No. 124831

IN THE
SUPREME COURT OF ILLINOIS

THE CITY OF CHICAGO,

Petitioner/Appellee,

vs.

FRATERNAL ORDER OF POLICE, CHICAGO LODGE NO. 7,

Respondent/Appellant

On appeal from the Appellate Court of Illinois,
First District, No. 1-17-2907
There heard on appeal from the Circuit Court of Cook County, Illinois
No. 2016 CH 9793
Honorable Sanjay T. Tailor, Judge Presiding

REPLY BRIEF OF RESPONDENT/APPELLANT

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POINTS AND AUTHORITY

ARGUMENT

Respondent/Appellant, Fraternal Order of Police, Chicago Lodge No. 7 ("Lodge") advocates for and bargains on behalf of the thousands of Police Officers who have dedicated their lives to protecting the citizens of Petitioner/Appellee, City of Chicago ("City"). The collective bargaining agreement negotiated between the Lodge and the City exists to give those Officers the security in their employment that they deserve, allowing them to do their jobs effectively. Contrary to the claims of the City and their Amici[1], neither the collective bargaining agreement nor the Arbitration Award[2] at issue in this case are obstacles to the reforms they seek. The Lodge's purpose in the underlying arbitration and this litigation is to do nothing more than enforce the contractual promises that the City voluntarily made in exchange for promises and concessions made by the Lodge through the collective bargaining process over the course of more than thirty years of bargaining. The City's violation of its

[1] Amicus, Illinois Attorney General Kwame Raul, shall be referred to as "Attorney General" and his brief cited as (AG Br., p. _). Amicus, "Reporters Committee for Freedom of the Press and 19 News Media Organizations," shall be referred to as "Reporters" and their brief cited as (Reporters Br., p. _). Amicus, "Organizations and Religious Leaders that Represent Victims of Chicago Police Misconduct and Organizations and Data Scientists Dedicated to Good Government," shall be referred to as "Organizations and their brief cited as (Org. Br., p. _).

[2] As in the Lodge's opening brief, it will refer collectively to the "Award" as including the January 12, 2016 Arbitrator's Opinion and Interim Award (A 000038-90), the April 28, 2016 Arbitrator's Opinion and Award (A 000091-116), and the June 21, 2016 Arbitrator's Ruling on Fraternal Order Of Police Lodge No. 7's Motion for Reconsideration or, Alternatively, Clarification (A 000118-129).

obligations under Section 8.4 of the parties' collective bargaining agreement is not only undisputed, but flagrant (City Br., p. 29).[3]

The lower court's decisions have undermined the collective bargaining process and the important public policies embodied in the Illinois Public Labor Relations Act, 5 ILCS §315/1, *et seq*. ("IPLRA"), substituting the judgment of the courts for the judgment of the arbitrator, and relieving the City of its duty to bargain with the Lodge over changes to the collective bargaining agreement. The decisions render important aspects of IPLRA a dead letter, giving municipal employers the ability to nullify undesirable provisions in a collective bargaining agreement–without bargaining with their employees' representative–if they can shoe-horn their claims into a politically expedient public policy. According to the Appellate Court, a municipality can even appoint its own "task force" to draft a report that later can be as the basis for a public policy to avoid its collective bargaining obligations (A 000014, ¶ 33). This stretches the public policy exception to enforcement of labor arbitration awards–which is supposed to be a *limited* exception–beyond its breaking point. *See*, *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 307, 671 N.E.2d 668, 219 Ill.Dec. 501 (Ill. 1996).

If the City no longer considers a particular provision in a collective bargaining agreement to be desirable, then it is obligated to bargain for changes to that agreement. Both

[3] To the extent the City is seeking to reassert the argument rejected by the Arbitrator that the Lodge had acquiesced to the City's violations of Section 8.4, it must be rejected. (A 000073).

