



OFFICE OF THE MAYOR
CITY OF CHICAGO

BRANDON JOHNSON
MAYOR

December 7, 2023

TO THE HONORABLE, THE CHAIRMAN AND
MEMBERS OF THE CITY COUNCIL COMMITTEE ON
WORKFORCE DEVELOPMENT

Ladies and Gentlemen:

Together with the Superintendent of Police, I transmit herewith an ordinance adopting an arbitration option in certain police disciplinary cases.

Your consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in blue ink, appearing to be "BJ", with a horizontal line extending to the right.

Mayor

ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The City Council hereby approves the arbitration option in certain police disciplinary cases as set forth in the October 19, 2023-Interest Arbitration Award, substantially as set forth in the term sheet attached hereto. The Mayor is authorized to execute an agreement to incorporate this arbitration award into the Collective Bargaining Agreement between the City of Chicago and the Chicago John Dineen Lodge No. 7 (formerly known as Fraternal Order of Police, Lodge #7).

SECTION 2. This ordinance shall be in force and effect upon its passage and approval.

December 7, 2023

Term Sheet for the Interest Arbitration Award to be Incorporated into the Collective Bargaining Agreement between the Chicago John Dineen Lodge No. 7 (formerly known as Fraternal Order of Police, Lodge #7 or FOP) and the City of Chicago

1. **Term:** July 1, 2017, through June 30, 2027—10 years (effective upon ratification by City Council)

2. **Interest Arbitration Award: Arbitration of Police Discipline:** set forth in the attached interest arbitration award

Throughout the City and Lodge's formal collective bargaining history which began in 1981, the Lodge and the City have agreed that certain disciplinary matters (lengthy suspensions and discharge/separation cases) fall within the exclusive jurisdiction of the Police Board. Pursuant to the attached interest arbitration award, however, now officers and the Lodge can choose between arbitration or the police board for suspensions of 366 days or more and separation cases. If the interest arbitration award is approved, and an officer/the Lodge selects arbitration:

- **Transparency:** the arbitration hearing will be closed to the public;
- **Paid Status (while hearing proceeds):** the officer will remain in a paid status until the arbitrator rules on the discipline;
- **Training:** arbitrators will not have to undergo the same training that the consent decree requires for police board members;
- **Retroactivity:** this provision would be retroactive to September 14, 2022.

The City filed a dissenting opinion based on the reasons set forth above which is also attached.

**BEFORE
DISPUTE RESOLUTION BOARD**

**EDWIN H. BENN (Neutral Chair)
CICELY PORTER ADAMS (City Appointee)
JOHN CATANZARA, JR. (Lodge Appointee)**

In the Matter of the Arbitration

between

CITY OF CHICAGO

(“CITY”)

and

**FRATERNAL ORDER OF
POLICE, CHICAGO LODGE NO. 7
 (“LODGE”)**

**CASE NOS.: L-MA-18-016
AAA 01-22-0003-6534
Arb. Ref. 22.372
(Interest Arbitration)**

FINAL OPINION AND AWARD

APPEARANCES:

**For the City: James C. Franczek, Jr. Esq.
David A. Johnson, Esq.
Jennifer A. Dunn, Esq.**

**For the Lodge: Joel A. D’Alba, Esq.
Margaret A. Angelucci, Esq.**

Dated: October 19, 2023

CONTENTS

SYNOPSIS 3

I. BACKGROUND 6

II. ARBITRATION OF PROTESTS TO DISCIPLINARY ACTIONS IN EXCESS OF
365 DAYS AND SEPARATIONS (DISMISSALS) 10

 A. “Behind Closed Doors” 10

 B. “The Rule Of Law” 14

 1. Arbitration Of Discipline Grievances As A Right Under The Rule Of Law... 14

 2. The Privacy Of Arbitration 20

 3. The Right To Remain On The Payroll 23

 4. Retroactivity 25

III. THE FEDERAL COURT CONSENT DECREE..... 25

IV. WHAT HAPPENS NEXT? 26

V. CONCLUSION..... 28

APPENDIX 30

SYNOPSIS

This is an interest arbitration under authority of the Illinois Public Labor Relations Act (“IPLRA”) setting the terms of the parties’ successor collective bargaining agreement to the contract which expired June 30, 2017.

Through use of a mediation and arbitration process (“med-arb”) where the Neutral Chair of this Board acted as both a mediator and an arbitrator, the parties have now agreed upon all terms for their successor Agreement, with the exception of a proposal made by the Lodge concerning arbitration of protests to certain disciplinary actions. The parties’ negotiated agreements for the many agreed-upon provisions of their new Agreement are attached to this Award as an appendix and are incorporated into this Award.

Prior to the negotiations for this Agreement, protests over disciplinary actions given to police officers in excess of 365 days and separations (dismissals) were heard exclusively by the Chicago Police Board. For the new Agreement, the Lodge proposed that it be given an option to arbitrate grievances protesting those disciplinary actions. The City did not agree to that proposal.

By Interim and Supplemental Interim Awards dated June 26, 2023 and August 2, 2023, respectively, the Lodge’s proposal to have the option to arbitrate grievances for that class of cases was adopted by a majority of this Dispute Resolution Board appointed by the parties to hear this case. The City Member of this Board dissented.

This Opinion and Award incorporates the parties’ total agreements for the new contract and further addresses the issue concerning arbitration of grievances protesting disciplinary actions in excess of 365 days and separations which issue was previously decided by this Board. The necessity for issuing this Award further discussing the arbitration provisions previously decided by a majority of this Board was deemed necessary by me in my capacity as the Neutral Chair of this Board because of some public reaction to the prior awards which, in my opinion, showed a misunderstanding of the arbitration process or a desire to dismantle that process – a process that has long been the statutory requirement in the State of Illinois as well as the public policy of this state and at the federal level.

First, Section 8 of the IPLRA requires that unless agreed otherwise, final and binding arbitration of disputes must be a term in the collective bargaining agreements covering police officers, firefighters and security employees [emphasis added]:

Sec. 8. Grievance Procedure. The collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the*

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 4

administration or interpretation of the agreement unless mutually agreed otherwise.

Second, long and well-settled case law in Illinois developed in interest arbitration decisions issued by this Neutral Chair (going back to 1990) and many other arbitrators has established that if a party requests arbitration of discipline in an interest arbitration proceeding, that party is entitled under Section 8 of the IPLRA to have final and binding arbitration of discipline adopted as a contract term. There are 17 published interest arbitration cases upholding the right to have binding arbitration in collective bargaining agreements (and there are more).

Third, under collective bargaining agreements for police officers (who are prohibited from striking), final and binding arbitration is the policy of this state as provided in Section 2 of the IPLRA [emphasis added]:

Sec. 2. Policy. ... To prevent labor strife and to protect the public health and safety of the citizens of Illinois, *all collective bargaining disputes* involving persons designated by the Board as performing essential services and those persons defined herein as security employees *shall be submitted to impartial arbitrators*, who shall be authorized to issue awards in order to resolve such disputes. *It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act.* To that end, the provisions for such awards shall be liberally construed.

Fourth, Section 15 of the IPLRA is a supremacy clause negating any statutes or ordinances that deny or limit final and binding arbitration as sought by the Lodge:

Sec. 15. Act Takes Precedence.

