
BOND INFORMATION MEMO

School Districts

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Court of Appeals Holds That Student Safety Concerns Outweighed Teachers' Picketing Rights

On May 6, 2014, in [Santer v. Board of Education of East Meadow Union Free School District](#), the New York Court of Appeals held that a school district did not violate the First Amendment by disciplining teachers who participated in a picketing demonstration, because the teachers' right to engage in constitutionally protected speech was outweighed by the school district's legitimate interests in protecting the health and safety of students and in maintaining effective operations.

The picketing activity that resulted in the discipline of the teachers occurred on March 2, 2007. The teachers had, for over two years prior to that date, engaged in weekly protests (including picketing) to express their dissatisfaction with the lack of progress in reaching a new collective bargaining agreement with the school district. On March 2, 2007, due to inclement weather, the teachers decided to park their cars on the two-way street in front of the middle school and place picketing signs in their car windows instead of walking along the middle school's sidewalk holding their signs. Because of the manner in which the teachers were parked, parents dropping off their children to school were unable to pull directly up to the curb and instead had to stop their cars in the middle of the street to drop off their children. As a result, traffic became congested in both directions and students had to cross through traffic in the rain to reach the school.

On March 16, 2007, the school district commenced disciplinary proceedings under Education Law Section 3020-a against the teachers who had participated in the picketing activity on March 2, alleging that the teachers created a health and safety risk by purposely parking their cars in a manner that precluded students from being dropped off at the curb. The teachers were found guilty of the alleged misconduct after their hearings and were assessed fines as disciplinary penalties.

The teachers filed petitions in New York State Supreme Court to vacate the disciplinary decisions. The Supreme Court denied the petitions. The Appellate Division reversed the lower court's decision and vacated the disciplinary decisions on the ground that the school district failed to meet its burden of showing that the teachers' exercise of their First Amendment rights constituted such a threat to the school's effective operations that the imposition of discipline was justified. The Appellate Division also held that the discipline imposed on the teachers would likely have a chilling effect on the teachers' speech regarding an important matter of public concern.



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The Court of Appeals reversed the Appellate Division, and reinstated the disciplinary penalties imposed on the teachers. The Court of Appeals recognized that the teachers' picketing activity was a form of protected speech that related to a matter of public concern, but found that the school district had satisfied its burden of showing that the teachers' conduct posed a significant risk to the health and safety of students. The Court of Appeals noted that the school district was not required to prove that a student was actually injured as a result of the teachers' picketing activity in order to justify its discipline of the teachers. The potential risk to student safety was sufficient to justify the discipline. The Court of Appeals also found it significant that the teachers had engaged in picketing activity prior to March 2, 2007, and after March 2, 2007, without being subjected to any discipline. The Court of Appeals determined that this demonstrated that the school district's disciplinary actions were not motivated by the content of the teachers' protected speech.

Despite the Court of Appeals' decision in the *East Meadow* case, school districts and other public employers should continue to proceed cautiously if they are considering disciplinary action against an employee for conduct that could constitute protected speech under the First Amendment. Disciplinary proceedings should be commenced in such instances only if it can be demonstrated that the employee's conduct constituted such a threat to the employer's effective operations that the imposition of discipline is justified.

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