

No. 132241

IN THE SUPREME COURT OF ILLINOIS

CHICAGO JOHN DINEEN LODGE # 7,	)	
	)	On Appeal from the
Appellant,	)	Appellate Court of Illinois,
	)	First Judicial District
v.	)	No. 1-24-0875
	)	
CITY OF CHICAGO, DEPARTMENT of	)	
POLICE, BRANDON JOHNSON, in his	)	
Official Capacity as MAYOR, LARRY	)	On Appeal from the Circuit Court of
SNELLING, in his Official Capacity as	)	Cook County, Chancery Division
Superintendent of the Chicago Police	)	Case No. 2024 CH 00093
Department, and THE CHICAGO CITY	)	Hon. Michael T. Mullen,
COUNCIL,	)	Judge Presiding
	)	
Appellees.	)	

BRIEF OF APPELLANT, CHICAGO JOHN DINEEN LODGE #7

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NATURE OF THE CASE

Chicago John Dineen Lodge #7 (“the Lodge”) and the City of Chicago (“the City”) are parties to a collective bargaining agreement (“CBA”) with a term of July 1, 2012, through June 30, 2017. The Lodge and the City engaged in protracted negotiations for a successor contract. When the parties were unable to reach agreement on the terms of the successor CBA, the matter was submitted to a Dispute Resolution Board (“DRB”) for final and binding interest arbitration, as required by the parties’ CBA and by the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* (“IPLRA”).

The DRB issued a Final Opinion and Award (“the Award”) on October 19, 2023, in which it decided all outstanding issues and established the terms to be included in the parties’ successor CBA. Those terms included, in relevant part, that all bargaining unit Police Officers shall be able to exercise their statutory right to select either (a) final and binding grievance arbitration, or (b) a Police Board hearing, for suspensions of greater than 365 days and separations; that those arbitrations be private; and various procedural matters relating to the arbitrations. The Chicago City Council rejected these contract provisions relating to arbitration of discipline, so the Lodge filed suit to confirm and enforce the Award. The City filed counterclaims to vacate certain portions of the Award.

On March 21, 2024, the Circuit Court entered a Memorandum Opinion and Order, in which it granted the Lodge’s request to confirm and enforce the Award in large part, but granted the City’s request to vacate two discreet procedural provisions of that Award, relating to (1) private arbitration proceedings, and (2) Officers remaining on pay status pending the completion of arbitration. The Lodge appealed those portions of the Memorandum Opinion and Order vacating parts of the Award. On August 8, 2025, the

Appellate Court issued its majority opinion in which it reversed the Circuit Court on the issue of remaining in pay status, but affirmed the vacatur of the Award relating to private arbitration proceedings. 2025 IL App (1st) 240875. The Lodge now appeals the Appellate Court's ruling on private arbitration hearings. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the Appellate Court erred in vacating, on public policy grounds, the portion of the Interest Arbitration Award providing that disciplinary grievance arbitrations shall be conducted privately, where there is no expression of well-defined and dominant public policy in the State of Illinois that precludes continuing to hear police disciplinary cases in private arbitration proceedings.
2. Whether the Appellate Court erred in allowing the City to raise new public policy arguments that the City had waived by not raising at the Circuit Court.
3. Whether the Appellate Court erred in finding that the City timely raised a challenge to that Award within 90 days of its issuance.

JURISDICTION

This Court has jurisdiction over this appeal pursuant to Ill. S. Ct. R. 315 as an appeal by permission from an Appellate Court opinion. The Appellate Court issued its opinion and judgment on August 8, 2025, and issued a corrected copy of the opinion on August 26, 2025. 2025 IL App (1st) 240875 (referred to herein as "App. Ct. Op."). The Lodge timely filed its Petition for Leave to Appeal on September 12, 2025, which this Court allowed on November 26, 2025.

STATEMENT OF FACTS

I. Interest Arbitration Proceedings Before the Dispute Resolution Board

The Lodge is a labor organization representing all Chicago Police Officers below the rank of Sergeant. App. Ct. Op., ¶ 7. It has been party to collective bargaining agreements (“CBAs”) with the City since 1981. *Id.*, ¶ 8. The parties were engaged in negotiations for unresolved items for a successor CBA beginning in October 2017, but did not reach full agreement. *Id.* ¶ 15-16.

Section 28.3.B of the parties’ CBA provides that if the Lodge and the City are not able to reach agreement on all the terms of a successor agreement, the disputed issues shall be referred to the three-member Dispute Resolution Board (“DRB”), chaired by a neutral arbitrator jointly selected by the City and the Lodge. *Id.*, ¶ 18. Section 28.3.B establishes the impasse resolution procedures to be followed and specifically incorporates various statutory interest arbitration procedures set forth in the IPLRA Sections 14(h), (i), (k), and (m). (C 1059-61).¹

In September 2022, the parties appointed Arbitrator Edwin Benn to serve as the DRB’s Neutral Chair. (C 1827). The parties exchanged proposals, submitted evidence and briefings, and engaged in numerous hearings and mediations before the DRB. The arbitrator issued several interim rulings, followed by the Final Opinion and Award on October 19, 2023. App. Ct. Op., ¶¶ 19-32; (C 1533-61). At interest arbitration, the Lodge proposed that Police Officers should be able to present grievances to final and binding arbitration to challenge separations and suspensions of more than 365 days. On that issue, the DRB held that Section 8 of the IPLRA mandates final and binding arbitration of all

¹ All references herein to the Common Law Record (“C ____”) refer to pages included in Volume 1 of that Record, unless otherwise noted.

disputes arising under a CBA, including discipline, unless both parties agree otherwise. (C 1546) (quoting 5 ILCS 315/8). Under prior CBAs, the Lodge and the City had “agreed otherwise” to submit certain disciplinary matters involving the separation or discharge of Officers to the Chicago Police Board instead of to arbitration, but the Lodge no longer “agreed otherwise” during the current negotiations. (C 1546). The Lodge’s proposal allowed the Lodge and its members to exercise this statutory right to arbitration, so it was adopted by the DRB. (C 1546-52); *see also* (C 1503-06) (Interim Award dated August 2, 2023). The DRB also ordered that suspensions in excess of 365 days and separations shall follow the same procedures for private arbitration that already existed under the parties’ prior CBAs for all other disciplinary matters. (C 1503-06).

The parties’ preexisting arbitration procedures – which have long applied to all discipline of 365 days or less – include an agreement that all grievance arbitrations are conducted privately. (C 1552-55).² As the DRB held, these private hearings are consistent with the general practice of labor arbitration, and they are required by the American Arbitration Association (“AAA”) Rules, which are incorporated by reference into the parties’ CBA. (C 1552) (AAA Rules provide: “The arbitrator and the AAA shall maintain the privacy of the hearing unless the law provides to the contrary.”). The DRB noted that this finding was undisputed by the City, and that “‘the parties’ past practice’ is that ‘arbitration proceedings under this collective bargaining agreement shall be private and not open to the public.’” (C 1554-55). Because private arbitrations were already the *status quo* for suspensions up to 365 days, the DRB found no reason to change from that

² It is undisputed that arbitration proceedings for all discipline up to 365 days have been, and continue to be, conducted privately under the parties’ CBA. (C 1554-55). The City has not challenged or attempted to vacate those private arbitration provisions for lesser discipline cases, and as a result, those existing procedures have been confirmed by both courts in this case.

past practice for suspensions of more than 365 days or separations, as there was no basis to create an entirely new procedure for public arbitration “when that practice did not previously exist.” (C 1554-55).

