Public Employee Rights and Responsibilities

Module 12

Constrained or Empowered?

- The Supreme Court often uses the U.S. Constitution to constrain or empower the use of discretion by administrative agencies.

Constrained or Empowered? (2)

Example:

- Constrained:
  - “On the one hand, the courts, seeking to curb the powers of the administrative state, have strengthened Fourth Amendment restrictions on street-level administrators in order to prevent potential harms associated with unchecked discretion and the use of intuition alone” (Rosenbloom et al 2010, 175).
- Empowered:
  - “On the other hand, in certain law enforcement activities – specifically those pertaining to traffic violations, drugs, alcohol, customs, and illegal aliens – the courts have found governmental interests that are sufficiently important reduce Fourth Amendment constraints on street-level discretion” (Rosenbloom et al 2010, 175).

Government Employees

- Should government employees enjoy the same rights as all citizens?

Government Employees (2)

- The core premise of the public service model is that the Court “seeks a functional balance among the interests of the government as employer, those of public employees in exercising constitutional rights, and that of the broader public in the way its affairs are run by public administrators” (Rosenbloom et al 2010, 195).

Government Employees (3)

- The public service model seeks to balance:

1. “the interest of the employee in exercising his or her constitutional rights”
2. “the government’s interest in achieving some important purpose as an employer”
3. “the public’s interest in the way government and public administration operate”
4. “avoidance of overly intrusive judicial involvement in public management” (Rosenbloom 2015, p. 48)

Government Employees (4)

- How does the *public service model* differ from the *doctrine of privilege?*

Substantive Rights of Government Employees

- Speech on Matters of Public Concern
  - Can a public employee be fired for engaging in speech?
  - What happened in the *Pickering* case?

Substantive Rights of Government Employees (2)

- Speech on Matters of Public Concern
  - Can a public employee be fired for engaging in speech?
    - Test:
      - Was the “public employee’s expression [] on a matter of public concern”? (p. 197)
      - If yes, what was the “manner, time, and place” of the expression? (p. 197)
        - “Adverse action against the employee is more likely to be justified if the remarks impair discipline or harmony in the workplace, jeopardize close working relationships, interfere with normal operations, or detract from the employee’s ability to do his or her job” (Rosenbloom et al 2010, p. 197).

Substantive Rights of Government Employees (3)

- “Work Product” Speech
  - Work product speech is not protected by the First Amendment *(Garcetti v. Ceballos* (2006)).

Substantive Rights of Government Employees (4)

- Partisan Speech and Activity
  - “Regulations limiting public employees’ rights to engage in partisan political campaigns are generally constitutional insofar as they are not excessively vague or overly restrictive” (p. 199).
    - What happened in *U.S. Civil Service Commission v. National Association of Letter Carriers* (1973)?

Substantive Rights of Government Employees (5)

- Fourth Amendment Rights
  - Protections against unreasonable searches/seizures
    - Can public employees be subjected to workplace searches? Why or why not?

Substantive Rights of Government Employees (6)

- “Procedural due process is required when dismissals are:
  - In retaliation for the exercise of protected constitutional rights, such as free speech;
  - Injurious to the employee’s reputation or honor;
  - Damaging to the employee’s interest in future employability; or
  - In conflict with the employee’s contractual or tenure rights in public employment” (Rosenbloom et al 2010, pp. 203-204).

Substantive Rights of Government Employees (7)

- Procedural Due Process Balancing test:
  - “the private interest in retaining employment”
  - “the governmental interest in the expeditious removal of unsatisfactory employees and the avoidance of administrative burdens” and
  - “the risk of an erroneous termination” (Rosenbloom et al, 2010, p. 204)

Substantive Rights of Government Employees (8)

- Should contractors be treated the same as public employees?

Sources

- Bryner, G. (1981). Congress, courts, and agencies: Equal employment and the limits of policy implementation. *Political Science Quarterly*, *96*(3), 411-430.
- Lipsky, Michael (2010). Street-Level Bureaucracy: Dilemmas of the Individual in Public Service. 30th Anniversary Expanded Edition.
- Maynard-Moody, S., & Herbert, A. W. (1989). Beyond implementation: Developing an institutional theory of administrative policy making. *Public Administration Review*, 137-143.
- Roberts, R. (2008). Teaching Law in Public Administration Programs. *Journal of Public Affairs Education*, 14(3), 361-381.
- Rosenbloom, David H., Rosemary O'Leary, and Joshua Chanin (2010). *Public Administration and Law*. 3rd Ed. CRC Press.
- Van Horn, C. E., & Van Meter, D. S. (1975). The policy implementation process: A conceptual framework. *Administration and Society*, *6*(4), 447.