

COURT RULES PUBLIC POLICY TRUMPS ARBITRATION: CITY CANNOT DESTROY DISCIPLINARY RECORDS

The First District Court of Appeals for Illinois denied enforcement of an arbitration award requiring the City of Chicago to destroy records of alleged police misconduct that were more than five (5) years old. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2019 IL App (1st) 172907. The Court found that there is a well-defined public policy favoring proper retention of important public records, which the arbitration award violated. This decision has significant implications for public sector unions in Illinois which have collective bargaining agreements with similar provisions.

The FOP's collective bargaining agreement had long contained a records destruction policy. At the time of the arbitration, the section stated:

All disciplinary investigation files, disciplinary history card entries, Independent Police Review Authority and Internal Affairs Division disciplinary records, and any other disciplinary record or summary of such record other than records related to Police Board cases, will be destroyed five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer[.]

In 1991 the City complied with a federal court order prohibiting it from destroying files related to complaints against officers. Other federal courts issued similar orders, and the City sought to eliminate the records destruction in the CBA. The FOP filed grievances regarding the City's failure to abide by the CBA. During the DOJ's investigation into the Chicago Police Department, the DOJ ordered the CPD to stop destroying records. Shortly thereafter, the arbitrator issued his decision regarding the destruction grievances, and held that public policy would not prevent destruction of the records once the DOJ had finished its investigation. The City filed a lawsuit to vacate the award, and the Circuit Court of Cook County vacated the award, finding that "enforcement of the Arbitral Award violated a well-defined and dominant public policy to preserve government records." The Appellate Court agreed, finding that the arbitration award enforcing the contract provision on destruction of records violated the strong public policy as found in the Local Act, the State Act and FOIA.

The implications of this decision are significant. Many contracts contain provisions that require the destruction of discipline records after a certain period of time. These contract provisions are now unenforceable as against public policy. However, there is nothing in the decision that negates contract language that requires stale discipline not to be considered in employment actions, as long as it does not also require destruction of the records. Contract provisions requiring destruction of records will need to be renegotiated in the next contract negotiations cycle. Please review your current contract language and contact Asher, Gittler & D'Alba if you have any questions or concerns.

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