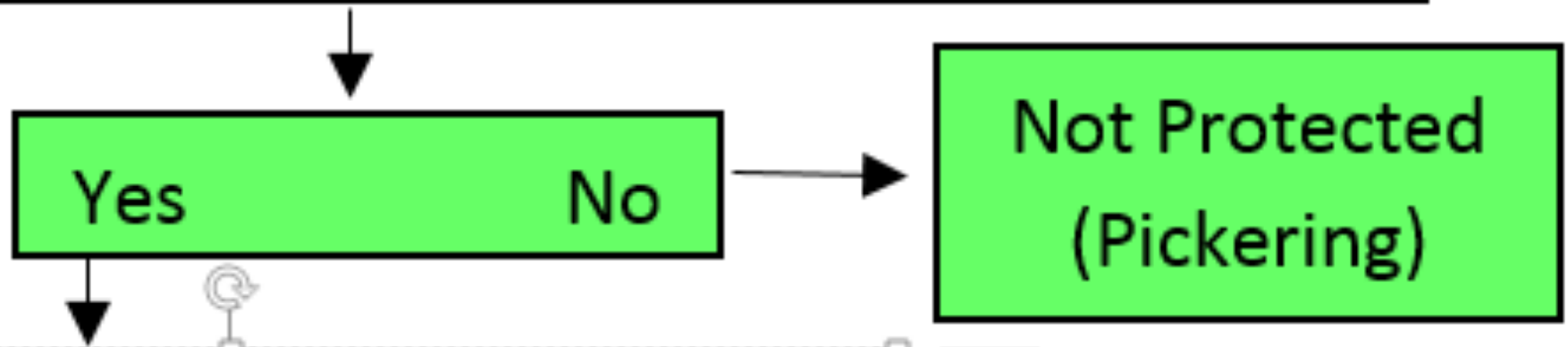


## STEP 3

Does right of employee to speak outweigh the interest of employer to maintain a proper working environment and office relationships? (Pickering and Connick) Burden of proof rests on the employee to prove prevailing interest (Connick)



# STEP 3

Is speech likely to:

- Cause a disruption?
- Create a hostile working environment/relationships?
- Interfere with efficient office operation?
- Diminish necessary loyalty and trust?

(Pickering and Tinker)

Yes

No

Not Protected

Protected

# ADDITIONAL CONSIDERATIONS

Did the speech occur at a school-sponsored event? (Hazelwood)

Yes

No

Not Protected

Protected



# ADDITIONAL CONSIDERATIONS

- Does the person have a high position that influences others? (Rankin)
- Yes → not protected
- No → protected

## **ADDITIONAL CONSIDERATIONS**

- Does the employee mix personal and professional matters on the social media site? (Spanierman)
- Yes → not likely protected
- Completely personal → likely protected

## ADDITIONAL CONSIDERATIONS

- Were the privacy settings on the social media set in such a way that restricted access to the page?
- Yes → may be protected
- No → may not be protected

## ADDITIONAL CONSIDERATIONS

- Was the speech made in an off-duty, non-work related environment? (U.S. v. National Treasury Employees Union)
- Yes → protected
- No → not likely protected

## ADDITIONAL CONSIDERATIONS

- If an employee was terminated for multiple reasons and one was improper use of social media, could you prove that you would have reached the “same decision anyway” if the social media use was removed?
- Yes → avoid litigation
- No → possible litigation