No. 128338

IN THE SUPREME COURT OF ILLINOIS

WILLIAM WALTON, INDIVIDUALLY,
AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

Plaintiff-Appellant,

v.

ROOSEVELT UNIVERSITY,

Defendant-Appellee.

ON APPEAL FROM THE ILLINOIS APPELLATE COURT,
FIRST DISTRICT
No. 1-21-0011

BRIEF OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS OF LOCAL 705 AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT

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STATEMENT OF IDENTITY AND INTEREST OF THE AMICUS

For more than a century, the International Brotherhood of Teamsters ("IBT") has helped workers achieve the American Dream and stood together to form a union and labor movement to fight for the protection of workers' rights. INTERNATIONAL BROTHERHOOD OF TEAMSTERS, https://teamster.org/ (last visited July 29, 2022). As a large local union, IBT Local Union No. 705 ("*amicus*" or "Local 705") proudly represents approximately 16,000 members in and around the Chicago land area. *Amicus'* members include United Parcel Service, freight, cartage, warehousing, public works, rail yards, movers, and many other employees. *Amicus* prides itself in negotiating fair and strong contracts for its represented employees, including for a safe working environment, competitive wages, and time off for workers to be with their families. *Amicus* has worked hard to settle grievances between unionized employees and employers and has extensive experience with the union grievance and arbitration process.

The purpose of an amicus brief is to discuss policy or supplement a party's brief, including to provide historical discussion on the question at issue. This amicus brief is an opportunity for the *amicus* to give its perspective to the discussion. *Amicus* speaks for hundreds of thousands of unionized workers and is the entity most experienced to give voice to their specific situations and issues *vis-à-vis* the Illinois Biometric Information Act ("BIPA"), 740 ILCS 14/1, et seq. *Amicus* seeks to demonstrate that, under the current precedent, unionized employees are left without any practical recourse for a BIPA or related privacy violation.

The collective bargaining agreement ("CBA") between Walton and SEIU Local 1 union ("SEIU CBA") contains standard collective bargaining provisions that are

representative of a union agreement, including for a large, prominent union in the Chicago area and other unions throughout the State. This brief provides perspective on preemption generally under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and the lack of grievance procedures for a BIPA violation if preemption applied.

Affirming the Appellate Court decision would unfairly tip the scale of bargaining power between unionized employees and their employers in favor of employers. Based upon the broad management rights clause construed as a potential consent, the Appellate Court found that unionized employees must pursue their BIPA rights through the grievance procedures in the SEIU CBA. *Amicus* has an interest in ensuring equal bargaining power between employers and unions but disagrees that the subject agreement sets forth a bargained-for dispute framework for a BIPA claim. This brief is submitted in support of appellant Walton.

INTRODUCTION

Walton was a labor union member who worked for the campus safety department of Roosevelt University ("Roosevelt") and filed a BIPA claim against the university. *Walton v. Roosevelt Univ.*, 2022 IL App (1st) 210011, ¶ 4, *appeal allowed*, No. 128338, 2022 WL 1738484 (Ill. May 25, 2022). He, like other employees in his department, was a member of the SEIU Local 1 ("SEIU Union" or "Union"), a collective bargaining unit. *Id.* His BIPA claim involved the manner by which employees clock in and out for work using a finger scan timekeeping system. *Id.* at ¶ 8. Roosevelt argued preemption under Section 301 of the LMRA, and the trial court disagreed. However, the First District Appellate Court agreed with Roosevelt's preemption argument upon review of its interlocutory appeal. The

Appellate Court found that Walton and other unionized workers were required to pursue their BIPA rights through the grievance procedures in the SEIU CBA instead of state court.

A typical CBA is a long and complex document understood best by the drafting parties and drafted using language familiar to those in the industry. *See, e.g., Int'l Union of Operating Engineers, Loc. 139, AFL-CIO v. J.H. Findorff & Son, Inc*., 393 F.3d 742, 746 (7th Cir. 2004). The CBA may include rates for different job classifications, wage increases, overtime compensation, vacation schedules, and vacation pay. It also may contain a management rights provision and a pledge for union membership, strike protocol, and designation for union recognition. The CBA further provides a system for resolution of disputes related to its provisions. *See. e.g., Irvin H. Whitehouse & Sons Co. v. N.L.R.B.*, 659 F.2d 830, 831 (7th Cir. 1981)

When an employee raises a concern that their union rights have been violated, the CBA shall set forth a detailed grievance procedure. *See Glasper v. Scrub Inc.*, 2021 IL App (1st) 200764, ¶ 51. The union representatives and selected arbitrators become well-versed in resolving familiar disputes. A small number of grievances that cannot be settled between union representatives and management proceed to arbitration only *if* the union chooses to submit the dispute. If not, the dispute dies. As such, if a union exercises its discretion to not pursue a BIPA claim, the dispute is over.

