

I. INTRODUCTION

The ERB cannot delegate to an Arbitrator its duty to determine whether the City will violate Portlanders' fundamental human rights by returning a gun to the hands of the man who shot an unarmed man in the back. When considering whether an award is legally enforceable, in addition to the public policy exception set forth in ORS 243.706(1), ERB must adhere to the centuries-old principle that courts and government agencies bear a fundamental responsibility to the law that no private contract can eliminate.

The City has a duty under the United States Constitution to exercise adequate supervision over its police officers. It is the City that authorizes its officers to enforce the law and potentially use deadly force against civilians. Case law is clear that reinstatement of Officer Frashour will violate this duty. Not only did Officer Frashour use excessive force against Aaron Campbell, he also has a documented history violating Portlanders' fundamental right to be free from excessive force by their government.

The City has a legal duty to the future victims of Officer Frashour's next use of force to fulfill its constitutional obligations. The City cannot waive that duty, and neither an Arbitrator nor the ERB can order the City to violate it.

II. STATEMENT OF INTEREST

The Albina Ministerial Alliance Coalition for Justice and Police Reform ("AMA Coalition") seeks to represent a public interest in this proceeding. Specifically, it wishes to bring to the ERB's attention the interests of communities disproportionately impacted by police use of force in the City of Portland, such as African American communities, people with mental disabilities and mental health issues, and other minority groups. The outcome of this case will

determine whether the City is able to take measures that the AMA Coalition and its members have long demanded to increase accountability for police use of force. These measures are necessary to protect members of the communities represented by the Coalition's member organizations, both against excessive use of force itself and against community reluctance to call law enforcement for fear of its use of force. The common law public policy doctrine explained in the attached brief requires ERB to take these interests into account in ruling on this case.

The AMA Coalition was founded in 2003 after Kendra James, a young African American woman, was shot during a traffic stop. The AMA Coalition was broadened with the police shooting of Aaron Campbell in January 2010 and now includes 25 community and faith-based organizations who are dedicated to bringing Justice to the citizens of Portland and reforming the Portland Police Bureau ("PPB"). The AMA Coalition is working toward these five goals: 1. A federal investigation by the Justice Department to include criminal and civil rights violations, as well as a federal audit of patterns and practices of the Portland Police Bureau; 2. Strengthening the Independent Police Review Division and the Citizen Review Committee with the goal of adding power to compel testimony; 3. A full review of the Bureau's excessive force and deadly force policies and training with diverse citizen participation for the purpose of making recommendations to change policies and training; 4. The Oregon State Legislature narrowing the language of the State statute for deadly force used by police officers; 5. Establishing a special prosecutor for police excessive force and deadly force cases. It pursues these goals with an emphasis on team work among the AMA Coalition's diverse members and on the principles of non-violent direct action enunciated by Dr. Martin Luther King, Jr.

Founding AMA Coalition member Albina Ministerial Alliance ("Alliance") is a group of

125 Portland-area churches, including many predominantly African American congregations. The Alliance has its roots in the civil rights work of ministers in the mid-twentieth century. Some of the AMA Coalition's other member organizations represent other groups at high risk for police use of force, such as Disability Rights Oregon, Mental Health America - Oregon Chapter, and Oregon Action. Others are policy groups working in the area of police accountability, such as the Portland Chapter of the National Lawyers Guild.

The AMA Coalition, as a diverse coalition with deep roots in the communities most affected by the PPB's use of force, is well-suited to represent the interests of these communities. It has a long established role as a stakeholder in the public debate concerning police use of force.

III. FACTUAL BACKGROUND

On January 29, 2010, Officer Ronald Frashour shot and killed Aaron Campbell, an unarmed African American man who was distraught about the death of his brother. Officer Frashour already had a history of excessive use of force. In *Waterhouse v. Frashour*, a federal jury found that Officer Frashour violated Frank Waterhouse's Fourth Amendment rights by using excessive force, and awarded the plaintiff \$55,000 in damages. *Waterhouse v. Frashour et al*, CV- 07-1716 (D. Or. 10/15/09) (Judgment attached as Exhibit 1). Officer Frashour was also sued for excessive force for pepper spraying a woman during a domestic disturbance call; a federal judge ruled the case should go to a jury for a determination of whether excessive force was used. *Kelly v. City of Portland*, 2010 U.S. Dist. LEXIS 119974, *15-6 (D. Or. 11/10/10). In the two years prior to shooting Campbell, Officer Frashour had been subjected to at least two "command counselings," yet he has continued to use excessive force. Arb. Award Exh. E-16.

