



SEVENTH CIRCUIT AFFIRMS INJUNCTION AGAINST CITY OF EAST CHICAGO BARRING RETALIATION AGAINST FIREFIGHTERS FOR PROTECTED POLITICAL SPEECH

The Seventh Circuit issued a decision in *International Association of Fire Fighters, Local 365 v. City of East Chicago and Anthony Copeland* on December 21, 2022. Judge St. Eve authored the majority opinion. Thirty-eight firefighters and their union (“Plaintiffs”) sued the City of East Chicago, the Mayor of East Chicago, Anthony Copeland (“Copeland”), and the former East Chicago Fire Chief Anthony Serna (“Serna”) (collectively as “Defendants”), alleging that the defendants implemented an undesirable work schedule in retaliation for their protected First Amendment activity. Plaintiffs also filed motions for preliminary injunctions, which the United States District Court for the Northern District of Indiana, Hammond Division previously granted after full briefing and a two-day hearing.

Copeland, a former firefighter of 26 years, was elected the mayor of the City of East Chicago in 2010 and almost immediately froze the salaries and benefits of East Chicago firefighters, including abolishing terminal leave, freezing longevity pay and grade pay, and eliminating payout of leave banks for firefighters hired after 2010. When Copeland ran for reelection in 2019, the East Chicago firefighter political action committee actively and publicly endorsed Copeland’s opponent for mayor and candidates who opposed his policies for positions on East Chicago’s legislative body, the Common Council (“Council”). Copeland was reelected, despite some firefighter’s protestations at his inauguration, along with six of the candidates whom the firefighters had endorsed.

In August and September of 2019, the union president David Mata (“Mata”) and the Council drafted a salary ordinance that would return some of the benefits that Copeland froze in 2010 and passed the ordinance through the Council unanimously. However, Copeland vetoed the ordinance, and the Council was unable to override the veto.

Soon after this event, Copeland directed Serna to develop a new schedule for the East Chicago fire department. The department utilized a 24/48 schedule, where a firefighter would be on-duty for 24 hours and then off-duty for the next 48 hours and would be on duty the same hours every day that they work. Serna proposed, and Copeland decided to implement an 8/24 schedule, where a firefighter would be on duty for 8 hours and off-duty for the next 24 hours. No other fire department in the country has adopted this schedule. This schedule assigns firefighters to different shifts every day and wreaked havoc on the personal lives and well-being of the East Chicago firefighters. It was difficult, if not impossible for the East Chicago firefighters to manage their children’s regular schedules which caused weight gain, lack of sleep, irritability, and issues with concentration.

On November 2, 2019, Serna and Mata met to discuss the changes to the schedule at a Burger King and Mata secretly wore a wire to the meeting and recorded the conversation. Serna defended the decision to implement the 8/24 work schedule, explained that the change was in response to the Council and the Union’s efforts in 2019 to unfreeze the firefighters’ salary and benefits with the ordinance, stated that he and Copeland believed the firefighters were responsible for the terms of the ordinance and said phrases such as “you can call it retaliation.”

On December 2, 2019, Serna, Mata, then-Deputy Fire Chief Marc Escobedo, then-Union Vice President Manual Paredes, and then-Union Secretary Mike Widemann (“Widemann”) met to discuss a draft of a memorandum of understanding. Widemann wrote the terms of the draft wherein the Defendants agreed to give up the proposed change to the work schedule in exchange for the Union’s agreement to give up its right to lobby the Council and sent the draft to Mata. On December 3, 2019, the Union rejected the memorandum of understanding. On December 4, 2019, Serna issued three memoranda, discontinuing the 24/48 schedule and implementing the 8/24 schedule. Copeland also posted on Facebook that the new work schedule was not about retaliation but efficiency.

Following the schedule change, the Union lobbied the Council to pass an ordinance reinstating the old policy, and on December 23, 2019, the Council did so. Copeland vetoed the ordinance, but the Council passed the ordinance over the veto. Copeland then filed suit against the Council alleging that the ordinance violated his executive power under Indiana law. On March 4, 2021, the Lake County Superior Court issued a decision agreeing with Copeland and struck down the ordinance, leaving the 8/24 schedule in effect. In April of 2021, the Plaintiffs filed this suit, and on July 30, 2021, the Plaintiffs filed a motion for a preliminary injunction, requesting the district court order Defendants to revert to the 24/48 schedule during the pendency of the case.

