



CLIENT NEWS BRIEF

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PUBLIC EMPLOYEE'S COMPLAINT ABOUT JOB ACTIONS ARE A MATTER OF PRIVATE CONCERN, NOT PROTECTED BY FIRST AMENDMENT

In *Borough of Duryea v. Guarnieri* (June 20, 2011, ___U.S.___ (WL 2437008)), the U.S. Supreme Court addressed the issue of whether a municipality's alleged retaliatory actions against an employee gave rise to liability under the First Amendment's petition clause, and affirmed that such actions do not give rise to liability where actions related to a matter of private concern — his employment — rather than a matter of public concern.

Charles Guarnieri was fired from his position as Chief of Police for the Borough of Duryea, PA. He filed a union grievance and was subsequently reinstated. He filed another grievance after his employer, the Borough council, issued directives instructing him how to perform his duties, including limitations on his overtime. An arbitrator ordered that some of the directives be modified or withdrawn.

The employee then sued the Borough under 42 U.S. Section 1983, alleging that the directives were issued in retaliation for filing his first grievance, which violated his protected First Amendment right to "petition the government for a redress of his grievances."

A district court jury found in favor of the employee and awarded him damages of about \$100,000, plus \$45,000 in attorney's fees. The Borough then appealed and, contrary to the position of every other federal circuit court on the same issue, the Court of Appeals affirmed and held that a public employee who petitions the government through formal means is protected from retaliation, even if the petition relates solely to a private matter.

The Borough then appealed to the U.S. Supreme Court and the Court reversed the judgment. The Court held that as a general rule only petitions or speech on matters of public concern will be protected by the First Amendment, while petitions or speech on matters of private concern are not so protected.

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The Supreme Court holding in this case is consistent with current law and provides guidance for public agencies regarding what actions are appropriate when dealing with employee discipline matters. The decision places restraints on the application of the petition clause in the context of government employment which “would subject a wide range of government operations to invasive judicial superintendence.”

If you have any questions about employees’ free speech or petition rights, or management rights of public agencies generally, please contact one of our [eight offices](#) located statewide or consult our [website](#).

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