No. 21-2953

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

KEIA YATES, JOHNNY JIMMERSON,
AND LEONARDO RODRIGUEZ

Plaintiffs-Appellants,

v.

CITY OF CHICAGO

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Civil Action No. 1:18-cv-02613
The Hon. Robert W. Gettleman

BRIEF OF PLAINTIFFS-APPELLANTS

Robert D. Sweeney
John J. Scharkey
Joanne H. Sweeney
SWEENEY, SCHARKEY & BLANCHARD LLC
230 West Monroe Street, Suite 1500
Chicago, Illinois 60606
Tel. (312) 384-0500

Counsel for Plaintiffs-Appellants

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 21-2953

Short Caption: Keia Yates, et al v. City of Chicago

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

☐ **PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.**

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
Keia Yates, Leonardo Rodriguez, Johnny Jimmerson

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Sweeney, Scharkey & Blanchard LLC

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

Attorney's Signature: /s/ Robert D. Sweeney Date: 10/29/2021

Attorney's Printed Name: Robert D. Sweeney

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

Address: Sweeney, Scharkey & Blanchard LLC
230 W. Monroe Street, Suite 1500, Chicago, Illinois 60606

Phone Number: 312-384-0500 Fax Number: n/a

E-Mail Address: rsweeney@ssbpartners.com

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

Attorney's Signature: /s/ John J. Scharkey Date: 1/20/2022

Attorney's Printed Name: John J. Scharkey

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

Address: Sweeney, Scharkey & Blanchard LLC
230 W. Monroe Street, Suite 1500, Chicago, Illinois 60606

Phone Number: 312-384-0500 Fax Number: n/a

E-Mail Address: jscharkey@ssbpartners.com

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND MUNICIPAL CODES

OTHER AUTHORITIES

JURISDICTIONAL STATEMENT

This is a direct appeal of the district court's grant of summary judgment in favor of the Defendant in this matter, which operated as a final judgment. Plaintiffs are putative members of a class of individuals who were employed as Aviation Security Officers ("ASO(s)") or Aviation Police Officers at O'Hare or Midway airports during the time period of January 1, 1993 through June 30, 2017. Plaintiffs brought an action for violation of the Fourteenth Amendment and 42 U.S.C. § 1983 as well as a pendent state law claim for promissory estoppel.

The United States District Court for the Northern District of Illinois possessed subject-matter jurisdiction under 28 U.S.C. § 1331(a) because Plaintiffs' federal claim arose under the Constitution, laws, or treaties of the United States. The district court had supplemental jurisdiction under 28 U.S.C. § 1367(a) over Plaintiffs' state law claim because the federal claim and the state law claim are so related that they form part of the same case or controversy under Article III of the Constitution.

The order granting Defendants' motion for summary judgment and a final judgment were entered on September 25, 2021. Plaintiffs' Notice of Appeal was timely filed with the District Court on October 22, 2021. 28 U.S.C. § 1291 confers jurisdiction over this appeal to the United States Court of Appeals for the Seventh Circuit.

STATEMENT OF THE ISSUES

1. Whether the district court erred in granting Defendants' motion for summary judgment on Plaintiffs' Fourteenth Amendment claim, where Plaintiffs asserted they had property interests in their work histories based on both a city ordinance and implied in fact contract.

2. Whether the district court erred in granting Defendants' motion for summary judgment on Plaintiffs' promissory estoppel claim, where Plaintiffs showed they reasonably relied on the City's express and implied promises that they were LEOs, and were harmed when the City retroactively eliminated their status as LEOs.

STATEMENT OF THE CASE

A. Nature of the Case.

This case is one of first impression. For approximately 27 years Defendant, the City of Chicago ("Defendant"), required Aviation Security Officers ("ASO(s)") who worked at O'Hare and Midway Airports to become state certified law enforcement officers ("LEO(s)") and maintain that certification throughout their employment. LEO experience entitles individuals to certain rights and benefits and makes them eligible for certain jobs that are not available to non-LEOs. In 2017, Defendant advised the ASOs they were not and never had been LEOs and disavowed ASOs' LEO experience. Defendant's action expunged any LEO reference or experience from ASOs' work histories making them ineligible for certain rights and benefits as well as jobs that required LEO experience. Plaintiffs have brought a claim for violation of their due process rights under the Fourteenth Amendment and a state law claim for promissory estoppel. Plaintiffs have found no prior instance of an employer seeking to eliminate an employee's work history.

B. Procedural History and Disposition of the Case.

Plaintiffs/Appellants Yates, Rodriguez, and Jimmerson, as individuals and as members of the proposed class (collectively, "Plaintiffs"), commenced the underlying litigation in April 2018 by filing a four-count complaint against the City of Chicago, the State of Illinois, the Executive Director of the Illinois Law Enforcement Training and Standards Board, and the Commissioner of the City of Chicago Department of Aviation. (Pls.' Comp., ECF No. 1.) After the defendants brought motions to dismiss

the original complaint, the trial court struck two counts—the Fifth Amendment Takings Clause claim and the fraudulent inducement claim—and dismissed all defendants except for the City of Chicago. (App. at 1–2.) Yates, Rodriguez, and Jimmerson, as individuals and representatives of the proposed class, then filed the operative two-count complaint. (Pls.' Am. Compl., ECF No. 61.) They also filed their Motion for Class Certification. (Pls.' Mot. for Class Certification, ECF No. 136; see also Def.'s Mem. in Opp. to Pls.' Mot. for Class Certification, ECF No. 156; Pls.' Reply in Supp of Mot. for Class Certification, ECF No. 161.) Following discovery, Defendant moved for summary judgment on both counts, (Def.'s Mot. for Summ. J., ECF No. 153; see generally Def.'s N.D. Ill. LR 56.1 Statement of Facts ("Def.'s SOF") and Exs. ("Def.'s Ex."), ECF No. 154; Def.'s Mem. in Supp. of Summ. J., ECF No. 155; Pls.' Resp. to Def.'s SOF, ECF No. 162; Pls.' Resp. in Opp. to Def.'s Mot. for Summ. J., ECF No. 163; Pls.' N.D. Ill. LR 56.1(b)(3)(C) Statement of Facts ("Pls.' SOF") and Exs. ("Pls.' Ex."), ECF No. 164; Def.'s Reply in Supp. of Summ. J., ECF No. 168; Def.'s Resp. to Pls.' SOF and Def.'s Suppl. Exs., ECF No. 169; Def.'s Reply to Pls.' Resp. to Def.'s SOF and Def.'s Supp. Exs., ECF No. 170), which the trial court granted on September 25, 2021, (App. at 12), which the trial court granted on September 25, 2021, (App. at 10, 12). The trial court simultaneously denied certification of the proposed class as moot. (App. at 12.) Yates, Rodriguez, and Jimmerson then brought the instant appeal, filing their Notice of Appeal in the district court on October 22, 2021. (Pls.' Notice of Appeal, ECF No. 180.)

C. Statement of Facts.

Yates, Rodriguez, Jimmerson, and the proposed class members are all current or former ASOs who served within the City of Chicago Department of Aviation ("CDA") at various intervals between January 1, 1993 and June 30, 2017. (Pls.' SOF at ¶ 1, ECF No. 164.)

1. ASOs were Law Enforcement Officers.

To become ASOs, Plaintiffs were required to undergo training, pass law enforcement physical and cognitive exams, and obtain and maintain certifications required of law enforcement officers. (Pls.' SOF at ¶¶ 1–6, 7, 11, 19, 20, ECF No. 164; *see* Pls.' Resp. to Def.'s SOF at ¶¶ 2, 8–10, ECF No. 162.) Their training and certification requirements differed in some respects from those of Chicago Police Department members, (Pls.' Resp. to Def.'s SOF at ¶ 2, ECF No. 162; *see* Def.'s Resp. to Pls.' SOF at ¶ 9, ECF No. 169; *compare* Pls.' Ex. 37, Rules and Regulations of the Chicago Police Department effective April 16, 2015, ECF No. 164-38, *with* Pls.' Ex. 9, City of Chicago Department of Aviation Special Police Policy & Procedures Field Manual revised May 2002 ("2002 Manual"), ECF No. 164-10), but ASOs were required to meet the minimum standards set out by the Illinois Enforcement Training and Standards Board ("ILETSB") to become ASOs, which would then entitle them to be LEOs once the Defendant, as a municipal entity conferred police powers on them. (Pls.' SOF at ¶ 3, ECF No. 164; *see* Def.'s Resp. to Pls.' SOF at ¶ 3, ECF No. 169).

ASOs were required by Defendant to attend either the Chicago Police Academy or the Cook County Sheriff's Training Institute, pass the state law enforcement officer exam, and be certified by the ILETSB as a LEO. (Pls.' Resp. to Def.'s SOF at ¶ 2, ECF

No. 162; Def.'s Resp. to Pls.' SOF at ¶ 3, ECF No. 169.) As part of their admission to the Chicago Police Academy or the Cook County Sheriff's Training Institute, ASOs were required to pass the Peace Officer Wellness Evaluation Report, otherwise known as the POWER Test. (Def.'s Resp. to Pls.' SOF at ¶ 5, ECF No. 169.) Upon graduation, ASOs were required to recite the Peace Officer's Oath which was administered by designated officials from either the Chicago Police Department or the Cook County Sheriff's Department. (Def.'s Resp. to Pls.' SOF at ¶¶ 6, 9, ECF No. 169.)

Upon completing these requirements and joining the CDA as ASOs, ASOs were given a copy of the City of Chicago Department of Aviation Special Police Policy & Procedures Field Guide (the "Manual"). (Pls.' SOF at ¶ 7, ECF No. 169; Pls.' Resp. to Def.'s SOF at ¶¶ 6, 11, 31, ECF No. 162; *see also* Pls.' Ex. 9, the 2002 Manual, ECF No. 164-10; *see* App. at 16–20.) Section 1/3.4 of the Manual states that "[t]he Aviation Special Police Officer will be an Illinois certified law enforcement officer." (App. at 18.) Under Section 1/5, "Authority of Aviation Special Police Operations Personnel," the Manual again provides that "Aviation Special Police Officers will be state certified law enforcement officers" and states that ASOs "will be commissioned by the Superintendent of the Chicago Police Department as Special Police Officers and will have the authority to make arrests . . . on Department of Aviation property." (*Id.* at 20.) Citing Municipal Code of Chicago 4-340, the same section states in bold typeface, "**Special Police will possess all the powers of the regular police patrol at the places for which they are respectively appointed or in the line of duty for**

which they are engaged." (*Id.* (emphasis in original).) The Manual makes no reference to ASOs' work histories. (Pls.' Resp. to Def.'s SOF at ¶ 34, ECF No. 162.)

Beyond the plain language of the Manual articulating that ASOs would be LEOs, Defendant told Yates, Rodriguez, Jimmerson and other ASOs at their respective times of hire and throughout their employment that they would be and in fact were LEOs. (Pls.' Resp. to Def.'s SOF at ¶ 6, 8–13, ECF No. 162.) Defendant also held out ASOs as LEOs to the public: ASOs were provided equipment by Defendant, including uniforms, five-point badges, patches, and patrol cars, that bore "POLICE" insignia. (Ex. A to Pls.' Mot. for Class Certification, K. Yates Decl., at ¶¶ 12, 16–17, 21, ECF No. 136.) The Superintendent of Police for the City of Chicago sent out a bulletin to all police department precincts in the City that stated as follows:

ARE YOU AWARE?
New Department of Aviation
Police Officer Stars
The Department of Aviation Police Officers have been issued new stars. The old badges have been retired. These are samples of the new stars for police officers, sergeants and lieutenants.

(Images from Ex. B to Pls.' Mot. For Class Certification, *Are You Aware?*, CHI. POLICE DEP'T DAILY BULL., (Chi. Police Dep't, Chi., Ill.), Jan. 11, 2006, at 1, ECF No. 136.) ASOs were required to conduct preliminary investigations, issue citations and tickets, and make arrests, identifying themselves on official City forms as the arresting officer. (Ex. A to Pls.' Mot. for Class Certification, K. Yates Decl., at ¶ 19, ECF No. 136; *see* Pls.' Resp. to Def.'s SOF at ¶ 11, 23, ECF No. 162.) ASOs appeared

in court to testify as arresting officers. (Ex. A to Pls.' Mot. for Class Certification, K. Yates Decl., at ¶ 19, ECF No. 136.) ASOs were permitted to carry firearms off duty and could register their firearms with the Chicago Police Department as part of their firearms certification requirements. (Pls.' Resp. to Def.'s SOF at ¶ 2, ECF No. 162.) Moreover, ASOs enjoyed many benefits afforded only to law enforcement officers, such as third-party retail discounts, federal and state government death and injury benefits, and state school scholarships, (Def.'s Resp. to Pls.' SOF at ¶ 19)

2. At the City's Direction, the Illinois Law Enforcement Training and Standards Board Decertified All Aviation Security Officers.

The ILETSB administers the LEO certification exam and recognizes police authority in Illinois. (Pls.' Resp. to Def.'s SOF at ¶ 15, ECF No. 162.) The ILETSB does not have the authority or autonomy to grant LEO status without sponsorship by a municipal body with authority to grant police powers—which, here, was Defendant. (Pls.' Resp. to Def.'s SOF at ¶ 45, ECF No. 162.) To confer or rescind LEO status on agency members, law enforcement agencies submit Form Es, which are essentially rosters of active agency members, to the ILETSB every time a member deemed to be a law enforcement officer by the municipality is appointed to or separates from a law enforcement agency. (Pls.' Ex. 13, J. Keigher Dep. at 24:14-29:10, ECF No. 164-16; *see also id.* at 114:1–24; Pls.' Rsp. to Def.'s SOF at ¶ 45, ECF No. 162.) In 1993, the ILETSB started recognizing the CDA as a law enforcement agency and ASOs as LEOs at Defendants request and sponsorship. (Pls.' Rsp. to Def.'s SOF at ¶ 15, ECF No. 162.) Beginning in the 1990s, the CDA submitted rosters to the ILETSB, listing ASOs as LEOs. (Pls.' Ex. 13, J. Keigher Dep. at 39:10–21, ECF No. 164-16.)