Pursuant to PPB policy, the City and the PPB conducted an extensive, official

investigation into the events leading up to and causing Aaron Campbell's death. *See* Arbitration Exh. J-11, J-9, J-11. At the end of the investigation, as required by PPB policy, several levels of review within the PPB culminated in Mayor Adams and Police Chief Reese making findings. *Id.*; www.portlandonline.com/police/index.cfm (2009 Manual on Policy and Procedures), pp 87-113.

Mayor Adams and Chief Reese found Officer Frashour's "use of deadly force against Aaron Campbell was not authorized by Bureau policies or training. [His] judgment and decision-making violated bureau policies, training and the expectations [] as a City of Portland police officer because:

- Campbell did not pose an immediate threat of death or serious physical injury; nor did he pose a significant and immediate threat of death or serious physical injury to [Frashour] or others. Further, [Frashour was] not reasonable in concluding that Campbell posed a threat at the level required to use deadly force.

- [Frashour] employed a rigid and inflexible approach in assessing the totality of circumstances facing [him]. [His] inability or unwillingness to adapt [his] thinking and tactics in response to changing circumstances negatively affected [his] decision-making prior to [his] decision to use deadly force, [his] decision to use deadly force, and is still evident in [his] post-incident explanations for [his] decision-making.

- In the totality of circumstances at the scene, use of deadly force was not reasonably necessary." Arbitration Exh.J- 8, p 2.

Chief Reese and Mayor Adams found Officer Frashour's conduct during the incident violated the PPB's policy on use of force, Directive 1010.20, and Directive 315.30, which "requires members to perform their duties in a manner that will maintain the highest standards of

efficiency in carrying out the functions and objectives of the Bureau.”

The Portland Police Association (“PPA”) grieved Officer Frashour’s discipline, and Arbitrator Wilkinson awarded reinstatement with full back pay. The City refused to place the community at risk by reinstating an officer who repeatedly and unapologetically uses unreasonable force. The PPA then filed this complaint and the ERB granted an expedited briefing schedule.

IV. LEGAL ARGUMENT

A. Summary

In the context of the PECBA, there are two independent sources for the public policy defense to enforcement of an arbitration award. One is ORS 243.706(1). The AMA Coalition believes that this statute requires that Arbitrator Wilkinson’s award be vacated in this case and defers to the City’s briefing on this point.

A much more basic source of the public policy doctrine that has received less attention than ORS 243.706(1). It is the centuries-old principle that courts bear a fundamental responsibility to the law that no private contract can eliminate: a court simply cannot order a person, or a City, to violate the law.

Consequently, the ERB has no authority to order the City to reinstate Officer Frashour if his reinstatement will violate the United States Constitution. Nor can ERB delegate to an Arbitrator its duty to determine whether the City will violate Portlanders’ fundamental human rights by returning a gun to the hands of the officer who shot an unarmed and innocent man in the back. The City has a duty under the United States Constitution and the *Monell* line of court precedents to exercise adequate supervision over the police officers it authorizes to enforce the

law and potentially use deadly force against civilians. The case law is clear that if the City returns Officer Frashour to his position, it will violate this duty. Not only did Officer Frashour use excessive force against Aaron Campbell, he also has a documented history of using excessive force and shows no signs of learning from his mistakes.

The City has a legal duty to protect the public from the excessive use of force by its police officers such as Officer Frashour. The City cannot waive this duty, and neither an arbitrator nor the ERB can order the City to violate it.

B. Courts have refused for centuries to order parties to violate the law

“The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract.” *McMullen v. Hoffman*, 174 US 639, 654 (1899)(collecting cases)¹; see also *Cone v. Gilmore*, 79 Or 349, 353 (1916). That doctrine is alive and well today. *Aramark Facility Services v. SEIU, Local 1877*, 530 F.3d 817, 822-823 (9th Cir. 2008) (“a court need not, in fact cannot, enforce an award which violates public policy”); *Harmon v. Mt. Hood Meadows, Ltd.*, 146 Or App 215, 221 932 P2d 92 (1997).

