AUGUST 2025 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]


Prof. Bennett with his pet therapy dog - FRYE

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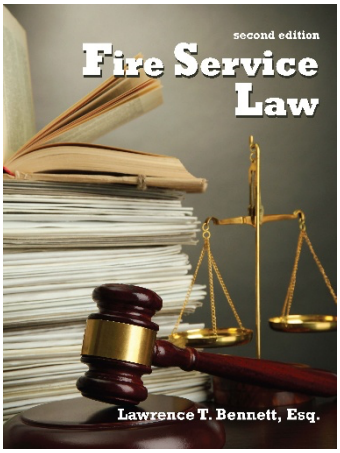

https://www.waveland.com/browse.php?t=708

21 RECENT CASES

Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

FL: EXPERT QUAL - BUTANE "MOSQUITOE SHIELD" FIRE

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IL: GENITALIA / HOMO / RACIST - TEXT MESSAGE GROUP

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MO: CITY 2022 RETIRED 2013 PROM. LIST B/C AND CAPT

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CA: CHIEF MED LEAVE / 4 SURGERIES – FIRED – JURY $4.1M

Chap. 10 – Family Medical Leave Act, incl. Military Leave

Chap. 11 – Fair Labor Standards Act

Chap. 12 – Drug-Free Workplace, inc. Recovery

Chap. 13 – EMS, incl. Comm. Param., Corona Virus

WA: SHOULDER STRAPS NOT USED – PT DEATH - $2.3M

TX: "MD" TOLD EMS NOT TREAT PT - NOT A PHYSICIAN

NY: EMS OFFICER – DIDN'T WRITE RPT CHIEF – 1-YR SUSP

Chap. 14 – Physical Fitness, incl. Heart Health

Chap. 15 – Mental Health, incl. CISM, Peer Support

IL: CHICAGO – PSYCHOLOGICAL "SUITABILITY SCREENING"

Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing

IN: FIRE CHIEF CONV. FRAUD – FD STOP ONLINE SALE PROP.

PA: FF / SEX 8th GRADER - FED. & PA JUDGES – STAY PRISON

Chap. 17 – Arbitration, incl. Mediation, Labor Relations

TX: HOUSTON - $650M BACK PAY – A/Cs SUE BE INCLUDED

Chap. 18 – Legislation

OTHER ONLINE RESOURCES

- **2025: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletters: **https://doi.org/10.7945/j6c2-q930.**

  Updating 18 chapters of my textbook, FIRE SERVICE LAW (Second Edition; 2017): **http://www.waveland.com/browse.php?t=708**

- **2025: FIRE & EMS LAW – CURRENT EVENTS**: **https://doi.org/10.7945/0dwx-fc52**

- **2025: AMERICAN HISTORY – FOR FIRE & EMS**: **https://doi.org/10.7945/av8d-c920**

File: Chap. 1, American Legal System

FL: EXPERT QUAL - BUTANE "MOSQUITOE SHIELD" FIRE

On July 28, 2025, in Jacqueline Flynn v. Thermal Repellents, Inc. and Lowe's Home Centers, LLC, U.S. District Court Judge Paul G. Byron, United States District Court for Middle District of Florida (Orlando Division) denied the defense motion to exclude the testimony of Plaintiff's cause and origin expert, Mr. Patrick B. Dugan, CFI concerning porch fire in 2021. The expert followed 921, Guide for Fire and Explosion Investigations. The lawsuit involves a "Thermacell Patio Shield" – per Lowe's advertisement, it "provides a 15 - foot zone of protection against mosquitoes" and is "powered by a butane cartridge, so you never need to plug in to charge or use batteries to repel mosquitoes." Plaintiff purchased the Thermacell Patio Shield from Lowe's, arriving home around 5:30 p.m, and around 7:15 p.m., after her son set up the device, Ms. Flynn placed it on a glass-topped wicker table on the second-floor balcony and turned it on. She went downstairs to prepare dinner for her family, and aound 8:00 p.m., someone saw flames or an orange glow outside. When she went to investigate, Ms. Flynn saw flames coming from the second-floor balcony. THE COURT HELD: "Mr. Dugan's investigation and analysis easily satisfy *Daubert's* mandate that an expert employ a 'sufficiently reliable' methodology. His opinions are based on sufficient facts and data; he does not unjustifiably extrapolate his research to reach an unfounded conclusion; he considered—and ruled out—contradictory data (other known ignition sources); his analysis is based on objective data including burn patterns, weather, timing, and available ignition sources, and Mr. Dugan is as careful as an expert would be in conducting professional work outside the context of paid litigation."
https://ecf.flmd.uscourts.gov/cgi-bin/show_public_doc?2023-01890-113-6-cv

THE COURT WROTE:

> "Mr. Dugan's analysis of the cause and origin of the fire that damaged the Plaintiff's home is outlined in his expert report and deposition…. In his report, Mr. Dugan states that he employed generally accepted standards, customs, and practices regarding fire

> investigations, including National Fire Protection Association ('NFPA') 921, Guide for Fire and Explosion Investigations…. His analysis includes documenting the fire scene and identifying burn patterns, such as the area of greatest degree of burn, depth of charring, height of the burn, fuel load, time factors, the effect of fire suppression activities on fire scene preservation, and preferential pathways for the spread of fire.
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> ***
>
> The site inspection was followed by a laboratory examination of fire debris in July 2021 and January 2024…. While Mr. Dugan did not find remnants of the Patio Shield, he explained that its components are plastic, metal, and butane, which is highly flammable, and that there could be microscopic ceramic components…. Moreover, the firefighters used one and ¾ inch hose lines to suppress the fire, which generated 150 gallons of water per minute at 100 pounds of nozzle pressure…. Under such pressure, the components of the Patio Shield could disperse widely…. Mr. Dugan also factored weather conditions into his analysis and determined that an eight-mile-per-hour wind was present and sufficient to spread the fire."

Legal lesson learned: The expert followed NFPA 921, Guide for Fire and Explosions Investigations.

> Note: See the U.S. Supreme Court decision in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993); https://supreme.justia.com/cases/federal/us/509/579/
> "An expert may testify about scientific knowledge that assists the jury in understanding the evidence or determining a fact in issue in the case. Factors that a judge should consider include whether the theory or technique in question can be and has been tested, whether it has been subjected to peer review and publication, its known or potential error rate, the existence and maintenance of standards controlling its operation, and whether it is widely accepted in the relevant scientific community.

File: Chap. 1 – American Legal System

IL: COMMERCIAL / MULTI-FAMILY ALARMS - DIRECT TO 911

On July 22, 2025, in Alarm Detection Systems, Inc, et al. v. Village of Schaumburg, the United States Court of Appeals for 7th Circuit (Chicago) held (3 to 0) that the Village had right to change alarm code ordinance in 2016, requiring by August 31, 2019 that all multi-family dwellings and commercial establishments to install system reporting directly to 911 dispatch, instead of to an alarm company center. Four alarm companies sued, claiming loss of 250 customers, since the only direct reporting system was owned by Tyco/Johnson Controls which had a contract with the Northwest Central Dispatch System. Trial court dismissed the lawsuit since no proof customers breached their contracts, they merely didn't renew with the four companies. THE COURT HELD: "The Alarm Companies appealed, and we reversed in part, holding that they had stated a Contracts Clause claim. Alarm Detection Sys., Inc. v. Vill. of Schaumburg ("Alarm Detec-

tion I"), 930 F.3d 812, 823–24 (7th Cir. 2019). We cautioned, however, that to ultimately prevail, the Alarm Companies would need to show the Ordinance caused their customers to prematurely cancel existing contracts, not just decline to renew them. See id. The district court granted the Village's motion in a thorough written opinion. It reasoned that the Alarm Companies had offered no admissible evidence substantiating their claim that the Ordinance caused customers to breach contracts with them. *** They do not reveal which customers breached, when they breached, how the companies were notified of the breaches, or the reasons given for the breaches—all information a reasonable jury would need to understand how the Alarm Companies reached their conclusion that breaches occurred. Without any of this basic information, the Alarm Companies' bare allegations are too conclusory to carry their burden at summary judgment." https://cases.justia.com/federal/appellate-courts/ca7/24-3163/24-3163-2025-07-22.pdf?ts=1753214416

THE COURT WROTE:

> "Then, in 2016, Schaumburg's fire chief recommended that all multifamily and commercial properties in the Village shift to the direct connect model. The fire chief gave three justifications for the change. First, he reasoned that the direct connect model would reduce fire department response times because it would eliminate the need for supervising stations to place phone calls to NWCDS. Second, he explained that a direct connect system would increase the Village's awareness of out-of-service alarm systems because NWCDS would receive "trouble" and "supervisory" signals indicating system outages, not just active alarms. The fire chief's third justification was financial. NWCDS had an exclusive contract with Tyco/Johnson Controls, another fire alarm detection company. If the Village adopted a direct connect model, Tyco would pay NWCDS $23 per month per customer, and NWCDS would credit an equal amount to the Village, saving the Village roughly $300,000 a year.
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> ***
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> The uncontroverted evidence here shows that citizen safety, and perhaps Village finances, motivated the adoption of the Ordinance, not a desire to harm the Alarm Companies' businesses. Indeed, the Alarm Companies all but concede as much. They protest only that if safety is the Village's goal, the Ordinance is poorly crafted. This line of argument cannot save their claim. The tort of interference with prospective economic advantage does not countenance judicial review of the wisdom of the Village's policy choice. The proper forum for that debate is a Village Board meeting or a local election, not a federal court."

