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UNION LEADER'S COMPLAINTS ABOUT WORKPLACE SAFETY ISSUES WERE PROTECTED SPEECH UNDER FIRST AMENDMENT

In June 2021, Federal District Court Judge Manish S. Shah denied, in substantial part, a motion to dismiss First Amendment claims in a lawsuit brought by former Village of River Forest police officer and union chapter president Daniel Szczesny. Szczesny sued the village and multiple employees for actions they took after Szczesny complained about problems with a squad car that impacted officer and public safety. This ruling, in *Szczesny v. Village of River Forest, et al*, 1:20-cv-05661, confirmed that the First Amendment protects complaints of this nature by union officers. Judge Shah did not rule that Szczesny's allegations are true; he ruled that if they are true, they constitute First Amendment violations by most defendants.

Szczesny's allegations were as follows. In June 2019, the police department acquired a new squad car. Szczesny had difficulty shifting the car out of park into drive. In one instance, this prevented him from responding to a crime in progress. Other officers told Szczesny they had similar problems. Szczesny emailed the department's management about the car, but the department never addressed the officers' safety concerns. So Szczesny and the union's executive board submitted a letter to Police Chief James O'Shea, on union letterhead, expressing concern with both the car and the department's response. The next day, the department posted a response that claimed that it had focused on officer safety, and also attacked union leadership.

In the weeks that followed, Szczesny was inaccurately accused of filing false police reports; was threatened with "internal investigations" if the union did not retract its letter; and was pressured to violate privilege and disclose the names of the complaining officers. After months of harassment, Szczesny resigned on October 1, 2019. The village then responded slowly to Szczesny's requests to remove false material from his file; as a result, three prospective new employers of Szczesny received false material and declined to hire him.

Szczesny filed a multi-count complaint in federal court. All defendants moved to dismiss. With respect to Szczesny's First Amendment retaliation claim, Judge Shah denied this motion with respect to most defendants.

Judge Shah held that, as alleged, the letter was protected First Amendment speech. Under the Supreme Court's decision in *Garcetti*, the First Amendment does not protect routine employee grievances or speech that

"owes its existence to a public employee's professional responsibilities." However, as the Seventh Circuit Court of Appeals established in *Swetlik v. Crawford,* 738 F.2d 818, 825 (7th Cir. 2013), speech does have First Amendment protection when a public employee (1) speaks as a private citizen (2) about a matter of public concern. When an employee speaks "in his capacity as a union representative," he is speaking as a private citizen for First Amendment purposes. The letter was speech in Szczesny's capacity as union president, so it was "private citizen" speech and satisfied the first prong of *Swetlik.*

Judge Shah next addressed whether the letter was about a matter of public concern. Broadly, the question is whether the employee tried to raise some public concern, or spoke merely to further his own private interest. In this context, a police officer addressing public safety raises matters of vital public concern. But internal matters like equipment allocations are not matters of public concern.

Judge Shah concluded that the letter addressed the manner in which the police would serve the public, making it a "matter of public concern." The letter stated that the car sometimes could not be shifted out of park; that this prevented officers from responding to calls; and that the department dismissed these concerns. The letter "directly tied the vehicle's problems—and the administration's indifference to them—to broader officer and public safety concerns." It raised "a matter of public concern"—an issue of public and officer safety—and was not merely Szczesny's private grievance. For that reason, it was protected by the First Amendment.

Judge Shah next addressed retaliation, and held that Szczesny successfully alleged retaliation by another officer, Swierczynski. Szczesny alleged that Swierczynski, who outranked him, pressed and threatened him to reveal the names of complaining officers; publicly posted a letter attacking him; and threatened to tell O'Shea that he lied. These actions, Judge Shah held, would deter a reasonable person from expressing protected views. Further, it could be inferred that Swierczynski was motivated, at least in part, by the letter. Thus, Judge Shah upheld the First Amendment claims against all defendants except Scheiner.

This ruling affirms what the Seventh Circuit has long held: a public employee, speaking in his capacity as a union officer, and speaking about a matter of public concern, has full First Amendment rights. Speech in a union officer capacity is "private citizen" speech, and not that of an unprotected employee, for First Amendment purposes. Even if an issue starts as a personal grievance, any statement by a union officer about it is private citizen speech for First Amendment purposes. Moreover, Judge Shah interpreted "matter of public concern" broadly. Though this dispute could have been framed as an equipment issue and held not a "matter of public concern" on that basis, Judge Shah's analysis did not end there. Consistent with other cases, such as *Kristofek v. Vill. of Orland Hills*, 712 F.3d 979, 985 (7th Cir. 2013), Judge Shah treated the effect of the problem on the public as decisive on the "matter of public concern" question. Judge Shah's conclusion was consistent with *Kristofek*, and he reached the broad reading of "public concern" required by law. This allows unions to communicate freely on issues (such as damaged vehicles) that affect officer or public safety, or other concerns of a similar weight that are public-oriented. This is both correct and welcome.

ASHER, GITTLER & D'ALBA, LTD.
200 West Jackson Boulevard, Suite 720
Chicago, IL 60606 – 312.263.1500

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