

Police Sergeant Engaged in Protected Activity when Complaining About Gender Inequality

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Last month we reported to you the case of a public school principal whose First Amendment and retaliation claims were stricken by the Court due to the fact that she was not speaking as a private citizen, and thus, her speech was not protected. On the other side of the coin, here, the Third Circuit finds that a triable claim exists where a public employee articulates complaints of sex discrimination in the police force, because such speech implicates matters of public concern.

In *Montone v. City of Jersey City*, Nos. 11-2990 and 11-3516 (3rd Cir., March 8, 2013), current and former sergeants of the police department who were not promoted from the rank of sergeant to lieutenant during the tenure of the police chief and the mayor due to one of the sergeant's support of another mayoral candidate. The sergeants claim that they passed the civil service examination required to be promoted, were ranked such that they should have been promoted, and that their promotions were recommended by others, but that they were not because the police chief was penalizing them for the one sergeant supporting the opposing mayoral candidate. The police department denied these allegations, claiming that the lack of promotions was due to budgetary cuts and organizational decisions. The sergeants filed suit against the city, the police department, the police chief, and the mayor claiming that they were retaliated against and discriminated against in violation of their First Amendment rights, 42 U.S.C. §1983, and New Jersey state law. The district court entered summary judgment in favor of the employer on the free speech and political affiliation claims and the sergeants appealed.

The Third Circuit Court of Appeals vacated the district court's judgment. The district court had found that the female sergeant's free speech claim failed because she was not speaking of a matter of public concern. The Court of Appeals disagreed, finding complaints of gender inequality in the workplace dating back to the 1990s necessarily implicates a matter of public concern, as did the sergeant's report of sexual harassment against another female employee. Thus, the Court concluded, the sergeant was engaged in protected activity because her speech involved a matter of public concern. The sergeant would then have to prove at trial that she was acting as a citizen when she made these complaints and that her speech was a substantial or motivating factor in her non-promotion.

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Topics

First Amendment, Retaliation, Third Circuit Court Of Appeals