This concept does not arise from the court’s concern about the defendant who freely entered into the contract at issue. *McMullen*, 174 US at 669-70; *Hendrix v. McGee*, 281 Or 123, 129, 129 FN7. “It has been often stated in similar cases that the defence is a very dishonest one, and it lies ill in the mouth of the defendant to allege it, and it is only allowed for public considerations.” *Id.* The desired beneficiaries are the public and the legal system, not the

¹ “There are several old and very familiar maxims of the common law which formulate the result of that law in regard to illegal contracts. They are cited in all law books upon the subject and are known to all of us. They mean substantially the same thing and are founded upon the same principles and reasoning. They are: *Ex dolo malo non oritur actio*; *Ex pacto illicito non oritur actio*; *Ex turpi causa non oritur actio*. About the earliest illustration of this doctrine is almost traditional in the famous case of The Highwayman. It is stated that Lord Kenyon once said, by way of illustration, that he would not sit to take an account between two robbers on Hounslow Heath.” *Id.*

defendant. *Id.* Courts will not order parties to violate the law because doing so would be repugnant to their fundamental purpose of upholding and enforcing it. *Id.*

The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and applicable legal precedents. Where the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power.

Hurd v. Hodge, 334 US 24, 34-35 (1948) (footnotes omitted) (District of Columbia may not enforce covenants restricting the sale of land by race).

During the early and mid-twentieth century, federal courts (with help from the New Deal Administration and Congress) began to recognize the legitimacy of labor unions, the validity of their contracts, and the important role arbitration plays in modern American labor relations. In the *Steelworkers* Trilogy, the U.S. Supreme Court acknowledged that arbitrators have special expertise as to the meaning of collective bargaining agreements and courts should not disturb their interpretations. *Steelworkers v. Enterprise Wheel & Car. Corporation*, 363 US 593, 597-99 (1960); *see also Steelworkers v. American Manufacturing Co.*, 363 US 564 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 US 574. The arbitration award becomes an extension of the collective bargaining agreement, binding to the same degree as if the parties had negotiated and signed the award itself. *Eastern Associated Coal Corp. v. United Mine Workers of America, District 17*, 531 US 57, 62 (2000).

Courts thus began to recognize collective bargaining agreements and arbitration awards as meriting the same legal status as other forms of contracts. As with any contract, the courts also recognized the general enforceability of arbitration awards was subject to a public policy exception. *W.R. Grace & Co. v. Local 759, International Union of the United Rubber, Cork,*

Linoleum & Plastic Workers of America, 461 US 757, 766 (1983); *see also Eastern Associated Coal*, 531 US at 62; *Aramark Facility Servs.*, 530 F3d at 822-823.

Indeed, it is hard to imagine that any other result could have been possible. The public policy exception is merely a restatement of a fundamental limit on courts' power – courts serve to uphold the law, not to violate it. An employer and a union can no more require a court to order a violation of the law than can any other parties.

Given the nature of the doctrine, it is also unsurprising that courts, not arbitrators, determine whether public policy precludes a court from enforcing an arbitration award. *W.R. Grace & Co.*, 461 US at 766; *Aramark Facility Servs.*, 530 F3d at 822-823. The arbitrator has the final authority on the question of what the parties' contract requires them to do. *Id.* However the arbitrator cannot instruct the courts as to whether the courts have the authority to enforce that contractual requirement. *Id.*

In Oregon, the ERB initially gave less weight to arbitration awards in the public sector than federal courts gave them in the private sector. *Willamina School District v. Willamina Education Association*, 60 Or App 629, 633 (1982) (early ERB cases assessed whether award “palpably wrong” in its interpretation and application of the collective bargaining agreement) *quoting Eugene Education Association v. Eugene School District*, 4 PECBR 2598 (1980). Then, in *Willamina Education Association II*, the ERB decided to align its standard of review more with that articulated in the *Steelworkers Trilogy*. *Willamina Education Association v. Willamina School District*, 5 PECBR 4086, 4097-4100 (1980); *see also* 60 Or App at 633-35. The ERB's summary of the new exception included an exception when “Enforcement of the award would be contrary to public policy (for example, the award requires the commission of an unlawful act ...)”