Legal lesson learned: Public safety prevails over alarm company's loss of profits.

File: Chap. 1, American Legal System

TX: CITY DEMOLISHED HOUSE W/O NOTICE – 1-YR FIRE

On July 18, 2025, in Michael Ramirez v. City of Texas City, U.S. District Court Judge Jeffrey Vincent Brown, United States District Court for Southern District of Texas (Galveston), after a one-day bench trial, held that while City violated property owner's due process rights on failing to notify him that the house will be demolished, the owner is only entitled to $1 in nominal damages, and nothing for rehab materials in the house, and no attorney fees, since the house was not rehabbed for over a year. The electrical fire was on April 10, 2022, with substantial damage; on April 13th, 2022, the city sent him a Notice of Substandard Structure and of Abatement; Ramirez retained Michael Gaertner, a licensed architect, to help him obtain a permit to begin property renovations, but failed to provide a report from a structural engineer. Couple of break-ins; The damaged property languished without repair for about a year until its demolition on or around May 9th, 2023. THE COURT HELD: "Based on the fact findings and legal conclusions set forth above, the court concludes that although Ramirez's fire-damaged home was 'substandard' and a public nuisance, it was not a clear and imminent danger that justified Texas City's emergency demolition actions. Because Ramirez was not afforded an opportunity to be heard, the city deprived him of due process. Ramirez is therefore awarded $1 in nominal damages. Each party shall bear his or its own attorney's fees and costs."
https://cases.justia.com/federal/district-courts/texas/txsdce/3:2023cv00356/1939756/67/0.pdf?ts=1752929790

THE COURT WROTE:

> "Because the city did not afford Ramirez an opportunity to be heard, his due-process rights were violated. The evidence does not demonstrate that the property presented a clear and imminent danger requiring emergency demolition. Not only did the court hear credible testimony that the property's danger was not imminent, but the city's fire marshal conceded its threat was merely 'potential.' And if the property truly presented a clear and imminent danger, the city surely would not have waited an entire year to demolish it.
>
> ***
>
> Ramirez is not entitled to compensatory damages for the loss of any personal property inside the nuisance…. Accordingly, the court awards Ramirez $1 in nominal damages.
>
> ***
>
> Finally, attorney's fees. Counsel for Ramirez filed an affidavit on attorney's fees, in which she avers her reasonable and necessary attorney's fees are $57,880.80…. Applying § 1988(b) and the applicable case law, the court finds that Ramirez has not secured a victory that entitles him to prevailing-party status and attorney's fees."

Legal lesson learned: Give property owner written notice of plan to demolish. While the City only has to pay property owner $1, the City has had to incur legal expenses simply because it failed to give notice of planned demolition.

File: Chap. 1, American Legal System

LA: WIRE FRAUD – LIED TO INSUR. CO. – FIRE "ELECTRICAL"

On July 15, 2025, in United States of America v. Saleem Yousef Dabit, the 5th Circuit United States Court of Appeals (New Orleans) held (3 to 0) that a jury properly convicted the owner of wire fraud involving insurance claim for Jan. 1, 2019 fire at a warehouse - Sam's Men's Fashions. Dabit was indicted on (1) one count of use of fire to commit a felony (gasoline from at least 15 containers, which resulted in a massive fuel-air explosion), (2) one count of use of fire to maliciously damage property, and (3) one count of wire fraud on Hanover Insurance Company (falsely told insurance company that fire investigators said it was electrical). The jury found him not guilty of first two counts. On July 25, 2024 he was sentenced to 12 months and one day in jail; and on Aug. 26, 2024 the trial court judge denied his motion for release pending appeal. https://www.casemine.com/judgement/us/66cea7f23f1f7c7a89e60871 . THE 5th CIRCUIT HELD: "Here, a rational jury could have found beyond a reasonable doubt that Dabit, with specific intent to defraud, engaged in a scheme to defraud the Hanover Insurance Company using wire communications…. Even if there was insufficient evidence that Dabit set fire to the warehouse, there was sufficient evidence that Dabit lied to Hanover when he said that firefighters told him the fire was probably electrical. Multiple firefighters and certified fire investigators testified that no firefighter or investigator told Dabit that. And we are not entitled to second-guess any credibility determinations the jury might have made in this respect." https://www.ca5.uscourts.gov/opinions/unpub/24/24-30496.0.pdf

THE COURT WROTE:

> "In fact, there was substantial evidence Dabit set fire to the warehouse. First, investigators found 15 gas cans strewn about the warehouse, suggesting the fire was arson, not an accidental electrical fire. Moreover, there was only one key to the warehouse. Without that key, it was nearly impossible to enter. Given the extensive security features, firefighters needed specialized power tools to enter to put out the blaze. And neither firefighters nor investigators found any evidence that anyone else had somehow breached the building.
>
> Next, Dabit had a motive…. Dabit had over $1.2 million in debt at the time of the fire. The insurance proceeds—which covered over $1.5 million—may well have been critical for his ability to pay back that debt.
>
> Finally, other suspicious activity leading up to the fire points to Dabit as the culprit. For instance, beginning just one week before the fire and continuing up until the day before, Dabit conducted an inventory with an employee. But that employee explained to the jury that in two years of working for Dabit, she had never conducted such an inventory.
>
> Additionally, the fire was started while Dabit's family just so happened to be away on vacation—and thus not in their home adjacent to the warehouse. Assuming Dabit does not possess a touch of the prophetic, the timing of these events is oddly suspicious. Much

more could be said. But that should suffice to show that a reasonable jury could have concluded that Dabit himself set fire to the warehouse."

Legal lesson learned: Jury found him guilty of scheme to defraud insurance company, even if it did not find him guilty of arson.

Note: See Nov. 14, 2009 U.S Department of Justice Press Release, "Baton Rouge Man Indicted for Use of Fire to Commit a Felony, Use of Fire to Maliciously Damage Property, and Wire Fraud." https://www.justice.gov/usao-mdla/pr/baton-rouge-man-indicted-use-fire-commit-felony-use-fire-maliciously-damage-property

File: Chap. 3, Homeland Security

CA: AMMO PURCHASES – CA BACKGROUND CHECKS

On July 24, 2025, in Kim Rhode, et al. v. Rob Bonta, in his official capacity as Attorney General of the State of California, the U.S. Court of Appeals for 9th Circuit (San Francisco) held (2 to 1) that California's "first-of-its-find" ammunition background checks before each ammo purchase violates the Second Amendment. THE COURT HELD: "We hold that California's ammunition background check regime is unconstitutional, and we affirm the district court's grant of a permanent injunction." https://cdn.ca9.uscourts.gov/datastore/opinions/2025/07/24/24-542.pdf

THE COURT WROTE:

"In 2016, California voters approved Proposition 63, which created a background check regime for ammunition sales. This regime went into effect July 1, 2019. California requires residents to purchase ammunition through licensed ammunition vendors in face-to-face transactions. See Cal. Penal Code § 30312(a)–(b)…. The sale of ammunition must be approved by the California Department of Justice (referred to here as the 'department') 'at the time of purchase or transfer, prior to the purchaser or transferee taking possession of the ammunition.' Id. § 30370(a).

***

In 2018, lead plaintiff Kim Rhode, who has won Olympic medals for trap and skeet shooting, filed this pre-enforcement action along with six other California residents, three out-of-state ammunition vendors, and the California Rifle & Pistol Association, Inc…. Following the hearing, the district court permanently enjoined California from enforcing the ammunition sales background check provisions….

***

The three leading Supreme Court cases interpreting the Second Amendment, *Heller, Bruen*, and *Rahimi,* all involve facial challenges to laws restricting Second Amendment rights…. In *Heller* (6/26/2008) the Supreme Court considered a facial challenge to Washington, D.C.'s law banning handgun possession in the home and determined that the

> law was facially unconstitutional. 554 U.S. at 635…. Applying this framework, *Bruen* (6/23/2022) held that a licensing regime that issues carry permits only to applicants who show a special need for self-defense violates the Second Amendment.… *Rahimi* (6/21/2024) stated that § 922(g)(8)(C)(i) [prevents individuals under domestic violence restraining orders from possessing firearms] was lawful as applied to the challenger himself.
>
> ***
> By subjecting Californians to background checks for all ammunition purchases, California's ammunition background check regime infringes on the fundamental right to keep and bear arms. Because California's ammunition background check regime violates the Second Amendment, the district court did not abuse its discretion in granting a permanent injunction."

Dissent:

> "California, which has administered the scheme since 2019, has shown that the vast majority of its checks cost one dollar and impose less than one minute of delay."

Legal lesson learned: California may appeal to U.S. Supreme Court (but this requires 4 Justices to agree to hear the appeal). It's time for Congress to close "loopholes" in firearm laws; quick background checks to buy ammo seems like an excellent law.

