Case No. 124831

IN THE
SUPREME COURT OF ILLINOIS

FRATERNAL ORDER OF POLICE, CHICAGO LODGE NO. 7	)	On Petition for Leave to Appeal from the Appellate Court of Illinois, First District, No. 1-17-2907,
Petitioner-Appellant,	)	
	)	There herd on appeal from the Circuit
v.	)	Court of Cook County, Illinois
	)	No. 2016 CH 9793
THE CITY OF CHICAGO	)	Honorable Sanjay T. Taylor
	)	Judge Presiding
Respondent-Appellee	)	

ILLINOIS AFL-CIO AND ILLINOIS FRATERNAL ORDER OF POLICE LABOR COUNSEL *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER - APPELLANT

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INTEREST OF THE AMICUS CURIAE

The Illinois AFL-CIO is a state federation of labor unions affiliated with international unions which represent employees in a wide variety of jobs in the State government, local governments and public universities, colleges and schools. The Illinois Fraternal Order of Police Labor Council ("FOP Labor Council") provides collective bargaining and union representation including negotiating and enforcing collective bargaining agreements for law enforcement professionals throughout Illinois.

Many of the local unions affiliated with the Illinois AFL-CIO and local unions associated with the Illinois FOP Labor Council have negotiated collective bargaining agreements containing provisions related to retention of employee records and final and binding arbitration procedures subject to the jurisdiction of the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq*., the Illinois Educational Labor Relations Act, 115 ILCS 5/1 *et seq*., and the Illinois Uniform Arbitration Act, 710 ILCS 5/1 *et seq*. These are the governing labor relations laws for the state, county, or municipal governments, public universities, colleges and school districts and their employees.

The Illinois AFL-CIO and the Illinois FOP Labor Council understand that it is not a right to appear and address this Court as *amici curiae*. The resolution of this case is of utmost concern to the *amici curiae* and its member locals, as they believe that the binding nature of arbitration proceedings regarding matters that have been negotiated between a public employer and the exclusive bargaining representative of its employees are directly at issue in this litigation. The *amici curiae* request leave to address the matters of public policy raised by the Appellate Court's decision and the possible impact that decision will have on the public policy of collective bargaining.

ARGUMENT

I. The Appellate Court's Decision Will Adversely Affect the Arbitration Clauses of the Collective Bargaining Agreements in the Illinois Public Sector

The underlying premise of this case strikes at the heart of the collective bargaining process protected by the Illinois Public Labor Relations Act. The Appellate Court's decision in this case adversely impacts almost every public sector collective bargaining contract in, which over the past sixty years both before and after the 1983 passage of the States' collective bargaining laws, the Illinois Pubic Labor Relations Act ("IPLRA"), 5 ILCS 315 and the Illinois Educational Labor Relations Act ("IELRA"), 115 ILCS 5, have contained final and binding arbitration clauses. Many of these contracts also have clauses designed to protect employees from having stale discipline and any other records being held against them. Hence, the kind of clause in this case, Section 8.4 of the Chicago police collective bargaining agreement, is quite common in the Illinois public sector. *City of Chicago and Fraternal Order of Police Chicago Lodge No. 7*, Gr. Nos. 129-11-035 and 129-12-004, (2016) (Roumell, Arb.), App. at 38-9. The City seeks to nullify contract provisions that were bargained in good faith, voluntarily agreed to, and included in the parties' collective bargaining agreements since 1980. Indeed, Section 8.4 of the collective bargaining agreements memorialized the policies of the Chicago Police Department promulgated to protect police officers years before the collective bargaining process even started for those officers. The Appellate Courts' ruling would allow public sector employers across the state to negate similarly negotiated contract clauses and avoid the binding nature of the grievance procedure.