BIPA enforces procedural protections with a threat of substantial potential liability against the employer. *Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186. Yet, in the recent wave of BIPA class action litigation, unionized employees are now being largely excluded because there is no room for a BIPA claim in the grievance procedures of the CBA. The Appellate Court has effectively assigned pursuit of a BIPA claim to the representative

union. The real-world result is the substantial remedies under BIPA, which the Illinois legislature designed to deter non-compliance, will be unavailable to unionized employees.

If a union wanted the obligation to represent employees in BIPA cases, it would have bargained for such a clause in a CBA. The union would then take on a duty of fair representation for those claims on behalf of its workers. Instead, unions have rejected such responsibilities and the obligation has been unfairly foisted upon them by legal fiat. The Illinois legislature did not take such action, nor should this Court. The Appellate Court ruling effectively eliminates the availability of BIPA to unionized employees and turns collective bargaining on its head.

ARGUMENT

I. Under BIPA Individuals Have the Right to Sue in State Court.

BIPA is clear: aggrieved individuals shall have a right to sue in a state circuit court. 740 ILCS 14/20. The legislature would not craft a remedial scheme completely ineffectual to a given class of plaintiffs. *See Nelson v. Artley*, 2015 IL 118058, ¶ 25 ("Construing a statute in a way that renders part of it a nullity offends basic principles of statutory interpretation."). "This construction of the law is supported by the General Assembly's stated assessment of the risks posed by the growing use of biometrics by businesses *and the difficulty in providing meaningful recourse* once a person's biometric identifiers or biometric information has been compromised." *Rosenbach*, 2019 IL 123186, ¶ 35 (emphasis added). To find in favor of preemption would be a blow to the legislature's damages structure for a large subset of people, gutting one-prong of a two-prong system designed "to try to head off such problems before they occur." *Id.* The large subset of people excluded from BIPA are hard-working unionized employees with an interest in

protecting their identifying features (*i.e.* fingerprints) if biometric identification remains a pervasive method of verification in the employment sector.

The Appellate Court found that the question of whether the Union consented to the collection and use of biometric data through negotiation or through the management rights clause of the SEIU CBA was a question reserved for arbitration or the grievance procedures under the LMRA. *Walton*, 2022 IL App (1st) 210011, ¶ 25. The goals of BIPA are wholly distinguishable from the goals of the LMRA. "The LMRA is designed to equalize bargaining power between employers and unions by providing for self-organization and collective bargaining." *Byrd v. Aetna Cas. & Sur. Co.*, 152 Ill. App. 3d 292, 302 (1987). BIPA is an informed consent statute designed for the protection of sensitive biometric information. *Bryant v. Compass Grp. USA, Inc.*, 958 F.3d 617, 626 (7th Cir. 2020), *as amended on denial of reh'g and reh'g en banc* (June 30, 2020) (citing *Rosenbach*). There is a conflict between the remedial purpose of BIPA and bargained-for grievance procedures under the LMRA.

BIPA explicitly provides in the section "Legislative intent," that it was enacted because "[t]he public welfare, security, and safety will be served by regulating the collection, use, safeguarding, handling, storage, retention, and destruction of biometric identifiers and information." 740 ILCS 14/5(g). BIPA also provides that it may be enforced by "any person," to recover actual or liquidated damages, attorney fees, and costs. *Id.* at 14/20. The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent, and the best indicator is the language of the statute itself and the legislature objective in enacting it. *Andrews v. Kowa Printing Corp.*, 217 Ill. 2d 101, 105–06 (2005). The language of BIPA is clear and unambiguous, with remedies for a violation

clearly provided for within these steps, not within the steps of grievance procedures that were specifically bargained for without any regard for or mention of BIPA. *See* 740 ILCS 14/15.

Statutory rights are simply not waived in an CBA absent clear and unequivocal language and without negotiated provisions that provide requirements related to biometric information and compensation for non-compliance. For preemption to override a state law claim under the LMRA, it must be "clear[ly] and unmistakabl[y]" waived by the parties. *Metropolitan Edison Co. v. NLRB,* 460 U.S. 693, 708 (1983). Preemption cannot be inferred. BIPA was enacted based upon the State policy that individuals' biometric information was entitled to protections. A BIPA claim exists separate from any provision of the SEIU CBA.

