

## CASE SUMMARIES

By Jeffery Ortinau, J.D., Legal Advisor

Labor and Employment Law

Federal Appellate Case

### **First Amendment Does Not Protect Complaints About Lead at State Police Firing Range.**

A state police officer was assigned to manage a firing range where state police officers received firearms training and took firearms qualifications tests. Shortly after being assigned to the range, the officer began experiencing severe headaches, aching hips, and numbness and tingling in his extremities. A blood test revealed that the officer had elevated levels of lead in his blood. The officer filed a grievance with the state police union, alleging that his elevated levels of lead were a result of the range, and that the conditions at the range violated the collective bargaining agreement's safe working conditions provisions. The range was tested, and after results showed high levels of lead, it was closed for eight months for professional cleaning. The story received local media attention. After the officer was cleared to return to work, he sought a second medical opinion, which resulted in extended disability. When the officer did return, he worked only one week and again experienced symptoms that he claimed were related to lead exposure. The state police department had the officer examined by another physician, who found the officer's neurological test results to be normal and concluded that the officer could work, so long as he was not exposed to lead. The police department terminated the officer's disability benefits and ordered him to return to work. It required the officer to use personal days rather than sick time for additional leave, and paid him only for hours actually worked once his personal time was exhausted. The officer then sued under §1983 of the Civil Rights Act of 1871 alleging that the department had retaliated against him in violation of his First Amendment rights because his grievance forced the range to close and publicly embarrassed the department. The alleged retaliation included docking the officer's pay, refusals of requests to use sick leave, and misrepresenting to his co-workers that he was faking his illness. The trial court granted summary judgment to the department. The United States Court of Appeals for the Seventh Circuit affirmed, holding that although the officer's grievance constituted speech on an issue about which the public might have been interested, his purpose was strictly personal and internal to the department, and therefore not protected. A public employee who speaks publicly about a matter of public concern may have First Amendment rights against retaliation by his public employer. In this case, however, because the officer had filed an internal grievance addressing only the effects of lead contamination on him and on his work environment, the grievance did not constitute public speech addressing a matter of public concern. [\*Bivens v. Trent\*](#), 591 F.3d 555 (7th Cir. 2010).