The IPLRA has recognized the strong public policy interest in a grievance procedure for public sector collective bargaining. The public policy interest is so strong, in

fact, that the Act *requires* that collective bargaining agreements in the public sector include a grievance procedure. 5 ILCS 315/8. The IPLRA states, "[t]he collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure…" *Id.* (emphasis added). The statute further requires that mandated grievance procedure in the collective bargaining agreement "shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement." *Id.*

The IPLRA also pre-determined that the *quid pro quo* for the guarantee of the statutorily required final and binding arbitration process is a no strike provision for the duration of the agreement. 5 ILCS 315/8. The weight of the public policy supporting a final and binding arbitration procedure as provided for in the IPLRA is clear in the importance of the right given up as a *quid pro quo*. The right to strike has long been recognized as the "the primary form of labor pressure in the collective bargaining system." Kurt L. Hanslowe & John L. Aciero, *The Law and Theory of Strikes by Government Employees*, 67 Cornell L. Rev. 1055 (1982).

The respondent has engaged in an unwarranted effort to neutralize the requirements of the IPLRA that the collective bargaining agreements are to contain final and binding arbitration clauses. The Appellate Court's decision relies upon amorphous or generalized public policy pronouncements that are not narrowly tailored, as required by the public policy decisions of the U.S. Supreme Court in *United Paperworkers v. Misco*, 484 U.S. 29 (1987) (Court of Appeals exceeded the limited authority possessed by a court in reviewing an arbitrator's award entered pursuant a collective bargaining agreement) and *Eastern Associated Coal Corp. v. United Mine Workers of America, Dist. 17*, 531 U.S. 57

(2000) (arbitration award not vacated because it did not violate a specific provision of any law or regulation), in which labor arbitration decisions were not vacated. Consequently, the Appellate Court's decision directly undermines the General Assembly's mandate that labor disputes be resolved by the grievance and arbitration provisions of labor agreements. The Appellate Court ignored the strong public policies set forth in the IPLRA and in other state statutes that protect employees from the use of aged records in disciplinary and other proceedings and in the finality of the grievance and arbitration process in collective bargaining agreements.

Since the United States Supreme Court decided the *Steelworkers Trilogy*[1] in 1960, it has been a well-recognized and bedrock principle of the unionized workplace, both public and private, that there is a strong public policy interest in the use and finality of arbitration procedures bargained for by employers and unions. The *Steelworkers Trilogy*, has been "hailed as an important public policy breakthrough securing a speedy, efficient, conclusive and privately negotiated system for the resolution of union-management grievance disputes." Michael H. LeRoy & Peter Feuille, *The Steelworkers Trilogy and Grievance Arbitration Appeals: How the Federal Courts Respond*, 13 Indust. Rel. L.J. 78 (1992).

The important public policy of a strong deference to arbitration awards has been recognized in the public sector as well. *AFSCME v. State*, 124 Ill.2d 246, 254-55, 124 Ill.Dec. 553, 529 N.E.2d 534 (1988). As the Michigan Supreme Court recognized, "[t]he

[1] *United Steelworkers v. American Mfg. Co.*, 361 U.S. 546 (1960); *United Steelworkers v. Warrior Gulf Navigation Co.*, 363 U.S. 475 (1960); and *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960).

policy favoring arbitration disputes arising under collective bargaining agreements, as enunciated by the United States Supreme Court in the *Steelworks' Trilogy* is appropriate for contracts entered into under the [Public Employee Relations Act]." *Kaleva-Norman Dickson School Dist. v. Kaleva-Norman Dickson School Teachers' Ass'n*, 393 Mich. 583, 590-92, 227 N.W.2d 500 (1975).

The parties in this case have negotiated language regarding the retention and destruction of records regarding employees. Such a provision has existed in the parties' collective bargaining contracts for decades. Similar provisions have existed in the collective bargaining agreements of public sector unions across the state for decades as well, and these contracts, as required by the IPLRA and IELRA, also contained grievance procedures which required final and binding arbitration in lieu of the right to strike. The Respondent now seeks to abandon that process and negate the requirements of the IPLRA for a final and binding arbitration procedure by using the public policy exception in the broadest possible manner.

The Court should not permit the final and binding grievance procedure to be so easily avoided. Nor should it allow such long standing contract provisions to be overturned. Instead, it should support the importance of the final and binding arbitration process as provided for in the IPLRA and IELRA and the *quid pro quo* of sacrificing public employees' right to strike. Even though the police officers in this case do not have a right to strike, other employees covered by the Act do, and the Court's decision on the use of public policy to negate arbitration awards will affect them as well. These are central principles that should not be easily pushed aside.