The Appellate Court in *Walton* discussed and relied upon the U.S. Supreme Court case of *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 220 (1985) ("[F]ederal district courts have exclusive jurisdiction over state law claims when the resolution of such claims depends on the interpretation or administration of a collective bargaining agreement.") (citing *Allis Chambers*, 471 U.S. at 209-211). In *Allis-Chambers*, the Court found that a state law claim is preempted only if resolution of the claim is "substantially dependent" upon an "interpretation" of the specific terms of a CBA. 471 U.S. at 220.

The Illinois Supreme Court case of *Gonzalez v. Prestress Eng'g Corp*., 115 Ill. 2d 1 (1986) substantially discussed *Allis-Chambers*. The *Gonzalez* case provides the relevant guidance in this appeal, as the Court, using the principles in *Allis-Chambers,* found that the subject claims "plainly fall outside the preemptive sphere of section 301." *Id.* at 9. "In stark contrast [to the claim in *Allis-Chambers*], the instant claims are firmly rooted in the clearly

mandated public policy of this State, which, regardless of the existence or absence of a collective-bargaining agreement, confers upon all employees and employers certain nonnegotiable rights and imposes certain nonnegotiable duties and obligations." *Id.* (holding claims under the Workers Compensation Act were not preempted); *see also Lingle v. Norge Div. of Magic Chef, Inc.,* 489 U.S. 399 (1988) (Illinois tort of workers compensation retaliation for union employees not preempted by § 301 even when CBA prohibited termination without just cause).

The Appellate Court in *Walton* failed to include the public policy discussion articulated in *Gonzalez*. After making a brief reference to the standard in *Allis-Chambers*, the Appellate Court relied almost exclusively on the Seventh Circuit cases of *Fernandez v. Kerry, Inc*., 14 F.4th 644, 646-47 (7th Cir. 2021) and *Miller v. Southwest Airlines Co.*, 926 F.3d 898 (7th Cir. 2019), which both involved BIPA claims brought by unionized employees.

The Appellate Court in *Walton* followed the federal court's reasoning in *Fernandez v. Kerry, Inc.*, that, when the employer invokes a broad management rights clause from a collective bargaining agreement, the claim is preempted. An arbitrator must determine whether the union bargained for or consented to the collection of biometric information for purposes of BIPA under that clause. 2022 IL App (1st) 210011, ¶ 19 (citing *Fernandez*, 14 F.4th 644, 646-47). The court in *Fernandez* directly followed similar reasoning by the Seventh Circuit in *Miller v. Southwest Airlines Co.*, which held that a BIPA claim was preempted in the same way under the Railway Labor Act (45 U.S.C § 152 (2018)). 926 F.3d at 903-04. The Appellate Court in *Walton* found that "Walton and his fellow unionized employees are not prohibited from pursuing redress for a violation of their right to

biometric privacy—they are simply required to pursue those rights through the grievance procedures in their collective bargaining agreement rather than in state court in the first instance." 2022 IL App (1st) 210011, ¶ 27. This finding, if affirmed, will have far-reaching, detrimental effects on the BIPA rights of unionized employees. Unions and grievance procedures are not designed to handle BIPA disputes.

A. The Union is Not the Employees' Legally Authorized Representative to Provide Informed Consent Under BIPA.

The Appellate Court found that the subject management rights clause, which gave the employer broad authority to manage the business and direct the workforce, could be construed to provide consent to biometric data collection. *Walton*, 2022 IL App (1st) 210011, ¶ 22. In BIPA Section 15, consent to the collection of biometric information may be provided by the "subject or the subject's legally authorized representative." 740 ILCS 14/15. A union, however, is considered the employee's "bargaining representative," *and not as to all issues* related to employment. *See Bartley v. University Asphalt Co.*, 111 Ill.2d 318, 324 (1986) ("The duty of fair representation […] arises from a union's status as the exclusive bargaining representative...."). The Union cannot be the authorized representative for purposes of BIPA consent, and that question is also not appropriate for an arbitrator unfamiliar with BIPA. Further, as with other statutory rights serving important public policies, the right to informed consent under BIPA was not intended to be bargained away by a union. "The right is derived from Illinois (and national) public policy. It cannot be negotiated or bargained away." *Ryherd v. Gen. Cable Co.*, 124 Ill. 2d 418, 426 (1988) (affirming holding in *Gonzalez*).

