



### **COURT UPHOLDS DISTRICT OF COLUMBIA POLICE REFORM LAW ELIMINATING RIGHT TO BARGAIN OVER DISCIPLINARY PROCEDURES**

In a major move at police officer reform, the District of Columbia Council passed emergency legislation following the death of George Floyd while in Minneapolis police custody. The amendment eliminates the right of sworn law enforcement personnel to bargain over disciplinary procedure and applies to any collective bargaining agreement “entered into with the Fraternal Order of Police/Metropolitan Police Department Labor Committee after September 30, 2020.” A proposed amendment to the Illinois Constitution was drafted that would bar this kind of action from occurring in Illinois if passed.

The D.C. Fraternal Order of Police (“FOP”) filed a constitutional challenge to this legislation, and last week, the U.S. Court of Appeals for the District of Columbia rejected all of the issues that were raised by the FOP. The legislation eliminated the D.C.–FOP collective bargaining agreement’s detailed provisions on disciplinary procedures for D.C. Police Officers. FOP complained in its court filings that this legislation violated the following constitutional provisions:

1. Equal protection in that the removal of the disciplinary provisions created unequal treatment between the Police Officers and the similarly situated government employees, especially prison guards. The Court wrote that the District had a legitimate interest in improving police accountability, that the removal of the disciplinary procedures from the bargaining table gave management more flexibility in deciding how to consider allegation of police misconduct. This is the basis for the Court’s decision that there was a rational basis for the District to pass this law.
2. The Court also held that this targeting of police discipline was an appropriate first step in improving police accountability, and therefore was not a bill of attainder that “legislatively determines guilt and inflicts punishment on identifiable individuals without provision of the protections of a judicial trial,” or that it singled out Police Officers. As part of its reasoning on this issue, the Court stated that the D.C. legislation leaves in place significant protective measures, such as the right not to be fired, demoted, or suspended without cause. However, the Court does not state how these rights will be enforced.
3. The Court also dismissed the contract impairment claim on the ground that the new legislation is only to apply to future contracts and will have no retroactive effect. This statement does not

adequately consider that police contracts continue on after the “technical expiration date” into the new contract, so there is no real expiration.

4. Substantive due process claims were rejected on the ground that the “legislation is not gravely unfair and implicated no fundamental rights.” The Court is clearly not sympathetic to the loss of employment and the related economic consequences.

Most important for Illinois citizens to consider is that this kind of legislation, whether directed to Police Officers or other public sector workers, would be unconstitutional under the provisions of the Illinois Workers Rights Amendment that is on the November 8, 2022 ballot. The key sentence that protects the collective bargaining rights of public employees is: “No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety.” For these reasons, we urge you to vote for this amendment.

ASHER, GITTLER & D’ALBA, LTD.  
200 West Jackson Boulevard, Suite 720  
Chicago, IL 60606 – 312.263.1500

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Dated: August 30, 2022

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