the City and their Amici[4] refuse to recognize this fundamental aspect of collective bargaining and its protected status under the IPLRA. While the Lodge is unsurprised that journalists and community activists are not concerned with the importance of collective bargaining and the IPLRA, the Attorney General's refusal to recognize this statutory command is deeply upsetting. What cannot be allowed to happen–if the IPLRA means anything at all–is for the courts to do the City's bargaining for it. Even if each of the practical reasons supporting retention of all CR files indefinitely as outlined by the City and their Amici are valid, which the Lodge does not concede, the statutorily created way for the City to address those concerns is simple. The City must engage in the give and take of collective bargaining to achieve the changes it wants. If the electorate does not think the City has done that effectively, then it can elect new representatives to get the job done. However, if this Court relieves the City of its obligation to bargain over changes to the collective bargaining agreement, then the Lodge and the thousands of Officers it represents will be severely and irreparably prejudiced in their ongoing negotiations to establish their terms and conditions of employment. This matters, not just to the Lodge, but to all labor organizations representing state and municipal employees in the State of Illinois.[5] The City agreed to Section 8.4 of the collective bargaining agreement, and often negotiated for changes to it through collective bargaining, in each of the agreements negotiated since 1981 (A 000047-50). It should be required to

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[4] Under Illinois Supreme Court Rule 345(b), briefs of Reporters and Organizations should be disregarded as untimely.

[5] As Amicus in support of the Lodge, Illinois AFL-CIO and Illinois Fraternal Order of Police Labor Council stated in their brief: "The Appellate Court's decision in this case adversely impacts almost every public sector collective bargaining agreement[.]" (AFL-CIO Br., p. 2).

adhere to its statutory obligation to bargain for any changes to it now as well. Accordingly, the decision of the Appellate Court should be reversed and the Arbitration Award enforced.

A. There is no well-defined, dominant public policy requiring the indefinite retention of the disciplinary records at issue.

Neither the Illinois State Records Act, 5 ILCS §160/1, *et seq*. ("SRA"), Illinois Local Records Act, 50 ILCS §205/1, *et seq*. ("LRA"), Illinois Freedom of Information Act, ("FOIA"), nor the Department of Justice Report ("DOJ Report") or Mayoral Task Force Report ("Task Force Report"), establish a well-defined, dominant public policy precluding the City from entering into and abiding by a document destruction agreement concerning the CR files at issue here. Accordingly, the decision of the Appellate Court should be reversed and the Award enforced.

1. There is no well-defined, dominant public policy requiring the indefinite retention of CR files in the LRA or SRA.

The SRA and LRA do not establish a State-wide public policy precluding enforcement of the Award, even if the City must also obtain approval to implement it from the Local Records Commission. Significantly, the LRA does not contain a comparable "Purpose" provision to the one in the SRA. 5 ILCS §160/1.5.[6] This is presumptively not an

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[6]Section 1.5 of the SRA provides:

> Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois (i) that government records are a form of property whose ownership lies with the citizens and with the State of Illinois; (ii) that those records are to be created, maintained, and administered in support of the rights of those citizens and the operation of the State; (iii) that those records are, with very few exemptions, to be available for the use, benefit, and information of the citizens; and (iv) that those records may not be disposed of without compliance to the regulations in this Act. 5 ILCS §160/1.5.

error by the Legislature, as both the LRA and SRA were enacted through the same Public Act 86-1475. Thus, there is no basis to read Section 1.5 of the SRA - which, by its terms, applies only to the State of Illinois - into the LRA. The Legislature made a clear decision to treat State records different from Local records. Accordingly, the Lodge will continue to focus on the LRA, as the statute applicable to the City, notwithstanding the City's objections (City Br., p. 26) and the lower court's conflation of the two distinct statutes (A 000011-14, ¶ 27-32; 000023-27).

The City incorrectly states in its brief that the Award "eliminates the Local Record Commission's authority to determine what records should be destroyed or maintained, and it requires the City to destroy records related to alleged police misconduct without regard to the statute's explicit concerns for records of 'administrative, legal, research or historical value]." (City Br., p. 23). The Arbitrator made no such finding, nor is such a conclusion fairly inferred from the Award's holding. The Award accurately points out that there was no evidence "that the Local Records Commission denied" any application by the City to destroy the records at issue (A 000085). If anything, it is the Appellate Court's decision and the City's argument which strips the Local Records Commission of its authority to make decision on retention by assuming facts not in evidence. Nothing in the Award precludes the Local Record Commission from exercising its statutory discretion. In contrast, the Appellate Court's decision unqualified holding that "we find that the arbitration award violated an explicit, well-defined, and dominant public policy requiring retention of important public records[.]" (A 000016, ¶ 40), precludes the Local Record Commission from even considering

whether the CR files may be destroyed consistent with Section 8.4, the Award and the City's own document retention policies.

