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**Meagher v. Andover School Committee, et al.
94 F. Supp. 3d. 21 (D. Mass. 2015)**

I. SUMMARY

In this case, the U.S. District Court for the District of Massachusetts was tasked with considering (a) whether the Plaintiff teacher's email to colleagues advocating a withholding of services during a school's re-accreditation process in order to gain collective bargaining leverage is protected speech under the First Amendment, (b) whether the Defendant school district's subsequent dismissal of the Plaintiff teacher was unlawful, (c) potential liability/immunity of the municipal Defendants (school committee and school department), and (d), potential liability/immunity of the Defendants' superintendent of schools, a municipal employee. Both parties had submitted competing cross-motions for summary judgment to the Court relative to these issues. For a matter to be decided at summary judgment, the Court must determine, based on the pleadings, that an issue can be decided as a matter of law because no dispute of any material fact exists.

The presiding U.S. Magistrate Judge allowed and denied various portions of the parties' motions for summary judgment, addressing their claims as follows. The Court:

- (1) held that the Defendant school district and its superintendent violated the Plaintiff teacher's First Amendment rights by terminating her in retaliation for engaging in protected speech;
- (2) allowed the Plaintiff teacher's motion for summary judgment as to her 42 U.S.C. § 1983 ("§ 1983") claims against the Defendant school district;
- (3) held that the superintendent is entitled to qualified immunity as to the Plaintiff teacher's § 1983 charge;
- (4) allowed the Defendant school district's motion for summary judgment as to the Plaintiff teacher's Massachusetts Civil Rights Act (Mass. Gen. L. c. 12, §§ 11H and 11I) ("MCRA") claims against the district, because the superintendent is entitled to qualified immunity and the claims against the municipal defendants are not actionable; and
- (5) scheduled a status conference to discuss a trial for damages.

II. FACTS

This case stems from the Defendants', dismissal of the Plaintiff, tenured English teacher and active/controversial teachers' union member. Prior to Meagher's dismissal, new contract negotiations between the union and the school committee had become contentious. At the same time, Andover High School was in the process of seeking re-accreditation with the accrediting body for Massachusetts public schools, the New England Association of Schools and Colleges ("NEASC").

The re-accreditation process hinged on a "self-study," which required teachers and administrators to evaluate school offerings, prepare reports, and present reports for faculty approval by a two-thirds majority vote. Teachers were compensated to participate

in the NEASC re-accreditation process and they were allotted work time hours to participate. There was some dispute, however, as to whether teachers were obligated to participate in the re-accreditation process as part of their job and contractual responsibilities, particularly if the existing CBA had expired. The Court articulated that the question of whether the teachers were obligated to participate in re-accreditation was not relevant to its protected speech analysis or the resolution of this case. There was no dispute that the ongoing contract dispute directly impacted the re-accreditation process.

On or about April 9, 2012, Andover advised the teachers' union that it would view any teacher's failure to participate in the self-study process as an illegal work stoppage, subjecting that teacher to discipline. On June 10, 2012 Meagher sent an email from her personal email account to approximately sixty fellow teachers' personal email accounts, outside of school hours, urging them to enter "abstain" on the ballots asking whether re-accreditation reports should be accepted. It was undisputed that this email was intended as a means of avoiding a two-thirds majority vote, stalling the re-accreditation process and thereby gaining leverage in ongoing contract negotiations. On June 21, despite some faculty members voting "no" and some voting "abstain," each of the outstanding self-study reports were approved by the required two-thirds majority.

Via a letter from Andover Superintendent Marinel McGrath ("superintendent," "McGrath"), dated June 26, 2012, Meagher was notified that she was being placed on immediately effective administrative leave. A notice of intent to dismiss cited her email as a "clear violation of G.L. c. 150E, §9A(a), which makes it illegal for a 'public employee' to 'induce, encourage or condone any strike, work stoppage, slowdown, or withholding of services by' public employees." McGrath also stated that Meagher's email

encouraged teachers to “bring the NEASC accreditation work to a halt and jeopardize the accreditation of Andover High School” constituting “conduct unbecoming a teacher,” “insubordination,” and “other just cause” under G.L. c. 71, § 42. Following a statutory hearing prior to a final determination regarding her dismissal, McGrath officially informed Meagher of her termination, effective September 17, 2012. It was undisputed that McGrath made the decision to terminate Meagher because she sent the June 10, 2012 email to her colleagues.

Post termination, Meagher experienced a three month delay in obtaining unemployment benefits due to the Defendants’ opposition to her application on the grounds that she had organized a strike. The Department of Unemployment found for Meagher; the Defendants appealed but later dropped the appeal. Meagher claimed that Andover’s refusal to provide her with a letter of recommendation not referencing her dismissal resulted in her loss of a specific teaching opportunity and deprived her of gainful employment. Proceedings also commenced at the Division of Labor Relations.

