ISSUE BRIEF: ARBITRATION INVOLVING MUNICIPAL EMPLOYERS IN ILLINOIS – A STUDY OF OUTCOMES

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The Illinois Municipal League (IML), which represents all 1,294 cities, villages and towns in Illinois, is dedicated to preserving municipal authority and protecting local revenues. IML has a special interest in the outcome of arbitration decisions involving municipal employers in Illinois, which can result in costly compensation awards funded by taxpayer dollars[1] and limited municipal authority to address personnel matters. Currently, Illinois municipalities are experiencing an imbalance of arbitration appeal decisions favoring their employees, which has a direct effect on their ability to serve their community. Patterns observed throughout the arbitration appeal process that may lead to this imbalance are discussed.

INTRODUCTION

As employers, municipalities may receive claims for workers' compensation or grievances regarding an alleged violation of a collective bargaining agreement from their employees. These matters may be resolved internally, however, if there is a dispute, the matter will likely result in arbitration with the opportunity for administrative and/or judicial appeal. Arbitration is often thought of as an optional, quick, less expensive alternative to litigation, widely used due to its convenience. However, in issues of workers' compensation and collective bargaining agreement disputes, arbitration is a required first step. Arbitration poses a risk due to the lower standards of proof required to make an argument and the difficulty associated with appealing an arbitrator's decision. During arbitration, defined rules and standards are broadly applied to make decisions that can only be overturned with a greater level of proof than required to be presented at arbitration, and the current process of appealing an arbitrator's decision tends to provide more favorable outcomes to municipal employees than municipal employers.

The aims of this study are to (1) describe the frequency at which petitioners (municipal employees) are granted favorable verdicts over respondents (municipal employers) in cases heard by the Illinois Workers' Compensation

Commission (IWCC) and the Illinois court system resolving employment disputes and (2) discuss the concept of required arbitration and the difficulty associated with appealing an arbitrator's decision.

During data collection for this study, 410 cases were analyzed, specifically focusing on cases of appealed arbitration decisions between municipal employees and employers in Illinois' cities, villages and towns during the time period ranging from January 1, 2019, and June 30, 2023. The cases included in this study were compiled under two tracks: workers' compensation claims and collective bargaining agreement grievances. Of the 410 cases analyzed, four cases were chosen to illustrate that certain arbitration processes may lead to disproportionate outcomes in appealed arbitration decisions. In this regard, it is recommended that more research should be done to identify the reasons for the significant imbalance of outcomes and to investigate policy reforms that will create stricter standards of proof for arbitration decisions, such as a standardized test to evaluate differing medical opinions, and more pathways for employers, specifically municipalities, to appeal arbitration decisions in the court system.

This paper is organized as follows: The next section presents the study background from both literature and real practices in Illinois. The third section presents descriptive statistics of the 410 cases analyzed in this study filed between January 1, 2019, and June 30, 2023. The fourth section presents four selected cases to highlight examples of the difficulties associated with the appeal of an arbitration decision, and the fifth section presents an analysis and discussion of the four case examples. The sixth and final section recommends the next steps needed to identify effective changes in policy to reform the arbitration appeal process, specifically in regard to arbitration decisions involving municipal employers.

BACKGROUND

The processes required to resolve disputed workers' compensation claims and disputed collective bargaining agreement grievances are similar. In both instances, arbitration is typically the required first step.

In Illinois, an employee who is injured while working and seeks compensation must notify their employer within 45 days of their work-related injury. To begin the claim, employees must file an Application for Adjustment of Claim, which is the official paperwork filed with IWCC. Every case is assigned to an arbitrator

who will make decisions on the claim if there happens to be a dispute. Cases where the accident occurred in Cook County are randomly assigned among the Chicago arbitrators, and cases outside of Cook County are assigned to an arbitrator at the hearing site closet to the site of the accident. Other hearing sites are located throughout the state in six regional zones.

After the arbitrator makes their decision, either side can request an appeal, which is reviewed by an IWCC panel of three commissioners that will then grant a decision. Each party can appeal the Commission's decision through the Illinois court system starting in the circuit court, then to the appellate court and, if necessary, to the Supreme Court of Illinois.

Collective bargaining agreements (CBA) are tools laborers can use to negotiate contracts with their employers through their unions. During this process, decisions are made regarding their terms of employment including pay, benefits, hours, leave, job health and safety and disciplinary policies. Many municipal employers enter into CBAs with their unionized employees, commonly police officers and firefighters. When there are disagreements about the application or interpretation of a CBA, arbitration is often designated in the CBA as the required method to resolve disputes between employers and employees that could not be resolved through the parties' grievance procedure. During arbitration, each party presents their case and argues their position to a neutral third party (arbiter) selected by both parties, which will then make a decision that is binding. Each party can appeal the arbitrator's decision through the Illinois court system in a manner similar to appealing an IWCC decision. There are, however, in both instances, limited avenues through which an arbitrator's award may be vacated through the courts.

As defined by the Illinois Uniform Arbitration Act (710 ILCS 5/12), the court can vacate an award under only five specified circumstances. Those circumstances include:

1. The award was procured by corruption, fraud or undue means;
2. there was evident partiality by an arbitrator appointed as a neutral or corruption in any one of the arbitrators or misconduct prejudicing the rights of any party;
3. the arbitrators exceeded their powers;

4. the arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 5, as to prejudice substantially the rights of a party; or,

5. there was no arbitration agreement and the issue was not adversely determined in proceedings under Section 2 and the party did not participate in the arbitration hearing without raising the objection; but the fact that the relief was such that it could not or would not be granted by the circuit court is not ground for vacating or refusing to confirm the award.