Id. (emphasis added). The ERB readily acknowledged the public policy exception, calling it “only commonsensical” and noting that forcing parties to violate public policy would undermine rather than strengthen the institution of arbitration. 5 PECBR at 4099. ³₂

Thus, the common law public policy doctrine is an independent limitation on ERB’s and courts’ authority to enforce an arbitration award or any contract. As explained further below, ERB has a duty to make an independent determination of whether the reinstatement of Officer Frashour violates public policy and, if so, to refrain from ordering it.

C. It is the ERB, not the arbitrator, who determines whether the award violates public policy

The ERB cannot defer to Arbitrator Wilkinson the question of whether the award violates public policy. *W.R. Grace & Co.*, 461 U.S. at 766; *Aramark Facility Servs.*, 530 F3d at 823. It must independently assess whether reinstatement would violate a well-defined policy determined **by reference to statutes and court precedent.**

In applying the public policy doctrine based in common law, ERB should, of course, draw

² Since the amendment of ORS 243.706(1) to codify the public policy language, litigants before ERB have focused on the exception created in that statute. *See, e.g. Washington County Police Officers’ Association v. Washington County*, 335 Or 198, 200, 205, 207 (2003); *Salem-Keizer Association of Classified Employees v. Salem-Keizer School District 24J*, 186 Or App 19, 23-25 (2003); *Deschutes County Sheriff’s Association v. Deschutes County*, 169 Or App 445, 451-55 (2000); *Washington County Police Officers’ Association*, 19 PECBR 100, 101, 112-13 (2001). However, the AMA Coalition is unaware of any contention that the passage of the statute was meant to eliminate the centuries-old, fundamental doctrine that courts do not enforce contracts that violate public policy. *See id.* Given the fundamental nature of the policy and its centrality to the judicial rather than legislative function, such intent would be surprising to say the least.

³ The AMA Coalition anticipates the City will review thoroughly the legislative history of the public policy language in ORS 243.706(1). ERB did so in *Marion County Law Enforcement Association*, finding the history sparse and making no holdings of relevance to this particular question. *Marion County Law Enforcement Association*, 23 PECBR 671, 691-96 (2010). There is also a tangentially relevant comment in *Deschutes County Sheriff’s Association*. 169 Or App at 453-455. In that case, the employer argued that factual findings made by the arbitrator concerning misconduct not relied upon by the employer in terminating an employee could nonetheless serve as a basis for upholding the termination. *Id.* The court held that such findings exceeded the arbitrator’s contractual authority and hence were unenforceable under the *Willamina* and *Steelworkers* standards. *Id.* In making this holding, the court considered the question of whether ORS 243.706 intended to supplant this aspect of the pre-existing doctrines and held that it did not. *Id.*

its analytical framework from the common law doctrine, not from the language of ORS 243.706.

Most directly relevant is the framework developed by the United States Supreme Court following the *Steelworkers* trilogy and adopted by ERB in *Willamina Education Association*. 5 PECBR at 4099.

The Supreme Court has held

[T]he question of public policy is ultimately one for resolution by the courts. If the contract as interpreted by [the arbitrator] violates some explicit public policy, we are obliged to refrain from enforcing it. Such a public policy, however, must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedence and not from general considerations of supposed public interests.

W.R. Grace & Co., 461 US at 766 (internal quotations and citations omitted). More recently, the Ninth Circuit explained the standard as follows:

The question of public policy is ultimately one for resolution by the courts. . . To vacate an arbitration award on public policy grounds, we must (1) find that an explicit, well defined and dominant policy exists here and (2) that the policy is one that specifically militates against the relief ordered by the arbitrator. In evaluating a public policy argument, we must focus on the award itself, not the behavior or conduct of the party in question.

Aramark Facility Servs., 530 F3d at 823. See also *Eastern Associated Coal Corp.*, 531 US at 62-63 (most recent Supreme Court application of same doctrine).

The ERB “must treat the arbitrator’s award as if it represented an agreement between [the employer] and the union as to the proper meaning of the contract’s words ‘just cause.’” *Eastern Associated Coal Corp.*, 531 US at 62. Applying this to the case at hand, the ERB must proceed as though the City and the PPA signed an agreement to reinstate Officer Frashour, which equates to an agreement not to discipline officers who shoot unarmed people in the back.

