

HR Weekly Podcast
06-25-2014

Today is June 25, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's topic concerns a recent decision by the United States Supreme Court concerning a public employee's First Amendment rights.

In *Lane v. Franks*, which was decided by the Court on June 19, 2014, Edward Lane sued Central Alabama Community College President Steve Franks after Lane was fired from his job leading the school's program for at-risk youth. Back in 2006, Lane conducted an audit that found that a state representative was being paid an annual salary of \$177,000 from his program, while not reporting to work. Lane eventually fired the elected official who vowed to get him back.

Subsequently, a federal grand jury indicted the state representative on corruption charges. Under subpoena, Lane testified about what he had learned in his audit. The elected official was convicted, sentenced to 30 months in prison, and ordered to pay back the money.

After Lane testified at the criminal trials, Franks sent termination letters to 29 program employees as part of lay-offs due to budget issues. A few days later, Franks rescinded all the terminations except for the terminations of Lane and one other employee. Lane sued Franks and the College alleging that his termination was retaliation for his First Amendment protected speech in testifying at the criminal trials. The district court granted Franks' motion for summary judgment. On appeal, the Eleventh Circuit Court of Appeals affirmed, holding that Lane's testimony was not entitled to First Amendment protection by reasoning that Lane spoke as an employee and not as a citizen because he acted pursuant to his official duties when he investigated and terminated the state representative's employment.

In a landmark decision in 1968, the Court declared that "citizens do not surrender their First Amendment rights by accepting public employment." "Rather, the First Amendment protection of a public employee's speech depends on a careful balance 'between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.'"

Relying in part on this landmark decision, the Court in *Lane v. Franks* disagreed with the two lower courts and ruled that Lane testified "as a citizen on a matter of public concern" and calling sworn testimony at a trial "a quintessential example of citizen speech for the simple reason that anyone who testifies in court bears an obligation, to the court and society at large, to tell the truth." The Court's decision was unanimous.

Justice Sonia Sotomayor wrote for the Court: "It would be antithetical to our jurisprudence to conclude that the very kind of speech necessary to prosecute corruption by public officials—speech by public employees regarding information learned through their employment—may never form the basis for a First Amendment retaliation claim." "Such a rule," she added, "would place public employees who witness corruption in an impossible position, torn between the obligation to testify truthfully and the desire to avoid retaliation and keep their jobs."

If you have questions about this topic, please contact your HR consultant at 803-896-5300. Thank you.