With no citation to the Award, the arbitral record, or any other evidence, the City makes the bald assertion that "the Local Record Commission has never considered–let alone approved–the destruction of those records as required by the Local Records Act." (City Br., p. 30). The arbitration hearing, or at least the Circuit Court, would have been the appropriate time to make and support such an assertion for the first time. Not here. Instead, the City doubles down, faulting the Lodge for being unable to accurately speculate as to what the Local Record Commission might do if the City bothered to live up to its obligations in response to a hypothetical question from the Circuit Court (City. Br., p. 28). The City has had nearly four years since the Award were issued to make such application to the Local Record Commission, yet it offers no indication that it has done so.

Instead, the City and the Circuit Court (and implicitly, the Appellate Court) assume that the Local Record Commission would deny a new application by the City for permission to enforce the Award (City Br. P. 28-29; A 000015, 000026). This assumption has no factual support in the arbitral record, and is inconsistent with the City's own document retention policies (which are largely consistent with Section 8.4) established outside of the collective bargaining agreement (A 000085), which the Circuit Court and Appellate Court fail to even address. It is hardly "bizarre" as the City suggests (City Br., p. 29), to highlight the City's failure to introduce any evidence at the arbitration or before the Circuit Court suggesting that the Local Records Commission had, in fact, denied it the ability to comply with Section 8.4 or its own document retention policy. What is bizarre is the City's assertion that "having an

internal document retention plan in place does not mean it is proper to destroy alleged police misconduct records pursuant to that plan or that the City has done so." (City Br., p. 29-30). The Arbitrator correctly found that given the City's own policies providing for destruction of records consistent with the LRA, he "has no basis to suggest that the issuance of an award granting relief in these grievances violates public policy based upon the Local Records Act (A 000050-53, 000085). The City offers no explanation as to why it would have a document retention plan in place that it would not follow, or why it would have such a plan in place without the Local Record Commission's approval.

Faced with these inconvenient factual findings and conclusions, the City attempts to shift its burden to comply with the LRA, and the contracts into which it voluntarily enters, onto the Lodge (City Br., p. 27-28). However, it is not the Lodge's burden to seek "reformation of section 8.4 to require the City to seek and obtain the Local Record Commission's approval before complying with section 8.4." (City Br., p. 28). The City agreed to Section 8.4, time after time, presumably with full knowledge of its obligations under the LRA. (A 000080). There simply was no evidence offered by the City at the arbitration (A 000085), or in the Circuit Court, that it was unable to comply with both Section 8.4 and the LRA. Accordingly, the conclusions reach to the contrary by the Circuit Court (A 000026) and the Appellate Court (A 000015) are purely speculative, and, therefore, do not support vacating the Award. Moreover, contracts should be interpreted to be consistent with the law (including public policy), wherever possible. *See*, *Enterprise Leasing Co. of St. Louis v. Hardin,* 2011 IL App (5th) 100201956, N.E. 2d 1059353, Ill.Dec. 931

(Ill.App. 5th Dist. 20011) ("We must interpret a contract to be consistent with the law and public policy of this state.").

The fact that the City sought changes to Section 8.4, obtaining some and not others (City Br., p. 29; A 000080), does not make pointing out the history of Section 8.4's inclusion in the final collective bargaining agreements "disingenuous." Rather, it highlights that Section 8.4 is readily susceptible to bargaining and that the City's insistence that court intervention is needed to protect the City from its own agreements is but a disingenuous attempt to evade its statutory bargaining obligations. Indeed, the City later makes a new argument "that section 8.4 on its face violates the public policy set forth in the Local Records Act, by failing to allow for the Local Record Commission's authority to make that determination in the first place." (City Br., p. 35). This is a direct attack on the contract language, as opposed to the enforceability of the Award, clearly indicating that the City seeks to evade its bargaining obligations through this action.