The purported potential grant of consent through the Union in the subject managements rights clause is simply too weak by itself. For reference, in another case

finding preemption from a potential grant to the union as the representative, there were more terms in the collective bargaining agreement for the claim. In *Glasper v. Scrub Inc*., 2021 IL App (1st) 200764, the court found that the unionized employee's Wage Payment and Collection Act claims were preempted because (a) "Article 1 of the CBA provides that the employer recognizes the union as the sole and exclusive representative," but *also* (b) the agreement *specifically defined* the number of hours in a work week, amount of wages, and provided a formula to calculate overtime pay. *Id.* at ¶ 37. The *Glasper* agreement provided a grievance procedure in great detail for a violation. *Id.* There was no aspect of the wage claim that "is not addressed by, does not arise from, or is independent of the CBA," and preemption applied. *Id.* at ¶ 38. The *Glasper* court also determined that the collective bargaining agreement was subject to interpretation because it provided the formula for calculating wages. *Id.* ¶ 48.

The *Glasper* court did more than reference the grant to the union as an authorized "representative." *Id.* In *Glasper*, the subject clause "specifically provides that the employer and employees shall not bargain independently of the union with respect to wages, hours of employment, or working conditions." *Id.* By comparison, in the *Walton* case, the subject management rights clause does not mention privacy, timekeeping, or time management in an analogous way, only general "operations." (SR60 at Art. II. Sec. 1) *See also Tito v. Scrub, Inc.*, 2021 IL App (1st) 201081-U, ¶ 44 (finding preemption where the agreement "included specific provisions defining the work week, overtime, and wages which were at issue."). A general grant without procedures for enforcement is not enough.

B. No Grievance Procedure in the SEIU CBA Covers BIPA.

The grievance procedure in the SEIU CBA is designed to handle claims specifically outlined in its provisions. The procedure must be completed in a limited time period and

further pursuit of the grievance is a matter of Union discretion at every step. In "Step I" of the SEIU CBA, the grievant has 10 days following the event to present the grievance to the Union Grievance Representative. (SR75-76 at SEIU CBA, Art. XVIII-Grievance Procedure and Arbitration, Step I) Under "Step II," "If the matter is not settled in the first step and the Union wishes to pursue it," the grievance will be presented to the employer in writing. *Id.* at Step II. The representative parties will discuss the grievance and the employer will provide an answer within 15 days. *Id.* Only if the grievance is not resolved in this second step, will the grievance go on to Step III. *Id.* at Step III. The grievance must specify which provision of the SEIU CBA has been violated and the Union must identify specific facts supporting the violation. *Id.* It is presented to the Labor-Management Committee consisting of representatives of the employer and union. *Id.* Only then, if the grievance is not resolved, the Union will have 10 days to serve the demand for arbitration. (SR76-77, Section 2)

It is fatal to the question of preemption that the SEIU CBA fails to provide a remedy or compensation for a BIPA violation. (SR75-76 at SEIU CBA, Art. XVIII-Grievance Procedure and Arbitration, pp. 18-19, Step I) The article at issue in this case, "Article II-Employer Rights, Union Membership and Checkoff, Section 1," referred to as the management rights clause, does not reference the grievance procedure. (SR60, p. 3) Therefore, it is not clear how a grievant may specify a violation of the management rights clause for a BIPA claim. (SR76, Art. XVIII, Step III) ("All written grievances shall specify the provision within the article(s) and section(s) of the agreement allegedly violated."). Nothing in the management rights clause states that the employer may or may not collect the employees' biometric information, that the employer should maintain a biometric

information storage and destruction policy, nor does it address any of the other requirements of BIPA. As a result, from the *amicus'* perspective and experience, there is no grievance procedure and no remedy for a BIPA violation under the SEIU CBA.

In fact, the grievance procedure in the SEIU CBA only relates to certain claims. They are non-payment of dues (SR61 at Art. II, Sec. 4); the right to discipline and discharge (SR61 at Art. III, Sec. 1), health and welfare (SR72 at Art. XIV, Sec. 1), strikes lockouts and picketing (SR75 at Art. XVII, Sec. 3). Each clause provides that the union will have the "right" to investigate such claims through the grievance procedure or references the grievance procedure. *Id.* There is no such provision for enforcement of the management rights clause.

