

U.S. Supreme Court rules 'No free speech at work'

By DON LOVING

The U.S. Supreme Court on May 30 restricted the free-speech rights of the nation's 21 million public employees, ruling that the First Amendment does not protect them from being punished for complaining to their managers about possible wrongdoing. However, a Portland labor attorney says Oregonians have some additional protections under state law.

In a split 5-4 decision, the Supreme Court said although government employees have the same rights as other citizens to speak out on controversies of the day, they do not have the right to speak freely inside their offices on matters related to their official duties.

"When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom," said Justice Anthony Kennedy, rejecting a lawsuit brought by a Los Angeles County prosecutor.

The 5-4 decision came in a case involving Richard Ceballos, a former Los Angeles County deputy district attorney. According to news reports, Ceballos says he was demoted, transferred and denied a promotion and that his superiors created a hostile work environment after he wrote a memo to his superiors asserting that false information was used to obtain a search warrant in a drug case.

Ceballos advised his superiors to drop the case related to the warrant — but instead, they proceeded with the prosecution. He then informed the defense team of his findings and, when subpoenaed to testify, he told the court about the lies used to obtain the search warrant.

It was after his testimony that Ceballos says his superiors retaliated against him. He then filed suit charging his First Amendment rights had been violated.

The AFL-CIO filed a brief in support of Ceballos.

Lawyers for government whistleblowers denounced the ruling as a major setback. They said it could threaten public health and safety. Public sector hospital workers who know of dangers may be discouraged from revealing them, while police and public employees may be dissuaded from exposing corruption, they said.

"This decision gives constitutional sanction to those who would fire a public worker for stepping forward to preserve the integrity of our public institutions as a government whistleblower," said American Federation of State, County and Municipal Employees President Gerald McEntee.

"This is bad, very bad from a national perspective," said Oregon AFSCME Council 75 senior political coordinator Mary Botkin.

While agreeing that the national high court ruling is a setback, labor attorney Barbara Diamond of Smith, Diamond & Olney notes that Oregon has its own whistleblower law.

"First, the Supreme Court decision was 5-4, which means a similar case framed slightly differently could end with a different result," said Diamond. "And second, we do have some limited, added protections under Oregon law."

Oregon has a broad "freedom of speech" clause in its State Constitution; however, Diamond notes the Oregon Legislature has never written parallel statutes that create an easy mechanism for legal remedies.

"There's the constitution, and there's the law," noted Diamond. "While you can sue for legal protections under the constitution, it's much easier if there are statutes in the law to base a case on. Oregon's free speech laws aren't whistleblower protections per se, but they are part of the mix."

Oregon Revised Statutes 659(a) are in fact distinct whistleblower protections, though Diamond notes the law doesn't make people bulletproof or allow them to say anything they want to say, especially as an employee of a certain governmental agency.

"Really, this underscores the importance of our unions," said Diamond. "If you've got something to say — be it on the job, in a letter to the editor or whatever — make sure you're saying it as a citizen rather than as an employee, or better yet, when possible say it as part of the union. There's much more leeway for a union to be critical of an agency. Regardless, we would take strong action should a union member ever be fired for what we considered a whistleblower situation."

Some public employee union contracts also include "extra" protections that may not be "whistleblower" in name but offer some protections in the same vein.

For example, the AFSCME Local 3336 (Department of Environmental Quality) contract includes language governing "professional differences of opinion." Council 75 staff representative Issa Simpson said that clause has come into play once during her tenure.

"We grieved this article once and took it to mediation where we got what we needed for the member — reinstatement to a project where a regulated company had asked to have her removed from her duties on the project," said Simpson. "Following the company's request, the agency began addressing what it called 'communication issues' on the part of our member and removed her from the project. She had been recommending technically sound water quality testing procedures that would have cost the company more money than they wanted to spend, and this is an outfit with a lot of clout in Eastern Oregon."

"Ultimately, the member was returned to the project, but it was a difficult issue."

(Editor's Note: Don Loving is public affairs director of AFSCME Oregon Council 75.)



What a day for the 'Unions For Kids' motorcycle ride

Nearly 300 motorcycle riders participated in the fourth annual "Unions For Kids" motorcycle 'Poker Run' June 10. "It was a record turnout, and we'll raise a record amount of money for the kids at Doernbecher," said Lee Duncan, a business representative of Portland-based Electrical Workers Local 48, who helped found the event.

All proceeds from the ride and raffle go to Doernbecher Children's Hospital. Since its inception, the event has raised more than \$16,000. The amount raised this year had not been finalized at press time.

Participating in the event for the first time was James (Jimbo) Brennan, a member of Painters Local 10 (photo right, on the motorcycle). Brennan and riding mates Teresa Chadwell and Gus Gustafson were stopped at a check-point in Sandy, Oregon, where bikes lined both sides of city block on Highway 26. A poker run consists of riders going to five check-points, where they draw a playing card for a poker hand. At the end of the ride — in this event, a 100-mile course that took riders past Crown Point on the Old Columbia River Highway (top photo) — the highest hand wins a cash prize.

A large portion of the "Unions for Kids" proceeds came from a drawing for a Harley-Davidson low-rider. In the photo below, 2-year-old Stirling Walker and her mom Shannon prepare to draw the winning ticket as Lee Duncan and Dave Tully quiet the crowd. The winner of the bike was Robert Borman of Gresham, a new member of Local 48.