On July 2, 2013, the Commonwealth Employment Relations Board found in Meagher’s favor on unfair labor practice charge, ordering Andover to “reinstate” Meagher to her teaching position at Andover High School and to compensate her for all “losses suffered” as a result of Andover’s “unlawful action.” Meagher also pursued this action “to redress violations of her constitutional rights” pursuant to § 1983 and the MCRA.

II. THE DECISION

The Court held that Meagher was unlawfully terminated for engaging in protected speech, that McGrath was immune from liability under the doctrine of qualified

immunity, and that Meagher failed to establish a valid MCRA claim against the school district or McGrath. As such, summary judgment was entered for the Plaintiff relative to her § 1983 claims against the Defendants and summary judgment was entered for the Defendants as to McGrath's liability and all MCRA claims.

A. Count I: § 1983 Claim for Unconstitutional Retaliation

1. Elements of a Retaliation Claim

The Court found for Meagher, determining that she had met both of the two essential elements of a § 1983 claim needed to prove that the Defendants had retaliated against her for her exercise of free speech: (1) the Defendants had acted "under color of state law" at relevant times and (2) the Defendants conduct "worked a denial of rights secured by the constitution or federal law" – in this case – the constitutional right to free speech. Being municipal entities, the fact that the Defendants acted under color of state law is undisputed. The parties did dispute, however, whether the Defendants had denied Meagher of her right to free speech.

2. Protected Speech

The Court relied on controlling caselaw indicating that Meagher's speech was of the kind that must be protected if she were "speaking as a citizen as a matter of public concern rather than pursuant to her duties as a teacher" and if the "value of her speech was not outweighed by the Defendants' interest in preventing unnecessary disruptions to the efficient operation of the Andover public schools." The Court applied a three-part test to determine if the speech was protected:

"(1) the employee must be speaking as a citizen on a matter of public concern;

- (2) the court must balance 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; and
- (3) the employee must show that the protected expression was a substantial or motivating factor in the adverse employment decision.

Even if all three elements favor a plaintiff, an employer may still avoid liability if can show that it would have reached the same decision even if the employee had not engaged in protected activity. In evaluating whether just cause existed for termination, Courts may consider fact-specific elements such as the time, place and manner of the speech as well as an employer's motivation for termination. In this case, the fact that Meagher's speech prompted her termination was undisputed. Andover argued that her speech was not protected, not that her speech was unlinked to her termination.

3. Qualified Immunity

Even if Meagher's free speech rights were violated, McGrath was still entitled to protection from liability under the "doctrine of qualified immunity," which "gives government officials breathing room to make reasonable but mistaken judgments about open legal questions." Pursuant to this doctrine, damages for which the official is personally liable may only be awarded if he or she violated a constitutional or statutory right *and* the right was "clearly established" at the time. Despite the Court having found that McGrath violated Meagher's constitutional right to free speech, it also found that the right was not clearly established. Courts have found that a right is "clearly established" for the purposes of this doctrine when: (1) the "contours of the right [are] sufficiently

clear that a reasonable official would understand that what he is doing violates that right;” and (2) “in the specific context of the case, a reasonable defendant would have understood that his conduct violated plaintiffs’ constitutional rights.” Qualified immunity protects “all but the plainly incompetent or those who knowingly violate the law.” It protects even when the right is well established, such as free speech, “so long as the official could reasonably have believed ‘on the facts’ that no violation existed,” as the Court found with McGrath. Although Meagher’s email did not end up delaying Andover High School’s re-accreditation process, the Court found that it was not unreasonable for McGrath to view Meagher’s conduct as a “continuing threat to the efficient operation of Andover High School.”

4. Municipal liability

The Court held the municipal Defendant school district liable for the violation of Meagher’s rights, despite not having acted “pursuant to an official policy or custom,” because its employee, the Superintendent was the “ultimate decision-maker” regarding Meagher’s termination, thereby “establishing municipal policy with respect to the action ordered.” Under the Massachusetts Education Reform Act of 1993, the “‘ultimate responsibility’ for hiring, firing and demoting public school teachers ‘resides...with the superintendents themselves.’” Under Mass. Gen. L. c 71, § 42, a principal’s responsibility for the hiring, etc. of teachers is “subject to the review and approval of the superintendent.”

B. Count II: Claim for Violation of the MCRA

Because qualified immunity principles under § 1983 apply equally to MCRA claims, McGrath was found to be similarly immune to the Plaintiff’s MCRA claim

against her. Because there was no dispute that the Defendants were municipal entities and MRCA claims are inapplicable to such entities, the Court granted summary judgment in favor of the Defendants as to all MCRA claims. The Court denied the Plaintiff's request for certification to the Supreme Judicial Court as to whether a municipality may be liable under the MCRA as under § 1983, finding the request unwarranted.

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