* * *

(b) Except as provided in subsection (a) above [not relevant for the final and binding arbitration issue], *any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any contrary statutes, charters, ordinances, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents.*

Fifth, the Illinois Constitution now provides for the protection of workers' rights, which includes the statutory right of police officers to have final and binding

arbitration as sought by the Lodge and prohibits any ordinances passed or in existence which deny or limit that right [emphasis added]:

SECTION 25. WORKERS' RIGHTS

(a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. *No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment* and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

Therefore, as argued by the Lodge and as ordered by the Interim and Supplemental Interim Awards, a majority of the Dispute Resolution Board adopted the Lodge's position that for grievances protesting disciplinary actions in excess of 365 days and separations (dismissals) issued to police officers, the Lodge can have the option to have those grievances heard and decided in final and binding arbitration rather than by the Police Board.

Arbitration proceedings are private. The practice of the parties for arbitrations of grievances for disciplinary actions between 11 and 365 days is that those proceedings are private and not open to the public. There is no reason that the same practice should not apply to arbitration proceedings for grievances protesting discipline in excess of 365 days and dismissals. Unless allowed by the arbitrator hearing a specific case and at the request of either the City or the Lodge, the arbitration proceedings are private between the City and the Lodge because they are the parties to the collective bargaining agreement and therefore those proceedings are not open to the public. That privacy of arbitration proceedings is also consistent with and required by ethical obligations imposed on arbitrators by the American Arbitration Association and the National Academy of Arbitrators to preserve the privacy of arbitrations.

Further and again consistent with the practice of the parties for disciplinary actions between 11 and 365 days issued to officers and the legal presumption of innocence until proven otherwise, for officers who are subject to discipline in excess of 365 days and separations, those officers shall also remain on the payroll until the disciplinary actions are resolved through arbitration.

Objections have been raised by some that my prior rulings concerning arbitration of discipline are inconsistent with a belief that arbitration proceedings are somehow improper because the proceedings are held "behind closed doors" thereby

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 6

preventing transparency and hindering a desire for police reform. The argument that arbitrations of discipline of police officers should be prohibited or limited because they are conducted “behind closed doors” relies upon slogans and catch phrases. Slogans and catch phrases such as “behind closed doors” do not determine outcomes in these interest arbitration proceedings. The “Rule of Law” quoted above and further described in detail below determines the result in this case.

The Lodge’s proposal on arbitration was therefore adopted as found by the Interim and Supplemental Interim Awards.

The results in this case – the parties’ negotiated terms coming from the med-arb process which have been incorporated into this Award and the arbitration provisions previously decided by this Board which end an over six-year labor dispute between the City and the Lodge – now go to the City Council for ratification. With this Final Award, the arbitration provisions have now been decided three times. Should the City Council decline to ratify and if the dispute comes back to this Board for consideration of any objections raised by the City Council, this Board is obligated to consider the City Council’s objections – which we will do. However, the arbitration dispute has now been decided three times in this process. The parties can therefore rationally assess the outcome of any further proceedings before this Board.

Should ratification not be obtained and litigation instituted, not only will this already remarkably prolonged labor dispute be further prolonged to the detriment of all involved (including the citizens of the City), but in light of decided law requiring great deference be given by the courts to interpretations of arbitrators chosen by the parties to resolve disputes, prolonged litigation will, in the end, prove futile.

This remarkably long labor dispute must now come to an end.

I. BACKGROUND

This is an interest arbitration proceeding between the City and the Lodge under the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* (“IPLRA”) to the extent adopted by the parties’ collective bargaining agreement (“Agreement”) in Section 28.3 to complete the terms of the parties’ successor Agreement to their prior 2012-2017 Agreement which expired June 30, 2017 and covers full-time sworn police officers below the rank of sergeant.

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 7

The history and procedural background of this proceeding are described in Interim and Supplemental Interim Awards previously issued on June 26, 2023 and August 2, 2023, respectively.¹

The Interim and Supplemental Interim Awards adopted two of the Lodge's proposals for the Successor Agreement – only one of which remains relevant for discussion in this Award.² The relevant issue that will be discussed in this Award is the Lodge's proposal which was adopted concerning arbitration of grievances protesting disciplinary actions in excess of 365 days and separations (dismissals):

The ability of the Lodge to have the option to have certain grievances protesting discipline given to officers in excess of 365-day suspensions and separations (dismissals) decided by an arbitrator in final and binding arbitration or by the Police Board as opposed to the current procedure of having all such disciplinary actions decided by the Police Board.

Prior to my involvement in this proceeding, the parties negotiated a number of changes to their 2012-2017 Agreement which were ratified by the Chicago City Council on September 14, 2021 (referred to by the parties as "Phase I").³ At the

¹ The Interim Award is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016_Interim_Award.pdf

The Supplemental Interim Award is posted at:
https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016_Supp_award.pdf

² Aside from the arbitration provisions, the Interim and Supplemental Interim Awards adopted a retention bonus proposal made by the Lodge:

That officers who have served more than 20 years should receive an annual retention bonus of \$2,000 payable on September 1st of each year of service after the completion of the 20th year of service.

As shown by the negotiated terms of the parties' agreements attached to the Appendix of this Award, during the mediation process which followed issuance of the Interim and Supplemental Interim Awards, the parties agreed to negate the ordered retention bonus for officers serving more than 20 years and provided a monetary stipend for all bargaining unit members. That agreement has been adopted into this Award.

³ City Exhibit 1.
<https://www.civiced.org/sites/default/files/o2021-3449.pdf>

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 8

commencement of this proceeding (“Phase II”), there were numerous issues that remained in dispute, which, after consultation with the parties, caused me to issue a Scheduling Order dated October 31, 2022 which established a process to govern the orderly development of a record for presentation and resolution of those many issues.⁴

In addition to a hearing process, the Scheduling Order also provided for mediation. However, mediation under the Scheduling Order was different from typical mediation in that by acting as mediator I did not just transmit offers and counter-offers and attempt to persuade the parties to settle. Because the Scheduling Order established a procedure for developing a complete record prior to the mediation step with identification of issues, submissions of final offers, along with filing of briefs and reply briefs – I had the ability and authority at the mediation step to advise the parties which proposals were likely to be granted or denied in the event further hearing proceedings under the Scheduling Order were required. This type of mediation with my functioning as the mediator *and* Neutral Chair arbitrator in this case is known as a “med-arb” – mediation *and* arbitration. This type of mediation process is not just designed to *persuade* parties to settle, but is designed to *force* parties to settle because under the med-arb process the parties know going into the hearing and decision process which follows mediation whether their positions are likely to finally prevail. Thus, if the parties are told by me that specific offers will be rejected but there is still desire by one or both parties to pursue certain offers, the parties must negotiate for

⁴ As of the mediation step in the Scheduling Order, the parties had developed a voluminous record which contained:

- 15 issues identified by the City;
- 17 areas of issues with over 50 sub-issues identified by the Lodge;
- Final offers with appendices submitted by the City;
- 32 pages of final offers submitted by the Lodge;
- A 66-page Pre-Hearing Brief submitted by the City with an appendix and 43 exhibits;
- A 270-page Pre-Hearing Brief submitted by the Lodge with 110 exhibits;
- A 21-page Reply Brief submitted by the City with 13 more exhibits; and
- A 71-page Rebuttal Brief submitted by the Lodge with 10 more exhibits.