Source: 710 ILCS 5/12

Similarly, there are limitations when originally appealing an arbitrator's decision to IWCC. Once a petition for review has been filed, IWCC has jurisdiction over all issues of law and fact and is not bound by the arbitrator's findings. There are a controlled number of defined items allowed to be presented to the Commission. The appealing party must file the authenticated arbitration transcript with the Commission after it has been verified by all parties. The appealing party must also file a *Statement of Exceptions and Supporting Brief,* which includes details of the original arbitration decision and separate headings identifying each issue found with the arbitrator's decision and statements of particular evidence in the record pertaining to such issue with citation of any legal authorities to support the position of that issue (Rules Governing Practice Before the IWCC, Section 7040.70). Once filed, the non-appealing party may file a brief in response containing their reasoning of why the arbitrator's decision should be upheld.

Then, once the briefs have been submitted, the Commission will schedule oral arguments, if requested. The oral arguments are heard by a panel of three commissioners, and each side is generally limited to only five minutes to present their argument, answer any questions the commissioners may have and deliver a rebuttal. No new evidence is allowed to be introduced, and parties are each limited to five written requests that the Commission make special findings upon any written question or questions of law or fact (Rules Governing Practice Before the IWCC, Section 7040.40).

The limited option to appeal is the known risk that both parties agree to when choosing to enter into arbitration. Part of that risk, however, is traditionally offset through the selection of an arbitrator. Proponents of arbitration argue, "One of the hallmarks of the arbitration process is that it is flexible, allowing parties to craft the process by which their dispute is resolved, to select their decision maker, to schedule their matter for hearing according to their personal calendars and to keep the particulars about their dispute private" (Callahan, 2006, p. 2). Additionally:

> *the party autonomy that is the foundation of arbitration means that the government lawyer is positioned to accomplish a great deal as to all provisions to ensure fairness by selecting and demanding adherence to these requirements of fairness as the sin qua non of the choice to arbitrate. (Garvey, 2021, p. 64)*

This particular benefit of arbitration disappears nonetheless when arbitration is required and, in the instance of workers' compensation disputes, the arbitrator is assigned.

The private sector has shared many of these same concerns regarding arbitration. In 2011, Cornell University's Scheinman Institute on Conflict Resolution, the Straus Institute for Dispute Resolution at Pepperdine University School of Law and the International Institute for Conflict Prevention and Resolution co-sponsored a repeat survey of corporate counsel in Fortune 1000 companies that had originally been administered in 1997. The survey, and subsequent analysis, focuses on how large companies handle conflict and examines a "dramatic fall-off in the use of arbitration in most types of disputes" (Stipanowich & Lamare, 2014, p. 6).

In the original 1997 survey:

> *By nearly every measure, moreover, the collective response reflected greater levels of concern regarding arbitration. A majority of respondents viewed the difficulty of appeal as a barrier to arbitration use, and nearly as many expressed concerns about lack of adherence to legal rules, compromised outcomes, and lack of confidence in neutrals. (Stipanowich & Lamare, 2014, p. 17)*

Attitudes towards the use of arbitration in 2011 were similar, and concerns persisted.

> *Spurred in part by fairness concerns associated with the use of arbitration in adhesion contracts, increased attention was directed to the lack of appeal from arbitration and other procedural limitations. These views resonated with longstanding worries in some quarters about the lack of judicial scrutiny of arbitration awards and the standards for decision-making. (Stipanowich & Lamare, 2014, p. 20)*

The same sentiments have occurred more recently as well. In the summer 2020 edition of Franchise Law Journal, W. Michael Garner describes arbitration:

> *If the parties must arbitrate, there is essentially no appeal from an arbitration decision. Arbitrators have much broader authority to decide cases than courts, and the absence of plenary appeal means that the parties face a far more uncertain, and ultimately binding, result when they arbitrate, as opposed to when they litigate. (Garner, 2020, p. 27)*

Since arbitration is less formal than traditional litigation, there is more room left for discretion in an arbitrator's decision. Decisions are made with more leniency, and the parties aren't held to the strict standards required in a court room to make their case. In some cases, this leads to quick expedited decisions at a lower cost, but in others, there is a risk of getting an inadequate resolution. This risk is usually offset by a mutually selected arbitrator; however, in the instance of workers' compensation, the arbitrator is assigned, and in instances of collecting bargaining agreements, arbitration is often a required first step.

It is difficult to appeal an arbitrator's legally binding decision in court without showing bias or fraud on the part of the arbitrator. So, when municipalities enter into arbitration over workers' compensation or collective bargaining disputes, they are in the hands of the arbitrator. If an arbitrator shows preference towards the employee, the result is often large compensation awards paid at the expense of taxpayers or limiting municipal authority to make decisions regarding personnel. Currently, Illinois municipalities are experiencing an imbalance of decisions favoring their employees, which has a direct effect on a municipality's ability to serve its community.

DESCRIPTIVE ANALYSIS

During data collection, 410 cases that were decided between January 1, 2019, and June 30, 2023, were identified to be included in the study. These cases were chosen if they involved the appeal of an arbitration decision regarding a workers' compensation claim or collective bargaining agreement grievance between a municipal employee and municipal employer. Once each case was reviewed, they were separated into three groups: collective bargaining grievance appeal cases decided by Illinois Courts (Circuit and Appellate), workers' compensation claim appeal cases decided by Illinois Courts (Circuit and Appellate) and workers' compensation claim appeal cases decided by IWCC. The case data was collected from the Illinois Courts' website and IWCC's website, as well as from a survey conducted by IML on October 13, 2023, of municipal attorneys and human resource directors to request case submissions. Participants were asked to provide a copy of any case filed between January 1, 2019, and June 30, 2023, that dealt with personnel matters or collective bargaining issue arbitration cases related to discipline, termination or some other grievance.