II. Final and Binding Arbitration Decisions Should Not Be Vacated Except in the Rarest of Circumstances

For decades, the Illinois Supreme Court has stressed that judicial review of a labor arbitrator's award is extremely limited. *American Federation of State, County, and Municipal Employees v. State,* 124 Ill.2d 246, 254 (1988); *accord, State v. AFSCME, 2016 IL 118422, ¶ 28; AFSCME v. Dep't of Cent. Mgmt. Servs. (DuBose),* 173 Ill. 2d 299, 304 (1996).

The Courts have the authority to overturn an arbitration award if "it is repugnant to the established norms of public policy." *DuBose*, at 307. The public policy exception is narrow and can be invoked only when a contravention of public policy is clearly shown. *Id.* (Citations omitted). The "public policy must be 'well defined and dominant' and ascertainable 'by reference to the laws and legal precedents and not from generalized considerations of supposed public interests.'" *Id.* In determining whether an award must be vacated, the Court follows a two-step analysis. First it must be decided whether a "well-defined" and dominant" policy can be identified. Second, it must be determined whether the arbitrator's award violated the public policy. *State v. AFSCME*, 2016 IL 118422, ¶ 41; *AFSCME v. Department of Cent. Mgmt. Servs. (DuBose),* 173 Ill. 2d 299, 307 (1996).

As shown in the next section of this brief, there is a not "well-defined" and "dominant" public policy that forms a basis to vacate the decision. Since none of the statutes it relied on mandate the retention of records in perpetuity, one cannot say that the policy in question is "well-defined." Similarly, the public policy cannot be "dominant" because it is in direct conflict with both the IPLRA and the Personnel Records Review Act,

820 ILCS 40. The IPLRA provides for a strong public policy of robust labor management relations including negotiation of mutually agreed upon collective bargaining agreements—which requires final and binding arbitration. 5 ILCS 315/2. The Personnel Record Review Act specifically limits the age of the records that can be used to take actions against an employee. 820 ILCS 40/8. These two public policies negate the holding of the Appellate Court and show the open records argument of the City is ill-defined, not paramount and subject to other, more important statutory requirements.

In the same vein, it cannot be said that the arbitrator's award, based upon a clear provision of the collective bargaining agreement, violates any public policy. In this case, the Court must determine whether obeying the arbitrator's award is inconsistent with other legal obligations that the City has no control over. Any other result would require the Court to base its decision on "generalized considerations of supposed public interests." *W.R. Grace & Co. v. Local Union No 749,* 461 U.S. 757, 766 (1983) (cited in *AFSCME v. Dep't of Cent. Mgmt. Servs. (DuBose), supra,* 173 Ill. 2d at 307); *accord, Eastern Associated Coal Corp. v. United Mine Workers of America, District 17*, 531 U.S. 57, 66 (2000) ("*Eastern Coal*") (reinstatement of employee discharged for drug use violated no positive law and was consistent with statute's remedial purposes as well).

Under *Eastern Coal*, the analysis is not whether the conduct that gave rise to the grievance was in violation of dominant, well-defined public policy, but rather whether enforcement of the arbitration decision violates public policy. 531 U.S. 57, 62-63. Illinois courts have implicitly recognized this standard as well. Illinois courts have held that a public policy offended by an arbitration award must be "well-defined and dominant, and ascertainable by reference to the laws and legal precedents" and not from "generalized

considerations of supposed public interests." *American Federation of State, County & Municipal Employees v. Dep't of Cent. Mmgt. Servs.*, 173 Ill.2d 299, 307, 219 Ill.Dec. 501, 671 N.E.2d 668 (1996), *quoting W.R. Grace & Co. v. Local Union No. 759*, 461 U.S. 757, 766 (1983). The public policy exception is narrow, and Illinois law and legal precedent must explicitly state the public policy in order for it to serve as a basis for vacating an arbitration award. *Id.*, at 307. *See also City of Highland Park v. Teamster Local Union No. 714*, 375 Ill.App.3d 453, 293 Ill.Dec. 341, 828 N.E.2d 311 (2nd Dist. 2005).

