Public Personnel Law

Number 14 September 1997 **Stephen Allred, Editor**

NEW STANDARD ANNOUNCED FOR POLITICAL FIRINGS

n Stephen Allred

The U.S. Court of Appeals for the Fourth Circuit, in an en banc ruling authored by Judge Russell, announced a new standard for political firings cases with its decision of August 7, 1997 in *Jenkens, et al. v. Medford*.[1] This bulletin summarizes the decision and its implications for North Carolina public officials.

Background and Lower Court Ruling

Bobby Lee Medford was elected sheriff of Buncombe County, North Carolina, in November 1994. The plaintiffs in this action were deputy sheriffs, serving as employees of Medford. In the primary and the fall election, the deputies worked for or otherwise supported Medford's opponents, but they did so on their own time, and never at work. On the day Sheriff Medford was sworn in, he dismissed several deputies, who then filed suit under 42 U.S.C. § 1983, alleging violations of their rights under the First and Fourteenth Amendments to the United States Constitution. They argued they were dismissed for failing to support Medford's election bid, for supporting other candidates, and for failing to associate themselves politically with Medford's campaign.

The district court ruled that the facts alleged in the deputies' complaint were sufficient to state a cause of action—that by firing them, Medford deprived them of their rights to freedom of association and to political belief, speech and expression, and their Fourteenth Amendment right to due process of law. The district court denied the defendant's motion to dismiss, and the Sheriff appealed to the Fourth Circuit Court of Appeals.

1. No. 96-1650 (Fourth Circuit Court of Appeals, August 7, 1997).

Prior Supreme Court and Fourth Circuit Rulings

The United States Supreme Court has issued four decisions on political firings.[2] As a general rule, the Court has stated, "[a] State may not condition public employment on an employee's exercise of his or her First Amendment rights."[3] Further, "[a]bsent some reasonably appropriate requirement, government may not make public employment subject to the express condition of political beliefs or prescribed expression."[4]

Two decisions, *Elrod v. Burns*[5] and *Branti v. Finkel*,[6] provide the analytical framework for analysis of political firing cases. In *Elrod*, the Court declared patronage dismissals unconstitutional, because the practice limited political belief and association, and therefore violated the First and Fourteenth Amendments. However, the Supreme Court created a narrow exception to give effect to the democratic process, allowing patronage dismissals of those holding policymaking positions, reasoning that this exception would, in part, advance the important government goal of assuring "the implementation of policies of [a] new administration, policies presumably sanctioned by the electorate."[7] Four years later, in *Branti*, the Court recognized that the labels used in *Elrod* ignored the practical realities of job duty and structure, and so modified the test: "[T]he ultimate inquiry is not whether the label `policymaker' or `confidential' fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved."[8]

The Fourth Circuit had previously ruled, in *Jones v. Dodson*,[9] that in a political firing case "if [the deputy's] discharge was solely because of his political party affiliation, it could not as a matter of law be justified under the *Branti* test."[10] The court did not, however, make an explicit inquiry into the specific role or duties of deputy sheriffs, nor did it explore the relationship between the sheriff and his deputies, as that relationship affects the execution of the sheriff's policies. Later, in *Joyner v. Lancaster*,[11] the Fourth Circuit upheld the dismissal of a deputy sheriff who had campaigned on behalf of the incumbent sheriff's opponent, ruling that the deputy played an important role in implementing the sheriff's policies, "and he was an essential link between the sheriff and the deputies whom he supervised."[12] Finally, in *Stott v. Haworth*,[13] the Fourth Circuit refined the *Elrod–Branti* analysis by requiring the trial court to first determine whether the position held by the dismissed employee relates to partisan political interests, and if so, by then examining the particular responsibilities of the position. When the position at issue resembles a policymaker, a communicator, or a privy to confidential information, the court held, then political party affiliation can be an appropriate requirement for effective job performance.[14] The position then falls into the *Elrod–Branti* exception to the prohibition against political firings, the court held.

The New Standard Announced in *Medford*

Judge Russell reviewed the previous Fourth Circuit decisions, noting that "our cases have moved from wholesale pronouncements (*Dodson*) to position-specific analyses (*Joyner and Stott*). Other circuits, however, simply refuse to allow deputy sheriffs to pursue the type of claim at issue before us. In reaching the decision to bar these claims, they have examined sheriff elections and the roles of sheriffs and their deputies. These circuits have found that sheriffs, as elected officers, require loyal deputies to help them implement their policies—"policies presumably sanctioned by the electorate."

Judge Russell noted with approval the approach taken by the Seventh and Eleventh Circuits in cases involving the political firings of deputies, stating:

> In jurisdictions where the sheriff is elected by popular vote, the triumph of one candidate

2. O'Hare Truck Service, Inc. v. City of Northlake, 116 S. Ct. 2353 (1996); Rutan v. Republican Party of Illinois, 497 U.S. 62 (1990); Branti v. Finkel, 445 U.S. 507 (1980); Elrod v. Burns, 427 U.S. 347 (1976).

3. O'Hare, 116 S. Ct. at 2356 (1996) (citing Board of Comm'rs v. Umbehr, 116 S. Ct. 2342 (1996); Perry v. Sindermann, 408 U.S. 593 (1972); Pickering v. Board of Educ., 391 U.S. 563 (1968); Keyishian v. Board of Regents, 385 U.S. 589 (1967)).