On April 7, 2017, approximately 27 years later, after hundreds if not thousands of individuals had gone through the ranks of ASOs, the ILETSB sent Defendant a letter, stating its findings that ASOs were outside the Chicago Police Department's chain of command and asking Defendant to define when ASOs were pulled from the jurisdiction of the Chicago Police Department Superintendent and placed under the direction of the CDA. (Pls.' Ex. 20, April 7, 2017 Letter, ECF No. 164-23; Def.'s Resp. to Pls.' SOF at ¶ 17, ECF No. 169.) On May 19, 2017, Defendant responded to the ILETSB, saying it could not ascertain "with a sufficient degree of accuracy" when ASOs were moved out of the chain of command of the Chicago Police Department Superintendent. (Pls.' Ex. 17, May 19, 2017 Letter, ECF No. 164-20.) Defendant further stated that the Chicago Police Department Superintendent does not appoint or certify ASOs; that ASOs are governed by the CDA and not the Chicago Police Department Superintendent; and that ASOs are neither police nor special police under Chicago's Municipal Code. (Pls.' Ex. 17, May 19, 2017 Letter, ECF No. 164-20; Def.'s Resp. to Pls.' SOF at ¶ 18, ECF No. 162.)

Around the same time the ILETSB was attempting to contact Defendant regarding the authority of ASOs, an incident occurred on April 9, 2017, where ASOs forcefully removed Dr. David Dao from United Airlines Flight 3411. (Pls.' Am. Compl. at ¶ 29, ECF No. 61; *see also* Def.'s Ans. to Pls.' Am. Compl. at ¶ 29, ECF No. 64.) The altercation went viral and caused international outrage. (Pls.' Am. Compl. at ¶¶ 30–33, ECF No. 61; *see also* Def.'s Ans. to Pls.' Am. Compl. at ¶¶ 30–33, ECF No. 64.) In connection with the incident, the CDA Commissioner at the time, Ginger Evans, gave

testimony before the United States Senate Subcommittee on Aviation Operations, Safety and Security on May 2, 2017, where she said ASOs were "aviation security officers" and were "non-sworn, non-armed personnel." (Pls.' Am. Compl. at ¶¶ 34–36, ECF No. 61 (citing Tr. from Hearing of Senate Subcommittee, May 2, 2017); *see also* Def.'s Ans. to Pls.' Am. Compl. at ¶¶ 34–36, ECF No. 64; *see* Def.'s Ex. 1, G. Evans Senate Hearing Notes, CHI-YATES013523–29, ECF No. 154-2 at 1–8.) She subsequently stated to the press that ASOs "are not, and have never been, police." (Pls.' Am. Compl. at ¶ 39, ECF No. 61; *see also* Def.'s Ans. to Pls.' Am. Compl. at ¶ 39, ECF No. 64.) No CDA commissioner had publicly questioned the designation of ASOs as law enforcement officers until Ginger Evans. (Def.'s Resp. to Pls.' SOF at ¶ 13, ECF No. 169; Pls.' Resp. to Def.'s SOF at ¶¶ 6, 11, ECF No. 162.)

The May 19, 2017 letter from Defendant to the ILETSB was either never sent or never received, such that the ILETSB sent Defendant additional correspondence on June 15, 2017. (Pls.' Ex. 21, June 15, 2017 Letter, ECF No. 164-24.) In this letter, the ILETSB advised Defendant that it "had received no response [to its April 7, 2017 inquiry] and must therefore conclude that the pertinent date identifying when [ASOs] were reorganized and no longer under the control and direction of the Chicago Police Superintended [sic.] is not known." (Pls.' Ex. 21, June 15, 2017 Letter, ECF No. 164-24; Def.'s Resp. to Pls.' SOF at ¶¶ 17, 18, ECF No. 169.) The letter indicated that Defendant's silence coupled with "recent published statements from the Department referring to these employees as 'non-sworn, non-armed security personnel'" led the ILETSB to conclude that ASOs were not LEOs within the meaning of the Illinois

Police Training Act. (Pls.' Ex. 21, June 15, 2017 Letter, ECF No. 164-24; Def.'s Resp. to Pls.' SOF at ¶¶ 17, 18, ECF No. 169.)

As a result, the ILETSB notified Defendant that it would decertify the CDA as a law enforcement agency and remove ASOs from LEO rosters effective July 1, 2017. (Pls.' Ex. 21, June 15, 2017 Letter, ECF No. 164-24.) The ILETSB indicated that ASOs could retain their certifications, meaning ILETSB would recognize that ASOs passed the certification test, but that their time served as ASOs for the CDA would not "qualify toward any law enforcement benefits or credentials as maintained by the Board." (Pls.' Ex. 21, June 15, 2017 Letter, ECF No. 164-24.) The letter closed, "Should you have any additional comments or information that warrants consideration before the Board takes these steps please bring them to our attention as soon as possible." (Pls.' Ex. 21, June 15, 2017 Letter, ECF No. 164-24.)

Five days later on June 20, 2017, Defendant responded, incorporating similar language to and attaching a copy of the May 19, 2017 letter. (Pls.' Ex. 16, June 20, 2017 Letter, ECF No. 164-19; Def.'s Resp. to Pls.' SOF at ¶ 18, ECF No. 169.) Defendant made no comment and provided no additional information related to the representations the ILETSB made in its June 15, 2017 letter. (*See* Pls.' Ex. 16, June 20, 2017 Letter, ECF No. 164-19.) Defendant did not advise the ILETSB of Chicago Municipal Code Section 2-20-30, (Def.'s Resp. to Pls.' SOF at ¶ 18, ECF No. 169; Pls.' Resp. to Def.'s SOF at ¶ 17, ECF No. 162), which grants the CDA commissioner the authority to designate employees as special police with full police powers and mandates the Chicago Police Department Superintendent will swear in those

employees as special police officers. (*See* Def.'s Resp. to Pls.'s SOF at ¶ 10, ECF No. 169.)

Receiving no contrary comment or information from Defendant, the ILETSB sent a final letter on June 29, 2017, saying that it would deactivate the CDA as a law enforcement agency based on Defendant's June 20, 2017 response. (Pls.' Ex. 15, June 29, 2017 Letter, ECF No. 164-18; *see* Pls.' Resp. to Def.'s SOF at ¶ 20.) ILETSB further stated, "Any individual who completed a basic law enforcement academy and passed the state certification exam shall be reflected a certified officer within the Board's records; however, time employed by the CDA shall not be credited as 'law enforcement' employment in any capacity[.]" (Pls.' Ex. 15, June 29, 2017 Letter, ECF No. 164-18; *see* Pls.' Resp. to Def.'s SOF at ¶ 22, ECF No. 162.)

This decision did not alter ASO compensation, (Pl.'s Resp. to Def.'s SOF at ¶ 23, 35, ECF No. 162), but it had other retroactive effects. Specifically, it eliminated the ability of ASOs to count their time served with the CDA as law enforcement employment. (Pls.' Resp. to Def.'s SOF at ¶ 22, 24, 35, ECF No. 162; Def.'s Resp. to Pls.' SOF at ¶¶ 12, 14, 19, ECF No. 169.) The ILTESB could and did grant waivers allowing ASOs as prospective law enforcement agency applicants to forgo additional training, (Pls.' Resp. to Def.'s SOF at ¶¶ 25–26, ECF No. 162; *see* Pls.' Ex. 13, J. Keigher Dep. at 156:1–157:11, ECF No. 164-16), but the ILETSB would not recognize the time an ASO served with the CDA as time served as a LEO. (*see* Pls.' Ex. 13, J. Keigher Dep. at 233:7–234:2, ECF No. 164-16). Jimmerson was hired as an ASO by the CDA in 1988; Rodriguez was hired as an ASO by the CDA in 2007; and Yates was

hired as an ASO by the CDA in 2002. (Pls.' Resp. to Def.'s SOF at ¶ 7, ECF No. 162.) Yates, Rodriguez, and Jimmerson cannot claim their service to the CDA from their date of hire through June 30, 2017 as time spent in law enforcement employment, (Pls.' Resp. to Def.'s SOF at ¶¶ 44–45, ECF No. 162; Def.'s Resp. to Pls.' SOF at ¶¶ 12, 14, ECF No. 169), particularly if or when they apply or transfer to another law enforcement agency or seek rights under federal gun laws. (Pls.' Resp. to Def.'s SOF at ¶ 35–36, ECF No. 162). In essence, Plaintiffs and other ASOs are treated as if they have never been LEOs and have no LEO experience**.** It also made them ineligible for the benefits described above. (Pls.' Resp. to Def.'s SOF at ¶¶ 35–36, 39, 41, 42, ECF No. 162; Def.'s Resp. to Pls.' SOF at ¶ 19, ECF No. 169.)

SUMMARY OF THE ARGUMENT

The district court erred in granting summary judgment on Plaintiffs' due process claim because the court failed to recognize the Plaintiffs' property interest in their work histories as conferred by both the Chicago Municipal Code and pursuant to an implied in fact contract. Further, the district court erroneously held that Plaintiffs had not sustained a loss of their work histories and that the Collective Bargaining Agreement ("CBA") in place between the Defendant and Plaintiffs' union preempted the implied in fact contract theory. The damage issue is not only wrong, but clearly a question of fact and the preemption issue is incorrect as work histories were never the subject of bargaining under the CBA.

The district court also erred in granting summary judgment against Plaintiffs' state law promissory estoppel count. There the district court again was in error for asserting the CBA preempted the claim when Plaintiffs' work histories were never a bargained for term of the CBA. Further the district court ignored Illinois case law permitting an estoppel claim against a municipality in much less egregious circumstances and offered no factual or legal support for its conclusion to the contrary. Finally, the district court's conclusion that the Defendant reserved the right to alter the terms of its Manual which contained representations supporting the estoppel claim fails to recognize that a modification of the Manual affects rights going forward, not retroactively as to work performed by Plaintiffs years, if not decades, before. The district court's opinion granting summary judgment should be reversed.

ARGUMENT

I. The District Court Erred in Granting Summary Judgment on Plaintiffs' Fourteenth Amendment Claim.

Plaintiffs have a property interest in their work histories both by operation of statute and as a result of an implied in fact contract. The district court's analysis and conclusion on these points are both flawed and should be reversed.

A. Plaintiffs Have a Constitutionally Protected Interest in Their Work Histories Under §2-20-030 of the Chicago Municipal Code.

The district court erred in concluding that Plaintiffs failed to identify a statute or ordinance that granted them a property interest in their work histories. It is undisputed that property interests protected by the Fourteenth Amendment are created by "state laws -- rules, or understandings" that give rise to a benefit. *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). Throughout the course of this litigation, Plaintiffs have consistently pointed to §2-20-030 of the Chicago Municipal Code as the statutory underpinning of the property interest they hold in their work histories as LEOs. (*See* Pls.' Resp. Mot. Summ. J. at 2-4, ECF No. 163). §2-20-030 states:

> Such employees of the department of aviation as the commissioner of aviation may designate shall have full police powers, and for that purpose shall be sworn in as special policemen by the commissioner of police, and furnished with suitable badges of authority. They shall have full power to eject from any public airport owned or operated by the city any person who acts in a disorderly manner, or in a manner calculated to injure the property of the city within such airport.

Id. In a confounding paragraph of its opinion, the district court ignored much of §2-20-030 and stated, "[Plaintiffs] argue that the Chicago Municipal code [sic.] provides

the means and procedures by which they were entitled to be LEOs, but the ordinance merely provides the means and procedures . . . for the CDA Commissioner to designate ASOs to have full police powers. It says nothing about maintaining histories, it does not guarantee police authority[.]" (App. at 8-9). This conclusion by the district court is erroneous and misses the point. The ordinance explicitly states that designees of the CDA Commissioner "*shall have full police powers*." Chicago Municipal Code §2-20-030 (emphasis added). It is also undisputed that for decades the CDA designated Plaintiffs and every other ASO in the CDA as LEOs to the ILETSB by name and badge number on a form required by the ILETSB - Form E. (Pls.' SOF at ¶15, ECF No. 164). During those decades ASOs were designees of the multiple commissioners of the CDA under §2-20-030. It appears the district court ignored the fact that the LEO designation was a benefit conferred by an ordinance, and instead held Plaintiffs to the impossible standard of requiring Plaintiffs to point to a statute or ordinance that actually said Plaintiffs were entitled to their career histories. That is an impossible and impractical demand.

Once a statute, ordinance or understanding ***confers*** a benefit creating a property interest under the Fourteenth Amendment, like designating an employee as an LEO, the benefit is thereafter ***conferred***. And while a statute, ordinance or understanding may be subsequently amended or changed, that does not mean that the preceding history of the benefit that was previously conferred is wiped away. The designation of a person as an LEO necessarily creates a history that the person was an LEO. You cannot have one without the other. In the instant case, multiple years

of designated LEO experience had value and created other opportunities and benefits. Concomitantly, wiping out that history caused damage. The district court's opinion that Plaintiffs did not identify a statute or ordinance granting a right to one's resume or their work history is in error.

It must be noted that during the district court's consideration of Defendant's summary judgment motion the Illinois legislature amended the Illinois Police Training Act ("PTA") to include a new provision which went into effect on January 1, 2022, which states:

> An individual has no property interest in employment or otherwise resulting from law enforcement officer certification at the time of initial certification or at any time thereafter, including, but not limited to, after decertification or the officer's certification has been deemed inactive.

50 ILCS 705/6.7. The addition of this language to the PTA is significant. By amending the PTA as it has the Illinois legislature has acknowledged that prior to January 1, 2022, an LEO designation created a property interest. This stands to reason as an LEO designation in Illinois can only be conferred as a result of the State of Illinois granting police power to municipalities, 65 ILCS 5/11-1-2, and the municipalities in turn conferring that police power on individuals by local ordinance. By necessity, an LEO designation and the benefits guaranteed thereby can only be conferred by law or ordinance as the entire designation is a creature of statute. It is a benefit that would not exist but for a statute. And prior to January 1, 2022, an LEO designation in Illinois created a property interest. Since January 1, 2022, it does not, to the extent the amendment cited above is constitutionally valid. The district court's reasoning

fails to acknowledge that the LEO designation can only be created by legislative action, and that once the designation is conferred a work history is necessarily created.