In *Highland Park*, a municipal police officer was arrested and charged with, among other counts, criminal trespass to a vehicle following an incident with another driver. *Id.* at 455. After being convicted by a jury, the City terminated the officer. The officer grieved the termination, which proceeded to arbitration. The arbitrator found that the City lacked 'just cause' to terminate the officer, and ordered his reinstatement subject to a lengthy suspension. *Id.* at 458-59. The circuit court vacated the award, finding that it violated the Illinois public policy of promoting effective law enforcement by assuring public confidence in law enforcement officers. *Id.* at 459.

The court, in that case, reversed, holding that there was no "explicit public policy" governing the case. *Id.* at 462. The court pointed out that while the trial court relied upon a number of appellate court opinions that established a public policy in favor of maintaining the public's trust in law enforcement officials, none of those cases expressly *require* that police officers who are convicted of a misdemeanor (or any type of offense) be terminated in lieu of a less severe form of discipline. *Id.* at 464. The court's analysis focused on the arbitration decision itself, not the alleged underlying conduct of the officer. It was the reinstatement of the officer, not the actions which lead to his discipline which the court

evaluated for a violation of public policy. *Id.* at 463-464. Because the city failed to demonstrate the existence of a well-defined and dominant public policy that was violated by the arbitrator's award, and because the city failed to show that the arbitrator made an irrational finding unworthy of the deference, the courts are required to provide for arbitration awards, the appellate court reversed the trial court's decision to vacate the arbitration award. *Id.* at 466-67.

In this case, the arbitrator's decision specifically speaks to the public policy concerns the Appellate Court found it to have violated and accounts for those public policy concerns in the decision and award. It is important to note that the arbitrator *did not* order the immediate destruction of any and all records which violated the negotiated contract provisions. Instead, after careful analysis of the legal cases that the City had relied upon, the arbitrator ordered that the matter be remanded to the parties to negotiate "the method and procedure to be followed in destroying eligible disciplinary records as well as to give the City the opportunity to list records that are exempt from destruction.…" (App. 000082). The arbitrator's decision analyzed the public policy at issue in the case, including the Local Records Review Act, 50 ILCS 205/7. (App. 0000081). The arbitrator noted that the destruction of records by the Department required, pursuant to its own Special Orders, approval by the Local Records Commission. (App. 000081). There is nothing in the arbitrator's decision and award, as reviewed by the Appellate Court that required destruction of records in violation of any public policy.

Thus, the arbitrator's decision does not require the City to violate the Local Records Act, the State Records Act or the Freedom of Information Act, and the arbitrator's decision was firmly rooted in basic principles of collective bargaining. The "public policy"

exception cannot be used to overturn such an award. *Compare, State v. AFSCME,* 2016 IL 118422 (overturning arbitrator's award because it violated Section 21 of the IPLRA and the Appropriations Clause of the Illinois Constitution and because overturning award would not negate collective bargaining under the IPLRA). In fact, in this case, the Appellate Courts decision violates the well-established and defined public policy in the state in support of collective bargaining.

The Appellate Court ignores the fact that the Roumell decision, consistent with the strong public policy in favor of collective bargaining set forth in the IPLRA, ordered the parties to bargain the appropriate remedy. The Appellate Court has inserted itself into that bargaining process, and unilaterally declared Section 8.4 of the contract a nullity and in essence declared that all records must be held in perpetuity. Failure to do so would run the risk of violating public policy. In doing so, the Appellate Court substituted its decision without the benefit of the *collective* bargaining process for that of the parties and in direct contravention of the strong public policy as stated in the IPLRA.

