

Federal Appeals Court Upholds Discipline of Police Officer for Facebook Posts

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In recent years, considerable attention has been focused on whether and when an employer may discipline an employee for posts made on blogs and social media sites. Perhaps most notably, in 2011, the National Labor Relations Board (“NLRB”) issued guidelines on what is, and what is not, protected social media conduct by employees. Despite a discernible trend toward the expansion of such protection, however, the United States Court of Appeals for the Eleventh Circuit recently affirmed a decision entered against an Atlanta police officer who claimed the Police Chief retaliated against her for criticizing a colleague on Facebook.

Gresham v. City of Atlanta arose when Officer Maria Gresham of the Atlanta Police Department posted on Facebook that a colleague had interfered “in an unethical manner” with an investigation of a person whom Gresham had arrested for fraud and financial identity theft. After discovering the post, the Department launched an investigation into whether Gresham had violated a Department regulation that required any criticism of a fellow officer to “be directed only through official Department channels,” and not to be used “to the disadvantage of the reputation or operation of the Department or any employees.” While the internal investigation was still pending, other officers were promoted to Department positions for which Gresham had applied and believed she was eligible. In a suit filed against the Department and the Police Chief, Gresham complained that she was passed over for promotion in retaliation for exercising her First Amendment rights. After a District Court judge allowed defendants’ motion for summary judgment, Gresham appealed.

The Eleventh Circuit (in a *per curiam* opinion) analyzed Gresham’s claim under the balancing test adopted by the Supreme Court in Pickering v. Board of Education, 391 U.S. 563 (1968). In Pickering, the Supreme Court held that a public employee who alleged she was retaliated against for exercising her rights to free speech as protected under the First Amendment must show (among other things) that her “interest in speaking outweighed the government’s legitimate interest in efficient public service.” Consistent with a long line of cases, the Eleventh Circuit reasoned that, because a police department is a “quasi-military organization,” negative comments about colleagues (even on matters of public concern) can directly interfere with confidentiality, morale, and the efficient operation of the department. Thus, because Gresham failed the Pickering balancing test, summary judgment was appropriate.

The Gresham decision represents another victory for employers wrestling with the permissible boundaries that may be placed on social media conduct by employees. As the Eleventh Circuit recognized, employees do not have an unfettered right to carry workplace gripes into cyberspace, and government employers may still place reasonable limits upon employee efforts to publicly air their grievances.

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