

# Ruling under Fort Worth's scrutiny



## Fired worker claims whistle-blower role

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**FORT WORTH** — Nine months before Emmitt Johnson Jr. was fired from his job supervising drainage ditch-cleaning crews, his boss told him that City Hall was out to get him.

"They want to see you fail," city street division Superintendent Stanley Scott can be heard saying in a telephone conversation recorded in November 1996. "I say sue."

Scott, who complained about his job, continued: "that's the very reason I want to stick a knife in their" rear ends.

The recording, legal in Texas as long as one part is aware of the taping, may win Johnson back his \$28,000-a-year job as an assistant field operations supervisor under the state's Whistle Blower Act. Last week, a Johnson County state district judge ordered the city of Fort Worth to reinstate the municipal employee, and to pay him \$191,000 in back wages and \$55,000 in attorneys fees.

The City Council is scheduled to discuss the judgment in closed session this morning. Assistant City Attorney Elizabeth Dierdorf said the city is "not missing any appeals deadlines" and could file a motion for a new trial.

At issue is whether the city retaliated against Johnson, a former union business agent, and fired him unfairly because he represented fellow employees before the city's Disciplinary Appeals Board, said Johnson's attorneys, Art Brender and Jason C.N. Smith.

The board convenes three-member panels to hear employee grievances and recommend whether punishment was just.

From Dierdorf's perspective, the case should have been about whether Johnson was entitled to whistle-blower protection.

"Under the act, you have to show that you reported that something violated the law and that you had a reasonable basis for your belief," Dierdorf said.

"My argument was and is there was no whistle-blowing," she said. "It's an employment-at-will state. You don't even have a reason to terminate the employee."

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At his southeast Fort Worth home, Johnson displays a cherished framed diploma. It marks his 1978 graduation from a Harvard University business school labor law seminar.

When Fort Worth municipal workers formed the Association for City Employees in the early 1990s, Johnson was eager to get involved.

"I was kind of excited about it because I thought it would be an avenue to discuss issues with management like pay raises and benefits," he said.

The group included about 200 employees, President Delores Strain said.

Soon, Johnson was appealing on behalf of colleagues at the city manager-appointed Disciplinary Review Board. And he was winning less severe discipline for co-workers, he said.

Johnson earned an "outstanding" rating on his July 1996 annual evaluation, with 456 out of a possible 500 points. But by November, his boss was investigating rumors that Johnson was a workplace loan shark. The allegations were dismissed in a Dec. 3, 1996, memo issued by Scott.

That fall, Scott warned Johnson that Johnson's city career was short-lived.

Between January and March 1997, Johnson directed city crews to dump fill dirt in a colleague's land, a common city practice. But by late June, Johnson's bosses had accused him of misusing city property and of theft because the crews used a city tractor to smooth the dirt.

Johnson says that Scott had granted permission for the tractor use; the city said Scott didn't.

Scott, a city employee since 1973, referred questions to Dierdorf, Scott said, however, that he was not disciplined related to the tractor incident or to his tape-recorded comments.

But Johnson and three other employees were fired for stealing the tractor and misusing city property. One employee eventually was allowed to retire instead, and two were reinstated. Johnson alone was left without an income.

Johnson said he hopes the City Council will let him go back to work, even if he must transfer to another city department. He hasn't found steady work since he was fired.

"I'm six years from retirement and it's a good job," Johnson said. "At this stage of my life, I don't want to start over. I was already vested in my retirement..."

"I won't have a problem putting this behind me and going back to work."