2. There is no well-defined, dominant public policy requiring the indefinite retention of the CR files.

FOIA, likewise, does not provide a statutory basis for a public policy requiring the indefinite retention of the disciplinary records at issue here. Section 1 of FOIA clearly states: "[t]his Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record which was not maintained or prepared by such public body at the time when this Act becomes effective, except as otherwise required by applicable local, State or federal law." 5 ILCS §140/1. Despite the clarity of this statutory language, the City complains that the Lodge's focus on this very specific sentence in FOIA is "misplaced" (City

Br., p. 31). However, in support, the City offers only non-sequiturs. First, the City points out that "FOIA does require maintenance of records of alleged police misconduct when those records are subject to pending FOIA requests." (City Br., p. 31). That was an issue in prior cases, *Fraternal Order of Police*, 2016 IL App (1st) 143884, ¶32, Petition for Leave to Appeal Denied, 60 N.E.3d 872 (Table), 406 Ill.Dec. 321 (Ill. 2016); *Kalven v. City of Chicago*, 2014 IL App. (1st) 121846 (Ill. App. 1st Dist. 2014); but not in this case. The question in this case concerns the impact of FOIA on the preservation of records when there is no FOIA request pending. Even the City admits early in its brief that "FOIA exists to ensure the public's access to records that have not been destroyed through those processes" established by the SRA and LRA (City Br., p. 21). The City likewise admitted at the arbitration hearing that "nothing under the Freedom of Information Act, FOIA, requires the police department to maintain records[.]" (A 000081).

Next, the City asserts that FOIA, along with the LRA and SRA, are part of the "'comprehensive legislative scheme' reflecting the General Assembly's recognition of a public policy favoring the proper maintenance of important public records." (City Br., p. 31). This distraction flat-out ignores the language in FOIA quoted above saying that FOIA does not require the maintenance of records. Neither the City, Amici, the Appellate Court or Circuit Court have any answer to how FOIA could possibly establish a public policy requiring the maintenance of records that are not subject to a pending FOIA request in the face of this clear statutory language.

3. There is no well-defined, dominant public policy requiring the indefinite retention of the CR files in the DOJ Report or Task Force Report.

The City and Amici argue that the DOJ and Mayoral Task Force reports provide a basis for a public policy (City Br., p. 31-34; AG Br., p. 4-5, 10-11, 14, 15; Org. Br., p. 6-7, 9-10) as the Appellate Court found (A 000014, ¶ 33). However, neither the Appellate Court, the City or Amici have offered a reasoned explanation as to how these reports fit within one of the limited sources for a public policy exception, as outlined by this Court. *AFSCME*, 173 Ill. 2d at 307. As the City concedes, the *AFSCME* case limited the sources for public policy to "our constitution and statutes, and when cases arise concerning matters upon which they are silent, then in its judicial decisions and the constant practice of the government officials[.]" *Id*. (City Br., p. 31-32). Clearly, the DOJ and Task Force Reports are not the Constitution or statutes, nor are they judicial decisions. Accordingly, they are left with the ill-fitting "constant practice of the government officials" designation. But, these reports do not document or recognize the "constant practice" of the public policy asserted by the City, Amicus and Appellate Court. If anything, the Reports find fault in what had been the constant practice of government officials and urge reform. A document urging reform of past practices simply cannot be used to establish a public policy based on the "constant practice of the government officials." At best, these reports are aspirational, "general considerations of supposed public interests" which do not establish a clear public policy sufficient to vacate an arbitration award. *United Paperworkers International Union v. Misco, Inc.*,484 U.S. 29, 43, 108 S.Ct. 364, 98 L.Ed.2d 286, 302 (1987).

The chair of the Task Force is now the Mayor of the City of Chicago. Accordingly, the Lodge would expect the City to approach bargaining from the perspective of the Mayor, as outlined in the Task Force report. Again, changes to Section 8.4 must come through bargaining, not fiat. The fact that the City is attempting to invalidate Section 8.4, rather than bargain for changes, is clear when it faults the Lodge for what it calls a "peculiar assertion that a committee formed by a Mayor to address, among other issues, the propriety and effect of the very CBA provision before the court should not inform this court's consideration of public policy." (City Br., p. 34). Apparently, the City believes it can create a task force to document reasons why a collectively bargained provision should be changed, then seek changes through the courts–rather than through bargaining–because its own self-serving report said so. This makes a mockery of the IPLRA and the important employee rights it protects. Again, the Task Force report urges changes, it is not a document reflecting the "constant practice of the government officials." Those changes must come about through bargaining with the Lodge.

