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Jay E. Grenig

Marquette University Law School, jay.grenig@marquette.edu

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Procedural Due Process: May Labor Order Reinstatement Without a Prior Evidentiary Hearing?

by Jay E. Grenig

William E. Brock, Secretary of Labor

v.

Roadway Express, Inc.

(Docket No. 85-1530)

Argued December 3, 1986

Section 405 of the Surface Transportation Assistance Act provides truck drivers who refuse to drive unsafe trucks with protection from discharge. That same section empowers the Secretary of Labor to order a discharged truck driver temporarily reinstated before conducting an evidentiary hearing, if the Secretary concludes there is "reasonable cause to believe" the employee was discharged in retaliation for the employee's safety complaints. In this case, the Court has been asked to determine whether section 405 is unconstitutional because the Secretary is not required to give the employer an evidentiary hearing before ordering an employee reinstated.

ISSUE

This case raises the question of whether the Secretary of Labor's power to order the temporary reinstatement of an employee allegedly discharged in retaliation for the employee's safety complaints violates the employer's constitutional right to procedural due process.

FACTS

In 1983, Roadway Express, Inc. discharged a truck driver for intentionally disabling his truck to create overtime/delay pay. Following a grievance hearing, the Area Grievance Committee sustained the discharge. A week later, the driver filed a complaint with the Secretary of Labor, claiming he had been discharged because Roadway's terminal manager was upset when the driver requested costly repairs needed for driving safety.

In response to the Secretary's request, Roadway submitted a complete written account of the facts and a statement of its position. After an eleven-month investigation, the Secretary indicated he intended to recommend a preliminary order of reinstatement. Roadway

asked for the statements and evidence on which the investigator was relying. This request was denied. Finding he had "reasonable cause to believe" that the driver had been discharged in retaliation for his safety complaints, the Secretary ordered Roadway to reinstate the driver pending an evidentiary hearing.

Roadway filed suit in the United States District Court for the Northern District of Georgia, seeking an injunction against the Secretary's order. Roadway claimed that issuing the reinstatement order without a prior evidentiary hearing violated its right to procedural due process. The district court issued an injunction barring enforcement of the Secretary's reinstatement order, finding that Roadway had important interests in not being compelled to reinstate an employee discharged for wrongful conduct (624 F. Supp. 197 (1985)). The court held that the procedures used by the Secretary were inherently unreliable since they did not provide any means for resolving disputed issues of fact and credibility. To the extent that the statute failed to provide employers with a meaningful opportunity to be heard, the court ruled the section failed to meet the requirements of due process. It concluded that due process could be satisfied only through a prereinstatement evidentiary hearing at which the employer is afforded, at a minimum, an opportunity to present its side and a chance to confront and cross-examine witnesses.

BACKGROUND AND SIGNIFICANCE

A number of federal statutes provide protection for employees reporting violations of the law. In this case, the Supreme Court is called upon to determine what type of due process must be afforded an employer before the government can order an employer to reinstate a discharged employee.

The fundamental requisite of procedural due process is the opportunity to be heard at a meaningful time and in a meaningful manner. The Supreme Court has considered in a variety of contexts whether due process requires a pre-deprivation hearing when a post-deprivation hearing is provided to the person deprived of the protected interest. A determination of just what due process is appropriate generally requires consideration of three distinct factors:

1. The private interest that will be affected by the official action;
2. The risk of an erroneous deprivation of such interest

Jay E. Grenig is a Professor of Law at Marquette University Law School, 1103 W. Wisconsin Avenue, Milwaukee, WI 53233; telephone (414) 224-3799.

- through the procedures used and the probable value, if any, of additional or substitute procedural safeguards;
3. The government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Here, the Secretary of Labor does not dispute that an employer should be afforded an opportunity to be heard before being required to reinstate an employee pending a formal hearing. The Secretary asserts that the statutorily-required notice of the employee's charge, coupled with the opportunity to respond, satisfies the employer's constitutional right to be heard before it is ordered to reinstate the terminated employee. On the other hand, Roadway asserts that the preliminary reinstatement procedures provided by section 405 are flawed because they call for an *ex parte* decisionmaking process in circumstances which require a resolution of disputed facts which turns on credibility determinations and veracity.

Should the Supreme Court determine a full evidentiary hearing is required, such a hearing could delay the reinstatement of an employee discharged in retaliation for reporting a safety violation and increase the financial hardship on the discharged employee. If the Court upholds the Secretary of Labor's position, employers may be forced to reinstate for lengthy periods discharged employees who may have been discharged for good reason in the first place.

ARGUMENTS

For William E. Brock, Secretary of Labor (Counsel, George R. Salem, Department of Justice, Washington, DC 20530; telephone (202) 633-2217)

1. Due process almost never requires the government to hold an evidentiary hearing before effecting a temporary deprivation of property.
2. Although the employer must pay the temporarily reinstated employee's salary pending a final determination of the legality of the discharge, the employer receives the benefit of the employee's labors.
 - A. The adverse effect of the deprivation of property is largely mitigated by the fact that the employer

receives value in return for the funds required to be expended.

- B. The only adverse consequence actually suffered by an employer is a reduction in control over the workforce.

For Roadway Express, Inc. (Counsel of Record, Michael C. Towers, 3500 First Atlanta Tower, Atlanta, GA 30383; telephone (404) 658-9200)

1. The Secretary of Labor's reinstatement of discharged employees without a minimal prior adversary hearing deprives an employer of the right to promptly remove employees whose conduct impairs efficient operation.
2. In the absence of a prior evidentiary hearing, the risk of an erroneous deprivation under section 405 is particularly high.
3. A prior evidentiary hearing would not frustrate the government's objective of speedy reinstatement or implicate additional administrative and fiscal burdens.

AMICUS ARGUMENTS

In Support of William E. Brock, Secretary of Labor

The Teamsters for a Democratic Union filed a brief arguing that the Secretary's application for injunctive relief in a federal court should serve as an adequate substitute for a prior evidentiary hearing.

In Support of Roadway Express, Inc.

In their joint brief, Central Ohio Coal Co., Consolidation Coal Co., Eastern Associated Coal Corp., Southern Ohio Coal Co., U.S. Coal, Inc. and Windsor Power House Coal Co. argued that the Secretary's interest in not affording a meaningful hearing prior to ordering temporary reinstatement is clearly outweighed by the substantial interest of the employer and the need for procedural safeguards to lessen the risk of government error.

The American Trucking Associations, Inc. suggested that the Court could avoid deciding the constitutional issue by relying on the legislative history of the statute which manifests a clear intent to provide for due process in section 405 proceedings.