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Employment: Termination of Political Rivals who Alleged Campaign Violations Cannot Succeed on Summary Judgment

Briggs v. Potter County, No. 18-3559 (3d Cir. Sept. 12, 2019).

Reversing the district court, the Circuit finds that a Sheriff, who after having been elected fired two subordinates that challenged him in a primary, was not entitled to summary judgment on the issue of retaliatory termination and whistleblower violations.

In the Republican primary for Potter County (Pennsylvania) Sheriff, Roy Hunt ("Hunt") and Ralph Briggs ("Briggs") ran against Glenn Drake ("Drake"), who at the time was the Chief Deputy Sheriff. Drake, who had retired from the Pennsylvania State Police Department, was brought into the Chief Deputy job by the previous Sheriff, with the understanding that he would run for Sheriff at the next election. According to Briggs, the last three Sheriffs had attained the office via this route—retiring from the Pennsylvania State Police, followed by appointment to the Chief Deputy position, and then election to Sheriff. Briggs and Hunt questioned the wisdom of this practice during the campaign, and were critical of Drake. Hunt believed that Drake was conducting campaign activities "on County property, in his official uniform, and during time that he was to have been at work for the County." He believed that these actions violated federal, state, and county law, and reported Drake to the District Attorney, the Pennsylvania Attorney General, and the Potter County Commissioners at a public Commissioners' meeting.

Drake was ultimately victorious in the primary and went on to win the general election.

After the primary, but before Drake took office, Briggs received an Employee Warning with four separate allegations of improper performance. And eight days after Drake assumed the office of Sheriff, Briggs was fired.

Four days after Briggs was fired, Hunt, acting in capacity as Union Steward, "grieved the termination of Briggs under the CBA and notified the Defendants of his role in investigating and prosecuting the grievance for the Union." While investigating Briggs's termination, Hunt discovered that Briggs had been accused of sleeping on the job. Hunt later observed two other officers sleeping on the job—when he reported the incident up the chain of command, no action came of it. When Hunt requested a copy of the relevant surveillance footage of the sleeping officers, he too was fired.

Hunt and Briggs filed suit, alleging that they were fired in retaliation for exercising their First Amendment Rights to speech, political association, and (in Hunt's case only) union association. They also brought claims under the Pennsylvania Whistleblower Act. The district court granted summary judgment for the defendants, holding that neither Briggs nor Hunt could establish a causal connection between their protected activity and their terminations, given that approximately eight months elapsed between the primary and the terminations. The court also held that Hunt's union activity was not protected, as it was not related to matters of public concern.

The Third Circuit reversed in significant part. It found that Briggs's and Hunt's speech was constitutionally protected: they were speaking as citizens about matters of public concern, including possible corruption in the Sheriff's Office. Hunt's and Briggs's campaigns against Drake were also protected associational activities. “The quintessential political association case involves the termination of an employee based on membership in a different political party. But such claims can also be made on the basis of membership in different factions within the same party.” Because Hunt and Briggs were clearly in a different faction of the party than Drake, their campaign against him in the Republican primary was protected associational activity. In addition, Hunt's actions as Union Steward constituted protected activity.

The Circuit also viewed the issue of causation differently than the district court, which had found that the temporal proximity between Briggs's and Hunt's protected activities during the campaign and their terminations (approximately 8 months) was not "unusually suggestive." As the Circuit saw it, that interpretation ignored the fact that Briggs was fired a mere eight days after Drake took office and gained the power to fire him, and Hunt was fired approximately a month later, while he was pursuing a grievance on behalf of Briggs.

The Circuit held that the district court erred in finding, as a matter of law, that there was no causal link between Hunt's and Briggs's protected activities and their terminations as it relates to the individual defendant-appellees. It also held that the lower court had wrongly denied the plaintiffs’ whistleblower claims on summary judgment.

But the Circuit did affirm as to one item--the lower court's summary judgment order regarding Potter County-given that the plaintiffs had provided no evidence of a policy or custom that caused the deprivation of their constitutional rights.

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