As for the DOJ Report, it is hardly "misleading" (City Br., p. 33) for the Lodge to highlight the indisputable fact that it does not direct the parties to modify Section 8.4; does not direct the City to continue retaining all records; and does not find Section 8.4 to be unlawful or unconstitutional (C 1074). With no recognition of the irony, the City reviews its own cherry-picked parts of the DOJ Report, including the underwhelming conclusion that Section 8.4 "not only **may** impair the investigation of older misconduct, but also deprives CPD of important discipline and personnel documentation that will **assist** in monitoring historical pattens [of] misconduct." (City Br., p. 33, emphasis added). A document claiming

that changes to Section 8.4 "may assist" does not even remotely establish a public policy basis for vacating the Award. Accordingly, neither the Task Force report nor the DOJ Report support the Appellate Court's decision.

B. The public policy behind the Public Labor Relations Act, favoring collective bargaining and the enforcement of labor arbitration awards, requires enforcement of the Award.

The City and Amici attempt to diminish the clear language of the IPLRA, suggesting that their favored "public policy" is somehow more important than, and should control over, the unambiguous commands of the statute (City Br., p. 36; Reporters Br., p. 7). It is undisputed that the IPLRA, by its clear language, trumps other statutes concerning terms and conditions of employment. 5 ILCS 315/15(a). Given that clear language, how can it not also trump "public policies" concerning terms and conditions of employment, which are inherently more amorphous and indirect than a statutory provision? This conclusion does not "swallow the public policy exception," (City Br., p. 37), it puts it in its rightful place. Indeed, this is the crux of where the Appellate Court (and the City and Amici) err. The Legislature spoke unequivocally when it passed the IPLRA. Accordingly, its statutory commands cannot be subverted to public policies, when even other statutes are subordinate to the IPLRA. The Appellate Court's order is a continuation of an unwarranted and unwise broadening of the public policy exception at the Appellate Court level,[7] which was intended

[7] See, *Decatur Police Benevolent and Protective Association Labor Committee v. City of Decatur*, 2012 IL App (4th) 110764 (Ill. App. 4th Dist. 2012); *Oak Lawn Professional Firefighters Association v. Village of Oak Lawn*, App. 1 Dist. 2018, 427 Ill.Dec. 242, 117 N.E.3d 1179 (Ill. App. 1st Dist. 2018); *City of Markham v. State & Municipal Teamsters, Chauffeurs & Helpers, Local 726*, 299 Ill.App.3d 615, 618, 233 Ill.Dec. 510, 701 N.E.2d 153 (Ill. App. 1st Dist., 1998).

to be a very limited exception to the clear requirements to enforce collective bargaining agreements and arbitration awards. *AFSCME*, 173 Ill. 2d at 307. It is time for this Court to reign in this improper expansion of the public policy exception.

This shameful and dismissive attitude towards the importance of the IPLRA is crystalized in the Reporters Amicus brief, when they state: "Any general policy preference for the enforcement of contracts like the CBA is ***negligible*** when a contract's specific provisions contravene the express terms of duly enacted laws that affect and benefit the public as a whole." (Reporters Br., p. 7, emphasis added). The thousands of Police Officers represented by the Lodge and tens of thousands of unionized public employees throughout the State, represented by Amicus, AFL-CIO, would strongly disagree that the enforcement of their lawfully bargained, statutorily protected collective bargaining agreements is "negligible." Public employees have the right to know that their employers will live up to their promises, which the City has admittedly failed to do in this case (City Br., p. 29). Moreover, the Reporters assertion is fundamentally flawed in that it completely fails to recognize that collective bargaining agreement are not run-of-the mill commercial contracts, but contracts bearing the imprimatur of a State statute commanding that such agreements "shall supercede any contrary statutes, charters, ordinances, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents". 5 ILCS §315/15(b). By ignoring the important public policy behind and the clear statutory command of the IPLRA, the Appellate Court erred. Accordingly, its decision should be reversed and the Award enforced.