On December 13, 2023, the Chicago City Council voted to ratify the majority of the provisions included in the Award, but expressly rejected the portion of the Award providing for grievance arbitration of discipline involving separations or suspensions in excess of 365 days. App. Ct. Op., ¶ 32. In discussing the reasons for rejecting the Award, Chicago Mayor Brandon Johnson suggested that the City was not required to accept the DRB’s ruling even though that ruling was required under Illinois law, stating: “There are a lot of policies over the course of time that have been in place. It does not make them right. So if you’re asking this body to just simply accept something because it’s law, that would be the antithesis to how this stage even exists.” (C 1622-23).

The issues rejected by City Council were referred back to the parties to discuss the reasons for their rejection and to determine whether the parties could agree to any modifications to the Award. (C 1059). The parties did not agree to any such modifications, and on January 4, 2024, the DRB issued a “Supplemental Final Opinion and Award.” App. Ct. Op., ¶ 33; (C 1598-61). That Supplemental Award was not authorized by the CBA’s language; rather, the parties’ CBA simply required that the parties meet to determine whether they would make any modification to the Award. (C 1059). The DRB did not amend, modify, or reconsider the contract language that had been previously adopted in the October 19th Award and instead simply confirmed that “the arbitration provisions of the Final Award stand unchanged.” (C 1661). The City

Council took a second vote and rejected that “Supplemental” Award on February 15, 2024. App. Ct. Op., ¶ 33.

II. Proceedings Before the Circuit Court

The Lodge sued to confirm and enforce the interest arbitration Award on January 4, 2024. (C 16-206; 578-769). The City answered (C 772-84), then later filed a motion for leave to amend its answer and file a counterclaim. (C 827-31). In its counterclaim, filed February 23, 2024, the City for the first time challenged the DRB’s rulings, specifically asking the Circuit Court to vacate portions of the Supplemental Final Award relating to the arbitration of separation and long-term suspension cases. (C 887-948).

The Lodge moved for summary judgment (C 835-50, 854-57) and also moved to dismiss the City’s counterclaim as untimely. (C 1700-15). The City filed a cross-motion for summary judgment. (C 992-1696). The Circuit Court issued its Memorandum Opinion Order on March 21, 2024 (C 1824-49), finding that the portion of the Award granting the right to grievance arbitration for all disciplinary cases was well-reasoned and consistent with Illinois law, and was neither arbitrary nor capricious. (C 1837-38).

However, the Circuit Court vacated the portion of the Award ordering that grievance arbitrations be privately conducted, finding that such an order was against public policy. (C 1838-43). The public policy relied on by the Circuit Court purportedly arose from the Illinois FOIA statute, 5 ILCS 140, *et seq.*, and the Consent Decree entered into in *State of Illinois v. City of Chicago*, 2019 WL 398703 (N.D. Ill. 2019). (C 1840-42). The Circuit Court also vacated the portion of the Award holding that all Officers

facing disciplinary charges shall remain on pay status pending a final award from an arbitrator, finding that such an order was arbitrary and capricious. (C 1844).³

III. Proceedings Before the Appellate Court

The Lodge appealed the Circuit Court’s rulings regarding public arbitration hearings; Officers remaining on pay status pending arbitration; the timeliness of the City’s challenges to the Award; and the Circuit Court’s denial of the Lodge’s request for attorneys’ fees. (C 1975-77 V2). In its appellate brief, the City raised, for the first time, several brand-new public policy challenges to the Award that were never raised or considered below, including a policy of “granting public access to government-sponsored adjudicatory proceedings” based on “constant practice of government officials” (City’s App. Br. at 24), as well as other statutory and constitutional arguments. (*Id.* at 28-32).

Amicus curiae briefs were filed in support of the City by three groups: (1) the Illinois Attorney General, (2) a group of “organizations and community leaders that represent victims and survivors of Chicago police misconduct,” and (3) a group of “academics and policy groups for police accountability.” In addition to the City’s brand-new arguments for vacatur, those groups raised several more public policy arguments that were never presented to or considered by the Circuit Court, or raised by any party to this litigation. *See, e.g.*, (Academics *Amicus* Brief, p. 18) (public policy in favor of “effective enforcement of the State’s criminal law”); (Community *Amicus* Brief, pp. 12, 43) (public policy “favoring the effective protection of the lives and property of citizens”); (*id.*, p. 9) (public policy “providing remedies for violations of the State’s most fundamental laws”).

³ The Appellate Court reversed the Circuit Court’s decision on this issue and instead confirmed the arbitration award with respect to Officers remaining on pay status. App. Ct. Op., ¶¶ 86-91. That matter is not at issue in the Lodge’s appeal.

The Appellate Court heard oral argument on June 17, 2025.⁴ In its Opinion, issued August 8, 2025, and corrected August 26, 2025, the Appellate Court majority correctly noted the extremely limited scope of judicial review of arbitration awards, which requires courts to construe arbitration awards so as to uphold their validity whenever possible. App. Ct. Op., ¶¶ 59-62. It also correctly described the narrow “public policy exception,” which allows for otherwise enforceable arbitration awards to be vacated where enforcement of the contract, as interpreted by the arbitrator, would clearly violate a well-defined and dominant public policy. *Id.* at ¶¶ 71-74.

However, despite holding that “there is no specific public policy that requires all police misconduct hearings to be open to the public”, *id.* at ¶ 82, the Appellate Court nonetheless fashioned just such a public policy, combining public policies “favoring effective law enforcement,” “favoring the exposure of crime,” “favoring the investigation and prosecution of criminal offenses,” and lastly, favoring “accountability and transparency,” based upon FOIA, the Consent Decree, and the past dealings between the City and the Lodge. *Id.* at ¶¶ 78-82. The Court ruled that the DRB’s decision to allow for private arbitration hearings, instead of the public Police Board hearings to which the Lodge had previously agreed, would “severely undermine” public policy. *Id.* at ¶ 82. Thus, the Appellate Court affirmed the vacatur of that one provision of the Award. *Id.* at ¶¶ 84-85. The Court confirmed all other provisions of the Award. *Id.* at ¶ 99.

Dissenting Justice Raymond W. Mitchell pointed out that requiring disciplinary proceedings to be opened to the public is a question for the legislature, and that the General Assembly has been silent on this issue, instead allowing police disciplinary

⁴ Audio of that argument is available at <https://www.illinoiscourts.gov/courts/appellate-court/oral-argument-audio/> (last accessed Jan. 13, 2026).

proceedings to be handled “for generations” in private arbitration across the State. *Id.* at ¶ 102 (Mitchell, J., Dissenting). The Dissenting Justice stated that the real issue is one of deference owed by the courts to labor arbitrators. *Id.* at ¶ 104. He also noted that there is no statute, constitutional provision, or judicial decision in Illinois supporting the newly-created public policy adopted by the majority. *Id.* at ¶ 106.

