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Trial ordered in suit against county Correction officer contends his speech rights were violated

By MICHELE MORGAN BOLTON
Staff Writer

Caption: Hoyt

ALBANY - County officials will likely testify before a federal jury in a civil trial in which they are accused of violating the free speech rights of a correction officer for what he said at a legislative meeting.

Ron Hoyt, who still works at the Albany County jail, was president of Council 82 in 2002. Council 82 is the parent or ganization of Local 775, which represents correction officers at the jail.

His leave of absence was revoked a day after he publicly questioned Undersheriff John Mahan's fitness for public service during the public comment period at the County Legislature's Feb. 13, 2002, meeting, according to court papers.

Hoyt's case against the county - naming former Deputy County Executive Christopher Andreucci, Sheriff James Campbell and Mahan as defendants - was dismissed in 2004 by visiting Senior U.S. District Court Judge Lyle E. Strom of Nebraska.

But on Friday the U.S. Second Circuit Court of Appeals in Manhattan reversed that decision.

"We conclude that the question of whether the revocation of Hoyt's full-time leave amounted to an adverse employment action should have been reserved for the jury, and that the district court erred in holding otherwise," said Richard K. Eaton, Judge of the United States Court of International Trade, who ordered the trial to be held within the next couple of months. No exact date has been set.

In his lawsuit, Hoyt claims Mahan removed a sheriff's employee from a position he bid for by seniority because Mahan didn't like the employee. Hoyt claims Mahan then lied to the union.

At the Legislature's meeting, Hoyt said members of organized labor depend heavily on seniority.

"Mr. Mahan has breached the credibility of the position of undersheriff," Hoyt told the legislators, according to a copy of his speech contained in the lawsuit. "... The sheriff must not allow, and this union will not stand by idly, while one individual misuses his power simply because he thinks he can."

Hoyt then told lawmakers Mahan should resign or be fired. The next day, Hoyt was ordered to return to full-time duty at the jail and, several months later, forfeited his union position because of lack of time. "An examination of Hoyt's speech demonstrates that it was framed in terms of advising the Albany County Legislature that one of its employees - Undersheriff Mahan - was disciplining corrections officers in an unlawful manner," Eaton said. "We view concerns raised to the government about the lawfulness of public officials' actions as implicating a matter of public interest, and thus conclude that on its face, Hoyt's speech related to a matter of public concern," the decision said.

And since County Executive Michael Breslin and Campbell both acknowledged in writing to the legislature that the policy, and any alleged waiver of it, is vague, the matter must be placed before a jury to decide, the decision stated. Both are among those expected to be called to testify.

"This is obviously a great and complete victory for Mr. Hoyt," his attorney, Bob **Keach**, said Monday. **Keach** represented Hoyt in filing the lawsuit and appealing the judgment against him. "I will be privileged still to take this case to trial and vindicate his constitutional rights," **Keach** said.

Attorney Michael Smith, who represents Albany County, said, "Obviously we are disappointed that the summary judgment in our favor was reversed. But the decision gives me no reason not to be optimistic. The court did not determine there had been any constitutional violations. Hoyt's case lives for another day, but we're prepared to go to trial."

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