However, the ERB cannot defer to the arbitrator is on the question of whether the City may lawfully make such an agreement. That is a question of law that is for ERB to decide. *W.R. Grace & Co.*, 461 U.S. at 766; *Aramark Facility Servs.*, 530 F3d at 823. As explained further below, there is a clear public policy in the *Monell* line of cases requiring municipalities to exercise reasonable control over their law enforcement officers to ensure that they do not use unconstitutionally excessive force. To determine whether this award is enforceable, it is the ERB itself that must answer the legal questions concerning whether Officer Frashour’s past conduct violated the Constitution, whether it indicates a likelihood that he may violate the constitutional rights of others if reinstated, and whether, in reinstating him, the City is violating its own constitutionally mandated duty to its inhabitants.

D. The *Monell* line of cases set out an explicit, well defined and dominant public policy

Under *Steelworkers* and subsequent Supreme Court cases, an “explicit, well defined, and dominant [public policy ...] must be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests.” *Eastern Associated Coal Corp.*, 531 US at 62. Once this policy is identified, the ERB determines whether it militates against the relief ordered by the arbitrator.⁴ Here, there is a well-established public policy regarding a municipality's duty to respond effectively to excessive force used by its officers and to prevent further Constitutional violations of its inhabitants.

⁴ The Second Reinstatement of Contracts provides additional guidance that has been adopted by the Oregon Court of Appeals and may prove useful to ERB:

- (3) In weighing a public policy against enforcement of a term, account is taken of
 - (a) the strength of that policy as manifested by legislation or judicial decisions,
 - (b) the likelihood that a refusal to enforce the term will further that policy,
 - (c) the seriousness of any misconduct involved and the extent to which it was deliberate, and
 - (d) the directness of the connection between that misconduct and the term.

Restatement of Contract Second, Section 178; *Harmon*, 146 Or App at 222.

42 U.S.C. 1983 provides that every “person” who, under color of any statute, ordinance, regulation, custom, or usage of any State subjects, or “causes to be subjected,” any person to the deprivation of any federally protected rights, privileges, or immunities shall be civilly liable to the injured party.

Local governmental bodies like the City of Portland may be liable under Section 1983 where a municipal policy is the cause of unconstitutional action taken by municipal employees. *Monell v. Department of Social Services of City of New York*, 436 US 658 (1978). Even if a use of force policy is constitutional on its face, a city may still be liable if the actual practice or custom regarding the use of deadly force was to shoot first and ask questions later. *See Price v. Sery*, 513 F3d 962, 973-74 (9th Cir. 2008). Likewise, local governments may be held accountable for constitutional deprivations pursuant to a governmental “custom” even though the custom has not been given formal approval through official decision-making channels, or is not written or formally adopted, but is a pervasive, longstanding practice that has the force of law. *Monell*, 436 US at 690-691; *Gregory v. City of Louisville*, 444 F3d 725, 754 (6th Cir. 2006) (alleged custom of using overly suggestive show-ups); *Sharp v. City of Houston*, 164 F.3d 923, 936 (5th Cir. 1999) (custom of transfers and demotion for officers reporting misconduct); *Watson v. City of Kansas City*, 857 F2d 690, 696 (10th Cir. 1988) (custom of treating domestic violence cases lightly). A city’s failure to train, failure to supervise, failure to discipline, or failure to adequately screen a potential employee can render it liable under Section 1983. *City of Canton v. Harris*, 489 US 378 (1989).

In *City of Canton v. Harris*, the Supreme Court held a city could be held responsible under Section 1983 where the underlying constitutional violation was committed by a non-

policymaking employee, and the city was deliberately indifferent to the likelihood that the particular constitutional violation would occur. 489 US at 387-88. Deliberate indifference exists where a pattern or practice of constitutional violations puts the city on actual or constructive notice of potential constitutional violations, and the city fails to implement training, supervision, or discipline to address the issue. *Id.* at 389-91.