Challenging the majority’s sources for its public policy, the Dissenting Justice wrote that the Consent Decree is a settlement agreement, which has never been a source of public policy; FOIA expressly exempts employee disciplinary matters from disclosure; and the parties’ own past practices cannot create public policy, especially where they were done “by *consent*.” *Id.* at ¶¶ 107-09 (emphasis in original). Finally, he warned that the majority’s decision to vacate the Award “invites parties to relitigate every labor arbitrator’s decision under the guise of public policy, and that is repugnant to the explicit, well-defined, and dominant public policy in favor of collective bargaining and the arbitration process that goes with it.” *Id.* at ¶ 110.

STANDARD OF REVIEW

The applicable standard of review of the Appellate Court’s decision to either confirm or vacate an arbitration award is *de novo*. *Asset Acceptance, LLC v. Tyler*, 2012 IL App (1st) 093559, ¶ 42 (citation omitted). Whether an arbitration award violates public policy is also a question of law to be reviewed *de novo*. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶ 26. However, as noted in the dissenting opinion in *City of Country Club Hills v. Charles*, 2020 IL App (1st) 200546, although courts apply “a *de novo* standard of review to the determination of whether the public policy exception applies,” the “application of the *de novo* standard

should not equate to substituting the reviewing court’s judgment for that of the arbitrator.” *Id.* at ¶ 49 (Cunningham, J., dissenting). Thus, no amount of deference is owed to the Appellate Court majority’s reasoning behind its erroneous decision in this case to vacate the portion of the Award that provides for private disciplinary arbitration proceedings. Instead, the Court should defer to the findings, conclusions, and interpretations made by the DRB in issuing its Award.

ARGUMENT

I. Introduction

There is no well-defined and dominant public policy in the State of Illinois that requires government employees’ disciplinary hearings to be open to public attendance or participation. Both the Appellate Court majority and the dissent agree on this point. App. Ct. Op., ¶ 82 (“there is no specific public policy that requires all police misconduct hearings to be open to the public...”); *Id.*, ¶ 106 (Mitchell, J., Dissenting) (“there is no expression of well-defined and dominant public policy in Illinois that precludes hearing police disciplinary cases in private arbitration”).

In fact, just the opposite is true: Illinois public policy, as reflected in the text of statutes adopted by the General Assembly, supports the resolution of employee disciplinary disputes through **private** arbitration proceedings. *See, e.g.*, 5 ILCS 315/2, 8, 14 (IPLRA incorporates public policy in favor of final and binding arbitration of all labor disputes); 5 ILCS 120/1, 2 (Open Meetings Act excludes the public from attending employee disciplinary matters and collective bargaining matters between government employees and labor unions); 5 ILCS 315/24 (“[t]he provisions of the Open Meetings Act shall not apply to collective bargaining negotiations and grievance arbitration conducted

pursuant to [the IPLRA].”); 5 ILCS 140/7(1)(n) (FOIA’s public policy in favor of granting access to public records expressly does not apply to “Records relating to a public body's adjudication of employee grievances or disciplinary cases”).

In the underlying interest arbitration proceedings for the Lodge and the City’s successor CBA, the Lodge proposed to exercise its statutory right to have all disciplinary matters of its bargaining unit Officers decided through grievance arbitration. (C 1539). In adopting that proposal and incorporating the right to private grievance arbitration for all disciplinary disputes – including suspensions over 365 days and separations – into the parties’ successor contract, the DRB acted in conformance with the State’s public policy as articulated through the various state laws referenced above. The DRB further confirmed that private hearings are the established standard for labor arbitration; private hearings are required by AAA Rules and the National Academy of Arbitrators’ Code of Professional Responsibility; and that private arbitration hearings have long been the “past practice” of the City and the Lodge, by agreement of the parties. (C 1552-54).

Despite all of this, the Appellate Court nevertheless concluded that Illinois public policy requires the DRB’s Award to be vacated because the Award allows for private arbitration hearings of “serious police misconduct hearings.” App. Ct. Op., ¶ 99. In its majority Opinion, the Appellate Court fashioned a brand-new public policy, based upon (1) a consent decree; (2) state statutes like FOIA, ignoring their explicit exemptions from disclosure of employee disciplinary matters; and (3) the prior course of dealing between the Lodge and the City. *Id.*, ¶¶ 81-83, 107-09.

In so ruling, the majority rejected longstanding Illinois Supreme Court precedent on the level of deference given to labor arbitrators’ findings and interpretations in

arbitration awards, *see, e.g. AFSCME v. State of Illinois*, 124 Ill. 2d 246, 254 (1988) (“*AFSCME I*”), and similarly rejected this Court’s precedent on the acceptable sources of Illinois public policy, *see, e.g., Zeigler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193 (1910); *City of Chicago v. Fraternal Order of Police*, 2020 IL 124831, ¶ 28. The majority’s “[h]ortatory but vague references to ‘transparency’ and ‘accountability’ are precisely the generalized considerations that fail to establish an explicit, well-defined, and dominant public policy.” App. Ct. Op., ¶ 108 (Mitchell, J., dissenting). Because no well-defined and dominant public policy has been identified, and because it cannot be shown that the Award clearly violates any such policy, the Appellate Court erred in vacating any portion of the Award.

Additionally, the Circuit Court and the Appellate Court erred in even considering the City’s challenges to the Award, because those challenges were not raised within 90 days of the issuance of the DRB’s October 19, 2023 Final Opinion and Award, as required by 315 ILCS 5/14(k) and 710 ILCS 5/12(b). Lastly, the Appellate Court majority erroneously relied upon public policy arguments that were never raised by any party at the Circuit Court and therefore should have therefore been deemed waived. *See, e.g., City of Chicago v. Int’l Bhd. of Elec. Workers, Local No. 9*, 2022 IL App (1st) 210850, ¶ 21 n.2. For these reasons, and the reasons the follow, the Appellate Court’s majority Opinion vacating part of the Award should be reversed, and the Award should be confirmed in its entirety.

II. Judicial Review of a Labor Arbitration Award Is Extremely Narrow and Highly Deferential to the Findings and Conclusions of the Arbitrator

This Court has established that judicial review of labor arbitration awards is both limited and highly deferential. “A labor arbitration award must be enforced if the

arbitrator acts within the scope of his authority and his award draws its essence from the parties' collective-bargaining agreement.” *AFSCME I*, 124 Ill. 2d at 254; *see also AFSCME v. Dep’t of Cent. Mgmt. Services*, 173 Ill.2d 299, 304-05 (1996) (“*AFSCME II*”) (“a court is duty bound to enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties’ collective-bargaining agreement.”); *United Paperworkers Int’l Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987) (“[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.”).