Significantly, Defendant did not make the argument espoused by the district court addressing Plaintiffs' property interest as a result of §2-20-030. Instead, Defendant relied upon cases that examined whether a plaintiff had a protected *future* right under a statute or regulation. *See Brown v. City of Mich. City*, 462 F.3d 720, 728 (7th Cir. 2006) ("[W]e must decide whether the tradition of distributing free park passes to . . . residents created a legitimate expectation of the continued right to visit Washington Park."); *Frey Corp. v. City of Peoria*, 735 F.3d 505, 508 (7th Cir. 2013) (discussing whether site approval was a property right under the due process clause and whether the City owed the property owner some procedural process prior to revoking it); (*see also* Def.'s Mem. Summ. J. at 10, ECF No. 155.). Plaintiffs distinguished *Brown* and *Frey* and pointed out that they were not asserting a guaranteed right to *continued* LEO status, but rather, that through the ordinance the CDA had already conferred the property interest for which Plaintiffs sought relief. The district court clearly recognized the error in Defendant's argument, and rejected it, but then posited its own analysis which was equally flawed.

Plaintiffs provided the district court with the ordinance under which the Commissioner of the CDA has the authority to grant them full police powers, and they submitted ample evidence that the various commissioners exercised this statutory authority consistently and repeatedly over decades. Plaintiffs were

required, as a condition of their employment, to: (i) attend and graduate from either the Chicago Police Academy or Cook County Sheriff's Police Department Training Academy (something civilians cannot do without designation from a municipality) (Pls.' SOF ¶4, ECF No. 164); (ii) pass the Peace Officer Wellness Evaluation Report to enter into either academy (not available to non-police candidates) (Pls.' SOF ¶5, ECF No. 164); (iii) recite the Law Enforcement Code of Ethics upon graduating from either academy, and be sworn in by the designated agent of the municipal entity (Pls.' SOF ¶6, ECF No. 164); and (iv) pass yearly firearms training and maintain firearms certification as part of their employment with the CDA to maintain their LEO status (Pls.' SOF ¶11 ECF No. 164). Plaintiff's property interest in their work histories as LEOs was granted to them as a benefit derived from the Chicago Municipal Code and for decades, that benefit was renewed by Defendant and accrued to all ASOs. This Court should reverse the district court's decision rejecting Plaintiffs' Fourteenth Amendment due process claim on the basis Plaintiffs lacked a property interest in their work histories.

B. Plaintiffs' Fourteenth Amendment Claim Does Not Turn on the Language of the Collective Bargaining Agreement, but Rather on an Implied Contract.

In addition to asserting a property interest in their work histories under §2-20-030 of the Chicago Municipal Code for purposes of their due process claim, Plaintiffs also asserted a property interest in those work histories as a result of an implied contract. The district court rejected that argument based on the erroneous belief that

the implied contract Plaintiffs offered was preempted by the CBA between the Plaintiffs' Union and the Defendant. This is simply not the case.

Neither the Defendant nor the district court pointed to any provision of the CBA that preempted the formation of an implied contract between the Defendant and the Plaintiffs regarding Plaintiffs' work histories. The lack of such a reference in the district court's opinion is conspicuous. As this Court is aware, there is no prohibition against employers making additional promises to employees "outside" the context of a CBA. Rather, preemption is relevant when an employee asserts a right to "outside" promises that relate to matters that are already the subject of a CBA. The district court cited *Matthews v. Chicago Transit Authority*, 51 N.E.3d 753, 780 (Ill. 2016), for the proposition that an outside promise is not enforceable when there is an explicit contract between the parties. *Matthews* however undermines the district court's conclusion. *Matthews* in part upheld the dismissal of a promissory estoppel claim premised on subject matter that *had* been bargained for in a CBA but said nothing with respect to preemption. The court stated,

> [i]n essence, Williams's promissory estoppel claim seeks to enforce a contractual obligation (implied in fact) that goes beyond the terms of the 2004 CBA. Because the CTA engaged in collective bargaining over retiree health care benefits, it is precluded under Illinois law from making 'outside' promises of benefits that exceed those set forth in the relevant CBAs.

Id. at 782. Here, by contrast, and as the district court explicitly noted, the CBA does not discuss work history. As it is *not* a subject negotiated under the CBA, the CBA does not preempt it. The district court's acknowledgement that the CBA is silent on

the issue of work histories is actually a death knell for the district court's preemption holding.

Plaintiffs presented the district court with the Manual provided to Plaintiffs and all ASOs for decades. It along with Defendant's conduct created an implied contract under which Plaintiffs hold a property interest in their time served as police. *See Trapani Constr. Co. v. Elliot Grp., Inc.*, 64 N.E.3d 132, 142 (Ill. App. Ct. 2016) ("Even in the absence of an express contract, an implied contract can be created as a result of the parties' actions."). As argued, contracts implied in fact "arise from a promissory expression that may be inferred from the facts and circumstances that demonstrate the parties' intent to be bound." *Id.* Here, Defendant's actions clearly demonstrate it represented to Plaintiffs and all ASOs they were LEOs, it held them out as LEOs, and it permitted Plaintiffs to rely to their detriment on those representations.

The list of actions by Defendant that created an implied in fact contract that Plaintiffs were LEOs and entitled to describe their work histories as LEOs is lengthy. (Pls.' SOF ¶¶2-6, 11, ECF No. 164.) In summary form, these include: Plaintiffs were granted the ability to make arrests and identify themselves as the arresting officer(s) on official City forms; carry sidearms off-duty without a concealed carry permit; issue tickets and citations; conduct preliminary incident investigations; testify in court as police officers; wear police uniforms, five point badges and patches; drive patrol cars which identified them as police, among all the other indica of LEO status set forth in the complaint and verified in Plaintiffs' Response to Summary Judgment. (*See* Am.

Compl., ¶ 28, ECF No. 61,; *see also* ECF No. 136, Ex. A, ¶¶ 16, 19.) Defendant encouraged, and often required, Plaintiffs to do almost every one of these acts, which would have subjected them to civil and criminal penalties if Plaintiffs had performed them as civilians (impersonating a police officer; carrying a concealed weapon without a permit; driving a vehicle with red and blue emergency lights; detaining civilians, giving false testimony about their status and position to courts). Further, Defendant clearly demonstrated its intent to be bound by its characterization of Plaintiffs as LEOs to both the employees (telling them orally and in writing that they were in fact police (Pls.' SOF ¶20, ECF No. 164) and to the public (requiring them to testify as police officers in the courts of the State of Illinois). (*See* Decl. of K. Yates ¶¶ 16, 19, ECF No. 136). It is hard to imagine a more compelling circumstance than this for an implied in fact contract.

The district court's reliance on *Jett v. Dallas Independent School District* to further support its conclusion regarding preemption is entirely misplaced. *Jett v. Dallas Indep. Sch. Dist.,* 798 F.2d 748, 754 n.3 (5th Cir. 1986). In *Jett*, the Fifth Circuit held that the oral contract under which plaintiff was promised a high school football coaching position did not create a property interest in the intangible, noneconomic benefits of the promised employment, and thus no due process violation occurred when such offer was subsequently revoked. *Id.* at 754. However, similar to every case cited by Defendant in its motion for summary judgment, *Jett* addressed an expected future property interest, not a past property interest that was retroactively erased, such as that at issue in this case. The football coach in *Jett* never got the job.

We submit the outcome would be different if the school hired the coach, called him coach for 30 years, gave him all the indicia of being the coach, held him out as the coach, actually let him coach, and then when something went sideways surrounding the football program, unrelated to the coach, the school denied it ever had a football team and denied that Mr. Jett was ever the football coach. Assuming Mr. Jett had some injury as a result of his vanquished resume, that claim should stand. The amount of evidence that an implied contract existed, which granted Plaintiffs a property interest in their work histories and their time served as police, is overwhelming. The district court's decision should be reversed on this ground.

C. The City, Not the ILETSB, Caused the Change in Plaintiffs' Work Histories as LEOs.

The district court concluded that, even if Plaintiffs had established a constitutionally protected property right under either the municipal code or under an implied contract, "the undisputed evidence demonstrates that defendant did not deprive them of that right." (App. at 9) The district court placed the decision to deactivate Plaintiffs' LEO status and the erasing of their work histories as LEOs solely at the feet of the ILETSB. (*Id*. at 10) In reaching this conclusion, however, the district court erred by ignoring that Defendant—and Defendant alone—had the authority to assign LEO status. By disregarding the City's dishonest communications with the ILETSB. This district court's decision cannot be squared with (1) the fact that the ILETSB lacks authority to grant or deny police powers under the Illinois Constitution, (2) the City's disingenuous responses to the ILETSB's inquiries

regarding Plaintiffs' LEO status, and (3) the City's public statements and actions regarding Plaintiffs' LEO status. This Court should therefore reverse.

First and foremost, only a municipality, and not the ILETSB, has the authority to designate individuals as LEOs and assign police powers under the Illinois Municipal Code. *Compare* 65 ILCS 11-1-1–2, *with* 50 ILCS 705/1, 6. In other words, the ILETSB, acting alone, lacks the statutory authority required to support the district court's conclusion. *See* 50 ILCS 705/6.3 (enumerating the limited circumstances (generally the commission of felonies) in which the ILETSB may exercise its discretionary decertification power). Again, a death knell for the district court's holding. The ILETSB only recognizes and reports LEO status based on the information it receives from a municipality. 50 ILCS 705/6(a). It is undisputed that the ILETSB officially recognized Plaintiffs as LEOs from the early 1990s until 2017. This recognition was afforded to Plaintiffs and remained unaltered for almost three decades *solely* because of Defendant's representations to the ILETSB that the ASOs were designated by Defendant to have police powers.

Further, the district court's holding that Defendant's response to the ILETSB inquiries regarding Plaintiffs' LEO status "played no part in the Board's decision" but "merely confirmed everything the Board had concluded" ignores Defendant's false statements to the ILETSB, which necessarily create a question of fact. (App. at 9-10.) In its April 5, 2017 letter to Defendant, the ILETSB requested that the City "define the moment when the employees were pulled from the jurisdiction of the Superintendent and placed wholly under the direction of the Department of Aviation"

to allow the ILETSB "to determine when aviation employees ceased serving as 'law enforcement officers' under the Police Training Act." (Pls.' SOF ¶17, ECF No. 164.) Had Defendant responded and stated that the Commissioner of the CDA had been granted authority under §2-20-030 of the Chicago Municipal Code by the Chicago City Council to designate employees of CDA with full police powers at O'Hare and Midway airports that would have been the end of the matter. Instead, when Defendant finally responded to the ILETSB, it stated that Plaintiffs were "neither police officers nor special police officers under applicable Chicago Municipal law." (Pls.' SOF ¶18, ECF No. 164.) If a municipality does not grant police powers to individuals, the ILETSB cannot hold those individuals out as LEOs. It is solely the province of the municipality to grant police powers and create LEOs – not the ILETSB. Defendant was the cause of Plaintiffs loss of their work histories – not the ILETSB.

D. Plaintiffs' Work Histories Are Not Intact.

The district court found that "the evidence shows, however, that plaintiffs' histories remain intact." This finding is impossible to square with other portions of the court's opinion. The district court simply accepted the City's wholly contradictory argument—stating in one breath that Plaintiffs "are not, and never have been police," and in the next, claiming that Plaintiffs' status as LEOs remains intact. In finding that "[p]laintiffs' histories remain part of their file and cannot be changed," the district court missed the entire import of this case. Plaintiffs' LEO work histories are not intact. ASOs cannot represent to a law enforcement agency or other employer

that they were employed as LEOs for a certain number of years because ILETSB will report the ASO has zero LEO experience upon a reference check.

The district court entirely misapprehended when a waiver can be granted by the ILETSB, who must request it, and the nature of its impact. (ECF 177 at 10). A waiver granted by the ILETSB simply affords a former CDA employee the ability to avoid the re-training requirement, i.e. graduating from a police academy, and passing the LEO exam, should a new law enforcement agency want to employ them. It does not remedy the fact that Plaintiffs no longer have the certified LEO experience required to even qualify for such lateral law enforcement positions within other agencies. Without their work histories, former CDA employees are rejected from lateral LEO positions well before a waiver is sought from the ILETSB, which occurs only after the candidate is being offered employment. This is not a mere hypothetical—Plaintiffs put forth numerous, specific examples of aviation police being outright rejected for lateral LEO positions following the Defendant's decertification in 2017. (*See* Pls.' SOF ¶12, ECF No. 164.) (identifying numerous former CDA employees who have been rejected by law enforcement agencies for lack of necessary LEO experience following the 2017 decertification and retroactive deletion of LEO work histories). The district court's opinion inexplicably does not address these examples.

Further, the district court parrots Defendant's unsupported contention that the ILETSB has granted waivers "every time a certified law enforcement agency wanted to hire a former CDA employee." (ECF 177 at 10.) As stated, in order to get

to the point where a potential new employer requests a waiver, an ASO would have to apply for a position stating how much LEO experience the ASO has. The ASO is then put in the impossible position of submitting how many years they worked for Defendant as an LEO, only to have that contradicted when the new employer contacts ILETSB to verify the years of service, or the ASO would have to submit some sort of narrative explaining that they worked as an LEO for a certain number of years, but that Defendant and ILETSB determined in 2017 that the ASO was never an ASO, but that if the employer requested a waiver from ILETSB as to the years of service issue, ILETSB represented they would grant it. [1] It is virtually guaranteed that if an employer came across an application that stated a candidate had multiple years of LEO experience, but ILETSB said the candidate did not – that application would be rejected if not worse for what appears to be a false statement. The other alternative is no better. An employer who encounters an applicant with the bizarre story ASOs have to tell with respect to whether they have LEO experience is the sort that would lead virtually any employer to quickly move on to the next candidate. At the very least, the district court's misapprehension with respect to the waiver issues

[1] It is uncertain whether this representation remains true today as Brent Fischer, the executive director of the ILETSB when Keigher offered his testimony, was terminated this past September after it was discovered that Fischer granted LEO certification to Howard Buffett (son of billionaire Warren Buffett) who had donated millions of dollars to training efforts, even though Buffett did not have the qualifications to be a part-time law enforcement officer. Jeremy Gorner, *Head of Illinois police training agency fired over improper law enforcement certification given to son of legendary investor Warren Buffett*, Chi. Trib., Nov. 17, 2021, https://www.chicagotribune.com/politics/ct-howard-buffett-police-certification-improper-20211118-236ouc54gzdn7jz4davymqollm-story.html.

establishes there are significant factual issues surrounding this topic. Summary judgment should not have been granted on this basis.