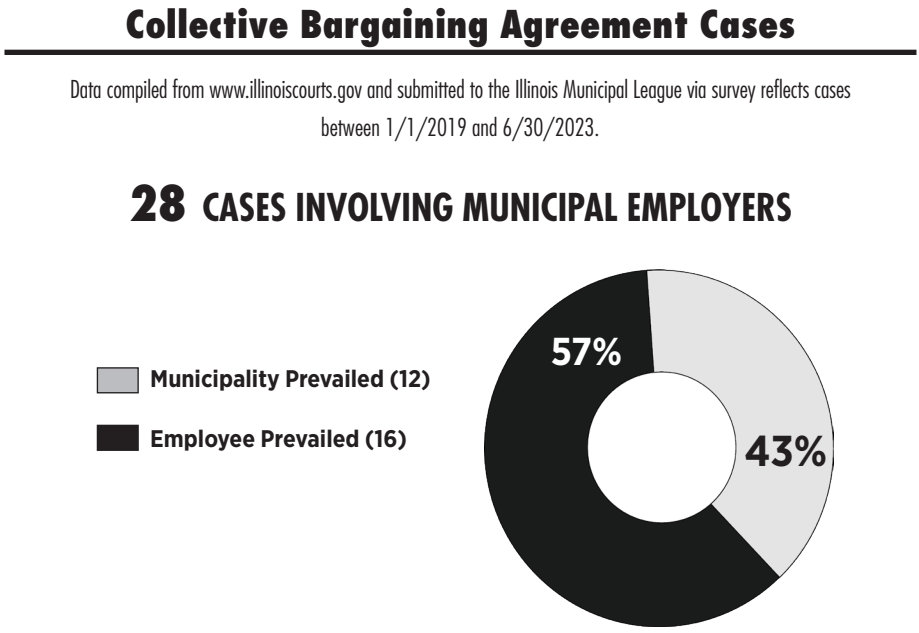
COLLECTIVE BARGAINING GRIEVANCE CASES IN ILLINOIS COURTS

This study identifies 28 cases involving grievances, filed by employees of municipal employers with CBAs, resulting in arbitration required by the CBA that were filed during the given time period. Cases were reviewed and flagged to be included if they involved a municipal employer and a collective bargaining agreement dispute first heard by an arbitrator. A visual representation of the breakdown described below can be seen in *Figure 1.*

Of the 28 collective bargaining cases that were identified, the municipality prevailed in 12 (43%) cases. In cases where the municipality prevailed, the municipality's denial of a grievance request was confirmed or an appeal from a labor organization was denied. In the remaining 16 (57%) cases, the employee prevailed. These cases were identified if the grievance request was affirmed by the court or if a municipality's appeal regarding an affirmed grievance was denied.

FIGURE 1

COLLECTIVE BARGAINING AGREEMENT CASES



WORKERS' COMPENSATION CASES IN ILLINOIS COURTS

Out of 185 court appeals of IWCC decisions filed during the given time period, 22 cases were identified to be used in the study using the Illinois Courts' website. Cases were included in the study if they involved a compensation dispute between a municipal employee and a municipal employer. A visual representation of the breakdown described below can be seen in *Figure 2*.

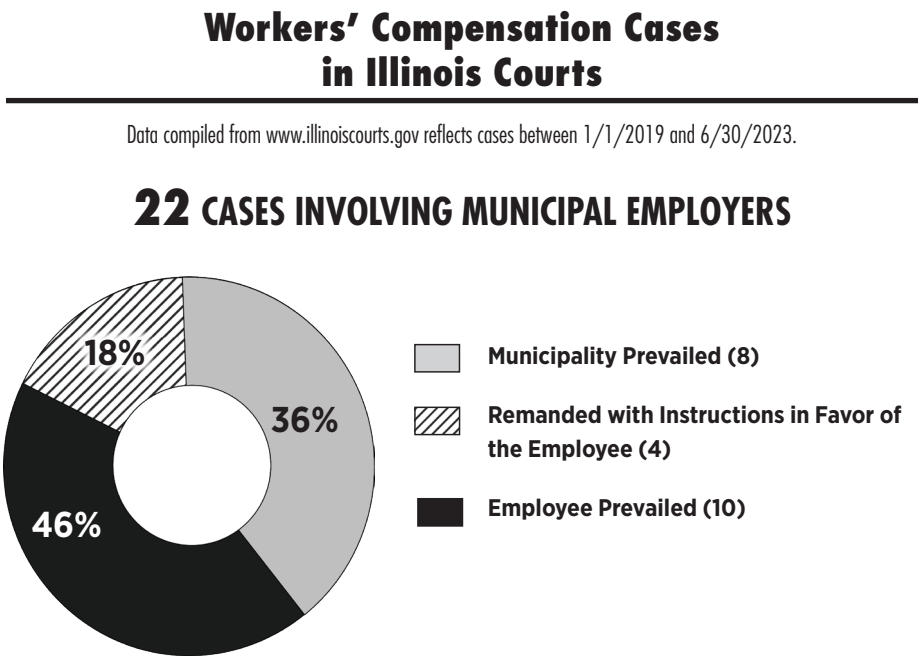
Of the 22 identified cases, the municipality prevailed in only eight (36%), all of which involve an employee appeal of IWCC's decision requesting an increase in benefits from the original award. In the event that the municipality prevailed, the appellate court either affirmed IWCC's awarded amount or affirmed the denial of benefits.