The standard of review of an arbitration award is “highly deferential,” because “an arbitration award should be the end, not the beginning, of litigation.” *Town of Cicero v. IAFF Local 717*, 338 Ill. App. 3d 364, 371 (1st Dist. 2003) (citations omitted). “Thus, whenever possible, a court must construe an award so as to uphold its validity.” *Id.* at 372. To this end, courts defer to the factual and legal findings of the arbitrator, as well as to the arbitrator’s interpretation of the CBA. *See id.* at 371-72 (“a court of equity will not set [an arbitration award] aside for error either in law or fact. A contrary course would be a substitution of the judgment of the chancellor in place of the [arbitration panel] chosen by the parties.”) (citations omitted); *Garver v. Ferguson*, 76 Ill. 2d 1, 7 (1979) (“A long line of cases has established that an arbitrator’s award will not be set aside because of his errors in judgment or mistakes of law or fact.”).

As Seventh Circuit Judge Frank Easterbrook has explained, when a court is tasked with reviewing an arbitrator’s award,

A search for either simple or clear legal error cannot be proper. Courts often say, with respect to arbitrators’ role in interpreting contracts, that error is not

a ground of judicial review. **“[T]he question for decision by a federal court asked to set aside an arbitration award ... 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.”**

George Watts & Son, Inc. v. Tiffany & Co., 248 F.3d 577, 579 (7th Cir. 2001) (quoting *Hill v. Norfolk & Western Ry.*, 814 F.2d 1192, 1194–95 (7th Cir.1987); citing *United Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960)). Consistent with these principles, the Appellate Court dissent in this case noted that the legal question presented in this case concerns the “deference that judges owe to arbitrators acting within the confines of their authority and the interest arbitration process defined in the parties’ collective bargaining agreement.” App. Ct. Op., ¶ 104 (Mitchell, J., dissenting).

Courts must give the same level of deference to an interest arbitration award, where the arbitrator is establishing the terms for a successor CBA, as would be given to a grievance arbitration award interpreting and applying existing contract language. *See, e.g., Town of Cicero*, 338 Ill.App.3d at 371 (in reviewing interest arbitration award under Section 14(k) of the IPLRA, “[t]he standard of review in this case is highly deferential,” and “whenever possible, a court must construe an award so as to uphold its validity”).

Similarly, courts applying the judicially-created “public policy exception” (discussed in Section IV, *infra*) have confirmed that the party challenging the award is bound, and courts must defer, to the findings and interpretations of the arbitrator. For this exception to apply, “the contract, *as interpreted* by the arbitrator, must violate some explicit public policy.” *AFSCME II*, 173 Ill. 2d at 307 (citations omitted, emphasis in original). As a result, courts consistently defer to the findings of fact and law made by arbitrators in considering public policy challenges. For example, in *Vill. of Posen v.*

Illinois Fraternal Order of Police Labor Council, 2014 IL App (1st) 133329, the employer sought to vacate an arbitration award based on a public policy of “maintaining the public’s trust in law enforcement officials.” *Id.* at ¶¶ 42-47. However, the arbitrator found that the officer in question did not intentionally commit theft, and that there was no just cause for his termination. The Court held: “We may not disturb the arbitrator’s findings on these issues.” *Id.* at ¶ 43. Thus, even if that were assumed to be a public policy issue, there could be no violation based on those arbitrator’s findings. *Id.* at ¶¶ 44-46. *See also City of Peoria v. Peoria Police Benevolent Ass’n*, 2022 IL App (3d) 210567-U, ¶¶ 39-40 (assuming that a public policy existed prohibiting police departments from employing racist officers, arbitrator made finding that officer’s conduct was not racist, so arbitration award reinstating officer could not be in violation of that public policy).

III. Illinois Public Policy Supports the Resolution of Labor Disputes through Private Arbitration and Protects Employee Disciplinary Matters from Public Attendance or Disclosure

The Appellate Court incorrectly concluded that Illinois public policy requires disciplinary arbitration hearings for Chicago Police Officers be open to the public attendance. However, the public policy reflected in state law supports the opposite conclusion: Illinois public policy favors *private* labor arbitration hearings. The General Assembly has established, through a series of statutory enactments, that public policy in the State of Illinois favors arbitration for the resolution of labor disputes. As the IPLRA establishes:

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 the labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be liberally construed.

5 ILCS 315/2; *see also* 5 ILCS 315/14 (creating statutory right to interest arbitration to resolve disputes over new contract language); 5 ILCS 315/8 (requiring final and binding grievance arbitration in CBAs); App. Ct. Op., ¶ 103 (Mitchell, J., Dissenting) (citing IPLRA as the source of “a deeply entrenched public policy in Illinois favoring collective bargaining agreements and enforcement of labor arbitration awards”).

The precise arbitration procedure awarded by the DRB is required by Section 8 of the IPLRA as an essential element of the grievance procedure that must be contained in any collective bargaining agreement negotiated between an employer and an exclusive bargaining representative. As an express matter of Illinois public policy, the agreement “shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise.” 5 ILCS 315/8. This therefore is the rule of law that governs this case, as determined by the DRB. (C 1546) (Final Opinion and Award at 14).

The Illinois Uniform Arbitration Act (“UAA”), which is incorporated into the Labor Act, further reflects this policy by strictly limiting the bases for reviewing or vacating arbitration awards. *See* 710 ILCS 5/1, *et seq.* This Court has repeatedly recognized this “public policy of promoting constructive relationships between public employers and public employees, and the public policy which requires finality in arbitration awards.” *AFSCME I*, 124 Ill. 2d at 262.

“The object of arbitration is to avoid the formalities, delay and expenses of litigation in court.” *Town of Cicero*, 338 Ill. App. 3d at 371 (quoting *Seither & Cherry Co. v. Illinois Bank Building Corp.*, 95 Ill.App.3d 191, 195 (4th Dist. 1981)). Because the purpose of arbitration is to be less formal, cheaper, and faster than court proceedings,

“Arbitrations are private and not open to the public.” (C 1552) (Final Opinion and Award at 20). To further this objective, the General Assembly has expressly excluded matters relating to arbitration of employee discipline from public attendance and from public disclosure.

The Open Meetings Act adopts a public policy “to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly,” by guaranteeing citizens a “right to attend” public bodies’ meetings. 5 ILCS 120/1. But that Act carves out all matters relating to employee discipline, as well as collective bargaining, from public attendance, by excluding the following from coverage:

- (1) The appointment, employment, compensation, discipline, performance, or dismissal of specific employees, including hearing testimony on a complaint lodged against an employee ...
- (2) Collective negotiating matters between the public body and its employees or their representatives, or deliberations concerning salary schedules for one or more classes of employees.