II. The District Court Erred in Granting Summary Judgment on Plaintiffs' Claim for Promissory Estoppel.

Plaintiffs brought a promissory estoppel claim against Defendant, showing that they had reasonably relied on Defendant's express and implied promises that ASOs were LEOs and possessed concomitant work histories. The district court's decision to grant summary judgment on this claim is in error for several reasons. First, the district court again incorrectly asserted that the CBA had preclusive effect on this equitable relief. Second, this is precisely the sort of extraordinary circumstance where an estoppel claim should be permitted, given the overwhelming evidence of an understanding between the parties, Defendant's breach of that understanding, and the devastating impact on numerous unsuspecting public servants. Third, the Manual's reservation of the right to change its terms at any time does not include the right to wipe out historical facts. And finally, the district court again attempted to divorce the grant of a position or designation as LEO from a person's right to the claim s/he is an LEO.

A. The Evidence Supports Plaintiffs' Promissory Estoppel Claim.

Contrary to the district court's opinion, Plaintiffs demonstrated the necessary elements of promissory estoppel. To establish promissory estoppel, a plaintiff must show that (1) the defendant made an unambiguous promise, (2) the plaintiff relied on the promise, (3) the plaintiffs reliance was reasonable, and (4) the plaintiff was harmed by its reliance. *Firestone Fin. Corp. v. Meyer*, 796 F.3d 822, 827 (7th Cir.

2015) (citing *Newton Tractor Sales, Inc. v. Kubota Tractor Corp.*, 906 N.E.2d 520 (Ill. 2009)). Moreover, "[a]n express promise is not required [to establish promissory estoppel]. Rather, the promise may be inferred from conduct and words." *First Nat'l Bank v. Sylvester*, 554 N.E.2d 1063, 1070 (Ill. App. Ct. 1990) (citation omitted). Here, every ASO the CDA hired from 1993 through 2017 received the Manual. The Manual described the "Authority of Aviation Special Police Operations Personnel," (Pls.' Ex. 9 at CHI-YATES015101, ECF No. 164-10), recognizing at the outset and in writing that ASOs were police. It literally states that ASOs will be special police, certified law enforcement officers and that, "**Special Police will possess all the powers of the regular police patrol at the places for which they are respectively appointed or in the line of duty for which they are engaged.**" (Pls.' Ex. 9, the 2002 Manual at CHI-YATES015094, ECF No. 164-10 at 22.) (emphasis in original).) In addition, Defendant gave unambiguous written and implied promises to Plaintiffs that they were LEOs and, by extension, that they would develop and retain a work histories reflecting that status. These facts are identified in Section I(B) supra and Plaintiffs will not repeat that lengthy list here. These statements are clear, direct, and explicit promises that Plaintiffs were and would be designated as LEOs.

Plaintiffs relied on Defendant's promises by taking and remaining in ASO positions for years, seemingly secure decisions based on the knowledge that they were LEOs and that their work histories would reflect this fact. This reliance was justified under the circumstances, as Defendant unwaveringly held the ASOs out as LEOs and required that the ASOs meet all requirements to be an LEO. Plaintiffs were harmed

by their reliance on Defendant's repeated promises when they were retroactively stripped of their work histories and lost the rights and privileges afforded by those work histories. This erasure, including the obliteration of years or even decades of credit for LEO service, constitutes a substantial injustice sufficient to support a promissory estoppel claim.

B. The Court Made A Host of Reversible Errors in Granting Summary Judgment Against Plaintiffs' Promissory Estoppel Claim.

The district court erred in granting summary judgment against Plaintiffs' promissory estoppel claim by concluding that the existence of the CBA precluded such equitable relief. The district court stated, "[P]laintiffs are parties to and their employment is expressly governed by the CBA, meaning they cannot rely on promissory estoppel." (App. at 11 (citing *Matthews*, 51 N.E.3d at 780.)). As discussed in a slightly different context earlier, neither *Matthews* nor other relevant caselaw holds that promissory estoppel is forbidden in collective bargaining arrangements. *Matthews* simply followed the longstanding rule that, if a term has been bargained for and negotiated as part of a CBA, neither an employee nor employer can supersede the CBA without a bargained for negotiation on that same term. "Because the CTA engaged in collective bargaining over retiree health care benefits, it is precluded under Illinois law from making 'outside' promises of benefits that exceed those set forth in the relevant CBAs." *Matthews*, 51 N.E.3d at 782. Here, by contrast, and as the district court explicitly noted, the CBA does not discuss work histories. (*See* App. at 10–11.) As an ASO's right to declare their own work history is *not* a subject or term negotiated under the CBA, the CBA cannot prevent Plaintiffs' promissory estoppel

claim. It stands to reason that Defendants would have compelled arbitration and brought this matter before the ILRB at the inception of this action if Defendant believed Plaintiffs' work histories were subject to the CBA.

The district court also erred when it found that promissory estoppel "will not be applied to governmental entities absent extraordinary circumstances not present in the instant case." (App. at 11.) The district court cited no authority for its bare assertion. An examination of Illinois law shows that in fact Illinois courts have permitted promissory estoppel claims against municipalities in much less egregious circumstances. For example, in *Boswell v. City of Chicago*, the Illinois Court of Appeals reversed the dismissal of plaintiff's estoppel claim where plaintiff took a compliance job with the city based on representations his role would be independent from political pressures and interference. 69 N.E.2d 379, 385 (Ill. App. Ct. 2016). The plaintiff "left his previous job and moved his family to Chicago, only to be stonewalled in his attempts to perform his job duties," and the Court of Appeals ruled his claims constituted injustice compelling enough to justify an estoppel count. *Id.* In the instant case, Plaintiffs lost years or decades of LEO experience and had their work histories expunged with the stroke of a pen. Plaintiffs were expressly and implicitly promised by Defendant that they would be LEOs following successful completion of a law enforcement academy curriculum and passing the LEO state exam. Plaintiffs were then explicitly and implicitly promised throughout their careers that if they maintained their certifications each year and complied with the Manual they would continue to be LEOs, which they did for decades. The loss of their work histories has

worked a severe injustice on a wide swath of public servants including the Plaintiffs. While the district court provided no explanation as to why it did not believe the instant case was one worthy of an estoppel claim against Defendant, it is clear that Illinois courts have permitted estoppel claims to go forward against much less egregious conduct. The district court's decision on this point is in conflict with existing Illinois law.

The district court also based its grant of summary judgment on promissory estoppel on its assertion that a reservation in the Manual gave Defendant the right to "change the conditions of employment for any time and any reason." (App. at 11.) In doing so, the district court simply parroted Defendant's argument on this point without substantive analysis. Contrary to Defendant's and the district court's position, the Manual's "disclaimer" statement is not a "clear and unambiguous" disclaimer that Defendant could *retroactively revoke* the ASOs' status as LEOs or refuse to credit their relevant work history. Further, the opinion cites no authority for the proposition that LEO status constituted a mere "condition of employment."

Indeed, the summary judgment opinion fails to address at all Plaintiffs' argument that, under federal law, LEO status is specifically *not* a condition of employment. As stated in the labor-management relations provisions of the United States Code, "the classification of a position" is not considered a "condition of employment." 5 U.S.C. § 7103(a)(14)(b). In turn, the Code states that "'conditions of employment' means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term

does not include policies, practices, and matters—[]relating to the classification of any position[.]" *Id.* As this case centrally concerns the classification of ASOs' position, the purported disclaimer cannot and does not overcome the clear and unambiguous promise in the Manual that "Aviation Special Police Officers will be state certified law enforcement officers." (Pls.' Ex. 9 at CHI-YATES015101, ECF No. 164-10.) Moreover, if work history was a condition of employment, it would have been subject to the ILRB's decision-making authority regarding CBA terms. It was not. The district court committed clear error on this point.

Finally, the district court opined that the Manual could not support a promissory estoppel claim because it does not discuss ASOs' work histories. Again, one cannot separate a person's acceptance of a position or classification from one's right to then assert they held the position or classification historically. The Manual stated, "Aviation Special Police Officers will be state certified law enforcement officers." (*Id.*) ASOs were, for approximately 27 years, state certified law enforcement officers. By declaring that ASOs will be LEOs, Defendant through the Manual necessarily addressed Plaintiffs' right to claim an interest in their career history. The district court seeks to impose a duality upon a person's work-life that is a fiction. Once a person is an LEO, a person can claim to have been an LEO. Curriculum vitae translates in Latin as "course of life." Listed on a curriculum vitae are those vocations a person pursues during their life. Suggesting that the Manual should have had a provision which explicitly stated that ASOs could hold themselves out as LEOs is absurd. ASOs should have work histories reflecting their LEO status, as it was

clearly an implied promise of the employment relationship. This Court should reverse the district court's grant of summary judgment, vacate the district court's denial of Plaintiffs' Motion for Class Certification on mootness grounds, and remand the case for further proceedings.

CONCLUSION

For the foregoing reasons Plaintiffs request that this Court reverse the decision of the district court granting summary judgment as to both counts of Plaintiffs' Amended Complaint, remand to the district court for further proceedings, and any further relief this Court deems fair and just.

CERTIFICATE OF COMPLIANCE WITH
FRAP RULE 32(a)(7), FRAP RULE 32(g) and CR 32(c)

The undersigned, counsel of record for Plaintiffs-Appellants, Keia Yates, Johnny Jimmerson, and Leonardo Rodriguez, furnishes the following in compliance with F.R.A.P Rule 32(a)(7) and Circuit Rule 32:

I hereby certify that this brief conforms to the rules contained in F.R.A.P Rule 32(a)(7) and Circuit Rule 32 for a brief produced with a proportionally spaced font. The length of this brief is **9,137** words.

Dated: January 20, 2022

SWEENEY, SCHARKEY & BLANCHARD LLC
/s/Robert D. Sweeney
Robert D. Sweeney

Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users

Dated: January 20, 2022

SWEENEY, SCHARKEY & BLANCHARD LLC
/s/Robert D. Sweeney
Robert D. Sweeney

Counsel for Plaintiffs-Appellants

CIRCUIT RULE 30(d) STATEMENT

Pursuant to Circuit Rule 30(d), counsel certifies that all material required by Circuit Rule 30(a) and (b) are included in the appendix.

Dated: January 20, 2022

SWEENEY, SCHARKEY & BLANCHARD LLC
/s/Robert D. Sweeney
Robert D. Sweeney

Counsel for Plaintiffs-Appellants

TABLE OF CONTENTS TO REQUIRED SHORT APPENDIX

Orders and Judgments

Excerpts from the City of Chicago Department of Aviation Special Police Policy & Procedures Field Manual

Statutes and Code Provisions

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KEIA YATES, LEONARDO RODRIQUEZ, JOHNNY JIMMERSON, as representatives of that class of individuals working as Aviation Security Officers of the City of Chicago, Department of Aviation	)	
Plaintiffs,	)	Case No. 18 C 2613
v.	)	Judge Robert W. Gettleman
CITY OF CHICAGO,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Plaintiffs Keia Yates, Leonardo Rodriquez and Johnny Jimmerson, on behalf of themselves and other similarly situated individuals working as Aviation Security Officers ("ASOs") of the City of Chicago, Department of Aviation, brought a four count putative class action complaint against defendants State of Illinois and Brent Fischer as Executive Director of the Illinois Law Enforcement Training and Standards Board ("ILETSB") (jointly, the "State defendants"), and the City of Chicago and Ginger Evans as Commissioner of the City of Chicago Department of Aviation ("CDA") (jointly, the "City defendants"), claiming that the defendants stripped them of their histories as law enforcement officers. Counts I and II were brought pursuant to 42 U.S.C. § 1983 and alleged violations of the Fifth Amendment's Taking Clause and the Fourteenth Amendment's Due Process Clause respectively. Counts III and IV were state law claims for fraudulent inducement and promissory estoppel. All claims were brought against all defendants. The State defendants and the City defendants brought separate motions to dismiss under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. The court granted the State defendants'

motion in full, and granted the City defendants' motion in part, dismissing Counts I and III, leaving plaintiffs' due process and promissory estoppel claims against the City defendants. Yates v. Illinois, 2018 WL 6179111 (N.D. Ill. Nov. 27, 2018). Plaintiffs then filed the instant amended complaint against the City only, re-asserting their Fourteenth Amendment and promissory estoppel claims. Defendant has moved for summary judgment on both counts. For the reasons set forth below, the motion is granted.

BACKGROUND[1]

Plaintiffs are ASOs hired by the CDA to monitor and enforce access controls at the airports. ASOs are members of SEIU Local 73 (the "Union") and are subject to a collective bargaining agreement ("CBA") under which the City reserved the right to adjust, modify, and abolish ASOs' job duties and classifications.

In or around 1993 the Illinois Law Enforcement Training and Standards Board ("ILETSB"), the state entity tasked with recognizing police authority in Illinois and administering the state law enforcement officer("LEO") certification exam, began recognizing the CDA as a law enforcement agency ("LEA") and, by extension, recognizing ASOs as LEOs. On November 21, 2016, Richard Zuley of the CDA sent an email to Anthony Raffety of the ILETSB indicating that the CDA was applying to the Illinois State Police for a LEADS account, which provides access to criminal records administered at the state level, and that the State Police wanted verification from the Board indicating that the CDA was a recognized LEO and that the ASOs were certified through the Board as LEOs. This raised concerns among the Board because they had assumed that the CDA already had LEADS access through a Federal ORI number which provides access to criminal

1 The Yates opinion sets out in detail the plaintiffs' factual allegations, which are largely not disputed. Familiarity with the factual background in that opinion is presumed and will not be repeated.

records administered at the state and federal level. This led the Board to review their "Chicago Department of Aviation Police" file to verify its status. That review exposed a number of complications. As part of their investigation, John Keigher asked Zuley which Illinois statute he believed conveyed the CDA with any police authority. Keigher did his own statutory research and also reviewed a few decisions of the Illinois Labor Relations Board that had concluded that the CDA was not being administered by the Chicago Police Department ("CPD"), and that CPD had no oversight of the CDA. As a result, the ILETSB concluded that the ASOs were not in the CPD Superintendent's chain of command, that the ASOs served an unarmed security function at the airports, and no applicable Chicago municipal law qualified ASOs to be LEOs.

