



## Employment & Labor Law FLASHPOINTS September 2020

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### **Superintendent's Police Report Is Protected Speech**

On August 3, 2020, the Seventh Circuit upheld a \$400,000 jury award to former Harvey School District Superintendent Denean Adams and affirmed a finding that the police report she filed was protected speech under the First Amendment, which played a role in her separation from employment. *Adams v. Board of Education of Harvey School District 152*, 968 F.3d 713 (7th Cir. 2020).

Adams served as superintendent of Harvey School District 152 under a three-year contract from July 2013 through June 2016. It seemed her tenure was going well and that the district at some point intended to extend her contract. The tide began to change around Spring 2015 when Adams asked the board of education to approve a forensic audit of the school district's expenditures. With the board's guidance, Adams moved forward with obtaining proposals from auditing firms and shared the information with the board. Thereafter, on July 9, 2015, Adams testified that a board member called her on her district-issued cell phone and said that she was "itching for an ass-kicking." 968 F.3d at 714. Adams notified the board president and filed a formal report with the police about the board member's threat. The report filed with police also mentioned the superintendent's request for an audit.

The following day, another board member (who also happened to be the spouse of the board member that made the alleged threat) went to the school district office and told Adams that she had concerns with Adams' performance as superintendent. Adams continued in her role as superintendent and also in pursuit of her concern about the school district's expenditures. One can infer from the facts that at least some board members may not have been supportive of Adams's pursuit.

In December 2015, Adams suspended the district's business manager for alleged financial irregularities. That same month, the board notified Adams that her contract would not be extended, despite telling her earlier in the year that it would. While the board did not fire Adams, actions taken would lead one to conclude that the board was not recognizing her as its superintendent, including blocking her e-mail and informing the state board of education that she was no longer its superintendent. This was stress-inducing for Adams. She began a medical leave in March 2016 and did not return to the district prior to the end of her contract in June 2016.

Adams filed suit under 42 U.S.C. §1983, alleging that that the district violated her First Amendment rights. A jury agreed and awarded Adams \$400,000 in damages. The district appealed, and its primary argument was that Adams's report to the police was outside the scope of the First Amendment because it was a personal grievance, not a matter of public concern.

It is well-established precedent that personal grievances are subject to state law (torts and contracts) rather than the First Amendment. *See, e.g., Connick v. Myers*, 461 U.S. 138, 75 L.Ed.2d 708, 103 S.Ct. 1684 (1983); *Pickering v. Board of Education of Township High School District 205*, 391 U.S. 563, 20 L.Ed.2d 811, 88 S.Ct. 1731 (1968). However, the Seventh Circuit found that the circumstances of this case demonstrate that Adams’s report to police was a legitimate matter of public concern. In reaching this conclusion, the court examined the report in isolation as well as in consideration of the surrounding circumstances.

In viewing the report in isolation, the court said it was not a “straightforward report of crime — for example, notice of a burglary or robbery.” 968 F.3d at 715. Rather, it was a report by a superintendent that a board member threatened physical violence against her. A potential for physical altercations between public officials (the superintendent and an elected member) implies that an important public institution was not working properly. This is a legitimate subject of public concern. *Chrzanowski v. Bianchi*, 725 F.3d 734 (7th Cir. 2013) (testimony in civil or criminal case, or grand jury investigation, is protected speech).

The court continued with its analysis of the police report and said that it would be a mistake to consider the report in isolation. This is because the problem, which led to the alleged threat by the board member and her ousting as superintendent, began when she proposed a forensic audit and continued following Adams’s suspension of the business manager. “The police report, and the controversy within the Board more generally, readily could have affected the outcome of elections as well as the daily management of the school system.” 725 F.3d at 716.

The link between the request for an audit and the threat was noted in the police report. The Seventh Circuit found that this was enough to place Adams’s speech on the public concern side of *Connick*. The court also found that the record permitted a reasonable jury to find that an ordinary employee in Adams’s position would be deterred from speaking by the prospect of losing her job and was permitted to consider the possibility that Adams would have remained on the job longer had she kept silent. Thus, the jury’s \$400,000 award was also upheld on appeal because damages for a First Amendment violation are not limited by the duration of contracts.

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