5 ILCS 120/2(c). Section 24 of the Labor Act confirms that “[t]he provisions of the Open Meetings Act shall not apply to collective bargaining negotiations and **grievance arbitration** conducted pursuant to this Act.” 5 ILCS 315/24 (emphasis added). This means that members of the public may not attend the discipline arbitration hearings of police officers.⁵

Similarly, the Illinois FOIA statute – which is the primary statutory basis for the public policies relied upon by the lower courts in this case – requires, as a matter of

⁵ As discussed below, members of the public may learn about the arbitration proceeding, the arbitrator’s reasoning, and determinations of witness credibility, pursuant to an exception in FOIA allowing for the disclosure of arbitrator’s award as the “final outcome of cases in which discipline is imposed.” 5 ILCS 140/7(1)(n). This achieves the General Assembly’s goal of providing sufficient transparency in the public employee disciplinary process, while still protecting the interests of employees as well as the integrity of the arbitration procedures.

public policy, disclosure of public records, finding that “access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government.” 5 ILCS 140/1. However, that same section of the statute recognizes that FOIA includes “[r]estraints on access to information,” which constitute “exceptions” to that public policy. *Id.*

Relevant to this suit, FOIA specifically exempts from disclosure: “Records relating to a public body's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed.” 5 ILCS 140/7(1)(n). Therefore, FOIA explicitly carves out adjudications of employee discipline from disclosure to the public, aside from the final award of the arbitrator. The Appellate Court did not note or correctly read this exception as a statement of public policy which does not support public arbitration hearings in discipline matters. App. Ct. Op., ¶ 81.

Through these statutory enactments, the General Assembly has excluded members of the public from attending arbitration hearings relating to employee grievances and disciplinary cases, and has excluded public access to the records relating to such arbitration, except for the final outcome of the case, *i.e.*, the final arbitration award. By excluding members of the public from these employee disciplinary matters, the General Assembly has endeavored, as a matter of public policy, to keep labor arbitration fast, fair, informal, inexpensive – and private. If public-sector employees and their labor organizations are compelled to conduct their arbitration hearings open to the public, this will directly undermine the goal of fast, informal, and inexpensive hearings. The Dissenting Justice correctly noted that the Appellate Court’s decision requiring public

hearings would lead to more expensive proceedings and delayed resolution of these employees' discipline cases. App. Ct. Op., ¶ 110 (Mitchell, J., dissenting).

IV. The Appellate Court Rejected Decades of Precedent and Created a New Public Policy Requiring Public Arbitration Hearings That Is Not Supported by Any Constitution, Statute, or Judicial Decision

A. The Public Policy Exception

Courts have created a limited “public policy exception” that allows for the vacatur of an arbitration award which draws its essence from the CBA and which is otherwise enforceable. In order for this exception to apply, “the contract, *as interpreted* by the arbitrator, must violate some explicit public policy.” *AFSCME II*, 173 Ill. 2d at 307 (citing *AFSCME I*, 124 Ill.2d at 261; *W.R. Grace & Co. v. Local Union No. 759*, 461 U.S. 757, 766 (1983)) (emphasis in original). This “narrow” exception is only invoked when it is “clearly shown” that the award violates “well-defined and dominant public policy.” *Id.* (citing *AFSCME I*, 124 Ill.2d at 261; *Misco*, 484 U.S. at 43). In this case, the public policy exception was the sole basis for the Appellate Court’s decision to vacate the portion of the Award keeping grievance arbitration private. App. Ct. Op., ¶¶ 78-85, 99.

The first step of the public-policy analysis is to determine whether a well-defined and dominant policy can be identified. If such a policy exists, the court must then determine whether the arbitrator’s award, as reflected in his interpretation of the contract, violated the public policy. *AFSCME II*, 173 Ill. 2d at 307. In the first step, the policy at issue must be “well-defined and dominant” and must be ascertainable “by reference to the laws and legal precedents and not from generalized considerations of supposed public interests.” *Id.* (citations omitted). For well over a century, Illinois courts have looked to the State’s Constitution and statutes, and where those laws are silent, to Illinois courts’ judicial decisions, to determine whether a public policy has been identified. *Id.* at 307

(citing *Zeigler*, 245 Ill. at 193); see also *City of Chicago*, 2020 IL 124831, ¶ 28 (“As to the initial inquiry of our public policy exception, we must first examine whether our constitution, statutes, or judicial opinions shed light on a well-defined and dominant public policy regarding the challenged provision.”). The State’s public policy cannot be derived from “the varying opinions of laymen, lawyers or judges as to the demands of the interests of the public.” *AFSCME I*, 124 Ill. 2d at 260.

This Court has instructed that it is not the role of courts to create or declare public policy. Instead, “Declaring public policy is the domain of the legislature.” *City of Chicago*, 2020 IL 124831, ¶ 34 (quoting *People v. Felella*, 131 Ill. 2d 525, 539 (1989)); *Henderson v. Foster*, 59 Ill. 2d 343, 347-48 (1974) (state statute is strongest indicator of public policy, and “[w]hen the legislature speaks upon a subject upon which it has the constitutional power to legislate, public policy is what the statute passed by it indicates.”); App. Ct. Op., ¶ 102 (Mitchell, J., dissenting) (“That public policy question properly belongs to the political branches of government, not well-intentioned judges.”).

Where a public policy challenge is rooted in a conflict between a CBA and a statute, “we need not look further than the plain language of the statute to determine the state’s public policy.” *City of Chicago*, 2020 IL 124831, ¶ 34; compare *Eastern Associated Coal Corp. v. United Mine Workers of Am., Dist. 17*, 531 U.S. 57, 67 (2000) (courts must “hesitate to infer a public policy ... that goes beyond the careful and detailed scheme” set forth in the statutory text). The Appellate Court majority failed to follow these directives, and instead fashioned its own, new public policy based not on state law, but based upon that court’s own policy preferences.

B. None of the Statutes Referenced by the Appellate Court Majority Support the Public Policy that the Court Attempted to Create

The Appellate Court majority initially recognized the narrow scope of this public policy exception. App. Ct. Op., ¶ 72 (acknowledging that public policy must be based upon laws and not on “general considerations of supposed public interests”). However, when the Appellate Court looked to the laws of the State of Illinois, it was unable to identify any law that even remotely supported the public policy it created here, acknowledging that “there is no specific public policy that requires all police misconduct hearings to be open to the public...” *Id.*, ¶ 82. The Court nonetheless attempted to cobble together a public policy mandating public arbitration hearings, by referencing several irrelevant state laws.

1. FOIA Exempts Employee Disciplinary Proceedings from Public Disclosure

Most importantly, the Appellate Court relies upon FOIA, which was the only statute identified by the Circuit Court in its public policy analysis. App. Ct. Op., ¶ 81; *compare* (C 1838-43) (Circuit Court opinion). The Appellate Court states that the “public policy favoring police accountability and transparency ... has its roots in FOIA,” and through FOIA, “it was the intention of the General Assembly to promote transparency in government.” *Id.* While that may be true in a general and abstract sense, the Appellate Court fails to mention that FOIA explicitly ***excludes*** from coverage all “Records relating to a public body's adjudication of employee grievances or disciplinary cases,” other than the final arbitration award. 5 ILCS 140/7(1)(n).