On April 5, 2017, the ILETSB sent a letter to the City indicating that in the early 1990s the ILETSP had been informed that ASOs were duly authorized to make "arrests, trained and certified in the same manner as [CPD] officers and under the appointment of the CPD superintendent as "Special Police Officers." Because of that, the ILETSB had deemed the ASOs to be LEOs employed within a special division of the CPD. The letter indicated that the Board had come to learn that ASOs were not authorized to carry firearms on or off duty, that decisions of the ILRB had repeatedly determined that ASOs were not LEOs, and that the chain of command for ASOs ended with the Chairman of the CDA, but "at no point is the Superintendent [of CPD] involved in their direction or command." The letter then indicated that as a result the Board could not "trace law enforcement authority from the Illinois statutes to these particular employees, in the manner that we can for CPD officers, and we can no longer find them [to] be law enforcement officers." The final paragraph of the letter provides:

> At this time, we respectfully ask the City to define the moment when these employees were pulled from the jurisdiction of the Superintendent and placed

> wholly under the direction of the Department of Aviation – this will allow us to determine when aviation employees ceased serving as "law enforcement officers" under the Police Training Act. This has become relevant as the Board must regularly verify the status of retired law enforcement officers who are eligible for certain firearm privileges under the federal Law Enforcement Officers Safety Act after serving as a law enforcement officer for ten years.

Four days later, on April 9, 2017, ASOs at O'Hare airport were dispatched to United Flight 3411 to respond to a call from the flight crew about a non-compliant passenger. Several ASOs responded and eventually physically removed the passenger from the plane. Videos of the event went viral on social media and news outlets across the county, alleging abuse by Chicago Police Officers. One video showed an APO dragging the passenger down the aisle. The video showed the back of the APO's vest indicating "POLICE."[2]

Plaintiffs allege that the Flight 3411 incident led the City to "strip" the ASOs of their "police status." As a result, the Union brought an unfair labor charge with the ILRB. After attempts to settle that charge failed, the ILESTB sent a letter to the City indicating that it had not received a response to its April 5 letter, that it was concluding that the date that ASOs were reorganized and no longer under the direction and control of the CPD was not known, and thus it determined that ASOs are not "law enforcement officers as defined by the Police Training Act." New hires would be precluded from attending an approved law enforcement academy and:

> By way of administration, officers who received their training and certification as employees of the CDA will remain certified officers; however, time served as an employee of this entity will not qualify towards any law enforcement benefits or credentials as maintained by the Board. Because no date of reorganization could be identified, and to protect the interests of the employees at issue, the Board will

2 In 2001, after the World Trade Center Attacks, the CDA officially renamed ASOs as "Aviation Police Officers" and held them out as police in a number of ways, including giving then 5-point star badges, which are provided only to law enforcement officers, and providing them with patrol cars that had flashing red and blue emergency lighting, which in Illinois is restricted to law enforcement vehicles. For ease, this opinion refers to the aviation officers as ASOs rather than APOs.

> deactivate the CDA and administratively separate the individuals on the subject roster as of July 1, 2017.

On June 20, 2017, the City responded, indicating that the "City's Aviation Security Officers do not receive any certification or appointment from the Chicago Police Superintendent, are under the supervision of the Commissioner of the CDA, and serve as an unarmed security function and are not police officers or special police officers under the Chicago Municipal Code." Based on that response, the ILETSB indicated that it would deactivate the CDA as an LEA and administratively separate all personnel currently listed on the roster effective on the close of June 30, 2017. The letter further provided:

> As soon as possible, the respective authorities should inform all employees of this agency that they are not law enforcement officers under the Police Training Act and have no authority as such to make arrests or carry firearms. Any individual who completed a basic law enforcement academy and passed the state certification exam shall be reflected as a certified officer within the Board's records; however, time employed by the CDA shall not be credited as "law enforcement" employment in any capacity, including, but not limited to, subsequent employment and participation in the Illinois Retired Officer Concealed Carry program.

DISCUSSION

Defendants have moved for summary judgment on both counts. Summary judgment is proper where there is "no dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A genuine dispute as to any material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The party seeking summary judgment has the burden of establishing that there is no genuine dispute as to any material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). In determining whether a genuine issue of material fact exists, the court must construe all facts and reasonable inferences in the light most favorable to the

nonmoving party. See CTL ex rel. Trebatoski v. Ashland Sch. Dist., 743 F.3d 524, 528 (7th Cir. 2014). But the nonmovant "is only entitled to the benefit of inferences supported by admissible evidence, not those 'supported only by speculation or conjecture.'" Grant v. Trus. of Ind. Univ., 870 F.3d 562, 568 (7th Cir. 2017).

In Count I plaintiffs allege that defendants deprived them of a property right in their work histories without due process of law in violation of the Fourteenth Amendment. Defendant attacks this count on numerous grounds. First, defendant argues that this claim is barred by collateral estoppel, or as it is now known, issue preclusion. Second, defendants argue that plaintiffs do not have a constitutionally protected property interest in their work histories. Third, defendants argue that plaintiffs' work histories remain intact, and that defendant did not cause any change in plaintiffs' LEO status or work histories. The court agrees with defendant's position.

Under Illinois law, which the parties agree applies, "[t]he doctrine of collateral estoppel applies when a party, or someone in privity with a party, participates in two separate and consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes has been adjudicated against that party in the former suit by a court of competent jurisdiction. The adjudication of the fact or question in the first cause will, if properly presented, be conclusive of the same question in the later suit, but the judgment in the first suit operates as an estoppel only as to the point or question actually litigated and determined and not as to other matters which might have been litigated and determined." Nowak v. St. Rita High School, 197 Ill.2d 381, 389-90 (2001) (emphases in original). The minimum requirements for its application are that the issue decided in the prior adjudication is identical with the one presented in the suit in question, there was a final judgment on the merits in the prior

adjudication, and the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication. Gumma v. White, 216 Ill.2d 23, 38 (2005).

As noted above, after the ILETSB deactivated the CDA as an LEO, the Union filed an unfair labor charge against defendant, alleging that defendant improperly removed the ASOs LEO authority and altered their duties. The ILRB disagreed with the Union's position, holding that ASOs, "are not, and have never been, police or peace officers." The ILRB further held that defendant made no change to the ASOs' duties or functions and that ASOs could not have reasonably relied on representations regarding their LEO status based on prior ILRB decisions rejecting that status and their lack of oversight by the CPD Superintendent. SEIU Local 73 v. City of Chi., 2018 IL LRB LEXIS 66, *63-80 (July 2, 2018).

According to defendant, the ILRB decision resolved the following issues which it argues are central to both counts in the instant case: 1) the defendant's communications with the ILETSB did not remove ASOs' purported police authority because they had no such authority in the first place; 2) the CDA Commissioner never authorized ASOs to be police or special police; 3) the CPD Superintendent never swore in any ASO; 4) defendant and the Union had litigated multiple actions over several years regarding whether ASOs were special police; 5) the labels conferred on employees by their employer are not determinative of actual authority, and removing police insignia did not alter ASOs' authority because they had no such authority to begin with; and 6) defendant's decision to remove ASOs' authority as special police was a matter of managerial authority. Defendant argues that because these issues have all been decided against plaintiff, they cannot be relitigated in the instant case. The result, according to defendant, is that plaintiffs are

estopped from seeking any relief for the alleged removal of their LEO status, and without LEO status, they have no constitutional property interest to protect.

The court agrees with defendant up to a point. There is no question that the minimum requirements for issue preclusion have been met. The issues decided by the ILRB are identical to some of the issues in the present case, the ILRB decision is an adjudication on the merits, and plaintiffs are in privity with the Union. See Merk v. Jewel Food Stores Div., 702 F. Supp. 1391, 1398 (N.D. Ill. 1988) (Members of a collective bargaining unit are privies to the union when the union brings an action on their behalf, and thus are barred from bringing the same cause of action.) Thus, plaintiffs cannot relitigate here issues that have already been decided by the ILRB.

All that means, however, is that the CDA should never have been certified as an LEA, and that ASOs should never have been certified as LEOs. But, it is undisputed that the ILETSB did certify the CDA as an LEA and did certify ASOs as LEOs when asked. Thus, ASOs were listed with the ILETSB as having work histories as LEOs even though they should not have been.

It is doubtful that plaintiffs can have a constitutionally protected property right in something to which they were never entitled. And, plaintiffs have certainly presented nothing to indicate that they can. Moreover, even if they could have such a right, they have failed to demonstrate that they do have a property right in their work histories. The Fourteenth Amendment protects property rights, but it does not create them. Property interests, for Fourteenth Amendment purpose are created by "state laws, rules, or understandings that give rise to a benefit." Board of Regents v. Roth, 408 U.S. 564, 577 (1972). Plaintiffs have failed to identify any state statute or local ordinance that guarantees their purported interest. They argue that the Chicago Municipal code provides the means and procedures by which they were entitled to

be LEOs, but the ordinance merely provides a means for the CDA Commissioner to designate ASOs to have full police powers. It says nothing about maintaining histories, it does not guarantee police authority, and the ILRB held that the designation was never properly effected.

Plaintiffs do argue that their property interest was created by an implied contract based on the Special Police Policy and Procedures Field Manual (the "Manual") given to them, and the manner by which defendant held ASOs out to be police officers. As defendant notes, however, when, as here, there is a binding contract, an employer's statements and practices "do not transmute probabilities into entitlements." Upadhya v. Langenberg, 834 F. 2d 661, 665 (7th Cir. 1987). "When a public employee has a legitimate entitlement to his employment, the due process clause may protect as 'property' no more than the status of being an employee of the governmental employer in question together with the economic fruits that accompany the position." Jett v. Dallas Independent School District, 798 F.2d 748, 754 n.3 (5th Cir. 1986). In the instant case, plaintiffs' employment rights are defined by the CBA, not by the manual, which contains no language to suggest that it supplants the CBA. The CBA creates no property interest in "work histories." Consequently, the court concludes that plaintiffs have failed to demonstrate a constitutionally protected property interest.

Moreover, even if plaintiffs could establish a constitutionally protected property right (they cannot), the undisputed evidence demonstrates that defendant did not deprive them of that right. John Keigher of the ILETSB testified that it was solely that Board's decision to deactivate the CDA as an LEA and, as a result, to deactivate the ASOs as LEOs. His unrebutted testimony was that the defendant's June 20, 2017, response letter played no part it the Board's decision. It merely

confirmed everything the Board had concluded. Thus, if plaintiffs' work histories have been "stripped," it was by the ILETSB, not defendant.

The evidence shows, however, that plaintiffs' histories remain intact. Keigher testified (again unrebutted) that plaintiffs' histories have not been erased. Although they remain certified as LEOs, they simply cannot exercise police powers unless they are working for an LEA. Plaintiffs' histories remain part of their file and cannot be changed. As to the June 29, 2017, letter indicating that "time employed by the CDA shall not be credited as "law enforcement" employment in any capacity, including but limited to, subsequent employment and participation in the Illinois Retired Officer Concealed Carry Program," Keigher testified that that "was a component of consideration at the time it was written," but that the Board ultimately concluded that time should be given credit. As a result, the Board granted waivers of the Police Training Act's requirement of re-training every time a certified LEA wanted to hire an ASO. As a result, the court concludes that the undisputed evidence demonstrates that defendant has not deprived plaintiffs of a constitutionally protected property right. Defendant's motion for summary judgment is granted as to Count I.

Count II asserts a claim for promissory estoppel. In Illinois, promissory estoppel "is a common-law doctrine adopted to permit the enforcement of promises that are unsupported by consideration, such as gratuitous promises, charitable subscriptions, and certain intrafamily promises." Matthews v. Chicago Transit Authority, 2016 IL 117638 ¶ 91 (May 5, 2016). It is employed to form a contract when the promisee has detrimentally relied on the promissor's gratuitous promise to do or refrain from doing something in the future. Id. Its application is proper, however, only in the absence of an express agreement, because it is a means to enforce

gratuitous promises and "is not designed to provide a party to a negotiated bargain a second bite at the apple if it fails to prove breach of contract." Id. at ¶ 92 (internal quotations omitted). And, Illinois courts have repeatedly held that promissory estoppel, like equitable estoppel, will not be applied to governmental entities absent extraordinary circumstances not present in the instant case. Id. at ¶94.

In the instant case, plaintiffs rely on statements in the Manual which they assert governed ASOs. Specifically, they cite to a provision which states that "The Aviation Special Police Officer will be an Illinois certified law enforcement officer," as the unambiguous promise necessary to establish a claim for promissory estoppel. As noted, however, plaintiffs are parties to and their employment is expressly governed by the CBA, meaning they cannot rely on promissory estoppel. Id.

Moreover, even if the doctrine were available to plaintiffs, their claim to it fails. To establish a claim based on promissory estoppel, plaintiffs must prove that: 1) defendant made an unambiguous promise to them; 2) they relied on the promise; 3) their reliance was expected and foreseeable by defendant; and 4) plaintiffs relied on the promise to their detriment. Id. at ¶ 95. Plaintiffs rely on the statement in the Manual to establish an unambiguous promise that they would be Illinois certified law enforcement officers. But they readily acknowledge that the Manual contains a disclaimer indicating that defendant reserved the right to "change the conditions of employment for any time and any reason." Plaintiffs argue that this is not a disclaimer that defendant could retroactively revoke the ASOs' status as LEOs or refuse to credit their relevant work history, but as noted above, defendant has done neither, and neither the Manual nor the CBA

makes any mention of work history. Thus, plaintiffs have failed to establish an unambiguous promise.

Additionally, plaintiffs cannot establish the necessary reliance in light of the numerous ILRB decisions holding that ASOs were not law enforcement officers and their knowledge that they did not meet the requirements to obtain LEO status because they were never sworn in by a CPD official. Consequently, the court grants defendant's motion for summary judgment on Count II.

CONCLUSION

For the reasons described above, defendant's motion for summary judgment [Doc. 153] is granted. Plaintiffs' motion to certify a class [Doc. 136] is denied as moot.

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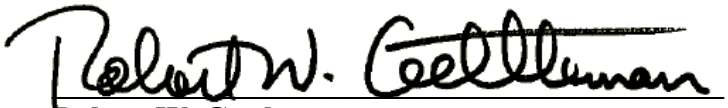

Robert W. Gettleman
United States District Judge

DATE: September 25, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

KEIA YATES, LEONARDO RODRIQUEZ, JOHNNY JIMMERSON, as representatives of that class of individuals working as Aviation Security Officers of the City of Chicago, Department of Aviation,

Plaintiff(s),

v.