The vast majority of lawsuits seeking to vacate labor arbitration awards are brought by employers seeking to overturn arbitration awards that reduced the discipline received by an employee under an agreed contract provision requiring "just cause" for discipline. Under *DuBose,* the arbitrator considering a public policy argument usually must make findings on the issue of whether the employee is likely to continue conduct that violates an established public policy. *AFSCME v. Dep't of Cent. Mgmt. Servs. (DuBose), supra,* 173 Ill. 2d at 318, 322-323. The Appellate Courts review such findings with extreme deference. An arbitration award will only be overturned if it condones blatant and specific violations of the public policy. *City of Aurora v. Ass'n of Prof'l Police Officers,* 2019 IL App (2d)

180375 ¶ 64; *Ill. State Toll Highway Auth. v. Int'l Bhd. of Teamsters, Local 700*, 2015 IL App (2d) 141060 ¶ 63.

This case is different and much simpler. The Court simply must determine whether enforcement of the award would subject the City to conflicting statutory obligations or whether it will undermine other state statutes regarding the availability of public information. As shown in the next section, it will not. The decision and award in the underlying case does not violate a clear and well-established public policy, because it ordered the parties to negotiate the issue, and there is no clear and established public policy that would require the City to indefinitely maintain discipline records.

III. There Is No Public Policy To Support the Indefinite Retention of Employee Records

The Appellate Court pointed to three statutes to support its claim that there is a dominant public policy that requires the indefinite retention of employee disciplinary records: State Records Act, 5 ILCS 160/1; Local Records Act, 50 ILCS 205; and the Freedom of Information Act, 5 ILCS 140. There is no language in any of these laws that satisfies the narrow and specific requirements as stated in *Misco* and *Eastern Coal* that supports overturning a final and binding arbitration award on public policy grounds.

A. The Appellate Court Failed to Consider the Personnel Record Review Act

The *AFSCME* case requires that a public policy exception be "well defined and dominate." *AFSCME*, 173 Ill.2d at 307. Had the Appellate Court considered all of the applicable state statutes, it would have been clear that there is no "well defined and dominant" public policy regarding the retention of employee records. Significantly, the court did not refer to the Illinois Personnel Record Review Act that supports the "delet[ion]

of disciplinary reports, letter of reprimands or other records of disciplinary action." 820 ILCS 40/8. The purpose of the Personnel Record Review Act is to ensure that aged discipline cannot be used to forever cloud the reputation and employment of a public employee. The public policy enshrined in this Act is very similar to the one supported by Section 8.4. This public policy is as dominant as those relied upon by the City and cannot be dismissed without proper consideration. When properly considered, the Personnel Records Review Act makes it clear that there is no well-defined and dominate public policy that requires the indefinite retention of employee disciplinary records.

The Personnel Record Review Act states, in relevant part:

> Section 8. An employer shall review a personnel record before releasing information to a third party and, except when the release is ordered to a party in a legal action or arbitration, delete disciplinary reports, letters of reprimand, or other records of disciplinary action which are more than 4 years old. 820 ILCS 40/8

It should be clear that the Illinois Personnel Record Review Act applies to all employers in Illinois, including public and private, and that disciplinary records are not required to be retained for an indefinite period of time. An Illinois employer is defined in the Act as:

> an individual, corporation, partnership, labor organization, unincorporated association, the State, an agency or a political subdivision of the State or any other, legal, business, or commercial entity which has 5 employees or more…820 ILCS 40/1 (b).

The City of Chicago and all other public employers are covered by this Act, and the disciplinary records of its employees do not have to be retained forever. This case involves a contract provision that protects "[a]ll disciplinary investigation files, disciplinary history card entries …and any other disciplinary record or summary…" from permanent retention in a manner similar to that of many other Illinois public sector collective bargaining

contracts and on-par with the statutory guarantee provided in the Personnel Records Review Act. The Appellate Court failed to consider this important statutory provision that was designed to protect the interests of Illinois workers, and which directly conflicts with the alleged public policy that the Appellate Court relied upon for the possible indefinite retention and use of employee records.