File: Chap. 4 – Incident Command

MO: CHIMNEY FIRE – FF RIGHT TO ENTER / CUT THE ROOF

On July 25, 2025, in Gary Gibbs v. City of Sikeston, et al., Senior U.S. District Court Judge Stephen N. Limbach, Jr., United States District Court for Eastern District of Missouri, granted defense motion to dismiss the lawsuit filed pro se 9no attorney) by the homeowner. During the morning of Jan. 8, 2021, the homeowner lit a fire in his fireplace and tan began a Zoom call with his employer. An hour later a neighbor told him his chimney was smoking; Gibbs got a water hose and extinguished fire. Someone called 911; he told police officer to cancel the fire department and leave his property; the officer refused, ordered him out of his home and fire department made entry over his objections. THE COURT HELD: "Even if there was no 'visible' fire when the first responders arrived after the 911 call, they had a duty to investigate for the public's safety."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IjaUc7vARjVQ5RdI8he5wvr8CafQJWJ892rNp3h%2B5maD?utm_medium=email&_hsenc=p2ANqtz-9yeYIX9OvUysaWxw5S4NvX23y7n2bM1DKt1TGid5472BDGnDkJHyEbdkJMIqnakyd6KQCi4nGEAs4FOkTAkAKzxnAO3A&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

"On the morning of January 8, 2021, Gibbs lit a fire in his fireplace and then began a Zoom meeting with his employer…. About an hour later, someone came to his door and told him that his chimney was smoking…. Gibbs extinguished the fire with a water hose…. A few minutes later, Officer Kim Scott arrived in response to a 911 call reporting a possible fire at Gibbs's residence…. Gibbs told Scott that the fire had been extinguished and that the fire department did not need to respond…. Scott said the fire department was en route and denied Gibbs access to his residence…. Gibbs repeatedly asked Scott to leave his property, but Scott refused to do so.

***

[Plaintiff alleged in his complaint that] approximately 25 minutes after all emergency vehicles arrived and 10 minutes after flames appeared, 'the team' began spraying water…. After the fire was extinguished, 'a second crew' climbed onto the roof and cut a 10-by-20-foot opening to access the attic…. 'Several firefighters' entered the attic and continued cutting into the interior structure.

***

The first responders had reason to believe that a fire might still be present. Additionally, 'an immediate threat that the blaze might rekindle presents an exigency that would justify a warrantless and nonconsensual post-fire investigation.' *Michigan v. Clifford*, 464 U.S. 287, 293 n.4 (1984). The entry onto Gibbs's property and the subsequent fire investigation did not violate the Fourth Amendment."

Legal lesson learned: Fire Department had lawful right to enter property, cut roof looking for extension of fire and prevent rekindle.

Note: Read the U.S. Supreme Court decision in Michigan v. Clifford (1984). https://supreme.justia.com/cases/federal/us/464/287/

"A burning building of course creates an exigency that justifies a warrantless entry by fire officials to fight the blaze. Moreover, in *Tyler,* we held that, once in the building, officials need no warrant to remain …for 'a reasonable time to investigate the cause of a blaze after it has been extinguished.' … however, reasonable expectations of privacy remain in the fire-damaged property, additional investigations begun after the fire has been extinguished and fire and police officials have left the scene generally must be made pursuant to a warrant or the identification of some new exigency. The aftermath of a fire often presents exigencies that will not tolerate the delay necessary to obtain a warrant or to secure the owner's consent to inspect fire-damaged premises….Because determining the cause and origin of a fire serves a compelling public interest, the warrant requirement does not apply in such cases

File: Chap. 5, Emergency Vehicle Operations

TX: AMBUL BACKED CAR – AVOID FIRE TRUCKS - IMMUNITY

On July 22, 2025, in City of Houston v. Maraunjanique Smallwood, the Court of Appeals of Texas, Fourteenth District held (3 to 0) held that trial court should have granted the City's motion for summary judgement, under the emergency exception of waiver of immunity under the Texas Torts Claims Act. The ambulance driver, returning to their station, saw flames coming from a building about seven blocks away – as they went north on two lane road, they had to stop and back up for two fire engines responding to the fire. They collided with Smallwood's vehicle behind them. THE COURT HELD: "We conclude the City established the TTCA's emergency exception applies to Smallwood's claims against the City as a matter of law and that Smallwood failed to raise a fact issue as to whether the City's immunity was waived. *** This evidence established that Moncivais was reacting to an emergency situation when he reversed the ambulance and collided with Smallwood." https://cases.justia.com/texas/fourteenth-court-of-appeals/2025-14-24-00312-cv.pdf?ts=1753189995

THE COURT WROTE:

> "On April 2, 2021, [Captain Edwin] Moncivais was driving an ambulance to his HFD station, accompanied by paramedic Stuart Whisler ('Whisler"), when Whisler 'noticed a significant amount of flames bellowing out of building located approximately seven city blocks away from our location.' Based on the location of the flames, Moncivas 'knew that the flames would be in a highly populated residential area.' Moncivais listened to the radio and did not hear any communications concerning a response to the fire, indicating it had not yet been reported, and he rolled down the ambulance's windows to listen for the sound of responding units but did not hear any sirens or see any emergency lights. Moncivais believed their assistance 'would be necessary to preserve the life of the residents and properties in the area.' Moncivais thus decided to drive the ambulance towards the fire and attempt to locate it.
>
> In his attempt to locate the fire, Moncivais drove north on Live Oak Street, 'which is a very narrow street, with one north bound and one south bound lane.' As Moncivais approached the corner of Southmore Street and Live Oak Street, he encountered two firetrucks with their lights and sirens activated attempting to turn south onto Live Oak Street from Southmore Street, but the ambulance's position and presence prevented the firetrucks from having ample room to maneuver the turn. The firetrucks activated their airhorns several times, indicating to Moncivais that they were requesting vehicles in their path yield the right of way immediately. At this point, Moncivais reversed the ambulance to allow for the passage of the firetrucks and in doing so struck Smallwood's vehicle, which was behind the ambulance in the same lane of travel on Live Oak Street.
>
> ***
> Here, Moncivais's affidavit provides his ambulance was blocking the path of two firetrucks that had their lights and sirens on and that he was unable to move the

ambulance anywhere but backwards. Moncivais states that he surveyed his surroundings and checked his rearview mirrors and 'noticed that there were no cars behind me.' Moncivais also asked Whisler to check that the path behind the ambulance was clear, and Whisler confirmed that it was. Moncivais states that he reversed the ambulance 'in a slow speed of approximately 2-5 miles per hour' with the reverse lights and the warning sounds on the back of the ambulance on.

> 'With my emergency lights activated, and due to the pending emergency vehicle in front of me, I placed my Medical Unit in reverse, which activated the reverse lights and warning sound on the back of the unit. . . . There were no vehicles in the roadway behind Ms. Smallwood, and Ms. Smallwood did not yield the right of way, nor did she respond to the ensuing emergency vehicles lights, siren[,] and airhorns.'

***

Smallwood did not dispute in the trial court that Moncivais was responding to an emergency call or reacting to an emergency situation. See Tex. Civ. Prac. & Rem. Code Ann. § 101.055. Instead, Smallwood only argued that a fact issue existed 'as to whether or not . . . Moncivais [w]as properly responding to an emergency call – e.g., using flashing lights and sirens – at the time he backed into [Smallwood's] vehicle.' (emphasis added).

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The City's motion for summary judgment argued that Moncivais was responding to an emergency call *or* reacting to an emergency situation, and thus the emergency exception applied.

***

This evidence established that Moncivais was reacting to an emergency situation when he reversed the ambulance and collided with Smallwood. As no evidence raised a material fact question on the issue, we conclude that the City's evidence established that Moncivais was reacting to an emergency situation when he reversed the ambulance and collided with Smallwood."

Legal lesson learned: Immunity statute protects City from liability in emergency situation, even if ambulance did not activate siren or emergency lights.

File: Chap. 5, Emergency Vehicle Operations

CO: AMBUL - ICE - AUTOMATIC CHAIN SYSTEM - IMMUNITY

On July 3, 2025, in Jeffrey Malott v. Town of Palisade Fire Department**,** the Colorado Court of Appeals, Division IV. Held (3 to 0) that trial court properly dismissed the lawsuit under emergency response provision of the Colorado Governmental Immunity Act [CCIA]; ambulance driver activated the system, no proof it didn't deploy. Early on October 28, 2019, firefighter

Corey Massey was driving Ambulance 41 responding red lights and siren, eastbound on I-70, for a roll-over accident. The weather was poor, and the road conditions were icy. The ambulance was acquired in 2018 with automatic chain system that could deploy chains on the ambulance's tires to help with traction during adverse weather conditions; the first FD vehicle with this system and Massey had never been trained on its use. He drove on the right shoulder, 5 to 10 mph, to pass stopped traffic; deployed the chain system – didn't hear or fell anything – and slid into the right side of the Plaintiff's vehicle. THE COURT HELD: "Malott contends that the CGIA's waiver of immunity for operation of a motor vehicle is broad and encompasses vehicle maintenance. Specifically, he asserts that the emergency vehicle exception doesn't even apply here because the Fire Department's failure to maintain the automatic chain system occurred before any emergency and, therefore, the Fire Department waived its immunity. We disagree…. The legislature created the emergency vehicle exception to immunize public employees from tort liability in situations requiring an immediate response…. Here, Massey was responding properly and lawfully to precisely the type of emergency situation the legislature envisioned when it created the emergency vehicle exception. The district court found that Massey activated Ambulance 41's lights and sirens, acted with due regard for Malott's safety, and did not endanger life or property, and that there was no evidence indicating that he was careless when responding to the rollover accident. Massey's response fits squarely within the CGIA's requirement that the operator of an emergency vehicle respond to an emergency with the vehicle's lights and sirens on…. We, therefore, conclude that because Massey operated Ambulance 41 properly and lawfully while responding to the emergency rollover accident, the emergency vehicle exception applies, and the Fire Department is immune under the CGIA. The district court properly dismissed Malott's case under C.R.C.P. 12(b)(1)." https://cases.justia.com/colorado/court-of-appeals/2025-24ca1544.pdf?ts=1751643339

THE COURT WROTE:

> [Plaintiff in court hearing called as a witness former Fire Chief Rich Rupp as a witness.] "Rupp testified that only Ambulance 41 had an automatic chain system but that there was no training or maintenance in place for the system because the Fire Department had never had an ambulance with such a system before. He did note, though, that every time he inspected the underside of Ambulance 41, he would examine the automatic chain system for defects and to make sure that the chains still rotated. Rupp further testified that he had never tested the automatic chain system in a real-world scenario and that he had never needed to use manual or automatic chains to respond to an emergency during his twenty-five-year tenure with the Fire Department. Rupp also testified that after the accident, Ambulance 41 was brought to a vehicle bay where Rupp activated the automatic chain system and heard the chains hit the ground.
>
> ***
>
> [Plaintiff also called as a witness Kyle Heer — an expert in engineering and mechanical design.] Heer reviewed evidence pertaining to the accident and analyzed the weather conditions on the morning of the accident, but he did not inspect the scene of the

accident, Ambulance 41, or the automatic chain system. Heer testified that although he had never worked on or used an automatic chain system, he had seen them in use on other vehicles while those vehicles were driving. Heer opined that the Fire Department failed to adequately maintain Ambulance 41's automatic chain system and that but for the failure to maintain the system, the chains would have deployed, and the ambulance would not have slid into Malott's car.