4. O'Hare, 116 S.Ct. at 2357.

5. 427 U.S. 347 (1976).

6. 445 U.S. 507 (1980).

7. *Elrod*, 427 U.S. at 367.

8. *Branti*, 445 U.S. at 518.

9. 727 F.2d 1329 (4th Cir. 1984).

10. *Id*. at 1338.

11. 815 F.2d 20 (4th Cir. 1987).

12. *Id*. at 24.

13. 916 F.2d 134 (1992).

14. *Id*. at 141-42.

> indicates voter approval of the candidate's espoused platform and general agreement with the candidate's "expressed political agenda." Some candidates gain office by promising changes in current policy. By choosing a particular candidate to protect the citizens of the county, the electorate vests in the sheriff broad discretion to set and implement the policies necessary to carry out his goals. The sheriff owes a duty to the electorate and the public at large to ensure that his espoused policies are implemented. Deputy sheriffs play a special role in implementing the sheriff's policies and goals. The sheriff is likely to include at least some deputies in his core group of advisors. Deputies on patrol work autonomously, exercising significant discretion in performing their jobs. In the course of their duties, deputies will "make some decisions that actually create policy." The sheriff relies on his deputies to foster public confidence in law enforcement. Furthermore, deputies are expected to provide the sheriff with the truthful and accurate information he needs to do his job. In some jurisdictions, the deputy sheriff is the general agent of the sheriff, and the sheriff is civilly liable for the acts of his deputy, effectuating the objectives and law enforcement policies which a particular sheriff has chosen to pursue."[15]

Judge Russell then announced the new standard for the Fourth Circuit in political firings cases. The North Carolina legislature recognizes the special status of sheriffs' deputies in the eyes of the law, he noted, and has made deputies at-will employees, who serve at the pleasure of the sheriff. The court's examination of the role of deputy sheriffs, stated Judge Russell,

> leads us to conclude that in North Carolina, the office of deputy sheriff is that of a policymaker, and that deputy sheriffs are the alter ego of the sheriff generally, for whose conduct he is liable. We therefore hold that such North Carolina deputy sheriffs may be lawfully terminated for political reasons under the *Elrod–Branti* exception to prohibited political terminations. This holding "strikes at the heart of the *Elrod–Branti* least restrictive means test which balances First Amendment rights of the deputies and the need for efficient and effective delivery of public services."

Applying this standard to the deputies who campaigned for Medford's opponents, the court held that the deputies had no constitutional right to continued employment after the election, and so failed to state a claim under 42 U.S.C. § 1983. The court acknowledged that this new standard conflicted with its ruling in *Jones v. Dodson*, but now stated that *Dodson* "has handicapped and impeded law enforcement since it became the law of this circuit." The court rejected *Dodson* to the extent it suggests that no deputy sheriff can ever be a policymaker. Instead, the court instructed the district courts to engage in a *Stott*–type analysis, examining the specific position at issue, and if the position resembles a policymaker, a communicator, or a privy to confidential information, then loyalty to the sheriff is an appropriate requirement for the job. In other words, stated Judge Russell, "newly elected or re-elected sheriffs may dismiss deputies either because of party affiliation or campaign activity. Either basis serves as a proxy for loyalty to the sheriff."[16]

The Dissent in Medford

Judge Motz wrote a dissenting opinion in this case. The majority, in her view, misapplied the Supreme Court's analysis in *Elrod* and *Branti*, and ignored altogether the *Pickering–Connick* line of cases that protect a public employee's right to speak on matters of public concern. Specifically, she wrote, the majority opinion failed to engage in a particularized examination of the actual duties of each deputy to determine whether Sheriff Medford has met the burden of showing that party affiliation is an acceptable job requirement, which in her view is an analysis required under *Elrod* and *Branti*. Instead, she stated, the majority broadly holds that all deputy sheriffs in North Carolina—regardless of their actual duties—are policymaking officials.

Not only did the majority incorrectly analyze the deputies' *Elrod-Branti* claim, she added, but also it also totally ignored the deputies' *Pickering–Connick* claim, which involves a two step process to determine whether a public employee's speech is constitutionally protected. First, the court must determine whether the employee spoke on a matter of public concern. If so, she continued, the court must then balance "the interests of the [employee], as a citizen, in commenting

15. Medford, slip op. At 15.

16. Id.

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."[17] Proper application of this test would result in a reversal of the deputies' dismissal, she concluded.

Conclusion

The Fourth Circuit's ruling in this case certainly makes it more likely that the practice of wholesale dismissal of sheriff's deputies—a practice that had been on the decline in recent years—will probably recur. The court's willingness to label an entire category of employees—in this case, deputies—as policymakers without examining the specific responsibilities of each employee's position is a marked departure from previous rulings. The critical question is whether the lower courts will now apply the *Medford* standard to other large groups of state or local employees and hold that they too may be dismissed for political affiliation and activity.

17. *Pickering*, 391 U.S. at 568.

To order copies of the Bulletin or to request a catalog of other Institute of Government publications, write to the Publications Marketing and Sales Office, CB# 3330 Knapp Building, UNC-CH, Chapel Hill, N.C. 27599-3330, or call (919) 966-4119 for price information.