B. The Freedom of Information Act Does Not Support a Finding of a Well-Defined and Dominant Public Policy

The Freedom of Information Act, 5 ILCS 140 contains two provisions that are pertinent to this case and which were not considered by the Appellate Court. First, the statutory exemptions for inspection and copying as stated in Section 7.5 of the Act include any "Information prohibited from being disclosed by the Personnel Records Review Act." 5 ILCS 140/7.5(q). This exemption certainly must be a part of any statement of public policy on records retention and supports the unions' claims here that a narrow reading of the law is necessary to protect the rights of workers against indefinite retention. Specifically, in *Johnson v. Joliet Police Department*, the court upheld the dismissal of a lawsuit filed under the Freedom of Information Act to obtain disciplinary records of an employee of the Police Department. 2018 IL App (3d) 170726 (2018). The FOIA exemption was interpreted by the Appellate Court as a basis to deny the FOIA request. This decision demonstrates that there is no universal records disclosure requirement to cover the Illinois public employees. *Amici* claim that the Appellate Court erred by not recognizing this exception.

The second provision of the FOIA overlooked by the Appellate Court lies in the opening section of the Act and recognizes the historic nature of records that may not have

been retained by a public body and is further recognition that there is no indefinite retention requirement:

> This 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 this Act becomes effective, except as otherwise required by applicable local, State or federal law. 5 ILCS 140/1.

The disciplinary protection clause was placed in the 1981 to 1983 collective bargaining agreement between the City of Chicago and Fraternal Order of Police Lodge 7. *City of Chicago and Fraternal Order of Police Chicago Lodge No.7*, Gr. Nos. 129-11-035 and 129-12-004, (Roumell, Arb.), App. 34, 43. It preceded the 1984 passage of the FOIA. A complete historical review of the genesis of this contract section designed to protect employees from facing outdated discipline records is contained in the arbitrator's award in this case, which is the very award that the City is seeking to vacate. The first collective bargaining contract provision, Section 8.4, on this subject required the destruction of disciplinary records that were maintained more than five years after the date of the incident, unless the investigation related to a matter which had been the subject of either civil or criminal court litigation prior to the expiration of the five-year period. *Id.* at App. 436. That grace period was sufficient to cover the statute of limitations issues of two years, 735 ILCS 5/13-202 under 42 U.S.C. § 1983 actions that might be brought against officers and the general Illinois five-year period of limitations 735 ILCS 5/13-205. Similar provisions with varying periods of protection are replete in the Illinois public sector collective bargaining agreements throughout the State.

Most important to the bar on permanent file retention and the claim of historical protection from disclosure are the Chicago Police Department's general and special orders

that predated this collective bargaining provision and FOIA. The Superintendent of Police in 1975 issued General Order 75-22 on use of disciplinary records requiring file destruction for Complaint Register case files five years from the date of the conclusion of an investigation. *Id.* App. at 46-7. The collective bargaining agreement tracks this general order. The arbitrator interpreting the Chicago collective bargaining agreement noted that the General Order and others which succeeded it contained the words "shall be destroyed" and the "five year" time period. *Id*. App. at 47. All of this clearly precedes the 1984 passage of the FOIA, and is subject to the historical protection provision in Section 1 of the Act, and none of this was recognized by the Appellate Court.

C. The State Records Review Act Should Not Have Been Relied Upon

Not only did the Appellate Court err in not considering the provisions of the Personnel Records Review Act, but it also gave too much deference to the State Records Review Act, which would not apply to the parties or the records at issue in the case before it. The State Records Act, according to the Appellate Court, applies records and maintenance and destruction requirements for State records. That Act, however, covers only the Secretary of State and State agencies. Section 1.5 of the State Records review Act declares that records are to be kept in compliance with the provisions of that Act, but it does not apply to local governments, such as the City of Chicago. 5 ILCS 160/1.5. Section 2 of the Act refers to the Secretary of State and records that are,

> … made, produced, executed, or received by any agency in the State in pursuance of State law or in connection with the transaction of public business…or other activities of the State or of the State Government.
>
> 'Agency' means all parts, boards, and commissions of the executive branch of the State government, including, but not limited to, State colleges and

> universities and their governing boards and all departments established by the Civil Administrative Code of Illinois.
>
> 'Public Officer' or 'public officers' means all officers of the executive branch of the State government, all officers created by the Civil Administrative Code of Illinois, and all other officers and heads, presidents, or chairmen of boards, commissions, and agencies of the State government. 5 ILCS 160/2.

