

Ninth Circuit: Police Officer's Complaints Regarding Safety Matters are not Protected Speech

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In this case, a police officer was removed from his position on the K-9 team after it was determined that he, as well as other officers on the team, had serious performance issues that posed a significant risk to team safety. The officer then brought suit against his employer and various other officers alleging that that he was deprived of his constitutional rights in that he was retaliated against for exercising his free speech rights under the First Amendment. Essentially, the officer claimed that he was terminated because he voiced various concerns about the K-9 team's ongoing safety problems and the accidental discharge of weapons. The matter was tried to a jury, who found unanimously that the officer was retaliated against. The employer moved for a judgment as a matter of law, which was denied. The employer appealed.

Upon review, the Ninth Circuit Court of Appeals held that the evidence presented to the jury did not reasonably permit the conclusion that the employee established a retaliation claim pursuant to the First Amendment. The court found that where a public employee reports safety concerns to his supervisor pursuant to a duty to do so, that employee does not speak as a private citizen, and is thus not entitled to First Amendment protection. In reaching this conclusion, the court reversed the judgment and held that the employer was entitled to judgment as a matter of law.

Not all speech is protected, and not all adverse actions are retaliatory, as this case demonstrates. However, employers must nevertheless take caution when taking adverse employment action against an employee who has recently articulated complaints so as to avoid inference of retaliation, and, in the public sector, to avoid potential First Amendment challenges.

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