The employee prevailed in 10 (46%) of the 22 identified cases. In these cases, the appellate court confirmed the original IWCC award in an appeal filed by the municipal employer. In four (18%) of the 22 cases, however, the appellate court remanded the case either to the circuit court or the Commission, depending

on the circumstance, with instructions to recalculate the award in favor of the employee (or against the municipality).

FIGURE 2

WORKERS' COMPENSATION CASES IN ILLINOIS COURTS



IWCC REVIEW DECISIONS

Between January 1, 2019, and June 30, 2023, IWCC reviewed 360 cases involving 88 different municipal employers. Cases were flagged to be included in this study if the listed respondent was a municipal employer. A visual representation of the breakdown described below can be seen in *Figure 3*.

During data collection, the 360 cases were sorted into one of four categories based on the outcome of IWCC's decision:

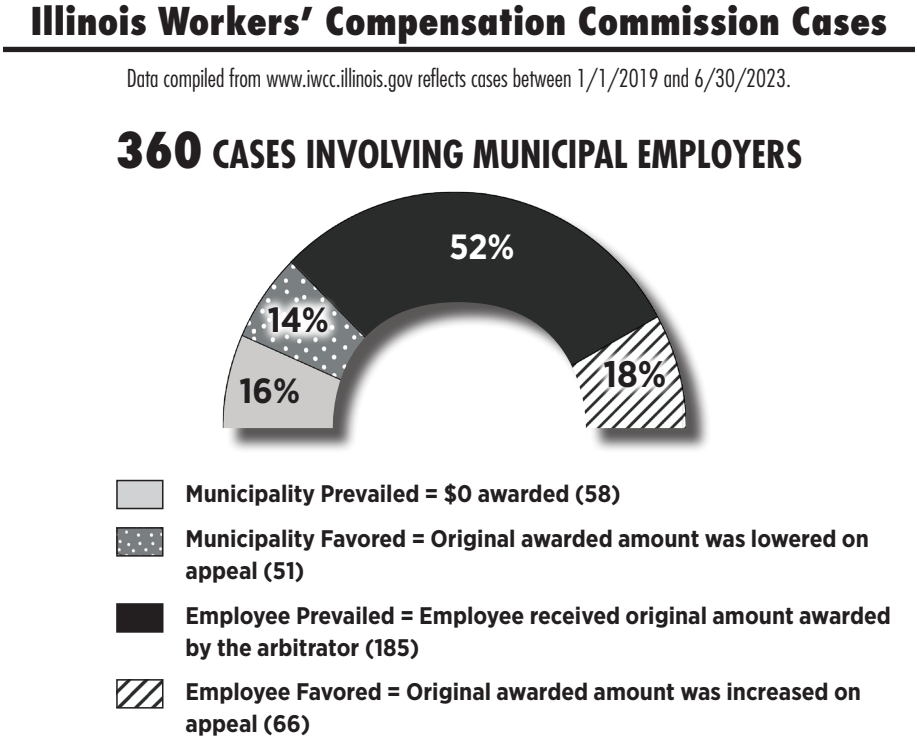
1. Municipality Prevailed: No compensation was awarded.
2. Municipality Favored: The amount originally awarded by the arbitrator was lowered by IWCC on appeal.

3. Employee Prevailed: The employee received the original amount awarded by the arbitrator.

4. Employee Favored: The amount originally awarded by the arbitrator was increased by IWCC on appeal.

FIGURE 3

ILLINOIS WORKERS' COMPENSATION COMMISSION CASES



The municipality prevailed in only 58 (16.11%) of the 360 cases involving municipal employers. In some cases, often when dealing with an accident that aggravated a pre-existing condition, multiple claims are filed addressing separate accidents related to the same work-related injuries. These related cases are often heard and decided on the same date. Of the 58 cases where the municipality prevailed, in 12 of them, the employee in question was granted

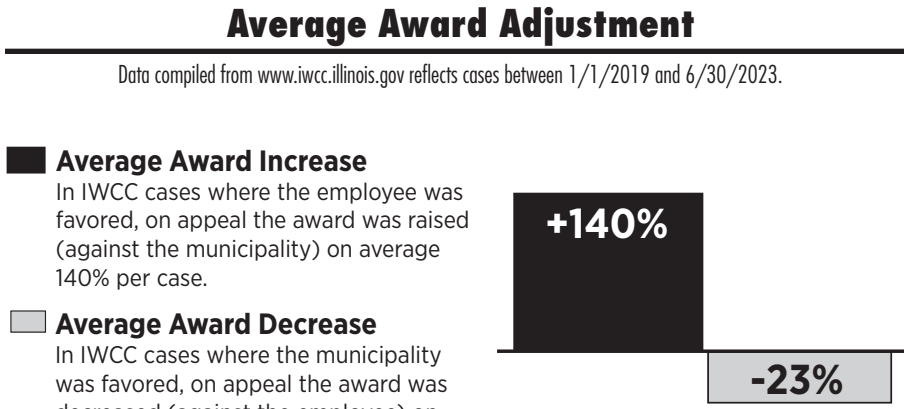
an award in a related case(s) reviewed by IWCC on the same date. So, while the municipality prevailed in 58 cases, municipalities walked away completely owing no compensation in only 46 (12.78%) of the 360 cases. On the other hand, however, the employee prevailed in 185 (51.39%) of the 360 cases.

Occasionally, IWCC agreed with the arbitrator's decision to award benefits, but did not agree with the arbitrator's assessment of the level of benefits and lowered the award amount in favor of the municipality. The municipality was favored in 51 (14.17%) of the 360 identified cases. In cases where the municipality was favored, the original awarded amount by the arbitrator was decreased by IWCC, against the employee, on average $29,987.88 (-23%) per case.