C. The issues and arguments raised by Amici on behalf of the City do not support vacating the Award.

Amici arguing in support of the Appellate Court's decision offer a variety of practical concerns they have regarding the Award and Section 8.4, but no different public policy basis warranting vacating the Award. As "practical" as those concerns may be, they are not within the realm of a well-defined, dominant public policy, which is the only basis upon which the Award can be vacated here. *See, AFSCME*, 173 Ill. 2d at 307. The remedy for those practical concerns is for the City to bargain for changes to Section 8.4, and for the public to vote out City officials if dissatisfied with the results of the City's bargaining.

The briefs of Amici overall demonstrate an incomplete understanding of the Award and Section 8.4, with each resorting to gross oversimplifications that support their respective narratives. Based on their briefs, it appears that the Attorney General, Organizations and Reporters Amici have not bothered to read the Award or Section 8.4, with each brief referring to the Award and Section 8.4 as requiring the destruction of records over five years old (AG Br., p. 11, 12, 14; Org. Br., p. 4-5; Reporters Br., p. 2, 3). If they had read either Section 8.4 or the Award, they would see the complexity of the clause and the detailed consideration in the Award. As recognized in the Award, Section 8.4 contains a multitude of exceptions to the destruction requirement, each of which were bargained by the City and the Lodge (A 000047-50, 80). These exceptions recognize that there are many circumstances under which CR files may be preserved for extended periods of time.[8] Moreover, as noted

[8] Indeed, the retention period for not-sustained excessive force cases, the examples most often cited by the Amici, is seven years and possibly longer as outlined within Section 8.4 (A 000042-43).

above, Amici fails to given any value to the statutorily guaranteed importance of collective bargaining or to offer any valid reasons why the City should not be required to bargain for further changes to Section 8.4, consistent with the IPLRA.

1. The Award may not be vacated based on practical concerns raised by the City and Amici.

The City and the Reporters and Organizations Amici identify what they perceive to be important practical concerns necessitating the retention of the CR files at issue. The City outlines all they ways it believes retaining the records would benefit it (City Br., p. 23-26). The Organizations brief opens by stating that they are "uniquely positioned to speak to the practical importance of preserving police misconduct records", before later expanding on those concerns (Org. Br., p. 1, 9-17). Similarly, Reporters brief states their concern that "enforcement of the CBA would hinder public understanding about police discipline and accountability, currently and historically, stifling informed public discourse about issues relating to law enforcement in Chicago." (Reporters Br., p. 3). However, there is no law supporting the position that labor arbitration awards may be vacated because of the practical concerns of third parties, regardless of how important those concerns are claimed to be.

Reporters further argue that "the records here are particularly infused with public interest[,]" and that their retention offers "concrete public benefits[.]" (Reporters Br., p. 8). However, public interest and public benefits do not equate to public policy. *See generally*, *Misco*, 484 U.S. at 43. Public policy is created by legislators and/or the courts over time, while public interest and public benefits are more akin to arguments raised or positions taken by various stakeholders seeking to craft public policy. Different stakeholders will have

different idea about what is in the public's interest or benefit, regardless of what is ultimately established as public policy. Thus, without questioning the sincerity of the concerns raised by the City and Amici, these practical concerns simply do not equate to a public policy established by the constitution, statutes, judicial decisions or the "constant practice of the government officials."

2. The Federal Consent Decree requires the City to abide by its collective bargaining agreements and to bargain any changes thereto.

Both the Attorney General and Organizations Amici argue that the Consent Decree[9] entered by Judge Dow in the United States District for the Northern District of Illinois (Case No. 17 C 6260) last year supports the City's position and provides a public policy basis for vacating the Award (AG Br., p. 9-12, 14-18; Organizations Br., p. 8-9). At no time has the City relied on the Consent Decree as a basis to vacate the Award. This non-reliance by the City makes sense, and the Lodge gives the City credit for not asserting such an inappropriate argument. What the Attorney General and Organizations fail to recognize is that in several sections the Consent Decree expressly affirms the City's obligation to abide by its collective bargaining agreements (see, Paragraphs 302, 427, 452, 461, 464, 468, 488 and 536). Moreover, the Consent Decree states unequivocally that the City must bargain with the Lodge over changes to the collective bargaining agreement, stating in relevant part:

