

Case 9

The year is 2020. The newly elected, and recently inaugurated, President of the United States was a participant in the Fifth Intercollegiate Ethics Bowl that took place in 1999. She believes strongly that the ethical dimensions of public policy often tend to get obscured or lost in the policy making process on the national level. One of her first acts as President has been to appoint a special panel of individuals, who combine outstanding records in their professional lives with a demonstrated ability to analyze and articulate ethical issues. The President is convinced the time is overdue to bring such individuals into the presidential policy advising process, along with the usual group of lawyers, economists, political analysts, and others with special kinds of expertise.

Recently the President has become intrigued by a proposal advanced back in the 1970's by several scholars in the field of business ethics, which attracted attention in the academic world, but, was largely rejected outside of academia (to the extent that anyone paid attention to it) as irrelevant in virtue of its lack of realism. The proposal called for the Congress of the United States to enact a legally enforceable right of freedom of speech in the workplace for all private sector employees in the United States. (A series of major cases decided by the U.S. Supreme Court in the 1960's, 70's and 80's established that the right of free speech protected by the First Amendment of the U.S. Constitution, applies to the workplace situation of public sector employees. These cases did not apply to private sector employees because the Bill of Rights of the Constitution is understood, within the framework of U.S. political institutions, to place limitations upon the actions of government, but not private, non-governmental, organizations.)

The proposal for a legally enforceable right of free speech for private sector employees was advanced to address a situation succinctly characterized in a statement made many years ago by Robert E. Wood, former head of Sears Roebuck & Co. Speaking of top corporate officers, such as himself, Wood said: "We stress the advantages of the free enterprise system, we complain about the totalitarian state, but in our individual organizations we have created more or less a totalitarian system." Despite decades of pronouncements throughout the 1980's and 1990's from organization relations specialists, heavily laden with words like "empowerment," "involvement," and "teamwork," many believe that the features of organizational life in the workplace, to which Mr. Wood might have pointed as prime examples of his generalization, have not passed from the scene in the first decades of the twenty first century. Large numbers of private sector business organizations at this time (2020) continue to terminate employees essentially without either notice or an explanation of reasons, and many private sector workplaces commonly inhibit, rather than promote, the free interchange of ideas, opinions, and attitudes.

The exact extent to which the above conditions characterize private sector work life is not easy to determine. As noted above, however, a widespread perception of their prevalence exists. Moreover, most private sector organizations – even those that would indignantly deny that Wood’s characterization applies to them – nonetheless, when pressed, tend to affirm that they have (and that, by right they should have) the freedom to fire employees at will. This attitude is often expressed in the form of statements about the need of employers to maintain efficiency and flexibility.

Here is the proposed wording for a legally enforceable right of free speech in the workplace that was advanced by business ethics scholar David Ewing in the 1970’s:

No organization or manager shall discharge, demote, or in other ways discriminate against any employee who criticizes in speech, or press, the ethics, legality, or social responsibility of management actions.