In 66 (18.33%) of the 360 cases, the original amount awarded by the arbitrator was increased by IWCC in favor of the employee. In cases where the employee was favored, the award was increased, against the municipality, on average $86,468 (+140%) per case. The stark imbalance of average compensation award adjustments made by IWCC can be seen in *Figure 4.*

FIGURE 4

AVERAGE AWARD ADJUSTMENT



During this time period, $30,638,882 was explicitly awarded to employees in cases involving municipal employers. This is an average award of $85,108 per case decided by IWCC. This, however, does not include benefits awarded to employees for ambiguous periods of time (i.e., weekly for life), awards for

future medical care or other awards not specified by a dollar amount. Since this study focuses solely on municipal employers, each award is paid with taxpayer dollars.

SELECTED CASES

Four cases were selected to highlight examples of the difficulties associated with the appeal of an arbitration decision, specifically in decisions on workers' compensation claims and collective bargaining agreement grievances between municipal employees and employers.

CASE 1:
WILLIAM MCWILLIAMS V. ROCKFORD MASS TRANSIT DISTRICT
FEBRUARY 17, 2021 - EMPLOYEE FAVORED

William McWilliams (Petitioner) was employed by the Rockford Mass Transit District (Respondent) as a bus driver until March 2017. In January 2012, Petitioner went to the doctor because he began to notice pain and tingling in his hands and arms. Petitioner had a known history of carpal tunnel syndrome (CTS) but claimed that his repetitive job duties aggravated it further.

Petitioner was referred to Dr. Brian Bear at Rockford Orthopedic Associates, and Dr. Bear confirmed that Petitioner had bilateral CTS and diagnosed him additionally with osteoarthritis of the thumb (also known as CMC arthritis). Dr. Bear had recommended surgery and performed the surgery on August 1, 2012, to treat Petitioner's CTS. Dr. Bear placed Petitioner off work for six weeks, and Petitioner's symptoms were much improved post-op. One year later, Petitioner returned to Dr. Bear with complaints of pain in his right thumb and right first finger. He was diagnosed with trigger finger of the right hand, osteoarthritis of the thumb, tenosynovitis and medial epicondylitis. In December 2013, Dr. Bear treated Petitioner's trigger finger with surgery. Petitioner improved.

On March 17, 2016, Dr. Bear, at the request of Petitioner's attorney, prepared a narrative report summarizing Petitioner's treatment. He reviewed Petitioner's job analysis and opined that Petitioner's CTS and trigger finger were aggravated by Petitioner's job duties as a bus driver. He did note that Petitioner's thumb arthritis was degenerative and not related to his employment.

Prior to this however, at Respondent's request, on April 19, 2012, Petitioner underwent a Section 12 examination. Section 12 of the Workers' Compensation

Act (820 ILCS 305/12) provides that "an employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer," for the purpose of determining the nature of the injury and the amount of compensation due. After the exam, the Section 12 examiner, Dr. Neal, noted that Petitioner was obese despite gastric bypass surgery and was working without restrictions. Since it was well accepted that the most common cause of CTS is idiopathic, obesity is a well-known risk factor and the activities of a bus driver are not generally considered the type of work that could contribute to developing CTS, Dr. Neal found no evidence of any relationship between Petitioner's work activities and his CTS and trigger finger condition.

In addition to his original report, after attending a demonstration of the duties of a bus driver, on February 20, 2015, Dr. Neal issued an addendum report, which reiterated that Petitioner's CTS and trigger finger condition were not causally related to his occupation. He cited publications from the American Academy of Orthopaedic Surgeons indicating that most cases of CTS have no identifiable etiology but that there are many medical risk factors attributed to developing CTS, including obesity. On January 16, 2017, Dr. Neal issued yet another report, after viewing video submitted by Respondent of Petitioner performing his job duties, which resulted in the same conclusion. On July 3, 2019, Dr. Neal issued a final addendum report after reviewing a video submitted by Petitioner. Again, Dr. Neal concluded that there was no connection between Petitioner's current condition of ill-being and his occupation.

The original arbitrator found that Petitioner did not sustain his burden of proving repetitive trauma caused or aggravated his CTS and trigger finger condition and denied benefits. The arbitrator found that Dr. Neal's testimony was more persuasive than that of Dr. Bear due to his closer examination and better understanding of Petitioner's precise work activities.

The Commission, however, reversed the arbitrator's decision, citing a disagreement in the medical community regarding the factors that can cause or aggravate CTS. Dr. Neal acknowledged that in some of his cited articles, it was confirmed that CTS may be caused in whole, or in part, by adverse working conditions. The Commission found that this admission partially negates the persuasion of Dr. Neal's opinion and found Petitioner's CTS to be causally connected. The Commission awarded Petitioner, and ordered Respondent to pay, $576.39 per week for a period of 12 weeks for temporary total incapacity

benefits, $518.75 per week for 19 weeks due to the loss of 7.5% use of the hand and the medical expenses incurred for the treatment of Petitioner's CTS. In total, Petitioner was awarded $24,165 plus medical expenses. Additionally, in a separate but related case, Petitioner was awarded a total of $2,016 in permanent partial disability compensation awarded in weekly increments, plus medical expenses for the loss of 5% use of the right thumb.

There is no widely accepted method to determine the cause and progression of CTS. Petitioner exhibited multiple known risk factors, including obesity, accompanied by his regular job duties. While some doctors believe repetitive work activities may aggravate CTS, after many demonstrations, Dr. Neal did not believe Petitioner's job duties were related to his worsening condition. It is, however, widely accepted that obesity is a contributing risk factor. The Commission overturned the arbitrator's decision, which was based on the persuasive and extensive testimony of Dr. Neal, because of an argument that continues to be controversial in the medical community, and not due to any additional evidence proving that there was a connection.