Through this exception, FOIA expressly carves out the disciplinary arbitration proceedings at issue in this case from disclosure to the public. *Id.* The Appellate Court

has held the 7(1)(n) exemption covers documents and information “connected to formalized legal proceedings” that involve employee grievances and disciplinary cases. *Kalven v. City of Chicago*, 2014 IL App (1st) 121846, ¶ 13, *overruled on other grounds by Perry v. Dep’t of Fin. & Pro. Regul.*, 2018 IL 122349, ¶ 13.

The *Kalven* Court was the first to expressly examine the scope of the 7(1)(n) exemption. There, the plaintiff brought suit after being denied access to records relating to investigations into Officer misconduct. *Id.* at ¶ 1. The records sought were related to pre-disciplinary investigations, not arbitration proceedings, and the court, looking to the ordinary meaning of “adjudication,” held that Section 7(1)(n) did not apply, thus establishing that investigatory files are not exempted under section 7(1)(n). *Id.* at ¶¶ 13-14 (internal investigatory process is “separate and distinct from disciplinary adjudications”). Illinois courts have consistently applied this interpretation. *See, e.g., Fraternal Ord. of Police, Chicago Lodge No. 7 v. City of Chicago*, 2016 IL App (1st) 143884, ¶¶ 52-54 (complaint register files are not exempt under FOIA); *Peoria Journal Star v. City of Peoria*, 2016 IL App (3d) 140838, ¶ 13 (“adjudication” is “generally understood to involve a formalized legal process that results in a final and enforceable decision,” not a report prepared prior to disciplinary proceedings).

That Section 7(1)(n) exception is controlling here, as this Court will “not look further than the plain language of the statute to determine the state’s public policy.” *City of Chicago*, 2020 IL 124831, ¶ 34; *Eastern Associated Coal Corp.*, 531 U.S. at 67 (courts “hesitate to infer a public policy ... that goes beyond the careful and detailed scheme” set forth in the statutory text). Neither the Circuit Court nor the Appellate Court majority mentioned this FOIA exemption. The Dissent notes this glaring omission: “[FOIA]

expressly exempts employee disciplinary matters from disclosure. *Id.* § 7(n). Again, there is no provision in the FOIA law that mandates public disciplinary proceedings for police. Hortatory but vague references to ‘transparency’ and ‘accountability’ are precisely the generalized considerations that fail to establish an explicit, well-defined, and dominant public policy.” App. Ct. Op., ¶ 108 (Mitchell, J., Dissenting).

The arbitration proceedings at issue here for 366-day-plus suspensions and separations fall squarely within FOIA’s 7(1)(n) exemption, as the adjudication of an employee’s disciplinary grievance. Based on that exemption, there is no obligation under FOIA to make the contents of an arbitration hearing open to the public in real time, and the Appellate Court clearly erred in holding that private arbitration hearings violate any public policy set forth in FOIA. Forcing the parties to open arbitration hearings to the public would be contrary to the public policy set forth by the General Assembly in 5 ILCS 140/7(1)(n) and would prevent the City from protecting certain statutorily-exempt information from disclosure.⁶

The public’s interest in transparency and accountability as it relates to allegations of Police Officer misconduct is well satisfied without allowing members of the public to physically attend arbitration hearings. An interested party may request the investigatory file, which is not protected from disclosure by Section 7(1)(n). *See* Illinois Attorney General’s Public Access Counselor (“PAC”) Opinion 13-011, *City of Bloomington*, June 11, 2013. Further, once the arbitration proceeding is completed, the “final decision” of

⁶ Any reliance by the Appellate Court on this Court’s decision in *City of Chicago v. Fraternal Order of Police Chicago Lodge No. 7*, 2020 IL 124831, on this point is unpersuasive. In that case, the Court did not consider or discuss the impact and importance of the Section 7(1)(n) exemption – it based its finding of a public policy concerning procedures for the proper retention and destruction of government records solely on the Local Records Act and State Records Act, and it did not rely on FOIA or discuss any of its exemptions. *Id.* at ¶¶ 28-37.

the arbitrator is not exempt, so the public has a right to access the arbitrator's opinion and is able to read the summary of the evidence, arguments, and reasoning of the arbitrator. But under Section 7(1)(n), the adjudicatory process, or the actual hearing, is exempt from disclosure. FOIA and its underlying policies do not contemplate or even allow physical attendance at adjudicatory proceedings, so the DRB's decision to keep arbitration of Police Officer discipline private cannot possibly violate that statute's public policy.

There is little if any difference, from a transparency and accountability perspective, between allowing the public to observe an arbitration hearing in real time and allowing them access to the final decision. The alternative selected by the DRB does not prevent the parties from opening arbitration hearings to the public if and when they mutually agree that an open hearing is necessary, but it protects the privacy interests of arbitrators, witnesses, and Officers, which very well could involve sensitive and personal financial and family information that should remain private and most likely would not be included in the final opinion of the arbitrator. Private arbitration also protects the safety of participants and witnesses, who may be reluctant to attend a proceeding open to any and all members of the public.

The City also needs to exercise its right to protect certain information from disclosure and to proceed without unnecessary exposure for parallel criminal matters. *See, e.g., Policemen's Benevolent & Protective Ass'n of Illinois, Unit 156 Sergeants v. City of Chicago*, 2020 WL 291371 at *3 (N.D. Ill. Jan 21, 2020) (Chicago Police Board chose to postpone disciplinary hearing of officers who were also subjects of a criminal investigation, because "there was a 'substantial risk that ... media reporting of the evidence in those cases [would] make it more difficult for criminal prosecutors to

prosecute the criminal proceedings and may result in a violation of the Respondents’ constitutional rights,’ which would ‘prejudice and potentially jeopardize the criminal proceedings’”) (citations omitted).

The public policy established by FOIA does not allow members of the public to access or attend disciplinary grievance arbitration hearings. The statutory exemption in no way supports the improperly created public policy relied upon by the Appellate Court.

2. The Appellate Court’s References to “Effective Law Enforcement and the Exposure of Crime” Are Irrelevant and Do Not Establish Any Public Policy Requiring Public Attendance at Disciplinary Arbitration Hearings

Perhaps because of the weakness of the public policy argument rooted solely in FOIA, the Appellate Court majority also references various other statutes (never mentioned by the Circuit Court) that it asserts support other public policies, favoring “effective law enforcement and the exposure of crime to protect the citizens of this State.” *Id.* at ¶ 78. However, none of the statutes referenced by the Appellate Court have anything to do with public access to disciplinary proceedings, and none reflect a determination by the General Assembly that disciplinary arbitration proceedings for municipal Police Officers must be held in a public forum. *Id.* at ¶ 78 (listing statutes).

For example, the Appellate Court cites the Civil Administrative Code of Illinois, 20 ILCS 2605/2605-200(a)(3), part of the Illinois State Police Law, which empowers Illinois State Troopers to employ “qualified persons to aid in preventing or detecting crime, apprehending criminals, or preparing and presenting evidence of violations of the criminal laws of the State.” *Id.* The Appellate Court also references the Citizen Participation Act, 735 ILCS 110/5, Illinois’s “anti-SLAPP” (strategic lawsuits against public participation) statute, which creates a procedure for a defendant to move to dismiss

a lawsuit brought in retaliation for the exercise of First Amendment rights. 735 ILCS 110/5, 15, 20. It then cites the Illinois Uniform Conviction Information Act, 20 ILCS 2635/2(B), which requires that the State Police make information relating to convictions in criminal proceedings publicly available.

