

2D CIR.

Shara v. Maine-Endwell Cent. Sch. Dist.

No. 20-2068, 2d Cir. (August 18, 2022)

SUMMARY

The Second Circuit affirmed dismissal of a bus driver's First Amendment retaliation claim, holding that his internal disputes with school officials over the frequency of reporting bus safety issues were made pursuant to his official duties as an employee, not as a private citizen, and did not address a matter of public concern. The court rejected the argument that speaking as a union officer automatically constitutes citizen speech, and found that the complaint alleged only a workplace disagreement about reporting protocols, not that unsafe buses were on the road or that public safety was endangered. The dissent argued that school bus safety is a quintessential matter of public concern and that the plaintiff's union role and FOIL request supported citizen speech.

CASE DETAILS

COURT	2d Cir.
WRITING FOR THE COURT	Richard J. Sullivan; Rosemary S. Pooler; William H. Park
JURISDICTION	Federal
DECIDED	August 18, 2022
DOCKET	20-2068
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Northern District of New York dismissal of complaint for failure to state a claim.
STANDARD OF REVIEW	De novo review of dismissal under Federal Rule of Civil Procedure 12(b)(6), accepting all factual allegations as true and drawing all reasonable inferences in favor of the plaintiff.
PRECEDENTIAL VALUE	Published
PARTIES	James Shara v. Maine-Endwell Central School District

TOPICS

first amendment retaliation employment law motions to dismiss civil procedure standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Shara's speech regarding bus safety reporting frequency was protected under the First Amendment as speech by a citizen on a matter of public concern.

KEY QUOTATIONS

“when public employees make statements pursuant to their official duties, . . . the Constitution does not insulate their communications from employer discipline.”

“Rather, the First Amendment protects a public employee’s right, in certain circumstances, to speak as a citizen addressing matters of public concern.”

“our Court has expressly rejected any 'categorical[]' rule 'that when a person speaks in his capacity as a union member, he speaks as a private citizen.'”

“To determine whether a public employee speaks pursuant to his official duties, courts 'examine the nature of the plaintiff’s job responsibilities, the nature of the speech, and the relationship between the two.'”

“To constitute speech on a matter of public concern, an employee’s expression must be fairly considered as relating to any matter of political, social, or other concern to the community.’”

FACTUAL BACKGROUND

James Shara was employed as a bus driver by the Maine-Endwell Central School District from June 2016 to January 2019. After being elected Vice President of the bus drivers' union in May 2018, he began raising concerns about bus safety. In October 2018, he spoke with mechanic Doug Miller about safety issues on two buses that had failed inspection. Shara insisted that safety issues be reported daily until corrected, while Miller and Director of Auxiliary Services Mike Aubel maintained that they only needed to be reported once. Shara continued to raise the issue, acting in his role as union vice president. He was counseled, placed on administrative leave, and terminated. Shara filed a FOIL request regarding bus inspections, but the majority opinion considered that the speech for which he was disciplined was the internal discussions about reporting frequency, not the FOIL request.

PROCEDURAL HISTORY

Shara filed a complaint alleging First Amendment retaliation. The district court dismissed with prejudice under Rule 12(b)(6). Shara appealed.

DISPOSITION

affirmed