See next, in Case 2, a similar instance of CTS with multiple contributing factors and how the decision differed.

CASE 2:
LYNDA ODUM V. CITY OF GRANITE CITY
MAY 4, 2020 - MUNICIPALITY PREVAILED

Lynda Odum (Petitioner) was employed with the City of Granite City (Respondent) as the fire chief's secretary for 32 years. Her work consisted of keyboarding, using a mouse, answering phones, paperwork and lifting file boxes. Petitioner testified that, in November 2016, she developed a gradual onset of numbness and tingling in both hands. She claimed the symptoms were worse when typing and lifting boxes of files. On March 1, 2017, Petitioner underwent nerve conduction studies and was diagnosed with bilateral CTS.

On August 2, 2017, Petitioner began to see Dr. George Paletta for her worsening symptoms, and he recommended surgery. He opined that while Petitioner did have some risk factors for CTS, her job activities were a contributing factor to the carpal tunnel syndrome. However, on cross-examination, Dr. Paletta acknowledged her risk factors of age, sex, smoking and hypertension could also have caused her carpal tunnel syndrome.

On April 5, 2018, Petitioner underwent a Section 12 examination[2] with Dr. Evan Crandall. Dr. Crandall reviewed Petitioner's history as well as an ergonomic analysis report conducted by Apex Physical Therapy, which measured Petitioner's daily typing activities. He opined that her work activities were not a contributing factor to bilateral CTS, and that her condition was likely due to her possession of other well-known risk factors such as sex, menopause and smoking. Both Dr. Crandall and Dr. Paletta opined that, in order for Petitioner's job duties to have contributed to her CTS, she would have had to type and use a mouse at least four hours a day, which the ergonomic analysis report showed was not the case.

Based on the evidence, the arbitrator found that Petitioner failed to meet her burden of establishing that she sustained an accident which arose out of and in the course of her employment or that her current condition of ill-being is causally related to her employment. The arbitrator denied benefits. The Commission unanimously confirmed the arbitrator's decision.

Similar to Case 1, there was a lack of medical evidence to establish a causal connection between Petitioner's work duties and her current condition of ill-being. Despite conflicting medical opinions, the lack of medical evidence was assigned a greater weight when deciding whether Petitioner met her burden of establishing a causal connection. The Section 12 examiner, Dr. Crandall, provided arguments that refuted Petitioner's claim that her condition arose out of and in the course of her employment, and the arbitrator denied benefits.

CASE 3:
WESTERN SPRINGS POLICE DEPARTMENT V. ILLINOIS WORKERS' COMPENSATION COMMISSION (JACQUELINE MACDONNELL-DAYHOFF)
JANUARY 13, 2023 - EMPLOYEE PREVAILED

Jacqueline T. MacDonnell-Dayhoff (Petitioner) worked as the receptionist and general office clerk for the Village of Western Springs (Village), but also worked as a school crossing guard in the mornings. Petitioner's post for her crossing guard duties was located just outside Village Hall, but the Village allowed her to use the public street parking located in front of Village Hall, instead of the designated employee lots, since it was closer to her post as a crossing guard. The Village's only instruction was to let the police department know her license plate number so that she could avoid getting a ticket, since the spots were designated as four-hour parking only. The Village did not require Petitioner to park here, and also provided two parking lots exclusive to Village employees,

which were given higher priority when clearing snow and ice. Both parties accepted this information as fact.

On the morning of February 6, 2014, Petitioner parked in front of Village Hall on a public street and slipped and fell on an ice patch while getting out of her car. Petitioner stuck her hands out to brace her fall and in doing so injured her right wrist. The Village voluntarily paid for Petitioner's medical bills, which totaled $79,290.

Arbitrator Thomas Ciecko denied Petitioner's request for additional benefits. He concluded that Petitioner was neither exposed to a risk distinctly associated with her employment nor was she exposed to a personal risk. He concluded that Petitioner had encountered a neutral risk that was no greater than that which the general public was exposed to. Petitioner parked on a public street; she was not ordered to park there and there were two other lots provided that had been cleared of snow. The arbitrator added, "Dangers created by ice and snow in public parking areas are dangers to which all members of the public are exposed on any winter day or night."[3]

Petitioner, however, appealed to IWCC, and claimed that, as a crossing guard, she was a traveling employee, which permits an exception to the general rule that "an injury incurred by an employee in going to or returning from the place of employment does not arise out of or in the course of the employment and, hence, is not compensable."[4] IWCC did not accept this argument. However, the Commission introduced an alternative argument.

Generally, when an employee falls in a location off the employer's premises when travelling to work, it is not compensable; however, there is an exception to this rule when an employer "provides" a parking lot to its employees. The standard, which is defined in *Walker Bros. v. Illinois Workers' Compensation Commission*, requires all three of the following to be true: (1) the parking lot was owned by the employer; (2) the employer exercised control or dominion over the parking lot; and, (3) the parking lot was a route required by the employer.[5] The Commission found one and two to easily be true, but while there is no evidence that the Village required Petitioner to park in the public parking spaces in front of Village Hall, they did make accommodations for employees to use that space. Using this argument, the Commission concluded that Petitioner fell in a parking space provided by her employer.

Commissioner Elizabeth Coppoletti dissented and stated that the lot where Petitioner fell was incorrectly defined as an employer-provided lot. Moreover, the commissioner states, "Petitioner simply chose not to use the hazard-free lot. Instead, Petitioner parked on the public street in front of Village Hall for her personal convenience."