> 710. The Parties acknowledge the City has entered into four collective bargaining agreements effective July 1, 2012 (individually, and collectively, the "CBAs") with unions representing sworn police

[9] Consent Decree available at: http://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf

> officers ("Unions"). The Parties further acknowledge that the City and the Unions are currently negotiating successor agreements to the CBAs ("Successor CBAs"). The Parties further acknowledge that the Unions and the City have certain rights and obligations under the Illinois Public Labor Relations Act, 5 ILCS 315 ("IPLRA") and that the IPLRA contains provisions for the City and the Unions to enforce their respective rights and obligations, ...
>
> 711. Nothing in this Consent Decree is intended to (a) alter any of the CBAs between the City and the Unions; or (b) impair or conflict with the collective bargaining rights of employees in those units under the IPLRA. Nothing in this Consent Decree shall be interpreted as obligating the City or the Unions to violate (i) the terms of the CBAs, including any Successor CBAs resulting from the negotiation process (including Statutory Impasse Resolution Procedures) mandated by the IPLRA with respect to the subject of wages, hours and terms and conditions of employment unless such terms violate the U.S. Constitution, Illinois law or public policy, or (ii) any bargaining obligations under the IPLRA, and/or waive any rights or obligations thereunder. In negotiating Successor CBAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAs consistent with the terms of this Consent Decree, or to the extent necessary to provide for the effective implementation of the provisions of this Consent Decree.

As the Seventh Circuit held, a consent decree issued by a Federal court cannot contravene a collective bargaining agreement unless it violates Federal law. *State of Illinois v. City of Chicago*, 912 F.3d 979, 988 (7th Cir. 2019). Notwithstanding the clear terms of the Consent Decree, the Attorney General relies on "provisions mandating the creation or improvement of systems for ensuring officer accountability, preventing future misconduct, protecting officer health and safety, and assuring transparency." (AG Br., p. 2).[10] Each of the Attorney General's concerns are practical, not matters of public policy established by the

[10] Later, the Attorney General states that "the Consent Decree anticipates that misconduct records, including records more than five years old, will be used for one of three distinct purposes: (1) historical trend analysis, (2) non-disciplinary early intervention systems, and (3) public transparency." (AG Br., p. 14).

constitution, statutes, judicial decisions or "the constant practice of the government officials." For that reason alone, the consent decree cannot serve as the public policy basis for vacating the Award.

The Seventh Circuit's explanation in considering the Lodge's motion to intervene in the case leading to the consent decree further establishes that it cannot serve as a source of public policy to invalidate the Award or Section 8.4, and is worth quoting at length:

> The Lodge also argues that the exception in ¶ 687 [now Paragraph 711], indicating that the decree may displace CBA provisions if they "violate the U.S. Constitution, Illinois law or public policy," swallows the rule. "Public policy" is undefined, and so there is arguably ambiguity regarding what triggers that exception.
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> * * * * *
>
> The parties negotiate and the district court considers the consent decree against this background law, which protects the Lodge even if ¶ 687 contains ambiguities. Simply put, a consent decree cannot accidentally eliminate the rights of third parties. And if the parties interpret the consent decree in a way which violates CBA rights, the Lodge can avail itself of normal remedies for CBA violations.
>
> Admittedly, "[c]onsent decrees can alter the state law rights of third parties." But that's true "only where the change is necessary to remedy a violation of federal law." The district court has made no finding of necessity. To the contrary, the court emphasized that it "is obligated to uphold the applicable law in resolving any real conflicts between the proposed decree and any existing or future contracts." The district court noted that consent decrees typically cannot subvert CBA rights, but reminded the parties that "a CBA also must comply with federal law."
>
> Thus, the Lodge's assertion of prejudice is largely speculative. As things stand now, the consent decree cannot impair the CBA or state law rights enjoyed by Chicago police officers. That will change only if the district court concludes that federal law requires the abrogation of those rights. Even then, the abrogation must be narrowly tailored.

Id. (Citations omitted). As suggested by the Seventh Circuit, the Lodge has already availed itself of its "normal remedies for CBA violations" by filing the underlying grievances, taking them to arbitration and seeking to enforce the Award at issue in this case. In light of the Seventh Circuit's explanation of the impact of the consent decree, Amici's arguments that it provides a public policy basis to vacate the Award must be rejected.