***

Malott contends that the CGIA's waiver of immunity for operation of a motor vehicle is broad and encompasses vehicle maintenance. Specifically, he asserts that the emergency vehicle exception doesn't even apply here because the Fire Department's failure to maintain the automatic chain system occurred before any emergency and, therefore, the Fire Department waived its immunity. We disagree.

***

The district court found that Massey activated Ambulance 41's lights and sirens, acted with due regard for Malott's safety, and did not endanger life or property, and that there was no evidence indicating that he was careless when responding to the rollover accident."

Legal lesson learned: When acquiring an emergency apparatus with an automatic chain system, train your personnel in its operation and establish a documented maintenance program.

File: Chap. 6, Employment Litigation

IL: FF BACK INJURY – NOT CREDIBLE CLAIM

On July 25, 2025, in Nicholas Witteman v. Brookfield Firefighters' Pension Fund, the Court of Appeals of Illinois, First District, Sixth Division held (3 to 0) that the Board properly denied the firefighter a line-of-duty pension; only receive disability pension. His credibility was challenged by testimony of fellow firefighters; patient used Hoyer Lift to put himself on stretcher; firefighter [and union President] never said he was injured, went on two more runs. THE COURT WROTE: "The Board concluded that Witteman was disabled but, based on his demeanor and credibility, as well as the testimony of others, determined that he did not injure his back by lifting the patient and, thus, unrelated to his job." https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/f07642b7-1e8b-438e-bd0d-cfbc858fbc9b/Witteman%20v.%20Brookfield%20Firefighters%20Pension%20Fund%202025%20IL%20App%20(1st)%20241278.pdf

The Court wrote:

> "Witteman testified that early in his 24-hour shift on April 14, 2020, he and his partner, Brad Pacyga, responded to a call at a single-family home with a wheelchair ramp. The patient, who had paraplegia with diabetes, weighed between 350 and 400 pounds. A second ambulance, with firefighters Charles Romeo and Mark Pollard, and a fire truck driven by Matthew Dubik also responded. The team was familiar with the patient and anticipated needing extra help due to his weight and health condition.
>
> ***
> Bradley Pacyga, Witteman's partner, testified that the patient used a Hoyer lift to move himself onto the stretcher because he did not want anyone to touch him. Once he got his upper body and hips onto the stretcher, Pacyga and Pollard, who were at the patient's feet, moved them over. Pacyga did not see Witteman lift the patient.
>
> ***
>
> Witteman did not cry out or show signs of pain, explaining that he has a high pain tolerance and was focused on the patient. He did not tell his coworkers that he was injured. After the call, he and Pacyga returned to the fire station, but Witteman did not inform the lieutenant on duty or anyone else during the remainder of the shift that he had hurt his back. *** Witteman could not remember what he did the rest of his shift but acknowledged he went on at least two more calls.
>
> ***
>
> To further explain his failure to report his injury, Witteman said '[a]t the time I was not talking to my lieutenant, nor my other shift mate due to very disparaging things that they had said and/or done to me.' He described Lieutenant Dubik as one of 'the most despicable people in the world,' and he did not think he could trust or talk to Dubik or Pacyga. He said the dispute arose when Dubik and Pacyga told the fire chief that he was not eating meals with his fellow firefighters and needed a psychological evaluation. This dispute prompted him to ask for a shift change, which was pending at the time.
>
> ***
> The Board voted 3 to 1 to deny a line-of-duty disability pension but unanimously awarded a non-duty pension. The Board issued a 66-page written decision and order, which found that Witteman failed to prove that lifting and transporting the patient was the cause of his disability."

Legal lesson learned: If injured on the job, inform your crew and your officer and promptly complete an injury form.

IL: FF – 8th BACK INJURY – COURT AWARDS L-O-D PENSION

On July 24, 2025, in Steven Boyles v. Bolingbrook Firefighters' Pension Fund, et. al, the Court of Appeals of Illinois, Third District held (2 to 0; unpublished decision) that the Pension Board improperly denied line-of-duty pension. The firefighter's back surgeon reported injury was caused by lifting patient; but Board instead relied on worker's comp doctor's conclusion ("muscle strain') and IME doctors (degenerative "bulging disc"). The Court reviewed each of his eight well documented on-duty back injuries, including the September 24, 2021 injury lifting a patient off a driveway, reversed the Board and trial court judge, and ordered the Pension Board to award Boyles a line-of-duty disability pension. THE COURT HELD: "We also note that the record reflects that, with only one exception, every incident that resulted in an injury or problem in Boyles's lower back over the years occurred while he was performing his duties as a firefighter." **https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/292238a1-8503-443d-b999-35a0256a802e/Boyles%20v.%20Bolingbrook%20Firefighters%20Pension%20Fund%202025%20IL%20App%20(3d)%20240548-U.pdf**

The Court wrote:

> "Boyles worked as a firefighter-paramedic for the Village of Bolingbrook (Village) for over 20 years. Over the course of his career, Boyles injured his lower back several times while he was on duty. On September 24, 2021, Boyles injured his lower back again at work, while helping to lift an injured person on a stretcher. That was the last time that Boyles worked full and unrestricted duty as a firefighter for the Village. *** Shortly before 4 p.m., Boyles was dispatched to his approximately sixth call of the day— a medical emergency where an elderly woman had fallen in her driveway and had possibly broken her hip or leg. Upon arriving at the scene, Boyles and the other emergency personnel saw that the woman was lying in the driveway. As Boyles was helping to lift the woman with a scoop stretcher, which was pretty low to the ground, he felt a twinge of pain in his lower back. When Boyles stood up, the pain increased dramatically and radiated down into his left leg. *** A computed tomography (CT) scan was conducted of Boyles's lower back. The scan showed that Boyles had three small bulging disks—one at the L2-L3 level, one at the L3-L4 level, and one at the L5-S1 level. *** In April 2022, Boyles filed his application for a disability pension. The following month, Boyles underwent the four-part surgery that Ross had recommended, even though the workers' compensation insurer had not approved the procedure, because Ross felt that it was imperative to get the pressure off the nerve in Boyles's lower back. *** In December 2022, a functional status evaluation was conducted that showed that Boyles met less than 50% of the job demands required to function as a firefighter. *** Therefore, under the unique facts of the present case, we must conclude that the Board's finding on causation was against the manifest weight of the evidence. Accordingly, we reverse the Board's decision and remand this case to the Board with directions to award Boyles a line-of-duty disability pension."

Legal lesson learned: The firefighter had a well-documented history of on-the-job back injuries.

File: Chap. 7, Sexual Harassment / Hostile Work Atmosphere

IL: GENITALIA / HOMO / RACIST - TEXT MESSAGE GROUP

On July 23, 2025, in David Stieglitz v. City of Chicago, et al., U.S. District Court Judge Franklin U. Valderrama, United States District Court for Northern District of Illinois (Eastern Division) denied the City's motion to dismiss retaliation lawsuit; pre-trial discovery will now proceed for plaintiff (who is white). The plaintiff has been a Chicago firefighter since 2005; in July 2000 he was added to a text message group from his firehouse; the chat excluded female firefighters, and included pictures of genitalia, homophobic and racist texts and inappropriate gifs. He also complained about inappropriate conduct directed at his minor son during a visit to the firehouse, during which he was asked about his sexual orientation. He asked his Lieutenant and his Battalion Chief to be removed from the text message group and stop the conduct, but they took no action. In 2021 and 2022 he filed complaints with City EEOC and OIG, and retaliation started. His lawsuit claims: "he was ostracized by his coworkers, threatened with discipline for reporting illegal behavior, brought up on false internal review charges, the station cook spit on his plate at dinner, he had doors slammed in his face, and he was transferred from his assigned house." THE COURT HELD: "The Supreme Court recently clarified that to establish an adverse employment action under Title VII, a plaintiff need only show 'some harm' respecting an identifiable term or condition of employment, rather than a 'significant' disadvantage. *Muldrow v. City of St. Louis*, Mo., 601 U.S. 346, 355 (2024). https://www.courthousenews.com/wp-content/uploads/2025/07/illinois-court-allows-firefighter-emt-to-sue-over-sexually-hostile-environment.pdf

The COURT WROTE:

> "After filing formal complaints with the City's Department of Human Resources Diversity and Equal Employment Opportunity Division (EEO Office) and the Office of Inspector General (OIG) in 2021 and 2022, Stieglitz maintains that he experienced retaliation, including ostracism, disciplinary threats, false allegations, involuntary transfers, and ultimately a retaliatory arrest. SAC ¶¶ 34-41, 47-51, 58-59.
>
> ***
> From Defendants' perspective, Stieglitz's assertions of being ostracized, accused of dereliction of duty, and being subjected to rude comments are not actionable, as they constitute petty slights or minor annoyances. *Id.* at 11. Nor does his reassignment to a

work location further from his residence rise to the level of a materially adverse employment action, submit Defendants. *Id.* Stieglitz disagrees, asserting that all that he is required to allege are adverse acts that would dissuade a reasonable employee from engaging in protected activity. Resp. City at 6 (citing, *inter alia*, *Harris v. City of Chicago,* 479 F.Supp.3d 743, 751 (N.D. Ill. 2020)). And he has done so. The Court agrees with Stieglitz."