The Appellate Court found that the arbitrator must determine whether Union consented on the employees' behalf in the subject management rights clause. *Walton*, 2022 IL App (1st) 210011, ¶ 19. The Appellate Court also found that unionized employees were "required to pursue [redress of a violation of BIPA] through the grievance procedures in their collective bargaining agreement rather than in state court in the first instance." *Id.* at ¶ 27. This conclusion is akin to a finding that the claim must be presented to arbitration despite the provisions of the CBA. *Vaca v. Sipes*, 386 U.S. 171, 191 (1967). When in fact, under the procedures (or lack of grievance procedures) in the SEIU CBA, the issue will never reach the arbitrator.

The lack of applicable provisions or grievance procedures for BIPA claims leaves the SEIU union in a precarious spot. The failure to submit a BIPA claim to arbitration could rise to a breach of the duty to fairly represent an employee. Union representatives typically have a duty to pursue meritorious grievances, but much is left to their discretion. *Vaca*, 386

U.S. at 191. This is because the grievance procedures and provisions of a CBA are closely guarded to maintain their integrity for the larger benefit of unionized employees. Therefore, a union "has discretion to act in consideration of such factors as the wise allocation of its own resources, its relationship with other employees, and its relationship with the employer." *Neal v. Newspaper Holdings, Inc*., 349 F.3d 363, 369 (7th Cir. 2003).

A finding that a BIPA claim must be processed through the grievance procedures assumes that employees will submit their claim in timely manner. Employees usually scan their fingerprint in a timekeeping system on their first day of employment, before they are officially admitted to the union. It is impracticable for an employee to bring a grievance after their first finger scan within their first days of employment. At that point, they are still in the "probationary period," and very unlikely to know of their rights to file in time. Any untimeliness cannot be ascribed to the Union. *Neal*, 349 F.3d at 370 (union did not breach its duty of fair representation by failing to pursue an untimely filed claim).

Unfortunately, in federal cases, BIPA claims of probationary employees have been found to be preempted. *See Crooms v. Sw. Airlines Co.*, 459 F. Supp. 3d 1041, 1049 (N.D. Ill. 2020) (finding that the collective bargaining agreement did cover employees in the probationary period in relation to the method of clocking in and out using a fingerprint scanner a preemption applied); *Williams v. Jackson Park SLF, LLC*, No. 19-CV-8198, 2020 WL 5702294, at *4 (N.D. Ill. Sept. 24, 2020) (rejecting plaintiff's argument that LMRA preemption did not apply to his BIPA claims because he was not a union member at the beginning of his employment, reasoning "he was a union member for the majority of his employment"). This is further proof that there is no "home" for a BIPA claim in union grievance procedures that include a short timetable to submit and process claims.

Notably, during a probationary period an employee can be terminated for any reason, and the union cannot grieve probationary discipline/termination. The probationary employee is in a tenuous position, being primarily interested in securing employment and union membership. It is highly unlikely that a probationary employee would file a grievance regarding a BIPA issue because of the fear that they may be terminated. In this real-world circumstance, the union bears the high burden of proving that the employee was terminated because they exercised union rights by filing a BIPA grievance compared to another issue the employer had with the probationary employee.

Additionally, there is no procedure for a former union employee to pursue BIPA relief. The SEIU CBA only applies to current employees. (Art. I ["The Employers recognize the Union as the sole and exclusive representative of all full and parti-time security employees,…]). The subject management rights clause applies to "employees covered by this Agreement." (SR60 at Art. II, Sec. 1) BIPA contemplates post-employment relief related to the retention and destruction of biometric information following the employees' last day with the company. *See* 741 ILCS 14/15 (a). *See, e.g., Carnock v. City of Decatur,* 253 Ill. App. 3d 892, 898 (1993) (retired firefighters did not have to exhaust the union grievance procedure). If preemption applies to former employees, they will not be able to participate in the grievance procedure.

II. Statutory Claims are Traditionally Considered Independent of a CBA.

BIPA includes rights and remedies created by statute. *See* 740 ILCS 14/1, et seq. Historically, statutory claims are independent of a CBA, particularly if the statute is enacted pursuant to the public policy of the State. For reference, Illinois courts have found that discrimination claims are not preempted despite a tangential reference to language in a CBA. *See Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 52 (1974) (a statutory right

against discrimination is legally independent of any claim provided in the collective bargaining agreement). It is material that the statutory claim has its origin in Illinois public policy, and, as such does not depend upon the existence of the CBA. *See Kraft, Inc., Dairy Grp. v. City of Peoria*, 177 Ill. App. 3d 197, 203 (1988) ("[D]iscrimination claim has its origin in the public policy of Illinois and does not depend on the existence of the collective bargaining agreement.") (citing *Gonzalez*, 115 Ill.2d at 10). *Cf. 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 129 S. Ct. 1456, 1459, 173 L. Ed. 2d 398 (2009) (the CBA "clearly and unmistakably" committed the union members to submit statutory claims to the grievance procedure).