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 9

their proposals because they will not be prevailing on those issues through the interest arbitration process.

During the mediation process and in making my determinations on the merits of the parties' offers, I followed the rules that are applied in interest arbitration proceedings which emphasize that interest arbitration is a *very* conservative process which frowns upon breakthroughs and requires that changes to the *status quo* sought by one party are only allowed if the party seeking the change can show that the existing condition is broken (*i.e.*, "good ideas" are not good enough.) *See* Interim Award at 16-18 describing those rules.

Following those rules, I advised the parties during the mediation process that with the exception of several areas in dispute which I believed deserved discussion, the parties' specific offers would be rejected because those offers fell into categories of breakthroughs (with no showing that the existing *status quo* was broken); good ideas (which are not good enough to justify a change); issues that were really disputes that could be resolved through the grievance and arbitration process which, if meritorious, could be remedied given the broad remedial authority of grievance arbitrators; management rights; or potentially permissive subjects of bargaining – all of which are not issues that are resolved through the conservative interest arbitration process.

The parties clearly understood the message. After being told "no" at the commencement of the mediation step on the vast majority of their remaining proposals, the parties negotiated to agreement or dropped many of the proposals that I indicated they would not achieve through further proceedings before this Board. The parties also negotiated on other topics that were not specific proposals in this matter, again reaching agreements.

The med-arb process worked. With the exception of handling the previously awarded right to arbitration of grievances protesting discipline in excess of 365 days and separations (dismissals) *all* remaining issues were resolved by the parties or dropped. The tentative agreements are attached to this Award as an Appendix and incorporated into this Award.

II. ARBITRATION OF PROTESTS TO DISCIPLINARY ACTIONS IN EXCESS OF 365 DAYS AND SEPARATIONS (DISMISSALS)

While the parties were able to agree upon many items for their new Agreement, the City did not agree with my Interim and Supplemental Interim Awards ordering that the Lodge have the option to present grievances protesting suspensions in excess of 365 days and separations (dismissals) to final and binding arbitration instead of having the Police Board decide those disciplinary actions. Interim Award at 43-70; Supplemental Interim Award at 12-27. In their Tentative Agreements at par. 21, the parties provided that “Arbitrator Benn’s Interim Award with respect to the issue of the Police Board and Arbitration will be submitted to the City Council.”

Although the arbitration issue has been decided in the Lodge’s favor by the Interim and Supplemental Interim Awards, I offer this further explanation for the City Council’s benefit as this dispute now moves to the City Council for ratification.

A. “Behind Closed Doors”

Publicly, those objecting to my ordering final and binding arbitration for these disciplinary actions have used an argument that arbitrations are inappropriate for disciplinary actions in excess of 365 days and dismissals because those proceedings are conducted “behind closed doors”. See The Chicago Sun-Times (September 14, 2023) [all italicized emphasis mine]:⁵

⁵ <https://chicago.suntimes.com/2023/9/14/23873944/chicago-city-council-reject-ruling-serious-police-misconduct-out-public-view>

City Council members urge colleagues to reject ruling that would keep serious police misconduct hearings out of public view

Several members of the City Council urged colleagues Thursday to reject a controversial ruling that would allow cops to have the most serious disciplinary cases decided *behind closed doors* — joining a chorus of critics who warn the move will erode transparency and community trust.

Independent arbitrator Edwin Benn ruled in June that officers facing dismissal or suspensions over a year could opt to move their proceedings to arbitration instead of going before the Chicago Police Board.

* * *

See also, The Chicago Tribune (September 17, 2023):⁶

Chicago aldermen, activists call for city to keep police hearings public

Several progressive aldermen and activists have joined a growing list of critics calling for the Chicago City Council to reject an arbitrator's ruling that would allow Chicago police officers accused of serious misconduct to have their disciplinary cases decided *behind closed doors*.

* * *

Earlier this year, as part of the ongoing contract negotiations between the Fraternal Order of Police and the city, an arbitrator ruled that CPD officers accused of the most serious misconduct should have the option to have their cases decided by the Chicago Police Board or an independent third party. If an officer chose the latter, the hearings would be conducted *behind closed doors* and not open to the public.

* * *

And on September 21, 2023, the Chicago Sun-Times published an editorial:⁷

⁶ <https://www.chicagotribune.com/news/criminal-justice/ct-fop-city-council-20230917-qfas7r5fybeknm5o2oa4nowihu-story.html>

⁷ <https://chicago.suntimes.com/2023/9/21/23883009/chicago-police-arbitration-firings-suspensions-discipline-secret-police-board-editorial>

Chicago police facing serious discipline should not have cases decided in secret

The City Council should reject a ruling by an arbitrator that would allow police officers facing firings or long suspensions to dodge the Chicago Police Board and move cases to arbitration — outside public view.

The City Council will vote on a ruling by an arbitrator that would allow police officers to dodge the Chicago Police Board for the most serious disciplinary cases and move them to arbitration.

The Chicago Police Department still is a long way from gaining the trust of many Chicagoans.

So it would be a mistake for the City Council to accept a ruling by an arbitrator that would allow police officers to dodge the Chicago Police Board for the most serious disciplinary cases, by moving them to arbitration.

We're talking about officers facing firings or suspensions longer than a year whose cases would be decided *behind closed doors*, out of public view.

* * *

“Behind closed doors” is a slogan – a catch phrase (perhaps, even the creation of a public relations effort) designed to defeat arbitration as a dispute resolution process.

Slogans and catch phrases that attempt to simplify complex and divisive issues have been rightfully criticized. See Thomas A. Bailey, “Voices of America The Nation’s Story In Slogans, Sayings, and Songs” (Macmillan Publishing Co., The Free Press, 1976) at viii, 501-502:

Slogans are comforting shorthand for thinking, which is usually avoided as hard work; and for this reason they are open to criticism. Even so, they are an essential part of the nation’s history.

* * *

... Catch phrases are undoubtedly foes of sober reasoning; they implant the comfortable but illusory feeling that the user is thinking when only mouthing. ...

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 13

Catch phrases are almost invariably one-sided, with little or no room for qualifiers or argument. They often contain untruths or half truths, such as “Guns don’t kill people; people kill people.” Some slogans not only serve as drugs for the brain but also as opiates for the conscience, notably when “Remember Pearl Harbor” rendered more righteous the dropping of two atomic bombs on Japan.

Slogans also encourage voters to think with their lungs⁸

For purposes of this case, the phrase “behind closed doors” has added meaning to those of us who have grown up, lived or worked in Chicago as that expression gives the image of smoke-filled closed rooms of the past with politicians, criminals and the powerful cutting deals to line their own pockets without regard to rights of ordinary citizens.

However, no matter how attractive the simplistic phrase “behind closed doors” may seem to those who do not understand or seek to defeat the arbitration process for police officers, that phrase and the illusions it conjures cannot succeed to defeat the Lodge’s contract proposal for binding arbitration in this case and my prior awards adopting that proposal. That is because there is a more powerful and accurate “truth” in a phrase that is the bedrock of our democracy which washes away that simplistic “behind closed doors” expression along with its images of shady and secretive deal-making in smoke-filled rooms. And that phrase is the most relevant (especially these days) – “The Rule of Law.”

