

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

KEITH JARBOE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF EVANSVILLE, INDIANA,	)	Case Number: 14-122
an Indiana municipal corporation,	)	
EVANSVILLE FIRE MERIT COMMISSION,	)	
and MIKE CONNELLY, in his individual	)	
and official capacity as the Chief of the	)	
Evansville Fire Department,	)	
	)	
Defendants.	)	

**COMPLAINT**

A. NATURE OF CASE

1. Plaintiff is a longstanding career firefighter who has reached the rank of District Chief of the Evansville Fire Department.

2. On or about the 10<sup>th</sup> day of July, 2014, the Defendants, by and through Defendant, Chief Mike Connelly, removed Plaintiff from his position as District Chief over the Suppression Unit and transferred him to the office as the Health and Safety Officer. This action occurred because Plaintiff provided information about the improper activities of the Chief and his Assistant Chief of the Fire Department that reached other public officials and the public. Aforementioned information disclosed the wrongdoing of the Chief who clearly violated the Contract between the City of Evansville and the Union as well as

the Policies of the Evansville Fire Department by transferring vacation hours to the Converted Time Bank when it was forbidden under the Rules and Regulations of the Department and by the Contract.

3. This lawsuit seeks compensatory and punitive damages for violation of the First Amendment to the Constitution of the United States of America, the Constitution of the State of Indiana, the common law regarding defamation, and Indiana Code §36-1-8-8, the Indiana “Whistleblower” statute.

#### B. JURISDICTION AND VENUE

4. This action arises under the First Amendment to the Constitution of the United States of America and is brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983.

5. The Court has original subject matter jurisdiction of the federal questions presented pursuant to 28 U.S.C. §1331 and §1343.

6. The Court has pendent jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. §1367.

7. Venue is proper in the Southern District of Indiana, Evansville Division, pursuant to 28 U.S.C. §1391 because the events giving rise to this action occurred in, and the Defendants are located in and are residents of, Vanderburgh County, State of Indiana, which is located in the Evansville Division of the Southern District of Indiana.

### C. PARTIES

8. Plaintiff Keith Jarboe is a career firefighter with over thirty-two (32) years of dedicated service to the City of Evansville, State of Indiana.

9. Defendant, City of Evansville, State of Indiana, is an Indiana municipal corporation (the “City of Evansville”).

10. Defendant, Evansville Fire Merit Commission, is the board established by laws of the State of Indiana and the Evansville City Council to oversee the administration of the Evansville Fire Department. Defendant, Evansville Fire Merit Commission oversees and approves the discipline within the Defendant’s, City of Evansville, fire department.

11. Defendant, Chief Mike Connelly, is the duly appointed Chief of the Evansville Fire Department and made the unlawful transfer of the Plaintiff as a disciplinary transfer for the Plaintiff exercising his lawful rights.

12. Defendant, City, through the Mayor, appointed the Fire Chief to his current position on or about January 1, 2012.

### C. FACTS

13. The Defendants acting under authority or color of state law, took action to transfer Plaintiff in violation of his rights, privilege and immunities under the First Amendment to the Constitution of the United States of America because of opinions expressed, held, or attributed to the Plaintiff in matters of public concern contrary to the Defendant’s, Mike Connelly.

14. Those matters of public interest included but are not limited to the opinions attributed to the Plaintiff regarding the inappropriate handling of overtime by the Chain of Command of the Defendant's, City of Evansville, fire department, as well as other opinions expressed of the operation of the fire department on matters of public concern.

15. The Defendant, Mike Connelly, as an agent of the Defendant, City of Evansville, transferred the Plaintiff in a personnel order dated July 7, 2014 and attached to this Complaint and made a part hereof as "Exhibit A".

16. The transfer of the Plaintiff was in violation of his rights, privileges, and immunities under the First Amendment of the Constitution of the United States because of the allegations against the Plaintiff being a whistleblower and publishing reports exposing the wrongdoing and actions of the Chain of Command and the misappropriate handling of overtime payments to themselves.

17. The Resource Management System, commonly known as RMS within the Defendant's, City of Evansville, fire department, logs Converted Time Banks as well as vacation time. The RMS records of the Defendant, City of Evansville, exposed that on January 1, 2013, fifty-six (56) hours of unused vacation time were placed into the Defendant's, Chief Mike Connelly, Converted Time Bank in violation of Policy 200.009, a copy of which is attached to this Complaint and made a part hereof as "Exhibit B", which had been in force and effect since May 17, 2010. Chief Connelly's actions further violated Article XXX

of the Contract, attached to this Complaint and made a part hereof as “Exhibit C”, between the Evansville Fire Department and the Union, which required an individual’s time bank to be at zero (0) before any vacation time could be transferred into the Converted Time Bank all for the benefit of the Chief and the Assistant Chief.

18. The Plaintiff discovered at that exact time that Assistant Chief Paul Anslinger converted fifty-two (52) hours on January 1, 2013 into his Converted Time Bank along with District Chief Dan Graham having fifty-two (52) hours placed in the Converted Time Bank, all in violation of the Policies of the Fire Department and their Contract with the Union.

19. The Plaintiff then provided this information to Larry Zuber who filed the report of these violations with City Councilman John Friend.

20. The Defendants’ action to transfer Plaintiff was taken under color of state law.

21. The Defendants’ actions were the official and final acts of the Defendants against the Plaintiff and were done by persons with final policymaking authority of the City of Evansville.

22. The actions of the Plaintiff involve public interest as set out in this Complaint. The Plaintiff’s actions to provide information of public concern are protected matters under the First Amendment to the Constitution of the United States and the Constitution of the State of Indiana.

23. The Defendant, Chief Mike Connelly, on behalf of the Defendants took action against the Plaintiff, Keith Jarboe, in violation of his rights, privileges, and/or immunities under the First Amendment to the Constitution of the United States of America because the Plaintiff, Keith Jarboe, was a whistleblower and published a report exposing the violations of the law and wrongdoing committed by the Defendants.

24. The Defendants, by and through Chief Mike Connelly and the Mayor of the City of Evansville, met in private and in a confidential meeting discussed the actions to be taken against the Plaintiff.

25. The Plaintiff served a Notice of Tort Claim on August 28, 2014 for all State Law claims included herein.

#### D. CLAIMS

26. The actions of the Defendants violate Keith Jarboe's rights under the Freedom of Expression Clause of the First Amendment to the Constitution of the United States of America.

27. The actions of the Defendants violate Keith Jarboe's rights against defamation under the common law of Indiana, his rights to free speech under Article 1, Section 9 of the Constitution of the State of Indiana, and his right to protection from retaliation pursuant to Ind. Code §36-1-8-8, the Indiana Whistleblower statute.

### E. JURY TRIAL REQUEST

28. Plaintiff requests trial by jury.

### F. RELIEF REQUESTED

**WHEREFORE**, Plaintiff Keith Jarboe respectfully requests the Court enter judgment in favor of Plaintiff and against Defendants in an amount sufficient to compensate Plaintiff for his damages, including but not limited to damage to his reputation, emotional and mental distress, future emotional and mental distress, lost earnings and fringe benefits, front pay including fringe benefits, lost future earnings and fringe benefits, attorney fees, punitive damages, and all other relief just and proper in the premises.

Respectfully Submitted

s/Charles L. Berger  
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