do with Mr. Blanck's employment. It was undisputed that Ms. Nichols got along with her colleagues and there were no reports of any problems with her work.

Ms. Nichols attended a public meeting where the Board of Trustees met to consider Mr. Blanck's employment, and she sat next to Mr. Blanck, but did not speak to him. At the meeting, the Board announced that Mr. Blanck would not be retained as general counsel. The next day, Ms. Nichols was told that she could not return to the general counsel's office because sitting next to Mr. Blanck raised questions about her loyalty to the District. She was given a choice to remain in her current position or take early retirement. Ms. Nichols chose to retire and sued the District for violating her First Amendment rights. The District moved for summary judgment, which the District Court granted. The Ninth Circuit reversed the District Court's decision and remanded the case back to the District Court.

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The Court noted that a public employer has significant discretion to discipline employees if their conduct disrupts the workplace. However, an employer may not interfere with an employee's First Amendment rights unless there is evidence that the employee's actions actually disrupted the workplace or were reasonably likely to do so in the future. Here, the Court emphasized that the District had no evidence of any disruption caused by Ms. Nichols sitting quietly next to Mr. Blanck. The District's mere speculation as to Ms. Nichols' association with Mr. Blanck was insufficient to prove that her conduct would cause future disruption. There was no evidence to suggest that her association actually disrupted the District's operation or that it interfered with her job performance. Thus, the District failed to produce adequate evidence to establish that Ms. Nichols' conduct caused, or was reasonably likely to cause, future disruption in the workplace.

COMMENT

A public employer may only take adverse action against an employee for exercising his or her First Amendment rights if there is a reasonable basis to believe that the employee's conduct will disrupt the workplace. Although the public agency need not wait until there is an actual disruption, speculation that disruption will occur is insufficient.

For a copy of the complete decision see:
HTTP://WWW.CA9.USCOURTS.GOV/DATASTORE/OPINIONS/2011/09/15/10-15359.PDF

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