⁸ See also, Newsome, “The Use of Slogans in Political Rhetoric,” *The Corinthian*, Vol. 4, Article 3 (2022) citing Bailey.
<https://kb.gcsu.edu/cgi/viewcontent.cgi?article=1203&context=thecorinthian>

B. “The Rule Of Law”

1. Arbitration Of Discipline Grievances As A Right Under The Rule Of Law

A basic dictionary definition tells us what “The Rule of Law” is:⁹

... The rule of law, sometimes called “the supremacy of law”, provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application.

My decision to order an option for the Lodge for arbitration of grievances challenging discipline of greater than 365 days and dismissals issued to police officers strictly follows “The Rule of Law”.

First, Section 8 of the Illinois Public Labor Relation Act requires, *as a matter of statute*, “final and binding arbitration of disputes” in collective bargaining agreements for police officers [emphasis added]:

Sec. 8. Grievance Procedure. The collective bargaining agreement negotiated between the employer and the exclusive representative *shall* contain a grievance resolution procedure which shall apply to all employees in the bargaining unit and *shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise.*

While in the past, the parties “mutually agreed otherwise” to not have arbitration for this class of cases, in this case the Lodge has no longer “agreed otherwise” and made a contract proposal to extend the existing arbitration provisions in the prior Agreement (grievances protesting disciplinary actions between 11 and 365 days) to include disciplinary actions greater than 365 days and separations (dismissals). Therefore, under Section 8 of the IPLRA, “The Rule of Law” requires that if the Lodge

⁹ Black’s Law Dictionary (West, 5th ed.).

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 15

proposes an option to take grievances protesting discipline in excess of 365 days and dismissals, “final and binding arbitration of disputes” *must*, consistent with that proposal, be placed into the parties’ Agreement for these cases that in the past would have gone to the Police Board for decision. In accord with the mandate in Section 8 of the IPLRA, that is how I ruled – a ruling joined in by the Lodge’s Member of this Board thereby constituting a majority decision of the Board.

Second, the IPLRA has a supremacy clause giving Section 8’s mandate for final and binding arbitration as a contract term supremacy over laws and ordinances to the contrary. Section 15(b) of the IPLRA states [emphasis added]:

Sec. 15. Act Takes Precedence.

* * *

(b) Except as provided in subsection (a) above [not relevant for the final and binding arbitration issue], *any collective bargaining contract between a public employer and a labor organization executed pursuant to this Act shall supersede any* contrary statutes, charters, *ordinances*, rules or regulations relating to wages, hours and conditions of employment and employment relations adopted by the public employer or its agents. ...

The City therefore cannot rely upon any ordinances it has that provide for this class of cases to be decided by the Police Board. The requirement for final and binding arbitration of disputes found in Section 8 of the IPLRA “Takes Precedence.”

Third, the IPLRA states a public policy requiring final and binding arbitration as I ordered in this case:

Sec. 2. Policy. ... To prevent labor strife and to protect the public health and safety of the citizens of Illinois, *all collective bargaining disputes* involving persons designated by the Board as performing essential services and those persons defined herein as security employees *shall be submitted to impartial arbitrators*, who shall be authorized to issue awards in order to resolve such

disputes. *It is the public policy of the State of Illinois that where the right of employees to strike is prohibited by law, it is necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be liberally construed.*

Arbitration of disputes as public policy in Illinois as stated in Section 2 of the IPLRA follows the long-held similar federal policy. *See e.g., United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 578 (1960) [footnotes and citation omitted]:

... The present federal policy is to promote industrial stabilization through the collective bargaining agreement. ... A major factor in achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.

The Illinois Supreme Court states that “... Illinois public policy is shaped by our statutes, through which the General Assembly speaks.” *State of Illinois v. American Federation of State, County and Municipal Employees*, 51 N.E.3d 738, 747 (2016). Through Sections 2 and 8 of the IPLRA requiring arbitration of disputes for the officers in this case, the General Assembly has clearly spoken. In this interest arbitration, I can take note of the General Assembly’s policy concerning the requirement for final and binding arbitration.

Fourth, the case law developed since the passage of the IPLRA issued by this arbitrator and other arbitrators has followed the mandate of Section 8 of the IPLRA that if, as here, a party requests arbitration of discipline in an interest arbitration, as a matter of plain statutory language in Section 8 and Section 2, that request *must* be adopted and that adoption is required even if boards of police commissioners similar to the Police Board deciding disciplinary matters have long been part of the parties’ collective bargaining agreements or relationships. Further, whether those

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 17

boards functioned well or did not function at all is just not a relevant consideration under Section 8's statutory mandate requiring final and binding arbitration of disputes in collective bargaining agreements. That is because the language in Section 8 that collective bargaining agreements "... shall contain a grievance resolution procedure which shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" leaves nothing to discretion. See *Village of Bartlett and Metropolitan Alliance of Police*, S-MA-21-145 (Benn, 2023) at 6-10;¹⁰ *Village of River Forest and FOP*, S-MA-19-132 (Benn, 2021) at 4-8;¹¹ *Village of Maywood and Illinois Council of Police*, S-MA-16-119 (Benn, 2017) at 2;¹² *Village of Lansing and FOP*, S-MA-04-240 (Benn, 2007) at 16-21;¹³ *City of Highland Park and Teamsters Local 714*, S-MA-219 (Benn, 1999) at 9-12;¹⁴ *City of Springfield and PBPA, Unit 5*, S-MA-89-74 (Benn, 1990) at 1-5;¹⁵ *Will County Board and AFSCME*, S-MA-009 (Nathan, 1988) at 56, 64-65;¹⁶ *City of Markham and Teamsters Local 726*, S-MA-89-39 (Larney, 1989);¹⁷ *Calumet City and FOP*, S-MA-99-128 (Briggs, 2000) at 13-16 (2000);¹⁸ *City of Elgin and PBPA*, S-MA-00-102 (Goldstein, 2001) at 66-72;¹⁹ *City of Markham and Teamsters Local 726*, S-MA-01-232

¹⁰ https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/S-MA-21-145_arb_award.pdf

¹¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-19-132-arb-award.pdf>

¹² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-16-119-02arbaward.pdf>

¹³ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-04-240.pdf>

¹⁴ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-98-219.pdf>

¹⁵ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-074.pdf>

¹⁶ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-88-009.pdf>

¹⁷ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-39.pdf>

¹⁸ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-99-128.pdf>

¹⁹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-00-102.pdf>

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 18

(Meyers, 2003) at 14-15;²⁰ *Village of Shorewood and FOP*, S-MA-07-199 (Wolff, 2008);²¹ *Village of Western Springs and MAP*, S-MA-09-99 (Meyers, 2010) at 63-66;²² *Village of Montgomery and MAP*, S-MA-10-156 (Camden, 2011) at 26;²³ *Village of Maryville and FOP*, S-MA-10-228 (Hill, 2011) at 10-12;²⁴ *Village of Oakbrook and FOP*, S-MA-09-017 (McAlpin, 2011) at 13-19;²⁵ *Village of Bolingbrook and MAP*, FMCS No. 101222-01003-A (Newman, 2011) at 9-10.²⁶

The fact that an “option” for the Lodge to choose whether grievances protesting disciplinary actions of greater than 365 days and dismissals should go to arbitration does not change the result. *See e.g., River Forest, supra* at 3-4; *Village of Maywood, supra* at 2; *Village of Lansing, supra* at 17-18; *City of Highland Park, supra* at 9-10; *City of Springfield, supra* at 1-2; *Will County Board, supra* at 15, 44, 65-66; *City of Markham (Larney award), supra* at 5, 19; *Calumet City, supra* at 18; *City of Markham (Meyers award), supra*; *Village of Shorewood, supra*; *Village of Western Springs, supra* at 63; *Village of Maryville, supra* at 10-12; *Village of Bollingbrook, supra* at 10, footnote 2.