Instead of using the narrow tests of *Misco* and *Eastern Coal*, the Appellate Court impermissibly read the broad purpose section of this Act to apply to Chicago police officers and correspondingly to all other local government employees without recognizing that by the plain language of the statute, it applies not to local governments but only to the State as a government entity. *City of Chicago v. Fraternal Order of Police Lodge No. 7*, 2019 IL App (1st) 172907 at ¶¶ 30, 38. This is a public records retention policy for the State and its respective agencies, but that does not apply to the City of Chicago in this case and may not be used to create a public records policy to vacate labor arbitration awards involving local governmental agencies.

D. The Arbitration Award and the Contract Were Not In Conflict With the Public Policy of the Local Records Act.

The arbitrator noted the Local Records Act, 50 ILCS 205/2 that declares a program for the efficient and economical management of local records for local governments and defines a public record as any documentary material executed or received by any agency in connection with the transaction of public business and "preserved or appropriate for preservation by such agency or officer." Here, the Police Department unilaterally determined for forty-four years that certain disciplinary records should be maintained for a fixed period of time and would be destroyed thereafter. This unilateral directive was eventually jointly agreed upon by the parties in 1981. In a subsequent special order dated

April 7, 2004, Special Order S09-03-01, "Records Management" the City provided for the destruction of certain records

> … providing there is approval by the Local Records Commission which [according to the arbitrator] recognizes the impact of the Local Records Act. Presumably, as to other records not at issue in this case, the Department, following Special Order S09-03-01, has been disposing of records from time to time pursuant to the procedure note in the Special Order, including obtaining permission from the Local Records Commission." Roumell Arbitration Decision, App. at 81.

The arbitrator noted that there was no evidence that the City applied to the Local Records Commission to destroy the discipline files that were subject to Section 8.4 of the collective bargaining agreement, nor was there any evidence that the Commission denied such application.

A key element of the Appellant Court's error is that this statute does not require the indefinite retention of records, and that they may be destroyed at the request of the City and subject to the approval of the Local Records Commission.[2] Pursuant to the arbitrator's remedial portion of his decision, such a request can be made at any time in order to bring the City into compliance with the award and the Act. Roumell Arbitration Decision, App. at 82-4. The same reasoning applies to other disciplinary provisions in the Illinois public sector collective bargaining agreements. Pursuant to the remedy awarded by the arbitrator, once the City identifies to the Lodge the records to be destroyed, the parties are to negotiate a timeline to implement the findings that would include an appropriate application for file destruction to be made by the City to the Commission. This procedure would allow the City to support the collective bargaining goals of the IPLRA and would allow the City and

[2] The Appellate Court's decision not only interferes with the strong public policy in favor of collective bargaining, but it also replaces its judgement for the Local Records Commission and declares that these records must be kept in perpetuity.

the Lodge to determine if there are any records that would not be appropriate for destruction, i.e., records discussed in *Fraternal Order of Police v. City of Chicago*, 2016 IL App (1st) 143884, which has been distinguished by *Johnson v. Joliet Police Department, supra*. Therefore, no public policy prevents the destruction of the disciplinary records at issue under this statute.

The generalized view of file destruction by the Appellate Court does not comport with the prevailing view of courts that public policy rejection of arbitration awards must by based on specific statutes and regulations, as stated in *Eastern Coal*. That is the clear teaching of *Misco* and *Eastern Coal*. It is not sufficient in this context to state that these statutes create a broad based public policy statement that records should be preserved indefinitely because there are specific statutes that provide for proper disposal of records, and the Local Records Act is one of them.

CONCLUSION

For the foregoing reasons, and for the reasons stated in the briefs of the Appellant-Defendant, the Illinois AFL-CIO and the Illinois Fraternal Order of Police Labor Council respectfully request that this Court reverse the decision of the Appellate Court.

Dated: October 30, 2019.

Respectfully Submitted,

/s/ Joel A. D'Alba

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or 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 18 pages.

/s/ Joel A. D'Alba

Joel A. D'Alba