Legal lesson learned: Fire Station text message groups, like other forms of communication, can lead to litigation. Under the U.S. Supreme Court's April 17, 2024 decision in *Muldrow v. City of St. Louis,* lawsuits claiming retaliation need only allege "some harms" to proceed with pre-trial discovery.
https://www.supremecourt.gov/opinions/23pdf/22-193_q86b.pdf

Note: Plaintiff in 2017 filed an EEOC complaint and then sued the City, claiming racial discrimination (he is white) about his Black Captain assigning two additional firefighters to drive Truck 19. The trial court judge after pre-trial discovery granted summary judgement to the City. On July 12, 2022, the U.S. Court of Appeals for 7th Circuit (Chicago) held that his race discrimination case was properly dismissed.
https://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2022/D07-12/C:21-2784:J:PerCuriam:aut:T:npDp:N:2902357:S:0

"David Stieglitz, a Chicago firefighter, sued the City of Chicago under Title VII of the Civil Rights Act of 1964 for race discrimination and retaliation. He alleged that his captain deprived him of lucrative opportunities to drive a fire truck because of his race (White) and that, after he protested, the Chicago Fire Department retaliated against him by briefly suspending him from driving. The district court granted the City's motion for summary judgment, concluding that Stieglitz lacked evidence to dispute the City's non-discriminatory reasons for scheduling multiple drivers and for the suspension. Because a jury could not reasonably infer from the evidence any intent to discriminate or retaliate, we affirm"

File: Chap. 8, Race Discrimination

CA: NEG. PERFORM. REVIEWS - NOT ADVERSE EMP. ACTION

On July 28, 2025, in Waris Gildersleeve v. City of Sacramento, Grian Brust, David Lauchner, et al., Senior U.S. District Court Judge John A. Mendez, granted summary judgment to the two officers. Gildersleeve is a firefighter with the City of Sacramento and has been an employee since 2005. During his probationary period he rotated through several fire stations, and when at Station No. 6 he was supervised by Brust and Laucher, and received some negative performance reviews. He got through probation, and he ultimately was promoted to a senior fire prevention

officer in 2023. THE COURT HELD: “Thus, the reprimands or negative reviews Gildersleeve received during his temporary probationary period did not ultimately impact his ‘compensation, terms, conditions, or privileges of employment.’ *Spokoiny*, 2025 WL 752492 at *1. *** Based on all of this evidence, Plaintiff cannot demonstrate a material adverse employment action and therefore cannot establish a prima facie case of racial discrimination. *** Plaintiff does not put forth any evidence that Brust or Lauchner physically threatened him or that their actions unreasonably interfered with his work performance. At best, the record pertaining to Brust and Lauchner demonstrates that they were indifferent to comments by others and engaged in race-neutral scolding, but not that they affirmatively aided or abetted any racial harassment on their own.”
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IuS%2F9HpBr5oZUxWDfnHZUAClV0FMS0FkyPj2D073HVCd?utm_medium=email&_hsenc=p2ANqtz-8Af1EW_JVwBhx0UDxsfrXH8_2s6MlC6Pm7CWzCebAgUkWejdyZMRNp9kjbmr3YiOjRBOAIc4DZsyAhk1nZpl--uaoeAg&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

THE COURT WROTE:

> “Plaintiff argues in his opposition that the record provides the following evidence of Brust and Lauchner's racial harassment: (1) Brust and Lauchner were cold and contemptuous towards Gildersleeve, as they were to the only other Black personnel at Station 6; (2) Brust and Lauchner personally observed Gildersleeve being verbally abused at Station 6, but did nothing to intervene; (3) Brust witnessed Lauchner personally participate in cursing at Gildersleeve but did not intervene; (4) Brust and Lauchner laughed at and criticized Gildersleeve, along with other white firefighters, during presentations and during dinner; and (5) Brust relied on reports from Lauchner to write negative comments in Gildersleeve's probation packet and disseminated negative information about Gildersleeve…. However, as Defendants point out, the evidence against Brust and Lauchner is devoid of any racial comment or discriminatory action…. Plaintiff does not put forth any evidence that Brust or Lauchner physically threatened him or that their actions unreasonably interfered with his work performance. At best, the record pertaining to Brust and Lauchner demonstrates that they were indifferent to comments by others and engaged in race-neutral scolding, but not that they affirmatively aided or abetted any racial harassment on their own.
>
> ***
>
> Defendant City of Sacramento has not moved for summary judgment on Plaintiff's simultaneously pled failure to prevent racial harassment nor does it present any argument to the contrary in its moving papers. Thus, Plaintiff's third cause of action is preserved against the City of Sacramento for failure to prevent racial harassment.”

Legal lesson learned: Plaintiff failed to prove any material adverse employment action by his two supervisors. The case against the city will proceed on "a failure to prevent racial harassment theory."

File: Chap. 8, Race Discrimination

MO: CITY 2022 RETIRED 2013 PROM. LIST B/C AND CAPT

On July 8, 2025, in Robert Eveland, et al. v. City of St. Louis; Firefighters' Institute for Racial Equality, Inc.; Charles Coyle, Director of the St. Louis Department of Public Safety, the United States Court of Appeals, Eighth Circuit (St. Louis) held (3 to 0) that the trial court properly granted defense motion to dismiss because the Battalion Chiefs and Captains lacked sufficient property interests in their desired promotions off of the 2013 lists, which were cancelled by Public Safety Director in 2022. The City had previously entered into a settlement agreement concerning the 2013 promotional exams, "to ensure that future promotional examinations are valid and fair and do not unlawfully discriminate against any promotional candidate on the basis of race." New exams were supposed to be held in December 2018 (and every three years thereafter) but due to budget cuts the 2013 lists were used until early 2022 when then-Director of Public Safety Dan Isom decided to stop using 10-year-old lists. "[The] current Director of Public Safety Charles Coyle concurred with this decision because in his opinion, using 10-year-old lists to make promotions is problematic because the individuals being promoted did not score as highly on the test and therefore are potentially not the best-qualified candidates." See Jan. 1, 2024, DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT. https://storage.courtlistener.com/recap/gov.uscourts.moed.198347/gov.uscourts.moed.198347.70.0.pdf THE COURT HELD: "The usual promotional process broke down when the fire chief's former supervisor, purportedly without authority, halted promotions due to the age of qualifying exam scores, which were about nine years old when the freeze began…. [Fire Chief has always promoted the top candidate on list, even though Civil Service rules allow him to select from top 6 on list.] Even assuming all of this is true, the firefighters had no property interests in their desired promotions that the due process clause protected. They just anticipated receiving them…. So, no matter how regular the fire chief's practice of promoting high scorers was, it could not give any of the firefighters a property interest in a promotion on its own. What is missing is evidence that the city bound itself in some fashion to adhere to that practice. It makes no difference that the fire chief testified to his intention to promote the firefighters in accordance with his custom. That intention, however firm, did not limit his discretion to promote different candidates or no candidates." https://cases.justia.com/federal/appellate-courts/ca8/24-2646/24-2646-2025-07-08.pdf?ts=1751988624

THE COURT WROTE:

> "The parties dispute how fire captain and battalion chief promotions occur in St. Louis's civil service system, but here is how the firefighters understand it. First, the fire chief notifies the city's director of personnel that he wishes to fill a vacancy for one of those positions. The director of personnel then certifies a shortlist of the candidates with the six highest scores on a corresponding qualifying exam. From these candidates, the fire chief may select one person to promote. Under the present fire chief, this person has invariably been the highest scorer. And if this practice had continued, as the fire chief intended, each of the firefighters would have received a promotion because each would have been the highest scoring candidate for a vacancy. But that did not happen. The usual promotional process broke down when the fire chief's former supervisor, purportedly without authority, halted promotions due to the age of qualifying exam scores, which were about nine years old when the freeze began."

Legal lesson learned: No Constitutionally protected property interests in desired promotions.

