

FIRED FOR COMPUTER MISUSE AND POLICY VIOLATION -- OR FOR EXERCISING FREEDOM OF SPEECH?



A paralegal assistant for the Ohio Department of Commerce was fired after being placed on administrative leave. She claimed that her termination was both discriminatory and a violation of her First Amendment rights, and took her argument to court. The woman, an African-American, began working for the Department's Division of Securities in 1994 and was president of the Central Ohio Chapter of the NAACP. In 2007, a fellow employee forwarded files to the woman. The files, relating to Ohio's Foreclosure Task Force, belonged to the Department's Director. Both employees were put on administrative leave for accessing the Director's files, and the woman was told to stay at home at a "work-ready" status during regular office hours, as per Department policy. An internal investigation concluded that the woman had done nothing wrong by receiving the files, which weren't secured and were accessible to most workers. It also revealed, however, a "high degree" of Internet usage unrelated to work on the woman's computer. She had been disciplined the previous year for emailing a pornographic cartoon to a co-worker. During her administrative leave, the woman met with the governor's Chief of Staff to discuss concerns of minorities employed in the Department and suggested names for inclusion in the Foreclosure Task Force. The HR Director, who'd conducted the investigation, interviewed the woman and asked about both her computer use and her meeting with the Chief of Staff. Though the Department Director emailed the woman about the "nature" of the meeting, the real concern was its timing – it took place during regularly scheduled hours without authorization. This violated the policy requiring her to remain work-ready at home. She was ultimately fired for insubordination during administrative leave, her computer use, falsifying time sheets and working in excess of scheduled hours with no authorization. The woman filed a grievance with the Ohio Civil Service Employment Association (OCSEA), where an OCSEA rep testified that the Department's Director had told him that the real reason for the woman's termination was that she had "too much power." A lawsuit followed, citing numerous claims, most of which were abandoned in response to the defendants' motion for summary judgment. The remaining claims, racial discrimination and retaliation, were dismissed by the district court, which noted that the plaintiff couldn't show that she was treated less favorably than others or a causal link between her protected activity and termination. The woman's retaliation claims were based on her meeting with the Chief of Staff and her association with the NAACP. Appellate judges pointed out that, prior to the meeting, the woman had been placed on administrative leave and her computer misuse had been uncovered. There was also no proof that the Director was aware of any criticisms of the Department (e.g., discrimination or detrimental treatment of employees) during the meeting – only that the plaintiff had talked about her administrative leave and the Foreclosure Task Force. The Director's alleged statements to the OCSEA rep, regarding the woman's excessive "power," were unrelated to either race or an NCAAP association. Unable to show a connection between her protected activity and her firing, or that other, non-protected employees received preferential treatment, the woman's case failed, and the district court's decision was upheld on appeal.