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Court Rules Against Employee's First Amendment Rights

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The employee claimed that he was retaliated against because he engaged in protected speech by: (1) publicly criticizing a city board's recommendation to purchase a Caterpillar front-end loader; (2) asserting that the decision was improperly influenced by personal relationships with the Caterpillar salesman and (3) criticizing an invitation for a free overnight trip to Chicago followed by a tour of the Caterpillar plant. He made these statements to the Board and in a private conversation with a person knowledgeable about heavy duty equipment. The employee claimed that as a result of these protected activities he was denied a promotion.

The Court held that his statements to the board were not protected speech because they were made in his official capacity at board meetings, citing the Supreme Court case of *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006). The employee also asserted that he made statements to members of the community that less expensive equipment made by John Deere should have been purchased. The Court rejected this argument because it stated that there was no evidence that the Board knew of these communications.

Significance of the Decision

The Court seems to suggest that if a decision-maker knows about communications not made directly to the employer that those expressions are protected by the First Amendment. Clearly, though, the Court wanted to make the point that retaliation cannot occur if the employer doesn't know about the communication.

The case is *Wackett v. City of Beaver Dam, Wisconsin*, No. 09-4040 (7th Cir. June 14, 2011).