Each of these statutes is entirely irrelevant to the issue before this Court, and none so much as hint at a determination by the General Assembly that any disciplinary arbitration proceedings for Chicago Police Officers must be held in a public forum. As is the case with FOIA, the plain text of these statutes establishes the outer limits of any public policy that they embody. *City of Chicago*, 2020 IL 124831, ¶ 34; *Eastern Associated Coal Corp.*, 531 U.S. at 67. Nothing in the Illinois State Police Law, the Citizen Participation Act, or the Illinois Uniform Conviction Information Act refers to disciplinary hearings or arbitrations for municipal police officers, nor do they make any reference to public attendance or participation in such hearings. Those statutes in no way support the public policy that the Appellate Court has created here.

Lastly, the Appellate Court cites to prior court cases discussing a “public policy favoring the investigation and prosecution of criminal offenses.” App. Ct. Op., ¶ 80. It is unclear what these cases have to do with the arbitration of disputes arising from the discipline of Chicago Police Officers. The implication from the majority’s discussion is that any Police Officer who is facing disciplinary charges for termination or a suspension of more than a year presumably must have committed a criminal offense, and by requiring the arbitration of those cases to be heard publicly, the court is helping in the investigation and prosecution of those Officers’ crimes.

This reliance on criminal law is misguided for several reasons. First, the City does not only seek to discipline Officers who are accused of crimes – Officers can face lengthy suspensions or separation for alleged attendance issues, poor performance, insubordination, misuse of sick time, and a plethora of other reasons. Second, any Officer who is actually accused of a crime will have those charges heard in criminal court, which is open to the public, thereby accomplishing the goal of transparency for criminal investigations and convictions. It is an affront to Police Officers, who devote their lives to preventing, investigating, and prosecuting crime, to suggest that every Officer who is facing discipline from his or her employer (often without just cause) must be a criminal.

In short, the City could not identify any state law or other legitimate source of public policy requiring public arbitration, so the Court improperly invented a policy. This conflicts directly with this Court’s well-established precedent. No well-defined and dominant public policy exists that prohibits private arbitration hearings for Police discipline cases, so this Court’s public policy analysis should end at the first step.

C. The Appellate Court’s Opinion Conflicts with Decades of Illinois Supreme Court Law by Relying Upon a Consent Decree and the Parties’ History as Sources of Public Policy

The Appellate Court’s majority further strayed from established law by referencing improper sources for public policy, relying in part upon a 2019 Consent Decree entered into between the State of Illinois and the City of Chicago. App. Ct. Op., ¶ 81. A consent decree “is no more than a court’s recording of an agreement reached by the parties in settlement of a dispute or claim and is not a judicial determination of their rights.” *People ex rel. Fahner v. Colorado City Lot Owners & Taxpayers Ass’n*, 106 Ill.2d 1, 8 (1985). As the Dissenting Justice states: “No published decision in America

has ever found a consent decree to be a source of public policy. More significantly, there is nothing in the consent decree that mandates that police disciplinary proceedings be open to the public, and it expressly provides that nothing in the consent decree alters the City's collective bargaining agreement with the police.” App. Ct. Op., ¶ 107.

As a voluntary settlement, the Consent Decree does not satisfy the threshold showing of a well-defined public policy, and it may not affect or interfere with the rights of a third party such as the Lodge.⁷ The Lodge did not agree to any of the provisions of the Consent Decree that were cited by the lower courts pertaining to transparency requirements and did consent to any implied modification of its bargaining rights. The Seventh Circuit has ruled that the parties to the Consent Decree have no ability to affect or alter the Lodge’s CBA without its consent. *State of Ill. v. City of Chicago*, 912 F.3d 979, 988 (7th Cir. 2019) (“because ‘[c]onsent decrees are fundamentally contracts,’ the parties to those decrees ‘‘may not impose duties or obligations on a third party, without that party’s agreement.’”’) (quoting *People Who Care v. Rockford Bd. of Education Sch. Dist. No. 205*, 961 F.2d 1335, 1337 (7th Cir. 1992)). In an Interim Opinion, the DRB held that the Consent Decree did not prevent the interest arbitration proceedings in this case from going forward to establish the contract terms at issue. (C 1383-85).

The Appellate Court majority’s reliance on the Consent Decree interferes with the contractual rights of the Lodge and its members, including their right to have the DRB decide procedures to be applied to future disciplinary arbitration proceedings. In *People*

⁷ Considering that the Consent Decree only applies to the City of Chicago and its Police Department, and does not apply to any other police department in the State, it is unclear how this settlement agreement could possibly be considered a reflection of public policies that are well-defined and dominant in the State of Illinois – unless it is based upon or reflects public policies that exist outside of and independent from the Consent Decree. In any event, the Consent Decree itself does not and cannot **create** public policy.

Who Care, the Seventh Circuit did not allow the parties to use a consent decree to create new collective bargaining provisions that changed teachers' seniority rights under their CBA. 961 F.2d 1335. Here, contractual rights for a private arbitration hearing, as determined by the DRB, may not be changed by the Consent Decree. The Appellate Court erred in allowing the Consent Decree to be used, through this public-policy analysis, as a weapon to undermine the terms of the Lodge's CBA.

Furthermore, as the Dissenting Justice points out, even if the Consent Decree could be considered a source of Illinois public policy, nothing in that document requires public attendance at disciplinary arbitration hearings or prohibits disciplinary arbitration hearings from continuing to be heard privately. Paragraph 711 of the Consent Decree, referred to as the "carve-out" paragraph, protects the Lodge's bargaining rights:

Nothing in this Consent Decree is intended to (a) alter any of the CBAs between the City and the Unions [defined as "unions representing sworn police officers," ¶ 710, which includes the Lodge]; 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 CBAs, including any Successor CBAs 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 CBAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAs 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.**⁸

⁸ Available at <https://www.chicagopoliceconsentdecree.org/Page-Attachments/CPCD/Resources/CONSENT/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf> (last accessed Jan. 19, 2026).

State of Illinois v. City of Chicago, 2019 WL 398703, Dkt. 703-1, ¶ 711 (N.D. Ill. Jan. 31, 2019) (emphasis added). Through Paragraph 711’s carve-out language, the Consent Decree itself disclaims any idea that it can be utilized to alter the Lodge’s CBA or impair the rights of its members under that CBA, including any new language that is the result of impasse resolution procedures before the DRB.