Fifth, I recognize that, typically, arbitrators do not interpret constitutional issues because that is a function for the courts.²⁷ However, in this case I can take notice of constitutional rights of employees because Section 14(h)(1) of the IPLRA provides

²⁰ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-01-232.pdf>

²¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-07-199.pdf>

²² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-019.pdf>

²³ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-156.pdf>

²⁴ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-228.pdf>

²⁵ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-017.pdf>

²⁶ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/101222-01003-a.pdf>

²⁷ *Alexander v. Gardner-Denver, Co.*, 415 U.S. 36, 57 (1974) (“... the resolution of statutory or constitutional issues is a primary responsibility of courts”).

that in resolving interest arbitration disputes, an “applicable” factor is “[t]he lawful authority of the employer.”

The recently adopted “Workers’ Rights” amendment to the Illinois Constitution provides [emphasis added]:²⁸

**ARTICLE I
BILL OF RIGHTS**

* * *

SECTION 25. WORKERS’ RIGHTS

(a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. *No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment* and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

Police officers are “employees” having rights under the Workers’ Rights provisions of the Constitution. Those “rights” include the statutory mandate compelling arbitration of discipline as ordered in this case which rights are found in Sections 8 and 2 of the IPLRA.

For the City to rely upon City ordinances that conflict with the statutory right of police officers under Sections 8 and 2 of the IPLRA to have in their collective bargaining agreement an option for the Lodge to take this class of cases to final and binding arbitration is therefore also prohibited by the above provisions of the Illinois Constitution. Given the statutory requirements in Sections 8 and 2 of the IPLRA and

²⁸ <https://www.ilga.gov/commission/lrb/con1.htm>

the supremacy clause in Section 15 of the IPLRA requiring final and binding arbitration and the applicable factor under Section 14(h)(1) of the IPLRA that I can consider “[t]he lawful authority of the employer”, the above-quoted provision of the Illinois Constitution precludes the City from relying upon its ordinances that require this class of cases to be decided by the Police Board as opposed to final and binding arbitration before arbitrators.

2. The Privacy Of Arbitration

Arbitrations are private and not open to the public. That again is “The Rule of Law.”

Unless agreed otherwise, it has long been held that “[a]rbitration is, however, a private proceeding which is generally closed to the public.” *Hoteles Condado Beach etc. v. Union De Tronquistas Local 901*, 763 F.2d 34, 39 (1st Cir. 1985) [with the court citing Elkouri and Elkouri, *How Arbitration Works*, (3rd ed. 1973) at 202]. *How Arbitration Works* (BNA, 5th ed.) at 338-339 explains [footnotes omitted]:

Privilege to Attend Hearing

Arbitration is a private proceeding and the hearing is not, as a rule, open to the public. However, all persons having a direct interest in the case ordinarily are entitled to attend the hearing. Other persons may attend with permission of the arbitrator or the parties. ...

As required by the parties’ Agreement at Section 28.3(B), this is a case decided under the auspices of the American Arbitration Association (“AAA”). The AAA Rules follow the requirement that arbitration hearings are not open to the public. See AAA Rule 21 (“The arbitrator and the AAA shall maintain the privacy of the hearing unless the law provides to the contrary”).²⁹

²⁹ https://www.adr.org/sites/default/files/Labor_Arbitration_Rules_3.pdf

The obligation to maintain privacy is an ethical obligation on the part of arbitrators serving in AAA proceedings. Indeed, without agreement of the parties to make these arbitration proceedings public, for me to order that arbitration proceedings be open to the public is an ethical violation on my part as imposed by the AAA. See the AAA Statement of Ethical Principles:³⁰

Confidentiality

- An arbitration proceeding is a private process. In addition, AAA staff and AAA neutrals have an ethical obligation to keep information confidential. However, the AAA takes no position on whether parties should or should not agree to keep the proceeding and award confidential between themselves. The parties always have a right to disclose details of the proceeding, unless they have a separate confidentiality agreement. Where public agencies are involved in disputes, these public agencies routinely make the award public.

Consistent with this principle, the privacy of arbitration proceedings is also part of the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators (of which I am a member and therefore bound by its Code of Professional Responsibility):³¹

2. Responsibility to the Parties

* * *

C. Privacy of Arbitration

All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law.

³⁰ <https://www.adr.org/StatementofEthicalPrinciples> - :~:text=An arbitration proceeding is a,and award confidential between themselves.

³¹ <https://naarb.org/code-of-professional-responsibility/>

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 22

a. Attendance at hearings by persons not representing the parties or invited by either or both of them should be permitted only when the parties agree or when an applicable law requires or permits.

...

I have no intention of committing an ethical violation because of the unwarranted use of the slogan and catch phrase “behind closed doors” by those who oppose arbitration.

The City points to no law requiring that arbitration proceedings be open to the public. The City’s pointing to rules of the Police Board³² does not rise to a “law” requiring that these arbitration proceedings be open to the public. Section 8 of the IPLRA and the Interim Award have removed the Police Board from the discipline process should the Lodge exercise its right to progress grievances protesting suspensions in excess of 365 days or separations to arbitration. The City cannot rely upon a provision of a process (*i.e.*, the Police Board’s procedures) which has been eliminated from the dispute resolution procedure for a case to justify its position that a “law” exists requiring the arbitration be open to the public. Either party is obviously free to request an arbitrator in an individual case to open the proceedings to the public. But unless agreed otherwise, there can be nothing in the parties’ collective bargaining agreement that requires such a result. If there is any doubt about whether the Police Board’s requirement must be adopted for arbitration hearings, again, Section 15 (Act Takes Precedence) of the IPLRA provides, in pertinent part, that “... the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control.”

Further, the Lodge points out that “... the parties’ past practice” is that “arbitration proceedings under this collective bargaining agreement shall be private and

³² City Comments on Language Proposals at 6-8.

not open to the public.”³³ The City has not disputed that assertion. Therefore, for discipline up to 365 days, nothing in the Agreement or the practice of the parties requires having those hearings open to the public. If that is the case, why should a grievance over discipline of 366 days (or more) be open to the public when the past practice of the parties has been that arbitrations for significant disciplinary actions have not been open to the public? The Interim and Supplemental Interim Awards merely extended the IPLRA’s statutory right for arbitration to include an option for grievances protesting disciplinary actions in excess of 365 days and separations to the parties’ already existing arbitration process for protesting disciplinary actions – that’s all. There is no reason to change the practice for hearings being open to the public for the extended right of arbitration for certain cases when that practice did not previously exist.

3. The Right To Remain On The Payroll

Under the parties’ Agreement, Appendix Q(C) provides (with exceptions not relevant here) that for grievances challenging suspensions from between 11 and 365 days, “... the Officer will not be required to serve the suspension, nor will the suspension be entered on the Officer’s disciplinary record, until the Arbitrator rules on the merits of the grievance.” That same provision is found in Sections 9.6((B) and (C) of the Agreement as those sections refer to the procedure in Appendix Q(C) which does not require the officer to go into a non-pay status.

