Commentary

Font Size: + −

Office Politics, Not Political Discrimination

Preferential Treatment for 'Politically Connected' Employees Not Unconstitutional

Jeffrey Campolongo Contact All Articles
The Legal Intelligencer | December 20, 2011


Jeffrey Campolongo

Employment law attorneys often get calls about workplace favoritism and nepotism. As unfair as the circumstances can sometimes be, there is usually nothing unlawful about the employer's actions.

Nepotism in the workplace — employers treating relatives with more favoritism than other employees — is not unlawful discrimination in Pennsylvania. There are certain limits on the types of preference employers can have, however, and one of those is political nepotism by a public employer.

A recent 1st U.S. Circuit Court of Appeals decision explains that while there are constitutional protections against political favoritism in public employment, preferential treatment to "politically connected" employees is not a constitutional violation.

RELATED ITEMS

- **Deputy's Right to Privacy Determined to Outweigh Gov't Interest**
- **ABA Opinions Clarify Ethical Obligations in E-Mail Interception**

In the Nov. 22 case of *Barry v. Moran* , the 1st Circuit affirmed that allegedly rampant political nepotism within the Boston Fire Department (BFD) was not unlawful discrimination. The court determined that the plaintiffs were not able to show that the preferential treatment other employees received was due to anything more than personal preferences and relationships.

As we all know, the First Amendment protects freedom of speech and association, which also includes protections for political speech and association. "Constitutional protection extends to the decision not to associate with a political party of faction," the *Barry* court noted.

To show political discrimination, a public employee must show that he or she engaged in constitutionally protected activity that was a substantial or motivating factor for an adverse employment action, the court said. The employer may then present evidence that it would have reached the same decision in the absence of the protected activity.

In *Barry* , eight BFD employees sued the department after years of allegedly being passed over for promotions, job transfers and public benefits in favor of outside individuals with less experience and fewer qualifications but with connections to higher-ups in the BFD or in the Boston political scene. According to the opinion, the employees presented a long history of not receiving opportunities and observing favoritism for those with "political" connections.

For instance, one employee was alleged to have applied for 11 positions she was qualified for during a six-year period. Other employees were discouraged from applying for new positions.

Upon complaint about preferential treatment to certain well-connected employees, the court goes on to say, a supervisor responded to one of the plaintiffs, "'If you're not into politics, little girl, then you're not into a position here.'"

Successful applicants for open position often came from persons affiliated with the "Hyde Park Group" and the "South Boston Group," informal groups that the plaintiffs claimed held the "power" in the BFD. The plaintiffs also pointed to favoritism toward employees who were friends with the mayor's wife, who had worked for the city previously, who were related to city employees, and who were neighbors of the BFD chief.

The 1st Circuit did not consider these circumstances to be evidence of unlawful discrimination but instead considered them to be a matter of office politics and traditional nepotism or cronyism. According to the decision, there was not any clear evidence of disparity in treatment due to political affinity. The two groups "in power" were merely social and familial networks that did not hold any political significance. Favoritism toward those with connections to city officials or higher-ups within the BFD was not deemed political nepotism.

The court was looking for evidence that linked the BFD's decision-making to political affiliation, such as that the plaintiffs were "members of a rival political party, that a divisive political issue created a rift between appellees and themselves, or that they were asked for campaign contributions or to engage in other political activity." The case emphasizes that "there is an important distinction between a public official who chooses to hire friends, relatives, neighbors or college buddies, and one who refuses to hire those who failed to make campaign contributions, join her political party or attend political rallies."

Office politics, even within a governmental entity, are not the same thing as political activity. *Barry* evidences how limited the circumstances are in which workplace nepotism arises to unlawful activity.

"However unsavory it may be, preferential treatment in public employment decisions unrelated to protected speech or association does not infringe upon freedoms secured by the First Amendment," the court said. •

Jeffrey Campolongo *is the founder of the Law Office of Jeffrey Campolongo, a boutique firm focusing on employee rights and counseling aspiring and established entertainers. He can be reached at jcamp@jcamplaw.com*

From the Law.com Network

LTN LAW TECHNOLOGY NEWS

Guidance Revamps Decade-Old Evidence File Format

RPost Patent Survives Invalidity Claim in Pyrrhic Victory

THE RECORDER

High Court to Revisit Medical Marijuana Cases

Big Asbestos Trial Under Way in San Francisco

dbr DAILY BUSINESS REVIEW.COM

Jury Finds TD Bank Liable for $67 Million in Rothstein Scam

3rd DCA sends foreclosure case back to trial despite lost note

New Jersey Law Journal

Spectator Injured by Toppled Teen at N.J. Nets Game Loses Damages Case

Restraint Held Too Broad To Prevent Father Attending Child's Soccer Game

ALM LEGA INTEL

The 2011 Electron 200

These reports have industry standard f determining bench success within law