

Supreme Court to Review First Amendment Claim of Police Chief Fired After Union Grievance

On October 12, the U.S. Supreme Court granted cert in the case *Duryea Borough; Duryea Borough Council, et al. v. Charles Guarnieri*, Docket No. 09-1476. The question presented is whether or not state and local government employees may sue their employers for retaliation under the First Amendment's Petition Clause when they petitioned the government on matters of private concern.

Charles Guarnieri served as chief of police for borough of Duryea, Pennsylvania until the borough council fired him in February 2003. He filed a union grievance. After about two years was reinstated to his position as police chief but things did not go smoothly.

On his first day back the borough issued eleven directives to Guarnieri telling him what he could and could not do on the job. He filed another union grievance which led to arbitration. Ultimately, the arbitrator told Guarnieri to modify or ignore some of the directives. He continued to have disputes with council members and sued, arguing that the directives and behavior were unconstitutional retaliation for the 2003 grievance.

Guarnieri also argues that the borough's refusal to pay him for \$338.00 in overtime was done in retaliation for the grievance. The borough argued that they denied the overtime because Guarnieri did not explain why the overtime was necessary. The Department of Labor investigated and found that withholding the overtime pay was a violation of the law.

Guarnieri's claim went to a jury trial where he was awarded damages and attorney's fees. The borough appealed arguing that because his 2003 grievance was on a matter of private concern, rather than public concern, the First Amendment does not apply. The Third Circuit Court of Appeals ruled that the First Amendment does protect Guarnieri's claim even though it is a private, not a public matter.

The Third Circuit's ruling conflicts with ten other circuit court opinions. The Supreme Court has not yet set a date for oral arguments. A decision is expected by June 2011.