

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Carolyn Mascow and Local 571 of the Illinois Federation of Teachers
v. Board of Education of Franklin Park School District No. 84

No. 19-2563, United States Court of Appeals for the Seventh Circuit (March 3, 2020)

SUMMARY

The Seventh Circuit held that a tenured teacher had a property interest in her job under Illinois law, and the district court erred by applying the "bitter with the sweet" doctrine to deny her due process claim for a hearing before layoff. The court affirmed summary judgment against her First Amendment retaliation claim because she failed to show causation between her union speech and her unsatisfactory rating. The case was remanded for determination of what process is due under **Mathews v. Eldridge** for contesting the rating that triggered her layoff and loss of recall rights.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Easterbrook; Bauer; Manion
JURISDICTION	Federal
DECIDED	March 3, 2020
DOCKET	19-2563
DISPOSITION	affirmed_in_part_vacated_in_part_remanded
PROCEDURAL POSTURE	Appeal from dismissal of due process claim on the pleadings and summary judgment on First Amendment claim
STANDARD OF REVIEW	The opinion does not explicitly state the standard of review, but it reviews the dismissal and summary judgment de novo, implying de novo review.
PRECEDENTIAL VALUE	Published
PARTIES	Carolyn Mascow and Local 571 of the Illinois Federation of Teachers v. Board of Education of Franklin Park School District No. 84; David Katzin; Heidi Lafleur

TOPICS

due process

first amendment

fourteenth amendment

employment law

summary judgment

motions to dismiss

appellate procedure

standard of review

civil procedure

PRACTICE AREAS

Employment Law

Constitutional Law

Civil Rights

QUESTIONS PRESENTED

1. Whether the district court erred in dismissing Maschow's due process claim on the pleadings
2. Whether the district court erred in granting summary judgment to defendants on Maschow's First Amendment retaliation claim
3. Whether Local 571's claims were abandoned on appeal

HOLDINGS

1. The district court erred by applying the 'bitter with the sweet' approach from *Arnett v. Kennedy*, which is not the law. Under *Loudermill*, if state law creates a legitimate claim of entitlement (property interest), federal law determines whether a hearing is required. The dismissal is vacated and remanded for further proceedings.
2. Summary judgment was proper because Maschow failed to show a causal connection between her protected speech and the adverse employment action. The timing alone (*post hoc ergo propter hoc*) is insufficient to establish retaliation.
3. The union's claims are treated as abandoned because its joint brief does not make any argument on the union's behalf.

KEY QUOTATIONS

"post hoc ergo propter hoc, which is the name of a logical error rather than a way to prove a violation of the Constitution." (2)

*"By reviving Justice Rehnquist's bitter-with-the-sweet approach, the district court made a legal error. The Justices are free to overrule *Arnett*, *Loudermill*, and similar decisions, but we are bound by them."* (4)

"Hearings deal with adjudicative facts, not legislative ones." (5)

FACTUAL BACKGROUND

Carolyn Maschow was a tenured teacher in Illinois. In 2017, she was laid off due to a reduction in force. Her latest rating was 'unsatisfactory,' which made her first in line for layoff and eliminated recall rights. She had previously acted as co-president of the local teachers' union and had raised objections to certain school events in 2014 and 2015. She claimed that her poor evaluations were retaliation for her union activities. The school district argued that the layoff was based on the rating and reduction in force.

PROCEDURAL HISTORY

The district court dismissed Maschow's due process claim on the pleadings and granted summary judgment to defendants on her First Amendment claim. Maschow and Local 571 appealed.

DISPOSITION

affirmed_in_part_vacated_in_part_remanded

REMAND INSTRUCTIONS

The case is remanded for proceedings consistent with the opinion, specifically to consider the due process claim on the merits, including the application of *Mathews v. Eldridge* and the adequacy of the informal review process for contesting the unsatisfactory rating.

CASES CITED

- *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984)
- *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983)
- *Garcetti v. Ceballos*, 547 U.S. 410 (2006)
- *Land v. Board of Education*, 202 Ill. 2d 414 (2002)
- *Board of Regents v. Roth*, 408 U.S. 564 (1972)
- *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985)
- *Goss v. Lopez*, 419 U.S. 565 (1975)
- *Arnett v. Kennedy*, 416 U.S. 134 (1974)
- *Atkins v. Parker*, 472 U.S. 115 (1985)
- *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441 (1915)
- *Mathews v. Eldridge*, 424 U.S. 319 (1976)

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