As discussed, the extension of the statutory right of arbitration for grievances protesting discipline for suspensions in excess of 365 days and separations is merely an extension of the right to arbitrate the class of cases involving discipline between 11 and 365 days as provided in the Agreement. Focusing particularly on Appendix Q

³³ Lodge Final Offers on language submitted July 13, 2023 at 1.

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 24

as currently written which explicitly provides that disciplinary actions falling under those provisions do not require the officer be put in non-pay status prior to decision by an arbitrator on the grievance, there is no reason to deviate from the practice agreed to by the parties for the lesser disciplinary actions. The line drawn by the City at 365 days as to whether an officer is suspended without pay and kept on the payroll is not reasonable. Why should an officer who is suspended for 365 days remain on the payroll until the arbitration is decided and the officer who is suspended for 366 days be put in non-pay status until that officer's arbitration is decided? There is no rational basis for such a line drawing.

Another bedrock "Rule of Law" is "the presumption that a defendant is innocent until proven guilty." *People of the State of Illinois v. Wheeler*, 871 N.E.2d 728, 748 (2007). As discussed, the parties have adopted a practice for proposed disciplinary actions against an officer less than 365 days of keeping that officer on the payroll until the disciplinary action is adjudicated and there is no rational basis to change that practice because an officer is facing a potential disciplinary action greater than 365 days and dismissal. That practice for officers facing disciplinary actions less than 365 days recognizes "the presumption that a defendant is innocent until proven guilty." To place officers in non-pay status for proposed disciplinary actions greater than 365 days and dismissals throws that presumption of innocence out the window. While arbitrators have broad remedial powers including awarding lost backpay and damages and other financial harm that is a direct or foreseeable consequence of a disciplinary action that lacks just cause, an officer being out of work until a case is decided can never be fully rectified – particularly given the stress placed on officers and their families as they suddenly have lost income.

If there is a concern that an officer has committed sufficiently serious misconduct to warrant a suspension greater than 365 days or dismissal and therefore should

not be compensated while the officer's alleged misconduct is investigated, there is an obvious simple answer for that concern. And that is for the City to timely investigate the matter and get the case in front of an arbitrator for decision.

4. Retroactivity

For purposes of retroactivity, on September 14, 2022, I was notified by the American Arbitration Association that I was selected as the Neutral Chair of the Board. It was at that time that the three-member Dispute Resolution Board was composed and had authority to act. Given the Lodge's demand for interest arbitration which the record shows was held in abeyance by the Lodge, it cannot be found that the City was solely responsible for the delays in getting this case before me for decision.³⁴ Under the circumstances, the retroactivity date for the arbitration provision shall therefore be concurrent with the date that this Board had authority to act – September 14, 2022.

III. THE FEDERAL COURT CONSENT DECREE

The Federal Court Consent Decree (*State of Illinois v. City of Chicago* (17-cv-6260 (N.D. Ill.))³⁵ carves out collective bargaining agreements and interest arbitrations such as this proceeding from coverage by the Consent Decree as follows [emphasis added]:

711. Nothing in this Consent Decree is intended to (a) alter any of the CBAs [collective bargaining agreements] between the City and the Unions; or (b) impair or conflict with the collective bargaining rights of employees in those units under the IPLRA. Nothing in this Consent Decree shall be interpreted as obligating the City or the Unions to violate (i) the terms of the

³⁴ The Lodge began the interest arbitration process on October 25, 2019 and then held that process in abeyance as of May 12, 2020. Lodge Pre-Hearing Brief at 41, footnote 18.

³⁵ City Exhibit 5, posted at:
<https://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>

CBAAs, including any Successor CBAAs resulting from the negotiation process (including Statutory Impasse Resolution Procedures) mandated by the IPLRA with respect to the subject of wages, hours and terms and conditions of employment unless such terms violate the U.S. Constitution, Illinois law or public policy, or (ii) any bargaining obligations under the IPLRA, and/or waive any rights or obligations thereunder. *In negotiating Successor CBAAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAAs consistent with the terms of this Consent Decree, or to the extent necessary to provide for the effective implementation of the provisions of this Consent Decree.*

As discussed in the Interim Award, the Supplemental Interim Award and this Award, these proceedings and the final successor collective bargaining agreement to the 2012-2017 Agreement obviously fall under the carve-out provisions specified in Paragraph 711 of the Consent Decree. Given the City's proposals and strenuous advocacy for those proposals (although not always successful), clearly, any objective observer to this process must conclude that the City met its obligations under Paragraph 711 – *i.e.*, that “the City shall use its best efforts to secure modifications to the CBAAs consistent with the terms of this Consent Decree, or to the extent necessary to provide for the effective implementation of the provisions of this Consent Decree” as required by the Consent Decree.

IV. WHAT HAPPENS NEXT?

The entire negotiated package including the Interim and Supplemental Interims Awards adopting an option for the Lodge to progress grievances protesting discipline greater than 365 days and dismissals to arbitration rather than having the Police Board decide those cases are all incorporated into this Award and that package now goes to the City Council for ratification. Should the City Council reject the terms of this Award establishing the parties' successor Agreement to the 2012-2017 Agreement and the matter is returned to this Board based on objections to the arbitration

requirement, given that the arbitration provisions have now been determined and discussed on three occasions, the parties can rationally assess the outcome of this Board having to reconsider its prior rulings – but we will listen to and consider those objections (and any other objections the City Council may have).

The parties have adopted the statutory impasse procedure under the IPLRA as a matter of contract. Section 14(p) of IPLRA allows parties to collective bargaining agreements falling under Section 14's impasse resolution procedures to agree to alternative methods of resolving disputed issues in interest arbitration ("Notwithstanding the provisions of this Section [14] the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution."). In Section 28.3(B)(11) of the Agreement, the parties have chosen *as a matter of contract* to resolve their disputes through such an alternative method. While the parties have adopted portions of the IPLRA as part of their contractual impasse resolution procedure, this interest arbitration is really a quasi-contractual and statutory process. And as to court review of contractual interpretations made by an arbitrator, review is quite limited. *See e.g., Brotherhood of Locomotive Engineers and Trainmen v. Union Pacific Railroad Co.*, 707 F.3d 791, 796 (7th, Cir. 2013) [quoting *Hill v. Norfolk & Western Ry.*, 814 F.2d 1192, 1194-95 (7th Cir. 1987)]:

As we have said too many times to want to repeat again, the question for decision by a federal court asked to set aside an arbitration award — whether the award is made under the Railway Labor Act, the Taft-Hartley Act, or the United States Arbitration Act — is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract.

See also, American Federation of State County and Municipal Employees v. Department of Central Management Services, et al., 671 N.E.2d 668, 672 (1996) [citation omitted]:

... [A]ny question regarding the interpretation of a collective-bargaining agreement is to be answered by the arbitrator. Because the parties have contracted to have their disputes settled by an arbitrator, rather than by a judge, it is the arbitrator's view of the meaning of the contract that the parties have agreed to accept. We will not overrule that construction merely because our own interpretation differs from that of the arbitrator. ...

