WORK COMP 101: INTERGOVERNMENTAL AGREEMENTS

AMRRP has recently received a large number of inquiries regarding intergovernmental agreements (IGAs). As a result, we believe it would be helpful to once again feature the details of Callan, et al. v. Pimber, a March 2006 Arizona Court of Appeals, Division Two, decision. It currently remains the leading case involving the application of the exclusive remedy provisions of A.R.S. § 23-1022 (D) in situations where law enforcement officers from multiple jurisdictions are working under the mandates of an IGA. The ruling is highly instructive for municipalities wanting to ensure they can prevent future civil liability by invoking the protection offered by the aforementioned statute.

Luis Pimber, an officer with the University of Arizona Police Department (UAPD), was assigned as an undercover narcotics agent to the Metropolitan Area Narcotics Trafficking Interdiction Squad (MANTIS). Robert Callan was an officer with the Tucson Police Department (TPD) and a member of their Special Weapons and Tactical (SWAT) unit. In August of 2003, during a joint operation involving MANTIS and TPD's SWAT officers, Callan seriously injured Pimber after mistaking him for the actual target of the operation and striking his back, neck, and left shoulder with his boot while Pimber lay on the ground. As a result, Pimber filed a civil complaint in Pima County Superior Court, alleging willful misconduct on the part of Callan and negligence by his supervisors and TPD. Significantly, Pimber also received workers' compensation benefits from UAPD's insurer.

At the trial court level, Pima County Superior Court Judge Deborah Bernini denied a motion by the defendants for summary judgment. The motion had asserted the complaint should be dismissed because the mandates of A.R.S. § 23-1022 (D), along with the IGA between the City of Tucson and other governmental entities, dictated that the two officers were co-employees. Thus, workers' compensation was Pimber's exclusive remedy, since a coworker, under A.R.S. § 23–1022 (A), cannot file a civil action against another coworker(s) for accidental injuries sustained in the course of employment. After the motion was denied, the defendants sought special action relief, requesting that summary judgment be granted through the Arizona Court of Appeals.

Upon review, the Court of Appeals believed a correct understanding of the mandates of A.R.S. § 23-1022 (D), along with the language of the IGA, were crucial in resolving the dispute. That statute states "an employee of a public agency, as defined in A.R.S. § 11-951, who works under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or contract entered into between the public agencies as provided by A.R.S § 11-952 is deemed to be an employee of both public agencies for the purposes of this section. The primary employer shall be solely liable for the payment of workers' compensation benefits for the purposes of this section." Since the court found the language of the IGA did not substantially differ from the statute, its analysis considered both provisions, whose wordings it found to be clear and unambiguous. The court ruled both A.R.S. § 23-1022 (D) and the IGA meant "that employees of a party to the IGA are also considered to be employees of another party in either of two scenarios (1) when they are working under the jurisdiction or control of the other party pursuant to the IGA, or (2) when they are working within the jurisdictional boundary of the other party pursuant to the IGA." Because the undisputed facts of this case reflected the second scenario in that both officers were working on a joint operation whose location was an appropriate jurisdictional locale pursuant to the IGA, the court concluded both UAPD and TPD were Pimber's employers at the time of his injury, and Callan was Pimber's co-employee. Although Callan, unlike Pimber, was not assigned to MANTIS, he was a member of TPD's SWAT unit that participated in the undercover operation where Pimber was injured. As a result of the co-employee status between the two police officers, Pimber was barred from filing a tort claim against Callan and TPD, and the workers' compensation benefits received were his exclusive legal remedy.

The Court also explained why the legislative history behind A.R.S. § 23-1022 (D) supported their analysis and "comport[ed] with our [the Court's] reading of the plain language of the statute." The statute, signed into law in 1983, was in response to a 1981 Arizona Court of Appeals case that upheld a large verdict for a Tucson police officer, who had been paralyzed after being shot by a South Tucson police officer during a joint police operation. The court inferred that the legislature, as demonstrated by its expeditious response to the judicial decision, "recognized that the financial health of a city that participates in joint police operations can be severely affected by lawsuits arising from injuries officers sustain in such

operations." Thus, the court believed the legislature's intent of limiting these types of lawsuits against municipalities was consistent with its decision.

Pimber's attorney raised the interesting argument that the civil suit should not be dismissed because both UAPD and TPD failed to post the notice required by A.R.S. § 23-1022 (E), which states "every public agency as defined in A.R.S. § 23-951 for which an intergovernmental agreement or contract is in effect shall post a notice pursuant to the provisions of A.R.S. § 23-906, in substantially the following form: All employees are hereby further notified that they may be required to work under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation."

The IGA also indicated that all its members "shall comply with [the] provisions of A.R.S. § 23-1022 (E) by posting the public notice required."

A.R.S. § 23-1022 (E) mandates that notice of potentially dual employment be given, in verbiage substantially mimicking the suggested language, to the employees of all public entities who enter into IGAs or contracts. The statute further indicates that notice should be provided as outlined in A.R.S. § 23 – 906, which mandates that employers "shall post and keep posted in a conspicuous place upon his premises, in English and Spanish and available for inspection by all workmen" a notice, in prescribed language, advising of the right to reject workers' compensation benefits (prior to an injury) and sue their employer civilly. Incidentally, A.R.S. § 23-906 is not applicable to public employees, and prior Arizona case law has established it is not necessary for a worker to actually see the posting, as long as it is continually displayed in a "conspicuous place" frequented by employees, such as a lunch room or main business office.

The court found no prior cases dealing with employers involved with IGAs that failed to post the notice required by A.R.S. § 23-1022 (E); however, it did find a review of prior cases addressing the effects of an employer's failure to post the notice required by A.R.S. § 23-906 (D) helpful. After reviewing those cases, the court concluded that even though UAPD and TPD had failed to post the required notice, Pimber could not file a viable civil suit against Callan and TPD. A.R.S. § 23-1022 (D) clearly

mandated that he was an employee of both TPD and UAPD, and his primary employer (UAPD) "shall be solely liable" for any workers' compensation benefits. Indeed, the court opined that the law had to be changed in order to reach a different conclusion, and if Pimber believed it was "unfair for TPD to be declared his employer, rendering it immune from suit without its also being responsible for his compensation benefits," the inequity "must be addressed to the legislature." Several other issues were also raised by Pimber's attorney to argue against the motion for summary judgment. These included, among others, the fact that Pimber was not a party to the IGA and the suit against Callan, as an individual, should be allowed because it states a cause of action for willful misconduct. These, along with the other arguments, were dismissed by the court as unconvincing, and summary judgment was granted in favor of the defendants.

IGAs, when done in accordance with the statutory mandates, are an excellent risk management tool. They definitively clarify which entity is responsible for providing workers' compensation benefits to an injured officer while invoking the protection from civil liability offered through the mandates of A.R.S. § 23-1022 (D). Callan v. Pimber is certainly instructive in demonstrating the importance of complying with the posting requirements of A.R.S. § 23-1022 (E) when entering into any IGA. Members of the plaintiff's bar, in any future litigation over this issue, will certainly use a municipality's failure to comply as one argument for potentially defeating the immunity from tort liability offered through A.R.S. § 23-1022 (D).