The Commission ordered that the Village pay the Petitioner temporary total disability benefits of $426.67 per week for 21 weeks and permanent partial disability benefits of $384.00 per week for 71.75 weeks because the injuries sustained caused 35% loss of use of the right hand. Petitioner was awarded a total of $36,512.

The Village of Western Springs Police Department appealed IWCC's decision through the Illinois Courts System. The IWCC decision was overturned by the circuit court, which reinstated the arbitrator's decision to deny benefits. Petitioner then appealed further to the appellate court. The appellate court's decision mainly dealt with the question of if the accident occurred in an employer-provided parking lot, which is required to apply the "parking lot exception."

The appellate court affirms the Commission's determination that since the Village owned and maintained the parking spaces where Petitioner fell and made accommodations allowing Petitioner to park there, that the accident occurred in an employer-provided parking lot. The appellate court did not, however, address the third requirement of the definition of the parking lot exception, which states that the employer requires its employees to use the designated lot. The appellate court further affirmed the Commission's decision that since the accident occurred in an employer-provided parking area, the injury arose out of and in the course of Petitioner's employment.

The appellate court reversed the decision of the circuit court and reinstated the award of benefits granted by the Commission.

CASE 4:
THE CITY OF SPRINGFIELD, ILLINOIS V. POLICE PROTECTIVE AND BENEVOLENT ASSOCIATION UNIT NO. 5, A LABOR ORGANIZATION, AND JAMES FOXX
FEBRUARY 17, 2023 - EMPLOYEE PREVAILED[6]

James Foxx, a Springfield Police Officer and member of the Police Protective and Benevolent Association Unit No. 5 (Association), was discharged from the

department in March 2020, after an incident the City of Springfield (City) found violated department general orders, rules of conduct, and the city civil service commission. The violations included workplace harassment and unbecoming conduct and associations.

In February 2020, Foxx messaged Lawrence Williams, a fellow officer, while on patrol. Foxx was covering Williams' 800 beat, and the two were communicating over the department's mobile data computer (MDC), as well as over text. Foxx sent a message over the MDC to Williams stating, "I'm going to send you a message via text so it's secure." Officer Williams is a Black man, and Officer Foxx is Caucasian. The text included a racial slur used to describe how Foxx felt while covering Williams' beat. Williams did not know what the slur used in the text meant, and when he asked, Foxx replied with a screenshot of an even more insensitive Urban Dictionary definition.

Williams did not respond to the text, and when Foxx got back to the garage at the end of the shift, Williams told him that he understood what he meant, but there was no need to send that text. Foxx later texted an apology to Williams. After the incident, Williams signed a complaint prepared by a commanding officer, which resulted in an Internal Affairs Division (IAD) investigation.

Officer Andrew Dodd, the commander of the field office division of the department, filled out the IAD complaint form and characterized the message as a "clear violation" of department policies. Dodd was shocked by the inappropriate use of language and expressed concerns about other members of the department's ability to trust Officer Foxx. Josh Stuenkel, Deputy Chief of Investigation, participated in the internal investigation and recommended Foxx's termination. He expressed concerns about the impact of this incident on department operations, including the recruitment and retention of minority officers. Stuenkel believed it would be difficult to express to minority officers that "we are opposed to any sort of racism" (Springfield v. Foxx, 2023, para. 17) while simultaneously allowing Foxx to remain employed by the department. At the conclusion of the IAD investigation, all of the command staff recommended Foxx's termination. Foxx was discharged from the department in March 2020.

The Association filed a grievance, which claimed Foxx's termination did not conform to the established tenets of progressive and corrective discipline defined in the collective bargaining agreement (CBA). The City denied the grievance, and in January 2021, the matter was submitted to a mutually selected arbitrator.

During arbitration, Foxx claimed that he had never been involved in any "racial issues" and claimed that on the night of the incident, he and Williams were only "joking." Foxx did not believe that the text he sent was racist since he did not have hateful intent in sending it.

The arbitrator found that since Foxx had apologized and pledged not to repeat the conduct, reinstatement was appropriate. The arbitrator did not, however, grant back pay, and Foxx was given a 13-month unpaid suspension.

The City appealed, and the circuit court found that the 13-month suspension was a sufficient punishment for the violation of a well-defined public policy. The City appealed further to the appellate court; however, judicial review of an arbitrator's award is extremely limited. It is a well-established rule that the award must be construed, if possible, as valid. There is a limited circumstance in which a court of review can vacate an award under the public-policy exception. Under the public-policy exception, an arbitration award derived from the essence of a CBA can be vacated if it is "repugnant to established norms of public policy" (*AFSCME,* 173 Ill. 2d at 307). On appeal, the City argued that the arbitrator's decision falls under the public-policy exception.

IML filed an amicus curiae brief on behalf of the City, in which IML claimed that the arbitrator's award violated Illinois' public policies which prevent racial discrimination, combat harassing communication that propagates discrimination, promote safe work environments for Illinoisans and provide professional, responsive, respectful, and trustworthy law enforcement. In the brief, IML concluded that the actions of James Foxx "placed the results of years of hard work, done by innumerable law enforcement professionals, on efforts to bridge the chasm between minority communities in Springfield and its police department, at risk of being undone."[7] IML argued that if the arbitrator's award is affirmed, all of the positive steps made by the Springfield Police Department, along with every other police department, to improve their relationships within minority communities, "will see their efforts eviscerated over the thoughtless conduct of one officer and one arbitrator."[8]

The appellate court found that the arbitrator's imposition of an unpaid 13-month suspension and reinstatement to the department did not violate public policy, affirming the arbitrator's decision.