With the City Council's ratification, this remarkably protracted labor dispute which has gone on for over six years will now be over. And, for what it's worth, this remarkably complex process with the final outcome resolving an extraordinarily long labor dispute occurred with the parties acting in complete good faith "behind closed doors".

This Board has interpreted the IPLRA and the parties' collective bargaining agreement. The Rule of Law is clear showing that slogans and catch phrases do not set contract terms of collective bargaining agreements, but statutes and precedent do.

It is really time to move on.

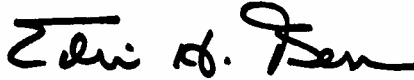
V. CONCLUSION

All tentative agreements between the parties from the med-arb procedure conducted under the Scheduling Order along with the arbitration issue resolved by the Interim and Supplemental Interim Awards are adopted into this Award.

With Mayor Johnson's election and a new administration along with a new Superintendent of Police, it is hoped that relations between the police and communities along with the morale of the officers will improve – they must. However, this

City of Chicago and FOP Lodge 7
Final Opinion and Award
Page 29

Board's function is limited to apply statutory and contractual requirements to set the terms of the parties' collective bargaining agreement – which we have done. If further reform is needed to be accomplished, that is beyond the authority of this Board.³⁶



Edwin H. Benn
Neutral Chair

The Lodge's Board Member concurs.

The City's Board Member concurs with the terms of this Award found in the Appendix, but dissents to the arbitration requirements adopted by this Award (Dissent attached after Appendix).

Dated: October 19, 2023

³⁶

The City has maintained throughout that I did not have authority to issue the Interim and Supplemental Interim Awards. For reasons discussed in the Interim Award at 20-26 and the Supplemental Interim Award at 27-30, clearly, I did have authority to issue those awards as this Board acted with majority rulings. Given that the parties have now negotiated a full contract and this Award incorporates the parties' agreements and the provisions of the prior awards with respect to arbitration and constitutes a full and final award, the City's arguments that I could only issue a final award and not interim awards are moot.

**BEFORE
DISPUTE RESOLUTION BOARD**

**Edwin H. Benn (Neutral Chair)
Cicely Porter-Adams (City Appointee)
John Catanzara, Jr. (Lodge Appointee)**

In the Matter of the Arbitration)		
)		
Between)		
)		
CITY OF CHICAGO,)		
)		
(“CITY”))	CASE NO.	AAA 01-22-003-6534
)		Arb. Ref. 22.372
-and-)		(Interest Arbitration)
)		
FRATERNAL ORDER OF POLICE,)		
CHICAGO LODGE NO. 7,)		
)		
(“LODGE”))		

**CITY OF CHICAGO’S DISSENT FROM FINAL OPINION AND
AWARD INCORPORATING INTERIM AND SUPPLEMENTAL
INTERIM AWARDS**

The Neutral Chair has labored valiantly, and successfully, to assist the parties in reaching agreement on a broad range of issues, as set forth in the Appendix attached to the Neutral Chair’s “Final Opinion and Award” (“Award”). It is the City’s belief that these agreements are in the best interest of all parties, especially including the residents of Chicago, and will prove instrumental in advancing the City’s continuing commitment to embedding principles of constitutional policing. We are grateful to the Neutral Chair for his efforts in helping the parties get to this outcome. However, the Neutral Chair has rejected the City’s repeated requests to modify his June 26, 2023 “Interim Opinion and Award” and his August 2, 2023 “Supplemental Interim Opinion and Award” (“Supplemental Interim Award”), directing that the successor collective bargaining agreement

("Agreement") include an arbitration option for disciplinary actions in excess of 365 days and separations.¹

As the City Appointee to the Dispute Resolution Board, it is my firm belief that the substantive provisions regarding resolution of separations and suspensions in excess of 365 days mandated by the Supplemental Interim Award are not justified by the record in this case or the parties' history, are likely to frustrate the City's efforts to bring about fundamental and necessary reforms in the Police Department, will sap public confidence in the disciplinary process applicable to police officers, will ultimately work to the detriment of police officers covered by this Agreement, and at bottom are inconsistent with the "interests and welfare of the public" as required by Section 14(h)(3) of the Illinois Public Labor Relations Act. (5 ILCS 315/14) Accordingly, I respectfully dissent from the Interim and Supplemental Awards ("Interim Awards"). My reasons follow.

The Interim Awards include these provisions governing the resolution of disputes over separations and suspensions over one year:

- i) the right of the Lodge to submit such actions to binding arbitration in lieu of the Chicago Police Board, which up until now has had exclusive jurisdiction over those actions;
- ii) the arbitration is to be closed to the public, unlike the case with hearings before the Police Board;
- iii) there is no requirement that arbitrators hearing these cases are to have completed the same training required of members of the Police Board pursuant to Paragraphs 540-542 of the Consent Decree between the City and the Attorney General of Illinois;
- iv) officers whom the Department is seeking to separate are entitled to remain on the payroll while the arbitration process plays itself out, contrary to decades' long past practice; and

¹ The Supplemental Interim Award was preceded by the Neutral Chair's June 26, 2023 "Interim Opinion and Award" ("Interim Award"), in which he adopted the Lodge's proposal for the arbitration option and remanded to the parties for the purpose of drafting language consistent with the Interim Award. It was the parties' inability to agree upon language that led to the August 2 Supplemental Interim Award, in which the Neutral Chair mandated the language to be included in the successor Agreement.

v) the arbitration option is retroactive to September 14, 2022.

These provisions are extraordinary and far-reaching. I will address them in sequence.

These parties have engaged in formal collective bargaining since 1981, negotiating 12 collective bargaining agreements over that span. Throughout this period, separations and suspensions in excess of one year were within the Police Board's exclusive province. On four previous occasions² the Lodge resorted to interest arbitration to resolve the terms of the collective bargaining agreement. In none of those proceedings did the Lodge seek an option to submit such disciplinary actions to arbitration. We submit that one of the principal reasons for the absence of bargaining activity for an arbitration option is that neither party viewed the Police Board process as broken or in distress. As we argued in our pre-hearing submissions, the statistics bear this out. The Superintendent has traditionally been very judicious in pursuing the ultimate sanction of separation and the Police Board has not been anything like a rubber stamp. Between 2013 and 2017 a total of 78 separation cases proceeded to hearing before the Police Board. The Board imposed separation in 39 of them—exactly 50%. In more than 20% of the cases the Police Board determined that the officer was not guilty, resulting in no discipline. The percentage of cases resulting in separation increased somewhat between 2017 and 2021, but not unreasonably so. Of 49 separation cases decided over that period, 32 (or 65%) resulted in separation. Statistics like this are hardly the mark of a biased tribunal. By their conduct over the years, the parties acknowledged that the arbitration option was a solution in search of a problem.

This time around the Lodge saw fit to seek the arbitration option. We argued (and indeed demonstrated, we contend) that there is no factual justification for the option. The Neutral Chair

² Interest arbitration awards were issued by George Roumell in 1993, Steven Briggs in 2002, and by this Neutral Chair in 2005 and 2010.

responded that this is beside the point: “if a party requests arbitration of discipline in an interest arbitration, as a matter of plain statutory language in Section 8 of the IPLRA, that request *must* be adopted . . . [f]urther, whether those boards functioned well or did not function at all are just not relevant considerations under Section 8’s statutory mandate . . .”. (italics in the original).³ With due respect, that view of the matter simply is not responsive to the needs of the moment.