CITY OF CHICAGO,

Defendant(s).

Case No. 18 C 2613
Judge Robert W. Gettleman

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s), CITY OF CHICAGO,

and against plaintiff(s), KEIA YATES, LEONARDO RODRIQUEZ, JOHNNY JIMMERSON, as representatives of that class of individuals working as Aviation Security Officers of the City of Chicago, Department of Aviation

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge presiding, and the jury has rendered a verdict.
☐ tried by Judge without a jury and the above decision was reached.
☒ decided by Judge Robert W. Gettleman on a motion.

Date: 9/25/2021

Thomas G. Bruton, Clerk of Court

Claire E. Newman, Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.3.3
Eastern Division

Keia Yates, et al.

Plaintiff,

v.

Case No.: 1:18–cv–02613
Honorable Robert W. Gettleman

The State of Illinois, et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Monday, September 27, 2021:

MINUTE entry before the Honorable M. David Weisman: In light of the District Judge's termination of this case Dkt # [177], all matters relating to the referral of this case have been resolved. Status hearing set for 10/04/21 before Magistrate Judge Weisman is hereby stricken with no appearance required. Referral terminated. Mailed notice. (pk,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at ***www.ilnd.uscourts.gov***.

CHAPTER 1 GENERAL INFORMATION.
Includes the organization and functions of the Department of Aviation Special Police Section.

CHAPTER 2 COMMUNICATIONS.
Includes radio and general communications procedures applicable to the Special Police Section.

CHAPTER 3 PERSONAL APPEARANCE AND UNIFORMS. Prescribes uniform and appearance standards for Special Police personnel.

CHAPTER 4 REPORTS.
Outlines the purpose, completion and distribution of Special Police report forms.

CHAPTER 5 PATROL.
Describes procedures used for patrol of areas within the Special Police Section's jurisdiction.

CHAPTER 6 FIXED POSTS.
Outlines procedures followed at Special Police posts.

CHAPTER 7 LINE PROCEDURES.
Describes procedures and policies followed by all Aviation Special Police Officers in the performance of their duties.

1/1.5 POSSESSION REQUIRED.

Special Police personnel will be given a copy of this manual upon initial assignment to the Special Police Section. Each employee will become familiar with the contents of the manual. Special Police personnel will be responsible for recommending changes and updates as necessary to maintain the manual in a current state. Periodic inspections will be made by management to verify individual officer possession and completeness of the manual.

1/1.6 REVISIONS AND AMENDMENTS

1/1.6.1 PERMANENT

Permanent changes to the manual may be made by issuance of policy letters, written directives and special orders from the Managing Deputy Commissioner of

Security, or any official designee. Any revised or amended material will indicate the appropriate Chapter and Section numbers being revised or amended. New pages reflecting the changes will be distributed to all Special Police personnel, indicating the effective date of the change.

I/1.6.2 TEMPORARY

Temporary changes in policies or procedures required by events, circumstances, and/or organizational needs, will be made by issuance of policy letters and/or special orders from the Managing Deputy Commissioner of Security, or his/her designee. Revised or amended material will indicate the Chapter and Section numbers being changed. The policy letter or special order will also include the effective dates for the temporary change, including specific commencement and expiration dates. If necessary, the temporary change may be reissued.

I/1.7 RELATIONSHIP TO OTHER PUBLICATIONS

The manual is intended to supplement other publications that also govern the activities of the Special Police Section, as follows:

- United States and Illinois Constitutions.
- Case Law and Appellate Law (Federal and State).
- Federal Law - U.S. Code, Federal Aviation Regulations, etc.
- Illinois Law - Penal Code, Government Code, etc.
- City of Chicago Ordinances.
- Department of Aviation Administrative Manual.
- Department of Aviation Operations Manual.
- Department of Aviation Security Plan.
- Department of Aviation Airport Emergency Plan.
- O'Hare International Airport Master Security Plan and Emergency Plan
- Midway Airport Master Security Plan and Emergency Plan

I/1.8 INTERPRETATION OF MANUAL PROVISIONS

It will be the responsibility of the senior supervisor at the scene to interpret any provisions of the manual in the event of differences of interpretation. The decision of the senior supervisor making such interpretation will be final and all orders of the supervisor will be carried out. Persons seeking further clarification or interpretation may submit a report to the Managing Deputy Commissioner of Security.

of the Assistant Commissioner of Security other assignments may be directed.

1/3.3 AVIATION SPECIAL POLICE SERGEANT

The Sergeant will be responsible for the supervision of Aviation Special Police Officers in their performance of the physical protection of airport facilities, grounds, roadways, access perimeter points and personnel. The sergeants will be responsible for training Special Police Officers in all patrol and fixed post duties. The Aviation Special Police Sergeant may serve as a Watch Commander when circumstances require. The Aviation Special Police Sergeant may be required to perform the duties of the Special Police Officer during times of manpower shortages.

1/3.4 AVIATION SPECIAL POLICE OFFICER

The Aviation Special Police Officer will be an Illinois certified law enforcement officer. The Officer will be responsible for the protection of the public, travelers and employees at the airport and of airport facilities, grounds and roadways. The Officer may be assigned to the airside and/or landside of the airport.

Special Police Officers will be responsible but not limited to the following duties on each watch:

1. Determine that all persons within the Air Operations Area are either displaying the appropriate access badge and is valid according to the expiration date or persons without an access badge are under escort.

2. Monitor all access points that enter into the Air Operations Area such as baggage claim doors, and all other access doors to determine that the doors are secured properly. Report all deficiencies to the Watch Commander and the Communications Center.

3. Respond to ALL 1542.207 Access Control Alarms, either audible or when assigned by the Communications Center, and acknowledge to the Communications Center the access point status, i.e. secure, propped and secured or repair and maintenance necessary, etc.

4. Special Police Officers assigned to fixed Special Police Posts will open gates only for entering and exiting of vehicles. Gates will not be left open for any reason without the expressed authorization of the Managing Deputy Commissioner. Special Police Officers assigned to fixed posts will approach each vehicle to check for the appropriate badge of the driver and any other occupant of the vehicle. The officer will determine that the vehicle has an Insurance Placard or the vehicle

is exempt by directive. All vehicles will be properly logged.

5. Special Police Officers will be responsible for knowledge and compliance with information in the Employee Information Book, C.O. Book, and Memo Book.

6. All actions, responses, conduct and practices taken by Special Police personnel will be consistent with the policies and procedures set forth in this manual.

1/3.5 ADMINISTRATIVE SERGEANT

The Administrative Sergeant will work under the direct supervision of the Assistant Commissioner of Aviation Security. He/she will be designated to this position by the Managing Deputy Commissioner. The person in this position will coordinate the activities of all three watches, monitor staff, record-keeping, and the preparation of special reports. Duties and responsibilities include general administration activities and the supervisor of staff personnel.

1/3.6 ADMINISTRATIVE ASSISTANT (CLERICAL)

The Administrative Assistant (clerical) will tabulate numerical reports and maintain relevant personnel/timekeeping records of Special Police personnel. The Administrative Assistant will perform other duties as directed by the Managing Deputy Commissioner of Aviation Security and will respond to direction from the Administrative Sergeant consistent with policy.

1/3.7 CHAIN OF COMMAND

The following policy identifies the chain of command within the Special Police Section. This policy will be strictly adhered to, unless unusual circumstances dictate access to a higher level of authority.

1) Aviation Special Police Officers will receive assignments and orders from persons serving as Watch Commanders, as well as Aviation Special Police Sergeants and Lieutenants.

2) Aviation Special Police Sergeants will be responsible to both the Watch Commander and to the Lieutenants for the conduct of assigned duties. Aviation Special Police Officers may serve as an acting Special Police Sergeant when circumstances require and will have the authority of the position.

General, or Chicago Police Department would have cause to further completion of the investigation.

1/4.16 COMMENDATIONS

The Department of Aviation expects a very high level of professional conduct from all its employees; however, members of the Special Police Section frequently perform their duties in a manner exceeding the highest standards of the Division. Official commendation of such performance, together with appropriate publicity, is provided to give full recognition to those who have brought honor to themselves and the Department of Aviation.

I/5 AUTHORITY OF AVIATION SPECIAL POLICE OPERATIONS PERSONNEL

Aviation Special Police Officers will be state certified law enforcement officers. They will be commissioned by the Superintendent of the Chicago Police Department as Special Police Officers and will have the authority to make arrests while enforcing state laws and City of Chicago ordinances as specified by the Managing Deputy Commissioner, Security, while on Department of Aviation property. They will not interfere in any police department investigation; however, they will respond to incidents and summon police whenever the need arises. They will effectively and unobtrusively interact with police during these incidents. Every Special Police Officer will conform to and be subject to all the rules and regulations governing Police Officers of the City of Chicago, and to such additional rules and regulations as the Superintendent of Police may make concerning Special Police. Special Police will possess all the powers of the regular police patrol at the places for which they are respectively appointed or in the line of duty for which they are engaged. (Municipal Code of Chicago, 4-340)

I/6 WATCHES ESTABLISHED

The tours of duty of the Special Police Section will be known as "Watches", and will be as follows for *O'Hare International Airport*:

- First Watch: 2130 - 0600 (PATROL, FIXED POST)
- Second Watch: 0530 - 1400 (PATROL, FIXED POST)
- Third Watch: 1330 - 2200 (PATROL, FIXED POST)

The watches will be as follows for *Midway Airport*:

- First Watch: 2230 - 0700 (PATROL, FIXED POST)
- Second Watch: 0630 - 1500 (PATROL, FIXED POST)
- Third Watch: 1430 - 2300 (PATROL, FIXED POST)

CHAPTER 4-340

SPECIAL POLICEMEN AND SECURITY GUARDS

4-340-010 Special policeman defined.

"Special policeman" means any person who, for hire or reward, shall guard or protect any building, structure, premises, person or property within the city; provided, however, that this shall not apply to regularly appointed police officers of the city or to any sheriff or deputy sheriff of the county.

(Added Coun. J. 12-9-92, p. 25465)

4-340-020 License – Required.

It shall be unlawful for any person to engage in the business of a special policeman without first being appointed and licensed therefor; provided, however, that no license shall be required of a special policeman engaged in the business of protecting persons, passengers and property being transported in interstate or intrastate commerce within the city by a common carrier and the protection of the property of said common carrier within the city, but a special policeman engaged in such business shall comply with all the other provisions of this chapter applicable to him.

(Added Coun. J. 12-9-92, p. 25465)

4-340-030 Application – Appointment.

An application of any person showing the necessity of appointment as a special policeman shall be made to the superintendent of police. The superintendent of police shall have power to appoint and swear in any number of special policemen to do special duty at any fixed place in the city, or at any of the necessary places for the protection of persons, passengers and property being transported in interstate or intrastate commerce within the city, at the expense and charge of the applicant.

(Added Coun. J. 12-9-92, p. 25465)

4-340-040 Application – Examination – Fingerprinting.

Any person who is an applicant for appointment as a special policeman shall appear in person for examination as to his qualifications for such position, at such place and at such time as may be designated by the superintendent of police. The superintendent of police shall cause an investigation to be made of the character of the applicant and he shall refuse to appoint anyone a special policeman unless, as a result of said investigation, the character of the applicant is found to be satisfactory and above reproach.

Every applicant shall appear at the bureau of identification for the purpose of having fingerprints taken.

(Added Coun. J. 12-9-92, p. 25465)

4-340-050 License – Fee.

Every special policeman required to be licensed, other than a special policeman employed by the department of aviation, shall pay an annual license fee of $100.00, except that special policemen employed by charitable, religious, educational or other institutions not carried on for private gain or profit shall by specific ordinance pay an annual license fee of $10.00.

(Added Coun. J. 12-9-92, p. 25465)

4-340-060 Certificate of appointment.

The superintendent of police shall issue a special certificate of appointment to each person appointed as a special policeman, which

certificate shall expire one year from the date of its issuance. The superintendent of police shall have power to renew any such appointment for a period of one year. He shall keep a correct list of all persons appointed as special policemen.

(Added Coun. J. 12-9-92, p. 25465)

4-340-070 Bond required.

Every applicant for appointment as a special policeman of a common carrier shall file a bond with the superintendent of police in the sum of $1,000.00 with good and sufficient sureties.

(Added Coun. J. 12-9-92, p. 25465)

4-340-080 Badges and other insignia.

Every special policeman shall wear a suitable badge, not in the form of a star, which shall be issued to him by the superintendent of police. Every special policeman shall deposit with the superintendent of police the sum of $10.00 for such badge. Said badge shall be worn by the special policeman on the outside of his outer coat while engaged in the performance of police duty. Upon the return of any badge so issued by the superintendent of police, the $10.00 deposit shall be refunded. It shall be unlawful for any special policeman to wear or display any badge except the one issued by the superintendent of police.

It shall be unlawful for any special policeman to wear any insignia, cap, device, button or uniform unless the same shall first have been approved by the superintendent of police.

(Added Coun. J. 12-9-92, p. 25465)

4-340-090 False representation.

No person shall falsely assume or pretend to be a special policeman or shall, without being a special policeman, wear or display any badge issued by the superintendent of police for such special policeman, or any badge having the words “special police” thereon.

(Added Coun. J. 12-9-92, p. 25465)

4-340-100 Powers and duties.

Every special policeman shall conform to and be subject to all the rules and regulations governing police officers of the city, and to such additional rules and regulations as the superintendent of police may make concerning special policemen. Special policemen shall possess the powers of the regular police patrol at the places for which they are respectively appointed or in the line of duty for which they are engaged.

Special policemen shall report in person to the superintendent of police at such times and places as may be required by him.

(Added Coun. J. 12-9-92, p. 25465)

4-340-110 Revocation of appointment.

The certificate of appointment issued by the superintendent of police for a special policeman of a common carrier may be revoked by the superintendent of police for cause, and said certificate of a special policeman for a fixed place may be revoked without assigning any cause therefor. Any person whose appointment has been so revoked shall immediately return the certificate of appointment and the badge issued to him to the superintendent of police.

(Added Coun. J. 12-9-92, p. 25465)

4-340-120 Violation – Penalty.