ANALYSIS AND FINDINGS

When comparing Case 1 to Case 2, there are many similarities. Both petitioners were diagnosed with CTS while employed, and both petitioners had pre-existing conditions that are known risk factors of CTS. Additionally, both petitioners' personal physicians filed opinions with the arbitrator claiming that their CTS is causally connected to their employment. This tends to happen often in workers' compensation cases, and very often it results in the employer requesting a Section 12 examination.

In both cases, similar claims were made: repetitive work duties can cause and/or aggravate CTS. The difference, however, is in the weight assigned to the Section 12 examiners' opinions. In Case 1, the admission of any repetitive work duty being a possible cause of CTS (despite other evidence pointing to pre-existing conditions as the cause), was enough for the Commission to grant an award. However, in Case 2, with a very similar set of evidence and claims, the denial of benefits was confirmed by the Commission. This is an example of the differing decisions that are possible when there is no defined test used to evaluate differing medical opinions and the weight assigned when deciding compensation. The standards to prove causal connection should be held under stricter scrutiny, and there should be a standardized test to evaluate the merits of differing medical opinions.

Case 3 exemplifies how defined tests can be loosely applied when making compensation decisions. It is a well-defined rule that in most cases, if an employee falls in the parking lot, it is not a compensable injury unless the parking lot fits the "employer provided" exception. In this case, there are three defined standards that a "provided" parking lot must meet. Only two prongs of the three-pronged test were satisfied, and yet the award was granted by both the Commission and the appellate court. Exceptions to well-defined rules should be strictly applied, especially when the decision comes at the expense of tens of thousands of taxpayer dollars.

The difficulty of appealing an arbitrator's decision is exemplified in Case 4. Appellants are limited in how they can present their argument. The arbitrator made the claim that termination of Officer Foxx was too extreme, and the City was limited in how it could rebut the argument. Instead of arguing the merits of the decision and the arbitrator's application of a three-pronged analysis, the City has to prove that the arbitrator's decision itself is a violation of public policy. The arbitrator's decision was broken down into a consideration of three

factors: awareness of the wrongful conduct; taking responsibility for one's actions; and a commitment not to repeat the conduct. The arbitrator decided that these three factors were met, but the City was not able to argue the merits of that decision. This is a perfect example of how the limited circumstances under which one can appeal an arbitrator's decision can result in a municipality with the lack of authority, or even opportunity, to make personnel decisions within its community.

A municipality should be able to assess the damage discriminatory comments have within its police department. The reputation of how a police department internally handles instances of blatant racism can have large effects on the department's relationship with the community it serves as well as its ability to recruit. For example, in this instance, the blowback from the community due to Officer Foxx's reinstatement will most likely fall directly onto the City. The public perception will be that the City of Springfield excuses racism within its police department, which is simply not the case. However, now the City must risk the safety of the community and the department by reinstating an officer that has lost the trust of both.

Arbitration, in theory, is a helpful mechanism to reduce the courts' caseloads and to quickly address employment matters, but the current system and standards of decision-making are far more favorable to municipal employees than municipal employers, which has direct implications to municipalities' ability to serve their communities.

CONCLUSION

Based on the data and case studies presented in this study, it is clear that there is an imbalance of outcomes in cases involving municipal employers that have underwent arbitration. It is recommended that more research should be done to identify the reasons why and to create reasonable solutions. Initial policy suggestions to investigate further include stricter standards of proof for arbitration decisions, such as a standardized test to evaluate differing medical opinions, and more pathways for employers, specifically municipalities, to appeal arbitration decisions in the court system.

Municipalities are required to utilize arbitration as the first step to resolving disputes with their employees regarding workers' compensation and collective bargaining agreements. Arbitration is thought to be quicker and less expensive than traditional litigation; however, arbitration is risky because of the lower

standards of proof required to argue either side of a case and the difficulty associated with appealing a legally binding decision made by an arbitrator. The data presented in this study shows that, in recent years, municipal employees have received a greater number of favorable decisions than municipal employers and monetarily receive much greater award adjustments in their favor.

While there are mechanisms in place to appeal these decisions, municipalities are more often than not unsuccessful due to the strict standards required to reverse an arbitrator's decision in the court system. During arbitration, defined rules and standards are broadly applied to make decisions that can only be overturned with a greater level of proof than required to be presented at arbitration. This has resulted in large compensation awards funded by taxpayer dollars and limited municipal authority to address personnel matters. Municipalities need a method of appeal that prioritizes evidence-based decisions in order to save taxpayer dollars, protect municipal authority, and hold arbitrators accountable for decisions based on lenient standards.

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ENDNOTES

[1] A total of $30,638,882 was explicitly awarded to employees in cases involving municipal employers decided by the Illinois Workers' Compensation Commission (IWCC) between January 1, 2019, and June 30, 2023.

[2] Section 12 of the Workers' Compensation Act provides that "an employee entitled to receive disability payments shall be required, if requested by the employer, to submit himself, at the expense of the employer, for examination to a duly qualified medical practitioner or surgeon selected by the employer," for the purpose of determining the nature of the injury and the amount of compensation due. (820 ILCS 305/12).

[3] 14WC8089, Arbitrator's Decision, page 3.

[4] *Venture-Newberg-Perini v. Illinois Workers' Compensation Commission*, 2013 IL 115728.

[5] *Walker Bros. v. Illinois Workers' Compensation Commission*, 2019 IL App (1st) 181519WC.

[6] *MacDonnell-Dayhoff v. Village of Western Springs Police Department*, 20IWCC0441, page 12.

[7] Brief for IML as *Amicus Curiae*, p. 21-22, *Springfield v. Foxx*, 2023 IL App (4th) 220321-U.

[8] *Id.*

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