> Note: See City of Cincinnati 6/15/2023 list for Lieutenants. "List may be used on or before two years from first hire date." https://www.cincinnati-oh.gov/hr/eligible-lists1/promotional/fire-lieutenant/

File: Chap. 9, Americans With Disabilities Act

CA: CHIEF MED LEAVE / 4 SURGERIES – FIRED – JURY $4.1M

On July 9, 2025, in Larry Whithorn v. City of West Covina, the California Court of Appeals, Second District, Eighth Division held (3 to 0; unpublished decision) that jury award of $4,145,595 in damages was appropriate based on evidence of being fired after four surgeries, and after filing internal complaint. According to press reports, he was on extended medical leaves from December 2016 to April 2017 and June 2017 to September 2017 (four surgeries) and brief leaves in January 2018 and September 2018 to aid an ill relative. During Whithorn's 2017 medical leave, newly elected City Councilmember Tony Wu expressed concerns to City Manager Freeland multiple times that Whithorn was an "absentee chief." On March 19, 2019, Whithorn filed a grievance. Tony Wu described the grievance as "bull shit." On April 22, 2019, within 17 days of starting as the new City Manager David Carmany, and after spending only 30 to 45 minutes interacting with Whithorn, Carmany fired Whithorn, without warning, reprimand or prior discipline. Carmany said City was going in a different direction but did not give Whithorn a specific reason for his termination." THE COURT HELD: "City again contends that Whithorn was required to prove that City's stated reasons for termination were pretextual. He was not. Retaliation claims may be brought under a mixed-motives theory. (George v. California Unemployment Ins. Appeals Bd. (2009) 179 Cal.App.4th 1475, 1492.) That was the situation here…. As we have just discussed, the fact an employer has mixed reasons for terminating an employee, some permissible and some discriminatory, does not defeat a discrimination claim. In such situations, the employee need only show that 'discrimination was a substantial motivating

factor.' City again contends there is no evidence to support that Councilmember Wu held retaliatory animus toward Whithorn, or that Wu influenced City Manager Carmany's decision to terminate Whithorn based on the grievance. As set forth in more detail above, Councilmember Wu was very clearly angry at Whithorn when Whithorn's grievance was presented to the city council. Wu described the grievance as 'bullshit' and claimed he was being 'bullied' by staff members. Wu, along with other city council members, did not want to pay for an investigation. When Human Resources Director Pinon pressed for an investigation and provided contact information for an investigator, his contract was terminated four and one-half months early, supposedly for financial reasons, but he was given a three months' severance."
https://www4.courts.ca.gov/opinions/nonpub/B332558.PDF

THE COURT WROTE:

> "In 2019, the City of West Covina (City) terminated the employment of Larry Whithorn as its fire chief after 28 years of service [age 49], excellent recent performance reviews, and no disciplinary issues.
>
> ***
> The jury returned verdicts in favor of Whithorn on five of his causes of action: disability discrimination, retaliation, failure to prevent discrimination and retaliation, 'whistleblower retaliation, and intentional infliction of emotional distress. It awarded him $4,145,595 in damages. [Footnote 1: This amount consists of $990,103 in past economic loss; $587,643 in future economic loss; $1,980,206 in past noneconomic loss; and $587,643 in future noneconomic loss.] Court also ordered City to pay attorney fees of $987,920.
>
> ***
>
> The jury found in favor of City on the age discrimination and firefighter bill of rights causes of action.
>
> ***
> Managing the budget was particularly challenging because over 90 percent of the budget was devoted to salaries, leaving less than 10 percent of the budget to cover other expenses such as supplies (IVs for paramedics, fuel for vehicles) and vehicle maintenance. At one point, Whithorn was mandated to cut his budget by 10 percent, but 92 percent of his budget was untouchable, so even if he had stopped funding supplies and maintenance, he still could not have achieved the 10 percent cut.
>
> ***
> Since at least 2015, City had experienced severe budget issues and a chief cause was its $200 million pension liability. In 2015, the firefighter's union contract with City expired. Until at least 2019, firefighters were working without a contract. The union and City were at odds over everything including salary, benefits, staffing, and working conditions during the entire time Whithorn was fire chief. Matthew Jackson was the union's president during that entire time. The union's contract negotiations were handled by the

union president, union members, and City negotiators. Whithorn was not responsible for those negotiations. Nevertheless, the union pushed Whithorn to advocate on the union's behalf in negotiations. In 2017, the union used a no-confidence vote against Whithorn as a tactic to assist in its negotiations and in likely retribution for a medical leave he had taken. In 2017, city officials dismissed the no-confidence vote as a union tactic, not a true assessment of Whithorn's performance."

Legal lesson learned: The former Fire Chief proved to the jury that discrimination was a substantial motivating factor in his termination.

Note: See May 9, 2023 article, "Former West Covina fire chief wins $4.1 million in wrongful termination suit." https://sac.media/2023/05/09/former-west-covina-fire-chief-awarded-4-1-million-in-wrongful-termination-suit/
According to the lawsuit, Whithorn was harassed following multiple extended medical leaves from December 2016 to April 2017 and June 2017 to September 2017 and brief leaves in January 2018 and September 2018 to aid an ill relative.

File: Chap. 13, EMS

WA: SHOULDER STRAPS NOT USED – PT DEATH - $2.3M

On July 28, 2025, in Michael J. Lang, individually and as personal representative of the estate of Frank E. Costa, et al. v. Platinum Nine Holdings, LLC, a Washington Limited Liability Corporation, doing business as Northwest Ambulance, et al., the Court of Appeals of Washington, Division 1 held (3 to 0; unpublished decision) that the trial court judge correctly held that the state's EMS immunity statute does not apply to negligence in securing the patient to the gurney or negligence in driving ambulance; the jury awarded the estate $2.3 million in non-economic damages. In Nov. 2020, the private ambulance with three EMS on board transported the 78-year-old patient with metastatic breast cancer from Genesis Care Center to the hospital for bloodwork. The ambulance crew moved Costa from his bed to the ambulance stretcher and secured him with two lap belts and guardrails but did not use shoulder straps to secure Costa to the gurney. [Lead EMT Jack] Wilson later testified that shoulder straps were for 'specific patients' who 'weren't able to control their upper body;' that he had rarely seen anyone use shoulder straps; and that he could not recall being trained on how to use them. During transport, Costa's condition deteriorated… [EMT Henry] Shaw, driving the ambulance, turned on the lights and sirens, and when garbage truck started to yield to right, but then moved left Shaw hit the brakes, lost control and hit a highway divider head-on at 53 miles per hour. During the crash, Costa came off the gurney and hit the ambulance wall, sustained injuries to his head and neck, and died later that day. THE COURT HELD: "Because, under the facts of this case, RCW 18.71.210 does not extend qualified immunity to ambulance transportation or the use of gurney restraints, we conclude that the trial court acted appropriately in granting Lang's motion in part and denying NWA's motion…. NWA contends that the trial court misconstrued RCW 18.71.210 in denying its motion for summary judgment because ambulance transportation of patients

receiving treatment and care to a medical facility is part of 'emergency medical service' as a matter of law. Because the statute differentiates between emergency medical service and transportation, we disagree. *** But because the statute does not provide qualified immunity for the behavior at issue and NWA conceded negligence, Lang did not need to plead or offer evidence of gross negligence." https://www.courts.wa.gov/opinions/pdf/862057.pdf

THE COURT WROTE:

> "NWA [Northwest Ambulance] contends that the trial court misconstrued RCW 18.71.210 in denying its motion for summary judgment because ambulance transportation of patients receiving treatment and care to a medical facility is part of 'emergency medical service' as a matter of law. Because the statute differentiates between emergency medical service and transportation, we disagree.
>
> ***
> RCW 18.71.210 provides:
> (1) No act or omission of any physician's trained advanced emergency medical technician and paramedic, as defined in RCW 18.71.200, or any emergency medical technician or first responder, as defined in RCW 18.73.030, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:
> (a) [t]he physician's trained advanced emergency medical technician and paramedic, emergency medical technician, or first responder;
> . . . [or]
> (f) any licensed ambulance service.
>
> ***
> NWA alleges that the legislature intended ambulance transportation to be an essential element of emergency medical services rather than a distinct act. But the plain language of the statute and its surrounding context indicate otherwise. As stated, RCW 18.71.210 provides immunity for any act or omission done or omitted in good faith 'while rendering emergency medical service.'"

Legal lesson learned: If your gurney has shoulder straps, write a policy that specifies when they are to be used.

File: Chap. 13, EMS

TX: "MD" TOLD EMS NOT TREAT PT - NOT A PHYSICIAN

On July 24, 2025, in Texas Medical Board v. Grayce Yannuzzi, the Court of Appeals of Texas, Fifteenth District, held (3 to 0) that the Medical Board properly issued a cease-and-desist order prohibiting Grayce Yannuzzi from holding herself out to be a licensed physician. She is a licensed laser hair professional who works at Ginger Allure MedSpa ('MedSpa'), under the direction of a Dr. Clark. She claims that she was merely telling the medic and his Medical Director that Dr. Clark would see the patient. Trial Court judge set aside the Board's order; Court of Appeals disagreed and reinstated the order. THE COURT HELD: "[Paramedic Christopher] Stevens and Dr. Abraham's testimony 'demonstrates a reasonable basis for' the Board's decision."
https://cases.justia.com/texas/fifteenth-court-of-appeals/2025-15-24-00048-cv.pdf?ts=1753365777

The Court wrote:

> "In May 2022, Yannuzzi and her family were dining at a Santa Rita Cantina in New Braunfels when Yannuzzi's sister, Katie Bonn, became overheated. Bonn—feeling dizzy, light-headed, and nauseous—went to the bathroom, which was air-conditioned. Someone in the restaurant called 911, and the New Braunfels Emergency Medical Service ('EMS') subsequently arrived. Bonn, while in the restroom, told Yannuzzi that she did not want to be treated by EMS. Yannuzzi approached Christopher Stevens, a responding paramedic, and told him that Bonn did not need help. *** The parties do not dispute that at some point during this exchange, Stevens handed Yannuzzi his clipboard, and she wrote Dr. Clark's contact information down. Stevens then called EMS medical director Dr. Heidi Abraham and handed his phone to Yannuzzi. *** Specifically, Dr. Abraham testified that Yannuzzi told her over the phone at the restaurant that 'I'm going to take [Bonn] back to my clinic and give her IV fluids. I'm going to start an IV and give her IV fluids.' This testimony is evidence of Yannuzzi offering to treat Bonn by giving her an IV."