Any person violating any of the provisions of this chapter shall be fined not less than $200.00 nor more than $500.00 for each offense.

(Added Coun. J. 12-9-92, p. 25465)

2-20-030 Police powers of department employees.

Such employees of the department of aviation as the commissioner of aviation may designate shall have full police powers, and for that purpose shall be sworn in as special policemen by the commissioner of police, and furnished with suitable badges of authority. They shall have full power to eject from any public airport owned or operated by the city any person who acts in a disorderly manner, or in a manner calculated to injure the property of the city within such airport.

(Prior code § 8.2-3)

50 ILCS 705/1

Statutes current with legislation through P.A. 102-557 and P.A. 102-662 of the 2021 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > *Chapter 50 LOCAL GOVERNMENT (§§ 5/0.01 — 90)* > *POLICE, FIRE, AND EMERGENCY SERVICES (§§ 705/1 — 755/50)* > *Illinois Police Training Act (§§ 705/1 — 13)*

50 ILCS 705/1 [Legislative Declaration]

It is hereby declared as a matter of legislative determination that in order to promote and protect citizen health, safety and welfare, it is necessary and in the public interest to provide for the creation of the Illinois Law Enforcement Training Standards Board for the purpose of encouraging and aiding municipalities, counties, park districts, State controlled universities, colleges, and public community colleges, and other local governmental agencies of this State and participating State agencies in their efforts to raise the level of law enforcement by upgrading and maintaining a high level of training and standards for law enforcement executives and officers, county corrections officers, sheriffs, and law enforcement support personnel under this Act. It is declared to be the responsibility of the board to ensure the required participation of the pertinent local governmental units in the programs established under this Act, to encourage the voluntary participation of other local governmental units and participating State agencies, to set standards, develop and provide quality training and education, and to aid in the establishment of adequate training facilities.

History

P.A. 83-1389; 88-586, § 25; 99-408, § 40.

End of Document

50 ILCS 705/6

Statutes current with legislation through P.A. 102-557 and P.A. 102-662 of the 2021 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > *Chapter 50 LOCAL GOVERNMENT (§§ 5/0.01 — 90)* > *POLICE, FIRE, AND EMERGENCY SERVICES (§§ 705/1 — 755/50)* > *Illinois Police Training Act (§§ 705/1 — 13)*

50 ILCS 705/6 Powers and duties of the Board; selection and certification of schools. [Effective January 1, 2022]

The Board shall select and certify schools within the State of Illinois for the purpose of providing basic training for probationary law enforcement officers, probationary county corrections officers, and court security officers and of providing advanced or in-service training for permanent law enforcement officers or permanent county corrections officers, which schools may be either publicly or privately owned and operated. In addition, the Board has the following power and duties:

a. To require local governmental units, to furnish such reports and information as the Board deems necessary to fully implement this Act.

b. To establish appropriate mandatory minimum standards relating to the training of probationary local law enforcement officers or probationary county corrections officers, and in-service training of permanent law enforcement officers.

c. To provide appropriate certification to those probationary officers who successfully complete the prescribed minimum standard basic training course.

d. To review and approve annual training curriculum for county sheriffs.

e. To review and approve applicants to ensure that no applicant is admitted to a certified academy unless the applicant is a person of good character and has not been convicted of, found guilty of, or entered a plea of guilty to, or entered a plea of nolo contendere to a felony offense, any of the misdemeanors in Sections 11-1.50, 11-6, 11-6.5, 11-6.6, 11-9.1, 11-14, 11-14.1, 11-30, 12-2, 12-3.2, 12-3.5, 16-1, 17-1, 17-2, 26.5-1, 26.5-2, 26.5-3, 28-3, 29-1, any misdemeanor in violation of any Section of Part E of Title III of the Criminal Code of 1961 or the Criminal Code of 2012, or subsection (a) of Section 17-32 of the Criminal Code of 1961 or the Criminal Code of 2012, or Section 5 or 5.2 of the Cannabis Control Act, or a crime involving moral turpitude under the laws of this State or any other state which if committed in this State would be punishable as a felony or a crime of moral turpitude, or any felony or misdemeanor in violation of federal law or the law of any state that is the equivalent of any of the offenses specified therein. The Board may appoint investigators who shall enforce the duties conferred upon the Board by this Act.

f. For purposes of this paragraph (e), a person is considered to have been "convicted of, found guilty of, or entered a plea of guilty to, plea of nolo contendere to" regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon. This includes sentences of

supervision, conditional discharge, or first offender probation, or any similar disposition provided for by law.

g. To review and ensure all law enforcement officers remain in compliance with this Act, and any administrative rules adopted under this Act.

h. To suspend any certificate for a definite period, limit or restrict any certificate, or revoke any certificate.

i. The Board and the Panel shall have power to secure by its subpoena and bring before it any person or entity in this State and to take testimony either orally or by deposition or both with the same fees and mileage and in the same manner as prescribed by law in judicial proceedings in civil cases in circuit courts of this State. The Board and the Panel shall also have the power to subpoena the production of documents, papers, files, books, documents, and records, whether in physical or electronic form, in support of the charges and for defense, and in connection with a hearing or investigation.

j. The Executive Director, the administrative law judge designated by the Executive Director, and each member of the Board and the Panel shall have the power to administer oaths to witnesses at any hearing that the Board is authorized to conduct under this Act and any other oaths required or authorized to be administered by the Board under this Act.

k. In case of the neglect or refusal of any person to obey a subpoena issued by the Board and the Panel, any circuit court, upon application of the Board and the Panel, through the Illinois Attorney General, may order such person to appear before the Board and the Panel give testimony or produce evidence, and any failure to obey such order is punishable by the court as a contempt thereof. This order may be served by personal delivery, by email, or by mail to the address of record or email address of record.

l. The Board shall have the power to administer state certification examinations. Any and all records related to these examinations, including but not limited to test questions, test formats, digital files, answer responses, answer keys, and scoring information shall be exempt from disclosure.

History

P.A. 87-182; 88-461, § 10; 89-685, § 10; 91-495, § 5; 96-1551, § 935; 97-1150, § 175; 99-352 § 20-130; 2019 P.A. 101-187, § 5, effective January 1, 2020; 2020 P.A. 101-652, § 10-143, effective July 1, 2021; 2020 P.A. 101-652, § 25-40, effective January 1, 2022; 2021 P.A. 102-687, § 55, effective December 17, 2021.

End of Document

50 ILCS 705/6.3

Statutes current with legislation through P.A. 102-557 and P.A. 102-662 of the 2021 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > *Chapter 50 LOCAL GOVERNMENT (§§ 5/0.01 — 90)* > *POLICE, FIRE, AND EMERGENCY SERVICES (§§ 705/1 — 755/50)* > *Illinois Police Training Act (§§ 705/1 — 13)*

50 ILCS 705/6.3 Discretionary decertification of full-time and part-time law enforcement officers.

(a) Definitions. For purposes of this Section 6.3:

"Duty to Intervene" means an obligation to intervene to prevent harm from occurring that arises when: an officer is present, and has reason to know (1) that excessive force is being used or that any constitutional violation has been committed by a law enforcement official; and (2) the officer has a realistic opportunity to intervene. This duty applies equally to supervisory and nonsupervisory officers. If aid is required, the officer shall not, when reasonable to administer aid, knowingly and willingly refuse to render aid as defined by State or federal law. An officer does not violate this duty if the failure to render aid is due to circumstances such as lack of appropriate specialized training, lack of resources or equipment, or if it is unsafe or impracticable to render aid.

"Excessive use of force" means using force in violation of State or federal law.

"False statement" means (1) any knowingly false statement provided on a form or report, (2) that the writer does not believe to be true, and (3) that the writer includes to mislead a public servant in performing the public servant's official functions.

"Perjury" means that as defined under Sections 32-2 [720 ILCS 5/32-2] and 32-3 [720 ILCS 5/32-3] of the Criminal Code of 2012.

"Tampers with or fabricates evidence" means if a law enforcement officer (1) has reason to believe that an official proceeding is pending or may be instituted, and (2) alters, destroys, conceals, or removes any record, document, data, video or thing to impair its validity or availability in the proceeding.

(b) Decertification conduct. The Board has the authority to decertify a full-time or a part-time law enforcement officer upon a determination by the Board that the law enforcement officer has:

(1) committed an act that would constitute a felony or misdemeanor which could serve as basis for automatic decertification, whether or not the law enforcement officer was criminally prosecuted, and whether or not the law enforcement officer's employment was terminated;

(2) exercised excessive use of force;

(3) failed to comply with the officer's duty to intervene, including through acts or omissions;

(4) tampered with a dash camera or body-worn camera or data recorded by a dash camera or body-worn camera or directed another to tamper with or turn off a dash camera or body-worn

camera or data recorded by a dash camera or body-worn camera for the purpose of concealing, destroying or altering potential evidence;

(5) engaged in the following conduct relating to the reporting, investigation, or prosecution of a crime: committed perjury, made a false statement, or knowingly tampered with or fabricated evidence; and

(6) engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public; such conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term "unprofessional conduct" shall include any departure from, or failure to conform to, the minimal standards of acceptable and prevailing practice of an officer.

(c) Notice of Alleged Violation.

(1) The following individuals and agencies shall notify the Board within 7 days of becoming aware of any violation described in subsection (b):

(A) A governmental agency as defined in Section 2 [50 ILCS 705/2] or any law enforcement officer of this State. For this subsection (c), governmental agency includes, but is not limited to, a civilian review board, an inspector general, and legal counsel for a government agency.

(B) The Executive Director of the Board;

(C) A State's Attorney's Office of this State.

"Becoming aware" does not include confidential communications between agency lawyers and agencies regarding legal advice. For purposes of this subsection, "governmental agency" does not include the Illinois Attorney General when providing legal representation to a law enforcement officer under the State Employee Indemnification Act [5 ILCS 350/0.01 et seq.].

(2) Any person may also notify the Board of any conduct the person believes a law enforcement officer has committed as described in subsection (b). Such notifications may be made confidentially. Notwithstanding any other provision in state law or any collective bargaining agreement, the Board shall accept notice and investigate any allegations from individuals who remain confidential.

(3) Upon written request, the Board shall disclose to the individual or entity who filed a notice of violation the status of the Board's review.

(d) Form. The notice of violation reported under subsection (c) shall be on a form prescribed by the Board in its rules. The form shall be publicly available by paper and electronic means. The form shall include fields for the following information, at a minimum:

(1) the full name, address, and telephone number of the person submitting the notice;

(2) if submitted under subsection (c)(1), the agency name and title of the person submitting the notice;

(3) the full name, badge number, governmental agency, and physical description of the officer, if known;

(4) the full name or names, address or addresses, telephone number or numbers, and physical description or descriptions of any witnesses, if known;

(5) a concise statement of facts that describe the alleged violation and any copies of supporting evidence including but not limited to any photographic, video, or audio recordings of the incident;

(6) whether the person submitting the notice has notified any other agency; and

(7) an option for an individual, who submits directly to the Board, to consent to have the individual's identity disclosed.

(a) The identity of any individual providing information or reporting any possible or alleged violation to the Board shall be kept confidential and may not be disclosed without the consent of that individual, unless the individual consents to disclosure of the individual's name or disclosure of the individual's identity is otherwise required by law. The confidentiality granted by this subsection does not preclude the disclosure of the identity of a person in any capacity other than as the source of an allegation.

Nothing in this subsection (d) shall preclude the Board from receiving, investigating, or acting upon allegations made confidentially or in a format different from the form provided for in this subsection.

(e) Preliminary review.

(1) The Board shall complete a preliminary review of the allegations to determine whether there is sufficient information to warrant a further investigation of any violations of the Act. Upon initiating a preliminary review of the allegations, the Board shall notify the head of the governmental agency that employs the law enforcement officer who is the subject of the allegations. At the request of the Board, the governmental agency must submit any copies of investigative findings, evidence, or documentation to the Board in accordance with rules adopted by the Board to facilitate the Board's preliminary review. The Board may correspond with the governmental agency, official records clerks or any investigative agencies in conducting its preliminary review.

(2) During the preliminary review, the Board will take all reasonable steps to discover any and all objective verifiable evidence relevant to the alleged violation through the identification, retention, review, and analysis of all currently available evidence, including, but not limited to: all time-sensitive evidence, audio and video evidence, physical evidence, arrest reports, photographic evidence, GPS records, computer data, lab reports, medical documents, and witness interviews. All reasonable steps will be taken to preserve relevant evidence identified during the preliminary investigation.

(3) If after a preliminary review of the alleged violation or violations, the Board believes there is sufficient information to warrant further investigation of any violations of this Act, the alleged violation or violations shall be assigned for investigation in accordance with subsection (f).

(4) If after a review of the allegations, the Board believes there is insufficient information supporting the allegations to warrant further investigation, it may close a notice. Notification of the Board's decision to close a notice shall be sent to all relevant individuals, agencies, and any entities that received notice of the violation under subsection (c) within 30 days of the

notice being closed, except in cases where the notice is submitted anonymously if the complainant is unknown.

(5) Except when the Board has received notice under subparagraph (A) of paragraph (1) of subsection (c), no later than 30 days after receiving notice, the Board shall report any notice of violation it receives to the relevant governmental agency, unless reporting the notice would jeopardize any subsequent investigation. The Board shall also record any notice of violation it receives to the Officer Professional Conduct Database in accordance with Section 9.2 [50 ILCS 705/9.2]. The Board shall report to the appropriate State's Attorney any alleged violations that contain allegations, claims, or factual assertions that, if true, would constitute a violation of Illinois law. The Board shall inform the law enforcement officer via certified mail that it has received a notice of violation against the law enforcement officer.

If the Board determines that due to the circumstances and the nature of the allegation that it would not be prudent to notify the law enforcement officer and the officer's governmental agency unless and until the filing of a Formal Complaint, the Board shall document in the file the reason or reasons a notification was not made.

(6) If a criminal proceeding has been initiated against the law enforcement officer, the Board is responsible for maintaining a current status report including court dates, hearings, pleas, adjudication status and sentencing. A State's Attorney's Office is responsible for notifying the Board of any criminal charges filed against a law enforcement officer.

(f) Investigations; requirements. Investigations are to be assigned after a preliminary review, unless the investigations were closed under paragraph (4) of subsection (e), as follows in paragraphs (1), (2), and (3) of this subsection (f).