3. The Torture Inquiry and Relief Commission Act does not provide a public policy basis to vacate the award.

The Attorney General also argues that the Torture Inquiry and Relief Commission Act, 775 ILCS 40/1, *et seq*. ("TIRC"), provides a basis for a public policy requiring vacating the Award (AG Br., p. 6-9). The Organizations Amicus makes similar arguments (Org. Br., p. 11-18). In making these arguments, Amici rely on allegations of fact that are nowhere in the record below (See, AG Br., p. 6-9, 12-14; Org. Br., p. 11-18). The Lodge has had no opportunity to evaluate or challenge these asserted "facts." For that reason alone, the arguments of Amici should be rejected.

But more importantly, the TIRC does not establish any requirement for the retention of the CR files at issue. It establishes a process through which certain convicted individuals may challenge their convictions. While older CR files may be helpful to those individuals, Amici cites to no provision in the TIRC to suggest that it is imposing a retention requirement. The Amici's arguments in this regard again come down to practical concerns, rather than public policy. As important as those concerns may be, their importance does not allow them to be elevated to the realm of a public policy warranting vacating the award. Moreover, as the Attorney General notes (AG Br., p. 13), the TIRC is sunsetting. Whatever the status

of the TIRC's ongoing investigations, they are of a limited duration, which further diminishes TIRC's value as a source of an enduring public policy.

4. General considerations of public safety do not provide a public policy basis to vacate the Award.

Amicus Organizations offer a general argument that enforcement of the Award would jeopardize public safety. (Org. Br., p. 9-11). The Lodge agrees that public safety and effective law enforcement are of the utmost importance. Notwithstanding their importance, these concepts of public safety and effective law enforcement are broad and the means and methods of improving them are numerous. Simply put, the subjectivity of such concepts are precisely the type of "general considerations of supposed public interests" which cannot serve as a public policy sufficient to vacate an arbitration award. *Misco*, 484 U.S. at 43.

CONCLUSION

For the reasons set forth herein, Respondent/Appellant, Fraternal Order of Police, Chicago Lodge No. 7, respectfully requests that the Court reverse the judgment of the Appellate Court and enforce the Arbitration Award.

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One of the Attorneys for Respondent/Appellant

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CERTIFICATE OF COMPLIANCE

I certify that this petition conforms to the requirements of Rules 315(d) and 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that on or before the hour of 5:00 p.m., this 10th day of March 2020, he filed the foregoing document (Reply Brief of Respondent /Appellant) with the Supreme Court of Illinois, via the Court's electronic filing system, pursuant to Illinois Supreme Court Rule 9(a).

VERIFICATION BY CERTIFICATION: Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true. The undersigned further certifies that he served the above-referenced document by electronic mail to the parties listed below.

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No. 124831

IN THE
SUPREME COURT OF ILLINOIS

THE CITY OF CHICAGO, Petitioner/Appellee, vs. FRATERNAL ORDER OF POLICE, CHICAGO LODGE NO. 7, Respondent/Appellant.	))))))))))	On appeal from the Appellate Court of Illinois First District, No. 1-17-2907 There heard on appeal from the Circuit Court of Cook County, Illinois No. 2016 CH 9793 The Honorable Sanjay T. Tailor, Judge Presiding

NOTICE OF FILING

TO: SEE SERVICE LIST

PLEASE TAKE NOTICE that on the 10th day of March 2020, I shall electronically file with the Clerk of the Illinois Supreme Court, Respondent/Appellant's Reply Brief, a copy of which is attached hereto and herewith served upon you.

March 10, 2020

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CERTIFICATE OF SERVICE/CERTIFICATE OF FILING

The undersigned, an attorney of record, hereby certifies that on or before the hour of 5:00 p.m., this 10th day of March 2020, he filed this Notice of Filing and Respondent /Appellant's Reply Brief with the Supreme Court of Illinois, via the Court's electronic filing system, pursuant to Illinois Supreme Court Rule 9(a).

VERIFICATION BY CERTIFICATION: Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and, as to such matters, the undersigned certifies as aforesaid that he verily believes the same to be true. The undersigned further certifies that he served the above-referenced document by electronic mail to the parties listed below.

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