Legal Lesson Learned: Paramedic wisely contacted Medical Director when person said she was a physician.

File: Chap. 13, EMS

NY: EMS OFFICER – DIDN'T WRITE RPT CHIEF – 1-YR SUSP

On July 24, 2025, in Joseph Oginski v. Vigilant Engine And Hook And Ladder Company, Inc, et al., U.S. District Court Judge Joan M. Azrack, United States District Court for Eastern District of New York, dismissed the lawsuit alleging retaliation in violation of his Constitutional right to free speech since his communications were not as a citizen but as a member on the department. The plaintiff was EMS 1st Assistant Chief of the department and had repeatedly urged the Board, including in a lengthy e-mail of August 7, 2022, to direct the Fire Chief to have all members use of the County Communication's Bryx 911 App for early notification of runs. The Board declined to do this. On September 18, 2022 the plaintiff responded to EMS call at nursing home for COVID patient; he refused to go in until fit tested COVID masks were brought from fire station

to the ambulance. The Fire Chief ordered him to submit a written report, which he refused to provide until meeting with Board's Chair and attorney. After a Board hearing on November 1, 2022 he was suspended for one year. The case was first submitted to a U.S. Magistrate Judge who concluded that Oginski's communications with the FD Board were part of official duties, and not as a private citizen; Federal Judge Azrack agreed. THE COURT HELD: "Here, however, the communications at issue were made in the context of his employment and pursuant to Plaintiff's official duties."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Iur66SqTUHCh2%2F6i5JSa4l6hU%2FvLi%2B5AObhTx2DvFKDq?utm_medium=email&_hsenc=p2ANqtz--swmEKE2bBH1yxnsdN_yPFP1ssqGq5KgURTPyK4vIy-QrvDWKI9I9IkKVZfzKsNc7HzZR6NsXw-W4jNuqGESlXN6G9zw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

THE COURT WROTE:

> "Plaintiff objects to various portions of the R&R [Report and Recommendation by U.S. Magistrate Judge Anne Y. Shields on June 18, 2025], specifically with respect to the R&R's conclusion that Plaintiff's speech was not made 'as a citizen,' and is therefore not protected by the First Amendment… (citing *Garcetti v. Ceballos,* 507 U.S. 410 (2006)). After conducting a *de novo* review of the full record and applicable law, the Court agrees with Judge Shields' well-reasoned and thorough recommendations and rejects Plaintiff's core objections for the reasons described below. *** Here, however, the communications at issue were made in the context of his employment and pursuant to Plaintiff's official duties."

Legal lesson learned: EMS officer's e-mails and other communications with Fire Department Board are not protected by First Amendment; his refusal to complete a written report to the Fire Chief about an EMS run is basis for discipline.

> See June 18, 2025 Report and Recommendation of U.S. Magistrate Judge Shield.
> https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ii3GHq1DqUk6JcIatDazVs2MT6qOPN%2BlSHCpyD6INecs?utm_medium=email&_hsenc=p2ANqtz--mlDS8haOQgu8WvAgxTOdChC-L5bDfnY4D7GnlMH_0KI2lqvAqiMoF8QlUmIn8nD4qRtsgkZAeTqUVI7tJfHdW7459rg&_hsmi=226712652&utm_content=226712652&utm_source=hs_email
>
> "Oginski was, at all relevant times, a member of the Company…. He first joined Vigilant in 2008. During the course of his membership Oginski held numerous 'operational and leadership' positions. Such positions included serving as Sergeant at Arms, Financial Secretary, EMS Corporal, Fire Lieutenant, EMS Captain and EMS 1st Assistant Chief.
>
> ***
>
> On September 18, 2022 Oginski and other Company members responded to an emergency call received from a nursing home (the 'September 2022 Nursing Home

Call')…. That call requested an ambulance for a Covid patient. Oginski was the responding ambulance driver…. A paramedic was already on the scene…. Upon arrival at the nursing home Oginski and the other responders found that their N95 masks did not create a facial seal…. Oginski attributes this to the fact that the masks were not fit-tested as required by law. Oginski had previously complained about the lack of fit-testing to Sachmechi and Cherry who ignored his complaints…. Upon arrival at the nursing home Oginski immediately contacted the firehouse and asked the dispatcher to send masks to the scene…. He also contacted Nassau County Medical Control ('Medical Control') for guidance as to how to proceed. Medical Control advised Oginski that it was appropriate to wait at the scene for the arrival of masks before entering the nursing home…. Shortly thereafter, the responding crew was advised that the patient at issue was not Covid positive…. Once masks arrived, the Vigilant responders entered the nursing home to provide the requested emergency assistance.

***

Before they could meet, [Department Chief Justin] Sachmechi is stated to have approached Oginski and 'demanded' that he write a statement about what happened at the nursing home…. Oginski told Sachmechi that he did not wish to meet with him, and that he would provide statements to the Vigilant attorney and to the Chairman of the Board…. Sachmechi continued to ask Oginski to provide him with a statement, and threatened to suspend Oginski for failure to comply…. Oginski reiterated to Sachmechi that he would provide a statement, but only after first speaking with Vigilant's counsel and the Board Chair…. Sachmechi responded by suspending Oginski for 10 days…. On September 20, 2022 (the next day) Vigilant's Recording Secretary emailed Oginski a statement of charges that was filed by Sachmechi. In that statement Oginski was charged with insubordination and conduct unbecoming a member."

File: Chap. 15, Mental Health

IL: CHICAGO – PSYCHOLOGICAL "SUITABILITY SCREENING"

On July 1, 2025, in Nicholas Sintos v. City of Chicago, U.S. District Court Judge Sara L. Ellis, United States District Court for Northern District of Illinois (Eastern Divion) held that plaintiff, who in February 2019 was rejected by the Chicago Fire Department's Medical Director after undergoing a "psychological suitability screening" may proceed with his ADA lawsuit. In 2020, the City stopped using this screening for applicants with mental health history. THE COUT HELD: "Dr. Wong also referred Sintos for a psychological suitability screening administered by Dr. Diana Goldstein of the Isaac Ray Forensic Group. The screening consisted of a twenty-three-page biographical questionnaire, two psychometric exams (the Minnesota Multiphasic Personality Inventory, revised ("MMPI-2"): Public Safety Module, and the Personality Assessment Inventory: Law Enforcement, Corrections and Public Safety Selection Report ("PAI")), and an interview…. Dr. Goldstein rated individuals as acceptable, acceptable with reservations, or unacceptable. An unacceptable finding [rating she gave to plaintiff] on the

screening meant that the candidate's results did not look like those of a sample group of individuals who completed the probationary period…. The parties agree that the second [ADA] element, whether Sintos was qualified to perform the essential functions of a firefighter/EMT with or without a reasonable accommodation, remains a question for the jury."
https://cases.justia.com/federal/district-courts/illinois/ilndce/1:2021cv05327/407800/161/0.pdf?ts=1751450196

THE COURT WROTE:

> [Footnote 2.] "Dr. Wong did not know of any other jurisdictions that used the suitability screening for only a select portion of applicants and had initially discussed using the suitability screening for all CFD applicants. CFD did not adopt his recommendation of universal screening, however. Dr. Goldstein and Isaac Ray Forensic Group conducted their last suitability screening for CFD before 2020. CFD stopped using the suitability screenings after that time.
>
> ***
>
> Medical professionals have diagnosed Sintos with major depressive disorder and anxiety disorders. In 2014, Sintos attempted suicide by medication while admitted to a partial hospitalization program, which led to his hospitalization for several days. For twenty-four months thereafter, Sintos qualified for a suicidal behavior disorder diagnosis. But he has had no suicidal ideations, suicide attempts, or psychiatric hospitalizations since 2014. At the time of the medical clearance process in late 2018 and early 2019, Sintos had a diagnosis of 'moderate episode of recurrent' major depressive disorder, for which he took nortriptyline…. His mental health symptoms 'were mild or minimal, well managed, and not causing occupational or social impairment.'"

Legal lesson learned: The case will now go to a jury trial unless the parties settle.

File: Chap. 16, Discipline

IN: FIRE CHIEF CONV. FRAUD – FD STOP ONLINE SALE PROP.