We acknowledged in these proceedings the authorities the Neutral Chair assembled for the proposition quoted in the preceding paragraph. But as we pointed out at the time, all of those cases involved municipalities that just do not bear comparison to Chicago and the circumstances in which it finds itself. Contrary to the Neutral Chair’s dismissal of our position, characterizing it as a claim that “Chicago is different because we are bigger”⁴, our argument goes considerably beyond size. We defy anyone to point to another city or village in this state that is in the same ballpark when it comes to complexity of the issues, diversity of communities served, or the intensity of the public focus on how the Police Department operates. Our fundamental proposition, one with which the Neutral Chair fails to come to grips, is that the collective bargaining agreement, and especially its provisions with respect to accountability, must be perceived by the public as fostering and advancing the cause of legitimacy in policing in our city. Anything less impedes the ability of the Police Department to fulfill its mission. In our submissions on this issue to the Neutral Chair we strived to craft an arbitration option that satisfied this need, understanding that our insistence on the *status quo* would be deemed impermissible. The flat rejection of our proposals leaves us with no alternative but to dissent. Below I address four aspects of what we had proposed.

³ Interim Award at 44-45.

⁴ Interim Award at 56.

First and foremost is the question of whether the arbitration hearing (should there be one) addressing a separation or suspension in excess of one year should be open to the public. Our proposed language providing for transparency was attached to the Supplemental Interim Award in Appendix B. The City proposed that the arbitration hearing “shall be open to the public in the same manner as hearings before a hearing officer employed by the Board.” We pointed out that the Police Board’s Rules of Procedure mandate open hearings but specifically contemplate closed proceedings where appropriate, such as the pre-hearing conference and other occasions “for good cause shown”. The Neutral Chair’s response, candidly, is disappointing in the extreme: “Arbitrations are private and not open to the public. That again is the ‘Rule of Law’.”⁵ The Neutral Chair goes so far to suggest that he would commit an “ethical violation” were he to provide that the arbitration hearings be open to the public.⁶ We have deep respect for the Neutral Chair and his long history of accomplishments in the field, but this is nonsense. Every Police Board hearing in living memory has been open to the public and we are unaware of any horrible (or even mildly uncomfortable) consequence flowing from that. Neither is it the case that a police arbitration hearing open to the public is without precedent. San Antonio is the nation’s seventh largest city. Its collective bargaining agreement with its police union directs that all arbitration hearings be open to the public.⁷ There is no basis in experience or logic to believe that an arbitration hearing open to the public somehow becomes a flawed proceeding by virtue of being public.

⁵ Final Award at 20. This is more than a little reminiscent of the exchange in the Ring Lardner story, “*The Young Immigrants*” (*sic*):

“Are you lost daddy I arsked tenderly.

Shut up he explained.”

(Spelling and punctuation (or lack thereof) in the original)

⁶ *Id.* at 21.

⁷ Article 28, Section 10(c) of the 2022-2026 collective bargaining agreement with the San Antonio Police Officers’ Association mandates that “All hearings shall be public unless it is expressly agreed in writing by the parties that the hearing shall be closed to the public.” It can be accessed at <https://www.sa.gov/Directory/Departments/CAO/Collective-Bargaining>.

The Neutral Chair's prioritization of the private interests involved overlooks the vital public interest at stake in an open hearing. The Neutral Chair can make light of it all he wishes, but the fact remains that substantial portions of the citizenry are deeply suspicious of the process by which the Police Department seeks to hold its officers accountable on those occasions where they engage in misconduct. It is not sufficient for an arbitrator to say: trust me. Absolutely no good can come from a situation where the disciplinary process refuses to acknowledge this reality. For our part, the City stands willing to present our disciplinary cases in the bright light of day.

Second, we believe it a grave mistake not to require that arbitrators hearing such serious disciplinary matters first acquaint themselves with the training materials required of Police Board members pursuant to ¶542 in the Consent Decree. The required topics include constitutional and other relevant law on police-community encounters, including law on the use of force and stops, searches, and arrests; police tactics; investigations of police conduct; CPD policies, procedures, and disciplinary rules; etc. How does this training not enhance an arbitrator's ability to resolve these cases appropriately?

Third, the Neutral Chair engages in a radical restructuring of the *status quo* by requiring that officers remain on the payroll while the arbitration process is ongoing. We had proposed (if there is to be an arbitration option) continuation of the existing process, where a Police Board hearing officer determines whether to suspend (without pay) an officer against whom charges seeking separation have been filed. None of the City's 40-plus collective bargaining agreements provide for such a right. The Neutral Chair has created an incentive for the Lodge to find itself "unavailable" for arbitration hearings, knowing that the longer it can drag out the process, the longer the officer remains on the payroll. The Department cannot make use of officers while in this status; it would be preposterous to send an officer on an emergency call while simultaneously

seeking to terminate that individual's employment as a police officer. There is no unfairness in the City's position: in the event the arbitrator finds the separation not to be for just cause, she has the authority to fashion an appropriate remedy. But there is no remedy for the City when the arbitrator, many months later, determines that the separation *is* for just cause.

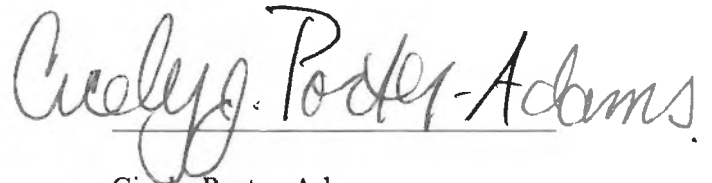
Fourth, we do not understand how the arbitration option is to be retroactive to September 14, 2022, more than a year before the date of the Final Award. We suggest this is unworkable and will only lead to confusion.

Finally, at the outset of this Dissent I observed that the Interim Awards will work to the detriment of police officers. That was not cant or rhetoric. It is a basic fact of life in Chicago (something which serves to distinguish us from other municipalities) that police officers, especially, are at risk of being named as defendants in civil lawsuits arising out of claimed misconduct. The fact that one has been named as a defendant, standing alone, is not proof of misconduct; that is what the judicial process is for. But that process relies on juries drawn from residents of Cook County. When the defendant officer confronts the jury, if that jury is composed of individuals who are skeptical of the integrity and legitimacy of the system by which the Chicago Police Department holds its officers accountable, the outcome of the process is not likely to favor the officer. Every CPD officer has a strong interest⁸ in ensuring that the wider public accepts the credibility of the Department's disciplinary process. Each officer is entitled to a fair shake from the jury, and the best guarantee of that is a disciplinary process that is open and transparent. The

⁸ Most civil lawsuits include a claim for punitive damages against the defendant officer(s). Section 2-302 of the Local Governmental and Governmental Employees Tort Immunity Act provides: "It is hereby declared to be the public policy of this State, however, that no local public entity may elect to indemnify an employee for any portion of a judgment representing an award of punitive or exemplary damages." 745 ILCS 10/2-302.

Interim Awards work in the opposite direction. The result is bad for the City, for the officers, and for the residents of Chicago.

I dissent.

A handwritten signature in black ink that reads "Cicely Porter-Adams". The signature is written in a cursive style with a horizontal line underneath the name.

Cicely Porter-Adams

City Appointee

October 19, 2023