(1) A governmental agency that submits a notice of violation to the Board under subparagraph (A) of paragraph (1) of subsection (c) shall be responsible for conducting an investigation of the underlying allegations except when: (i) the governmental agency refers the notice to another governmental agency or the Board for investigation and such other agency or the Board agrees to conduct the investigation; (ii) an external, independent, or civilian oversight agency conducts the investigation in accordance with local ordinance or other applicable law; or (iii) the Board has determined that it will conduct the investigation based upon the facts and circumstances of the alleged violation, including but not limited to, investigations regarding the Chief or Sheriff of a governmental agency, familial conflict of interests, complaints involving a substantial portion of a governmental agency, or complaints involving a policy of a governmental agency. Any agency or entity conducting an investigation under this paragraph (1) shall, within 7 days of completing an investigation, deliver an Investigative Summary Report and copies of any administrative evidence to the Board. If the Board finds an investigation conducted under this paragraph (1) is incomplete, unsatisfactory, or deficient in any way, the Board may direct the investigating entity or agency to take any additional investigative steps deemed necessary to thoroughly and satisfactorily complete the investigation, or the Board may take any steps necessary to complete the investigation. The investigating entity or agency or, when necessary, the Board will then amend and re-submit the Investigative Summary Report to the Board for approval.

(2) The Board shall investigate and complete an Investigative Summary Report when a State's Attorney's Office submits a notice of violation to the Board under (c)(1)(C).

(3) When a person submits a notice to the Board under paragraph (2) of subsection (c), The Board shall assign the investigation to the governmental agency that employs the law enforcement officer, except when: (i) the governmental agency requests to refer the notice to another governmental agency or the Board for investigation and such other agency or the Board agrees to conduct the investigation; (ii) an external, independent, or civilian oversight agency conducts the investigation in accordance with local ordinance or other applicable law; or (iii) the Board has determined that it will conduct the investigation based upon the facts and circumstances of the alleged violation, including but not limited to, investigations regarding the Chief or Sheriff of a governmental agency, familial conflict of interests, complaints involving a substantial portion of a governmental agency, or complaints involving a policy of a governmental agency. The investigating entity or agency shall, within 7 days of completing an investigation, deliver an Investigative Summary Report and copies of any evidence to the Board. If the Board finds an investigation conducted under this subsection (f)(3) is incomplete, unsatisfactory, or deficient in any way, the Board may direct the investigating entity to take any additional investigative steps deemed necessary to thoroughly and satisfactorily complete the investigation, or the Board may take any steps necessary to complete the investigation. The investigating entity or agency or, when necessary, the Board will then amend and re-submit The Investigative Summary Report to the Board for approval. The investigating entity shall cooperate with and assist the Board, as necessary, in any subsequent investigation.

(4) Concurrent Investigations. The Board may, at any point, initiate a concurrent investigation under this section. The original investigating entity shall timely communicate, coordinate, and cooperate with the Board to the fullest extent. The Board shall promulgate rules that shall address, at a minimum, the sharing of information and investigative means such as subpoenas and interviewing witnesses.

(5) Investigative Summary Report. An Investigative Summary Report shall contain, at a minimum, the allegations and elements within each allegation followed by the testimonial, documentary, or physical evidence that is relevant to each such allegation or element listed and discussed in association with it. All persons who have been interviewed and listed in the Investigative Summary Report will be identified as a complainant, witness, person with specialized knowledge, or law enforcement employee.

(6) Each governmental agency shall adopt a written policy regarding the investigation of conduct under subsection (a) that involves a law enforcement officer employed by that governmental agency. The written policy adopted must include the following, at a minimum:

(a) Each law enforcement officer shall immediately report any conduct under subsection (b) to the appropriate supervising officer.

(b) The written policy under this Section shall be available for inspection and copying under the Freedom of Information Act [5 ILCS 140/1 et seq.], and not subject to any exemption of that Act.

(7) Nothing in this Act shall prohibit a governmental agency from conducting an investigation for the purpose of internal discipline. However, any such investigation shall be conducted in a manner that avoids interference with, and preserves the integrity of, any separate investigation being conducted.

(g) Formal complaints. Upon receipt of an Investigative Summary Report, the Board shall review the Report and any relevant evidence obtained and determine whether there is reasonable basis to believe that the law enforcement officer committed any conduct that would be deemed a violation of this Act. If after reviewing the Report and any other relevant evidence obtained, the Board determines that a reasonable basis does exist, the Board shall file a formal complaint with the Certification Review Panel.

(h) Formal Complaint Hearing.

(1) Upon issuance of a formal complaint, the Panel shall set the matter for an initial hearing in front of an administrative law judge. At least 30 days before the date set for an initial hearing, the Panel must, in writing, notify the law enforcement officer subject to the complaint of the following:

(i) the allegations against the law enforcement officer, the time and place for the hearing, and whether the law enforcement officer's certification has been temporarily suspended under Section 8.3 [50 ILCS 705/8.3];

(ii) the right to file a written answer to the complaint with the Panel within 30 days after service of the notice;

(iii) if the law enforcement officer fails to comply with the notice of the default order in paragraph (2), the Panel shall enter a default order against the law enforcement officer along with a finding that the allegations in the complaint are deemed admitted, and that the law enforcement officer's certification may be revoked as a result; and

(iv) the law enforcement officer may request an informal conference to surrender the officer's certification.

(2) The Board shall send the law enforcement officer notice of the default order. The notice shall state that the officer has 30 days to notify the Board in writing of their desire to have the order vacated and to appear before the Board. If the law enforcement officer does not notify the Board within 30 days, the Board may set the matter for hearing. If the matter is set for hearing, the Board shall send the law enforcement officer the notice of the date, time and location of the hearing. If the law enforcement officer or counsel for the officer does appear, at the Board's discretion, the hearing may proceed or may be continued to a date and time agreed upon by all parties. If on the date of the hearing, neither the law enforcement officer nor counsel for the officer appears, the Board may proceed with the hearing for default in their absence.

(3) If the law enforcement officer fails to comply with paragraph (2), all of the allegations contained in the complaint shall be deemed admitted and the law enforcement officer shall be decertified if, by a majority vote of the panel, the conduct charged in the complaint is found to constitute sufficient grounds for decertification under this Act. Notice of the decertification decision may be served by personal delivery, by mail, or, at the discretion of the Board, by electronic means as adopted by rule to the address or email address specified by the law enforcement officer in the officer's last communication with the Board. Notice shall also be provided to the law enforcement officer's governmental agency.

(4) The Board, at the request of the law enforcement officer subject to the Formal Complaint, may suspend a hearing on a Formal Complaint for no more than one year if a concurrent

criminal matter is pending. If the law enforcement officer requests to have the hearing suspended, the law enforcement officer's certification shall be deemed inactive until the law enforcement officer's Formal Complaint hearing concludes.

(5) Surrender of certification or waiver. Upon the Board's issuance of a complaint, and prior to hearing on the matter, a law enforcement officer may choose to surrender the officer's certification or waiver by notifying the Board in writing of the officer's decision to do so. Upon receipt of such notification from the law enforcement officer, the Board shall immediately decertify the officer, or revoke any waiver previously granted. In the case of a surrender of certification or waiver, the Board's proceeding shall terminate.

(6) Appointment of administrative law judges. The Board shall retain any attorney licensed to practice law in the State of Illinois to serve as an administrative law judge in any action initiated against a law enforcement officer under this Act. The administrative law judge shall be retained to a term of no greater than 4 years. If more than one judge is retained, the terms shall be staggered. The administrative law judge has full authority to conduct the hearings.

Administrative law judges will receive initial and annual training that is adequate in quality, quantity, scope, and type, and will cover, at minimum the following topics:

(i) constitutional and other relevant law on police-community encounters, including the law on the use of force and stops, searches, and arrests;

(ii) police tactics;

(iii) investigations of police conduct;

(iv) impartial policing;

(v) policing individuals in crisis;

(vi) Illinois police policies, procedures, and disciplinary rules;

(vii) procedural justice; and

(viii) community outreach.

(7) Hearing. At the hearing, the administrative law judge will hear the allegations alleged in the complaint. The law enforcement officer, the counsel of the officer's choosing, and the Board, or the officer's counsel, shall be afforded the opportunity to present any pertinent statements, testimony, evidence, and arguments. The law enforcement officer shall be afforded the opportunity to request that the Board compel the attendance of witnesses and production of related documents. After the conclusion of the hearing, the administrative law judge shall report his or her findings of fact, conclusions of law, and recommended disposition to the Panel.

(8) Certification Review Meeting. Upon receipt of the administrative law judge's findings of fact, conclusions of law, and recommended disposition, the Panel shall call for a certification review meeting.

In such a meeting, the Panel may adjourn into a closed conference for the purposes of deliberating on the evidence presented during the hearing. In closed conference, the Panel shall consider the hearing officer's findings of fact, conclusions of law, and recommended disposition and may deliberate on all evidence and testimony received and may consider the

weight and credibility to be given to the evidence received. No new or additional evidence may be presented to the Panel. After concluding its deliberations, the Panel shall convene in open session for its consideration of the matter. If a simple majority of the Panel finds that no allegations in the complaint supporting one or more charges of misconduct are proven by clear and convincing evidence, then the Panel shall recommend to the Board that the complaint be dismissed. If a simple majority of the Panel finds that the allegations in the complaint supporting one or more charges of misconduct are proven by clear and convincing evidence, then the Panel shall recommend to the Board to decertify the officer. In doing so, the Panel may adopt, in whole or in part, the hearing officer's findings of fact, conclusions of law, and recommended disposition.

(9) Final action by the Board. After receiving the Panel's recommendations, and after due consideration of the Panel's recommendations, the Board, by majority vote, shall issue a final decision to decertify the law enforcement officer or take no action in regard to the law enforcement officer. No new or additional evidence may be presented to the Board. If the Board makes a final decision contrary to the recommendations of the Panel, the Board shall set forth in its final written decision the specific written reasons for not following the Panel's recommendations. A copy of the Board's final decision shall be served upon the law enforcement officer by the Board, either personally or as provided in this Act for the service of a notice of hearing. A copy of the Board's final decision also shall be delivered to the employing governmental agency, the complainant, and the Panel.

(10) Reconsideration of the Board's Decision. Within 30 days after service of the Board's final decision, the Panel or the law enforcement officer may file a written motion for reconsideration with the Board. The motion for reconsideration shall specify the particular grounds for reconsideration. The non-moving party may respond to the motion for reconsideration. The Board may deny the motion for reconsideration, or it may grant the motion in whole or in part and issue a new final decision in the matter. The Board must notify the law enforcement officer within 14 days of a denial and state the reasons for denial.

History

2020 P.A. 101-652, § 25-40, effective January 1, 2022.

End of Document

50 ILCS 705/6.7

Statutes current with legislation through P.A. 102-557 and P.A. 102-662 of the 2021 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > *Chapter 50 LOCAL GOVERNMENT (§§ 5/0.01 — 90)* > *POLICE, FIRE, AND EMERGENCY SERVICES (§§ 705/1 — 755/50)* > *Illinois Police Training Act (§§ 705/1 — 13)*

50 ILCS 705/6.7 Certification and decertification procedures under Act exclusive.

Notwithstanding any other law, the certification and decertification procedures, including the conduct of any investigation or hearing, under this Act are the sole and exclusive procedures for certification as law enforcement officers in Illinois and are not subject to collective bargaining under the Illinois Public Labor Relations Act [5 ILCS 315/1 et seq.] or appealable except as set forth herein. The provisions of any collective bargaining agreement adopted by a governmental agency and covering the law enforcement officer or officers under investigation shall be inapplicable to any investigation or hearing conducted under this Act.

An individual has no property interest in employment or otherwise resulting from law enforcement officer certification at the time of initial certification or at any time thereafter, including, but not limited to, after decertification or the officer's certification has been deemed inactive. Nothing in this Act shall be construed to create a requirement that a governmental agency shall continue to employ a law enforcement officer who has been decertified.

History

2020 P.A. 101-652, § 25-40, effective January 1, 2022.

End of Document

65 ILCS 5/11-1-1

Statutes current with legislation through P.A. 102-557 and P.A. 102-662 of the 2021 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 65 MUNICIPALITIES (§§ 5/1-1-1 — 120/99-99) > Illinois Municipal Code (Arts. 1 — 11) > Article 11. CORPORATE POWERS AND FUNCTIONS (§§ 5/11-1-1 — 5/11-152-4) > Public Health, Safety and Welfare; Police Protection and Public Order (Divs. 1 — 5.3) > Division 1. Police Protection and Tax (§§ 5/11-1-1 — 5/11-1-14)

65 ILCS 5/11-1-1 [Authority of corporate authorities]

The corporate authorities of each municipality may pass and enforce all necessary police ordinances.

History

Laws 1961, p. 576.

End of Document

65 ILCS 5/11-1-2

Statutes current with legislation through P.A. 102-557 and P.A. 102-662 of the 2021 Session of the 102nd Legislature.

Illinois Compiled Statutes Annotated > Chapter 65 MUNICIPALITIES (§§ 5/1-1-1 — 120/99-99) > Illinois Municipal Code (Arts. 1 — 11) > Article 11. CORPORATE POWERS AND FUNCTIONS (§§ 5/11-1-1 — 5/11-152-4) > Public Health, Safety and Welfare; Police Protection and Public Order (Divs. 1 — 5.3) > Division 1. Police Protection and Tax (§§ 5/11-1-1 — 5/11-1-14)

65 ILCS 5/11-1-2 Duties and powers of police officers

(a) Police officers in municipalities shall be conservators of the peace. They shall have the power (i) to arrest or cause to be arrested, with or without process, all persons who break the peace or are found violating any municipal ordinance or any criminal law of the State, (ii) to commit arrested persons for examination, (iii) if necessary, to detain arrested persons in custody over night or Sunday in any safe place or until they can be brought before the proper court, and (iv) to exercise all other powers as conservators of the peace prescribed by the corporate authorities.

(b) All warrants for the violation of municipal ordinances or the State criminal law, directed to any person, may be served and executed within the limits of a municipality by any police officer of the municipality. For that purpose, police officers have all the common law and statutory powers of sheriffs.

(c) The corporate authorities of each municipality may prescribe any additional duties and powers of the police officers.

History

Laws 1961, p. 576; P.A. 90-540, § 5.

End of Document