BIPA was enacted to promote public policy that individuals' biometric information be protected and that they provide their sensitive identifying information only with informed written consent. *See Rosenbach*, 2019 IL 123186, ¶ 33 (BIPA imposes legal duties regarding the collection, retention, disclosure, and destruction of a person's biometric information). In this same vein, BIPA requires that entities follow and maintain a *publicly available policy* for the retention and destruction of biometric information. 740 ILCS § 14/15(a). Clearly, enforcement of the public policy requirement should be left to the courts alone. The Section 15(a) publicly available policy requirement was not discussed by the Appellate Court in *Walton*.

Wage claims covered by statute have also been found separate from a CBA where the CBA did not include provisions for enforcement. In *Byrne v. Hayes Beer Distrib. Co.*, 2018 IL App (1st) 172612, ¶ 32, the plaintiff brought a claim under the Wage Act for alleged violations from deducting money for stale beer without consent. The defendant argued preemption, but the appellate court disagreed, finding that even though the CBA

required drivers to restock products to ensure freshness, it did not address how that provision would be enforced. *Id.* Instead, the question of whether money could be deducted from the drivers' commission fell squarely under section 9 of the Wage Act and was inherently independent of the CBA. *Id.*

In *Andrews v. Kowa Printing Corp.,* 351 Ill. App. 3d 668 (2004), *aff'd,* 217 Ill. 2d 101 (2005), the plaintiffs brought claims pursuant to section 5 of the Wage Act and argued against LMRA preemption. The appellate court agreed finding that "their claim under the Wage Act was a proper vehicle for their requested relief and federal preemption was not required." *Id.* at 673. "The parties must engage in a good-faith dispute or debate over the meaning of terms within the contract in order for preemption to be triggered." *Id.* The dispute was over amounts provided in a stipulation between the parties, not under the vacation and severance terms of the collective bargaining agreement so no interpretation of those provisions was necessary for preemption to apply.

In *Daniels v. Board of Education of the City of Chicago,* 277 Ill. App. 3d 968 (1996), the plaintiffs, who had been laid off, sought to recover their accrued and unused vacation days under section 5 of the Wage Act, *Id.* at 968. The defendant-employer argued preemption because the subject CBA contained a provision outlining how employees earned vacation pay and therefore the CBA had to be interpreted to resolve the vacation pay issue. *Id.* at 970. The appellate court did not find in favor or preemption, because the claim did not arise entirely under the subject CBA, rather the CBA was silent on compensation for accrued vacation days on separation from employment. *Id.* at 973-94.

Additionally, Workers' Compensation Act claims have been evaluated separately from a CBA. In *Miranda v. Jewel Companies, Inc*., 192 Ill. App. 3d 586, 591 (1989), the

plaintiff pursued the right to receive workers' compensation benefits collectively with vacation pay. The appellate court split the claims according to whether they required interpretation and application of the CBA. The claims for vacation pay were preempted by federal labor law. *Id.* at 592. The claims provided for by the exclusive remedies of the Workers' Compensation Act remained independent of the CBA as the Act provided the measure of economic recovery. *Id. See also Ryherd*, 124 Ill. 2d at 426 (discussing right to recover for retaliatory discharge, finding that the particular type of retaliatory discharge flowed directly from the Workers Compensation Act and not from the CBA); *Lingle*, 486 U.S. at 407-410.

Rights protected by statute are outside the realm of collective bargaining and grievance procedures. The intent of the union representation of employees does not include barring them from rights guaranteed to them by law. The question of whether Section 301 of the LMRA preempts BIPA claims asserted by employees covered by a collective bargaining agreement should be answered in the negative.

CONCLUSION

Amicus respectfully requests that the Court answer the certified question in the negative. The Union is not the bargaining agent for employees for purposes of BIPA. The statutory requirements of BIPA, which function through the potential for substantial liquidated damages for non-compliance, do not fit within the sphere of the union-employer relationship.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, Mara Baltabols, certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 17 pages.

Dated: August 4, 2022

/s/ Mara Baltabols

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