Evidence of a “custom or policy to use excessive force” is “sufficient to warrant the imposition of official liability” against a city. *Larez v. City of LA*, 946 F.2d 630, 646 (9th Cir. 1991). Here in the Ninth Circuit, such “a custom or practice can be supported by evidence of repeated constitutional violations which went uninvestigated and for which the errant municipal officers went unpunished.” *Hunter v. Cnty. of Sacramento*, 652 F.3d 1225, 1233-36 (9th Cir.2011). Simply put, “a local governmental body may be liable if it has a policy of inaction and such inaction amounts to a failure to protect constitutional rights.” *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir.1992), citing *City of Canton v. Harris*, 489 U.S. at 388).

Municipalities must take action when faced with officers who regularly use excessive force -- a city must discipline or properly supervise officers who have committed constitutional violations in the past. *Smith v. City of Fontana*, 818 F.2d 1411 (9th Cir. 1988), *overruled on other grounds by Hodgers-Durgin v. de la Vina*, 199 F.3d 1037 (9th Cir. 1999); *Vann v. City of New York*, 72 F.3d 1040 (2d Cir. 1995)(liability could be found where City failed to properly supervise and monitor problem officers with known history of abusive conduct). If they fail to do so, policymaking officials’ acquiescence in previous unconstitutional conduct by city employees can lead to municipality liability. *Griffin v. City of Opa-Locka*, 261 F.3d 1295 (11th Cir. 2001). Likewise, proof of a pattern of misconduct by an individual employee who has not

been disciplined can lead to municipal liability. *Parrish v. Luckie*, 963 F.2d 201(8th Cir. 1992)(Police chief knew of pattern and was deliberately indifferent to or had authorized unconstitutional acts by failing to take remedial steps following notice).

The above line of cases expresses an “explicit, well defined, and dominant” public policy requiring municipalities to respond effectively to use of excessive force by its officers and to take action to stem further constitutional violations of its constituents. *Eastern Associated Coal Corp.*, 531 US at 62.

E. Public policy militates against reinstatement

Enforcement of this award violates the public policy elucidated by *Monell* and its progeny requiring a city to take steps to protect its people from excessive and unjustified force. “Where it becomes clear that a police force needs close and continuing supervision because of a known patterns of misconduct, and the municipality fails to provide such supervision, ‘the inevitable result’ is a continuation of the misconduct.” *Harris v. City of Pagedale*, 821 F2d 499, 508 (8th Cir. 1987). Here, Officer Frashour’s history makes clear that continuation of misconduct will continue if he is reinstated.

In the two years prior to shooting Aaron Campbell, Officer Frashour was disciplined at least twice and was found by a jury of his peers to have used unjustified and constitutionally excessive force against a member of the community. In the case of Aaron Campbell, the ERB is required to determine whether Officer Frashour used unconstitutionally excessive force against Aaron Campbell, which is a separate issue from the arbitrator’s determination of whether Officer Frashour violated PPB policy. *W.R. Grace & Co.*, 461 US at 766; *Aramark Facility Servs.*, 530 F3d at 823. The AMA Coalition urges the ERB to conduct an independent analysis of the

underlying question of whether Officer Frashour violated Mr. Campbell's Fourth Amendment rights under *Graham v. Connor*, 490 US 386 (1989) and *Deorle v. Rutherford*, 272 F3d 1272, 1282-83 (9th Cir 2001), to find that the use of deadly force was not justified in this case.

The AMA Coalition argues that if reinstated, Officer Frashour's disregard for the constitutional strictures on use of force is highly likely to continue; his reinstatement clearly violates the important public policy requiring municipalities to prevent their officers from engaging in unconstitutionally excessive force.

Continuing the likelihood of Officer Frashour's use of using excessive force is further supported by the arbitration record, specifically by the PPB's findings as to his unjustified use of excessive force, his failure to even consider using less than deadly force against Aaron Campbell, and his continued insistence in the appropriateness of his actions; it is entirely foreseeable that should a similar situation arise, Officer Frashour would not hesitate to pull the trigger again. The ERB must ensure that does not happen and allow the City to protect its inhabitants.

V. CONCLUSION

For the reasons outlined above, the AMA Coalition urges the ERB to vacate Arbitrator Wilkinson's award ordering reinstatement, as it would directly violate public policy.

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s/ J. Ashlee Albies
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