On July 18, 2025, in Utica Township Volunteer Fire Fighters Association d/b/a New Chapel EMS, and Utica Township Fire Department Incorporated d/b/a New Chapel Fire & EMS v. Board of Trustees, Utica Township Fire Protection District, the Court of Appeals of Indiana held (3 to 0) that trial court properly issued a preliminary injunction on behalf of the Board of Trustees of the Utica Township Fire Protection District, preventing the Association and the Department from selling various items of Fire District property via online sites. Jamey Noel was the CEO of both the Association and the Department, and a former Indiana State Trooper; in Oct. 2014 he was sentenced to 15 years in prison under plea agreement. According to press report: "Additionally included in the plea deal is an agreement for Noel to pay back more than $3.1

million in public funds: $2,870,924 to the Utica Volunteer Firefighters Association; $61,190 to the Clark County Sheriff's Department; $173,155 to the Indiana Department of Revenue; and $35,245 to the Indiana State Police… Using findings from a long-term Indiana State Police investigation, state prosecutors alleged Noel used millions of taxpayer dollars from the Utica Volunteer Firefighters Association and New Chapel EMS to buy cars, planes, vacations, clothing and other personal luxury purchases. Investigators said public funds were also used to pay for college tuition and child support." https://indianacapitalchronicle.com/2024/10/14/former-indiana-sheriff-jamey-noel-sentenced-to-15-years-in-prison-as-part-of-plea-deal/ . THE COURT HELD: "New Chapel first asserts that the trial court lacked sufficient evidence of the value of the Fire District's property that New Chapel was attempting to misappropriate. But New Chapel is incorrect. The Fire District made it abundantly clear at the hearing that it had expended substantial sums on certain equipment, including nearly $700,000 on three vehicles alone. The record also makes New Chapel's ability to pay reasonable financial damages to the Fire District clear, including New Chapel's own admissions to the court. New Chapel's argument here is not supported by either the record or cogent reasoning." https://cases.justia.com/indiana/court-of-appeals/2025-24a-pl-02646.pdf?ts=1752863306

THE COURT WROTE:

> "In the late 1990s, Clark County formed the Fire District in order to provide fire protection for Utica Township. The Fire District, in turn, entered into agreements with the Association and the Department to provide those fire protection services. The Fire District levied taxes to pay for the costs and equipment that were to be used by the Association and the Department. At all relevant times, Jamey Noel was the CEO of both the Association and the Department.
>
> ***
>
> At some point, the Indiana State Board of Accounts conducted an audit of the Association after multiple fire trucks went 'missing.' Tr. Vol. 2, p. 36. Following that audit, the Board of Accounts informed the Fire District of apparent commingling of public funds between the Association and the Department and apparent misappropriation by Noel of Fire District assets and public funds. The Fire District terminated its relationships with the Association and the Department, and the Indiana Attorney General filed a civil lawsuit against Noel and others in an attempt to recover lost public funds. Immediately after their contracts with the Fire District were terminated, the Association and the Department began selling various items of Fire District property via online sites."

Legal lesson learned: Conduct annual financial audits.

> Note: Watch this July 28, 2025 – YouTube: "Utica Fire Department still reeling from Jamey Noel Scandal as debt, distrust remain."
> https://www.youtube.com/watch?v=roZMeWZrCG4

PA: FF / SEX 8th GRADER - FED. & PA JUDGES – STAY PRISON

On July 14, 2025, in Christopher Anthony Taylor v. George M. Little, U.S. District Court Judge Robert D. Mariani, United States District Court for Middle District of Pennsylvania, denied Mr. Taylor's petition for a write of habeas corpus; he is currently serving an 8 – 16 -year prison sentence in Pennsylvania state prison for having sexual relations with 8th grade cadet. On March 6, 2013, following a jury trial, Taylor was convicted of one count each of statutory sexual assault [victim was 8th grader, fire cadet, when started sexual relations], aggravated indecent assault—less than 16 years of age, indecent assault—less than 16 years of age, unlawful contact with a minor—sexual offenses, involuntary deviate sexual intercourse—less than 16 years of age, and corruption of minors. A trial court later denied his petition for release, and on Nov. 22, 2021, the Superior Court of Pennsylvania likewise denied his release from prison, and on June 2, 2022, the Pennsylvania Supreme Court denied Taylor's petition for allowance of appeal. THE COURT HELD: "Further, under 28 U.S.C. § 2254(e)(1), a federal court is required to presume that a state court's findings of fact are correct. A petitioner may only rebut this presumption with clear and convincing evidence of the state court's error…. The Court will deny the § 2254 petition for writ of habeas corpus."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IqmI6%2FwIkVosxkHnLXFS%2Fh3vCPBsdexRYsXhu3dcS77RM93%2Fb%2FlmP%2FEht28r%2FEOUuz%2BdIsVF1KqStdKclsmvBXo%3D?utm_medium=email&_hsenc=p2ANqtz-_Dn6dsk63fb2EPfPT1163Ju7zkOyiRsNHg_eV5kST7JoaZI-2AGCvSnryJrMriUeP5UHxNkfyzrDvNunm7WCvoOt678w&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

THE COURT WROTE:

> "On March 6, 2013, following a jury trial, Taylor was convicted of one count each of statutory sexual assault, aggravated indecent assault—less than 16 years of age, indecent assault—less than 16 years of age, unlawful contact with a minor—sexual offenses, involuntary deviate sexual intercourse—less than 16 years of age, and corruption of minors.1 On June 17, 2013, the trial court sentenced Taylor to an aggregate term of ten to twenty years in prison…. On February 3, 2017 [on remand from PA Supreme Court], the trial court resentenced Taylor to an aggregate term of eight to sixteen years in prison."

Legal lesson learned: Sex with a minor led to prison, and judges in PA and U.S. District Court have denied his release.

> Note: On Nov. 22, 2021, the Superior Court of Pennsylvania held (3 to 0) that the prisoner was properly denied release from jail by a state court judge and quoted some of the troubling testimony from the defendant's original trial.
> https://cases.justia.com/pennsylvania/superior-court/2021-1576-mda-2020.pdf?ts=1637608918
> "The [v]ictim, K.M.[(the 'victim')], took the stand and testified that, while in eighth grade, she became a member of the Dillsburg Citizen's Hose Company #1 in March of 2010. Victim met [Taylor, a 24-year-old adult male,] through the fire company. [Taylor] obtained the [v]ictim's phone number and the two began talking and texting regularly.

> [Taylor] began by asking the [v]ictim demographic questions and queried her about her interest in the fire department. [Taylor] was informed that the [v]ictim was 14[years old]. Nonetheless, [Taylor] asked her about her sexual experiences and whether she would like to hang out. [Taylor] asked the [v]ictim if she was willing to participate in sexual activity with him and she agreed…. The victim testified that their sexual relationship lasted about a year-and-a-half…. Sergeant John Schreiner[] of the Carroll Township Police, testified that cell phone records[, from the victim's three phones,] were obtained. The CD of records obtained from AT&T contained 4,000 pages of records. These records revealed more than 50 phone calls between [Taylor] and the [v]ictim…. [T]he phone records contained some 4,021 pages, detailing some 115,243 items. "

File: Chap. 17, Arbitration, Labor Relations

TX: HOUSTON - $650M BACK PAY – A/Cs SUE BE INCLUDED

On July 15, 2025, in City of Houston, Texas v. Alfredo Martinez, et al., the Texas Fourteenth Court of Appeals held (3 to 0) that 13 Assistant Fire Chiefs may intervene in case that has been pending for eight years and may sue the Houston Professional Fire Fighters' Association, Local 341, for breach of the duty of fair representation. Court also held that City has immunity. In March 2024, the Association and City negotiated $650 million back pay settlement; the Assistant Fire Chiefs were "shocked" when the Association told them they were not included in the settlement, and they seek declaratory and compensatory relief. The Association originally acted as the fire fighters' exclusive bargaining agent and asserted claims on behalf of all of the City's "fire fighters." But then the City and the Association agreed that the Association would not act as the Assistant Chiefs' bargaining agent and characterized the back pay as "overtime." THE COURT HELD: "The gravamen of their complaint against the Association is that the Association, as the fire fighters' exclusive bargaining agent, owed them the duty to bargain on their behalf for compensation comparable to the prevailing compensation for similar work in the private sector, and that the Association breached that duty by failing to act as their bargaining agent at all or by otherwise preventing them from benefiting from the settlement agreement. Their claims against the Association can properly be characterized as requests for the trial court to enforce the Association's statutory duty to act as the Intervenors' [Assistant Fire Chiefs] bargaining agent and to collectively bargain on their behalf. The trial court has jurisdiction to address such claims under section 174.251 of the FPERA [Texas Fire and Police Employee Relations Act] as well as under its general jurisdiction. *** We conclude that the Association has failed to show its entitlement to mandamus relief." https://cases.justia.com/texas/fourteenth-court-of-appeals/2025-14-24-00613-cv.pdf?ts=1752594731

THE COURT WROTE:

> "Under the FPERA, the City is statutorily required to pay its fire fighters compensation substantially equal to that which prevails in comparable private-sector employment. See TEX. LOC. GOV'T CODE § 174.021(a). Although that is a duty that

> the City owes to fire fighters individually, the beneficiary of the City's duty effectively changes if a majority of its fire fighters have selected an association as their exclusive bargaining agent.
>
> ***
> In March 2024, the City and the Association reached, and then amended, a $650 million settlement agreement. The parties agreed in the amended settlement agreement that (a) all of the fire fighters' back pay is classified as overtime, (b) "[t]he Association does not bargain on behalf of the . . . Executive Assistant Chiefs," (c) Assistant Chiefs are exempt from payment of overtime, and (d) none of the settlement amount is to be paid for work performed as an Assistant Chief.
>
> ***
> The Intervenors have alleged facts that, if true, would establish that they are aggrieved by the Association's conduct related to rights and duties under the Act. They contend that they are 'fire fighters' as defined in the FPERA,10 and that as such, they 'are entitled to participate and receive the back pay and compensation benefits provided for' in the amended settlement agreement. They allege that after the settlement was reached, the Association informed them 'that they were not considered part of the bargaining unit,' which 'came as a shock.'"

Legal lesson learned: Unions have a duty of fair representation of all its members; this case will now proceed to pre-trial discovery.

> Note: The Court also held that City has immunity in this lawsuit. "The City contends that the FPERA does not waive immunity from the Intervenors' claims for proceeds from the settlement agreement or for a declaration of their rights under it. In this, the City is correct…. But we agree with the City that it is immune from suit on the Intervenors' foregoing requests for declaratory relief and on their claims for proceeds from the settlement agreement. Because those are not claims to enforce the FPERA, the City retains immunity as to those claims.