

Illinois Supreme Court Rules Public Employers Can Keep Disciplinary Records Longer Than Union Contracts Provide

Labor & Employment Law Update

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On June 18, 2020, the Illinois Supreme Court ruled that enforcement of a union contract provision mandating the destruction of disciplinary records was against Illinois' public policy of preserving and retaining public records. The decision settles an ongoing dispute between the City of Chicago and the Fraternal Order of Police, Chicago Lodge No. 7 (FOP) about the disposition of disciplinary records.

Since 1981, the parties' contract has included a requirement that disciplinary records be destroyed after five years. Things changed in 1991 when a federal court in a civil rights lawsuit ordered the city to cease destroying complaint register files. The city subsequently attempted to negotiate contract changes removing the record destruction requirements, but these efforts proved unsuccessful. In 2011 and again in 2012, the FOP grieved the city's failure to destroy records. The city denied the grievance and the FOP initiated arbitration proceedings. Matters became more complicated in 2015 when the US Department of Justice (DOJ) launched an investigation into the Police Department's alleged use of excessive force and discriminatory policing.

In early 2016, the arbitrator sustained the FOP's grievance and ordered the parties to negotiate over the destruction of records. The arbitrator later amended his initial award and denied the FOP's grievances solely on the "public policy" of the DOJ's request to preserve documents. However, in response to the FOP's request for reconsideration, the arbitrator issued a third and final award ruling that the initial 2016 award (allowing the destruction of records) could take effect "once the DOJ completed its investigation." The city filed a successful circuit court petition to vacate the arbitration award on the ground that it violated Illinois public policy favoring the retention of public records. The appellate court agreed and the Supreme Court then agreed to consider the case.

In its decision, the Supreme Court rejected the FOP's arguments that the Illinois Public Labor Relations Act established a public policy in favor of enforcing labor arbitration awards over any other laws. The Court also held that union contracts,

and arbitration awards based on those contracts, could not trump state laws where a “public policy exception” exists. Accordingly, the public policy inherent in the Local Records Act regarding the preservation, retention and disposition of public records was given precedence over the union contract disciplinary record destruction requirements.

While this decision was welcomed by those seeking police reform and transparency, particularly in the current political landscape, labor advocates believe the decision unduly weakens the Illinois Public Labor Relations Act and labor agreements across the state. We can expect the Illinois Assembly will take on the issue and introduce remedial legislation. Until then, however, government employers should review contract provisions regarding the destruction or preservation of disciplinary records to ensure compliance with the Court’s decision.

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