After a two-day hearing with testimony about the detrimental effects of the new schedule on the East Chicago fire department staff’s workload, personal lives, and well-being, as well as the benefits of the 24/48 work schedule, the district court issued a combined opinion and order on March 28, 2022, granting the Plaintiffs’ motion for a preliminary injunction. The district court found that the firefighters had met the four requirements for a party seeking a preliminary injunction. The district court found: (1) the firefighters were likely to succeed on the merits of their First Amendment retaliation claim, as lobbying with the Council constituted protected First Amendment activity, and this lobbying was a motivating factor in the implementation of the 8/24 work schedule; (2) the firefighters would suffer irreparable harm without an injunction, as the Defendants implementation of the 8/24 schedule was likely to deter free speech, and this satisfied the irreparable harm element under relevant case law; (3) the balance of the equities tipped in the firefighters favor; and (4) an injunction was in the public interest since without an injunction, the firefighters working under the schedule would continue to experience physical and psychological harms like sleep deprivation, weight gain, and irritability, compared against the alleged cost-saving benefits of the 8/24 schedule.

On appeal, the Defendants argued that the district court erred in its decision to issue a preliminary injunction because the court: (1) clearly erred in making several factual determinations regarding whether the firefighters were likely to succeed on the merits; (2) applied an incorrect standard in determining that the firefighters would suffer irreparable harm without an injunction; and (3) failed to consider relevant state law when balancing the potential harm to the parties.

With respect to the firefighter's likelihood of success on the merits, the Seventh Circuit was highly deferential to the district court and found there was sufficient evidence in the record, from the parties’ filings and the two-day hearing, to support the district court’s finding that the firefighter's speech was a motivating factor in the schedule change, as required by the standard for a prima facie case of First Amendment retaliation. The Seventh Circuit noted that: (1) the district court did not clearly err in determining that Serna’s statements at November 2, 2019, Burger King meeting suggested that the defendants were motivated by the firefighters’ lobbying activity to implement the new work schedule and that these comments support that the defendant’s actions were in response to the firefighters’ work with the Council; (2) the district court did not base its finding that the discussions and events surrounding the memorandum of understanding supported the firefighter’s position on a mistaken belief that Copeland and Serna were responsible for drafting the memorandum of understanding; and (3) the district court acknowledged what it referred to as the “conclusory statements from Chief Serna,” but also emphasized that Serna never talked to the finance director, city comptroller, or anyone else about the cost savings of the 8/24 work schedule. For these reasons, the Seventh Circuit found that the district court did not clearly err in finding that the defendants’ implementation of the 8/24 schedule was motivated by the firefighters’

lobbying activity and therefore did not err in concluding that the firefighters were likely to succeed on the merits of their First Amendment retaliation claim. The Seventh Circuit also noted that what makes the firefighters' claim likely to succeed on the merits here is unrelated to the fact that the defendants rejected the firefighters' lobbying campaign.

With respect to the standard applied in determining that the firefighters would suffer irreparable harm without an injunction, the Seventh Circuit noted that the district court credited testimony that members of the union were deterred from exercising their First Amendment rights following the schedule change and the fact that firefighters suffered irreparable harm in the form of physical and psychological injury from the imposed schedule. The Appellate Court also noted that irreparable harm is presumed in First Amendment cases under Seventh Circuit precedent and the record supported the district court's finding that the implementation of the 8/24 work schedule deterred at least some political activity. That the Fire Fighters continued to engage in some political activity does not foreclose their contention that they were deterred from engaging in other activities. Therefore, the district court did not clearly err in finding that the firefighters suffered physical and psychological harm from the schedule change.

Finally, with respect to the Defendants' last argument that the district court erred when it ignored relevant Indiana statutes granting Copeland and Serna the exclusive right to set work schedules for the East Chicago Fire Department and abused its discretion by failing to consider Copeland and Serna's interests in their statutory authority over the fire department, the Seventh Circuit found it was not an abuse of discretion for the district court to find that the "undocumented possibility that East Chicago might be saving money" was a "feather" in comparison to the "anvil" of harms to the firefighters. The Appellate Court found little if any persuasive evidence supported the speculative financial benefit of the 8/24 schedule and the undefined harm to the statutory authority of Copeland and Serna.

The Seventh Circuit concluded that the district court did not err in determining that: (1) the defendants' actions were motivated by the firefighters' First Amendment activity; (2) there was no evidence that the 8/24 schedule was expected to result in cost-savings for the City of East Chicago; and (3) the firefighters would suffer irreparable harms without an injunction. The Seventh Circuit additionally found that the district court did not abuse its discretion in balancing the equities in this case, considering the severity of the harms the firefighters have experienced and the lack of evidence supporting the Defendants' alleged harms. Accordingly, the Seventh Circuit affirmed the decision of the district court.

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