Additionally, the Appellate Court does not identify any provision of the Consent Decree that requires disciplinary arbitration hearings to be conducted in public, or that even implicitly references this topic. That is because there is nothing in that document addressing this issue, beyond vague and general references to openness and transparency. *See App. Ct. Op.*, ¶ 81 (asserting only that the Consent Decree “stated that it aimed to ensure that the critically important job of policing in Chicago was done fairly, transparently, and without bias, affording dignity to those who were served and protected and providing proper guidance, training, and support for the women and men who comprised the police force.”). The outer limit of any public policy is defined by the specific text creating that policy. *See City of Chicago*, 2020 IL 124831, ¶ 34. Thus, even if it were assumed that the Consent Decree could be considered a source of Illinois public policy, that document makes no mention of public attendance at arbitration, so it cannot support the Appellate Court’s conclusion that such hearings must be open to the public.

The majority further held that the past agreement between the Lodge and the City to have certain disciplinary matters heard before the Police Board, rather than through grievance arbitration, is evidence that a public policy exists (and that it is being violated). *Id.* at ¶¶ 82, 84. Like the Consent Decree, the prior, agreed-upon behavior of an employer and its employees’ labor organization does not amount to a legislative declaration of the

public policy of the State of Illinois. The Dissent explains that the prior practices of these parties were “by *consent*,” not due to any legislative mandate, and that “[n]o court in America has ever before found a well-defined and dominant public policy from the parties’ past practice.” *Id.* at ¶ 109 (emphasis in original).

The mere fact that the City conducted its Police Board hearings publicly in the past does not rise to the level of proving a well-defined and dominant public policy for the State of Illinois that all (or any) police disciplinary matters must be open to the public.⁹ The Lodge has a right under Section 8 of the IPLRA not to continue to consent to any disciplinary cases proceeding before the Police Board instead of grievance arbitration, as the DRB concluded. (C 1546-52).

Actions taken by a single municipality, standing alone, cannot establish policies of the State of Illinois. Indeed, it is just as accurate to state that the City’s officials have historically followed the constant practice of not allowing the public to attend **any** disciplinary grievance arbitrations involving the Lodge in the past (which the DRB found to be the *status quo*, C 1554-55), so a ruling requiring public arbitration would actually violate the City’s constant practices.¹⁰ Finally, as the DRB noted, in the past the City and the Lodge “mutually agreed otherwise” to allow separation cases to be heard by the Police Board rather than through the parties’ grievance procedures, but the Lodge

⁹ Notably, no law requires that the Police Board conduct its disciplinary hearings in public, meaning that any decision to open up past Police Board hearings to the public was discretionary and not mandatory.

¹⁰ Under the DRB’s Award, separation and 366-day-plus suspensions are now governed by the same rules that previously applied to other disciplinary grievance arbitrations. (C 1502). Thus, where an Officer does not elect arbitration for a separation case, or where the Lodge decides not to advance a grievance to arbitration, then that matter will proceed by default before the Police Board. (C 1503-06). The Award does not alter in any way the procedures followed by the Police Board, so presumably the Police Board will continue to conduct its hearings in public, just as the arbitrators will continue to conduct their hearings in private.

exercised its statutory right to no longer so agree. (C 1546). This prior agreement between the City and the Lodge, since withdrawn, cannot provide the basis of a well-defined and dominant public policy for Illinois.

The legislature has spoken directly on this matter, through FOIA and the Open Meetings Act (discussed *supra*), so it is improper for courts to look to any other sources to identify public policy. *Chicago*, 2020 IL 124831, ¶ 34. By relying on a settlement agreement and the past, agreed-upon, and negotiated practices between employer and union, the Appellate Court improperly based its brand-new public policy on the varying opinions and policy preferences of laymen, lawyers, and judges.¹¹

V. The Appellate Court Failed to Defer to the DRB’s Findings and Instead Replaced Them with Its Own Findings

The Appellate Court’s opinion conflicts with binding case law on the deference courts owe to the findings of an arbitrator. In deciding what procedures should govern arbitrations of discipline cases for separations and lengthy suspensions, the DRB found “the parties’ past practice” of private arbitration was the existing *status quo* for all disciplinary arbitration, including suspensions up to 365 days, and it concluded that there was no reason to depart from that *status quo* for suspensions in excess of 365 days, as

¹¹ At the Appellate Court, the City also argued (for the first time) that the Award should be vacated based on a public policy favoring public access to court proceedings, under the First Amendment to the U.S. Constitution. (City’s App. Br. at pp. 28-32). As discussed *infra*, this argument was not raised at the trial court and was therefore waived; and the Appellate Court correctly did not address it. To the extent the City still asserts this argument, it is easily dismissed. The qualified right to court access arises from criminal court proceedings and has only been applied to proceedings that “have historically been open to the press and general public.” *Press-Enter. Co. v. Superior Ct. of California for Riverside Cnty.*, 478 U.S. 1, 8 (1986). Here, the DRB found that the historical practice of private arbitration proceedings is the *status quo* between these parties (C 1554-55), meaning that arbitration has not historically been open to the public. Furthermore, “courts have found no First Amendment right of access to police disciplinary hearings.” *Osztust v. Town of St. John*, 212 F. Supp. 3d 770, 779 (N.D. Ind. 2016) (collecting cases). The First Amendment does not provide any basis for this Court to vacate the Award.

there was no basis to create an entirely new procedure for public arbitration “when that practice did not previously exist.” (C 1554-55). The arbitrator thus interpreted the parties’ prior contract language and past practices and found that the appropriate benchmark was not any historical Police Board procedures, but rather the parties’ own historical arbitration procedures. Courts are not empowered to second-guess those arbitral findings. *See, e.g., Town of Cicero*, 338 Ill. App. 3d at 371-72; *AFSCME II*, 173 Ill. 2d at 307.

The Appellate Court majority and the Circuit Court both failed to give the required deference to the DRB’s findings. Rather than accepting the Neutral Chair’s conclusion that the relevant *status quo* was derived from existing contractual arbitration procedures, the courts inserted their own judgment that the procedures previously followed (by agreement of the parties) at the Police Board were the relevant *status quo*, meaning that private arbitration would be a departure from that *status quo*. *See, e.g., App. Ct. Op.*, ¶ 82 (“the City and CPD have maintained a decades-old policy of having hearings for serious misconduct open to the public. ... we find that to suddenly shut the door after 60 years of open hearings severely undermines the public policies”); *id.* at ¶ 84 (“There was no consideration [by the DRB] of the 60-year policy of open hearings for serious police misconduct.”).

The Appellate Court’s conclusion that the DRB’s Award constitutes a radical change from *status quo* procedures appears to be its primary basis for finding a violation of public policy. *See id.* However, as the Dissent explains: “the City made this course of dealing argument to the arbitrator, and the arbitrator rejected it with reasoned elaboration. That type of contract decision rooted in the interpretation and construction of the parties’ prior collective bargaining agreements is necessarily binding on courts. The parties

expressly agreed to submit this type of question to the arbitrator, an expert in labor law and the parties' prior agreements. Even if the arbitrator made a mistake of law, it is his interpretation of the contract-not ours-that must control.” *Id.* at ¶ 109; *compare George Watts & Son*, 248 F.3d at 579.

While the Appellate Court majority may have disagreed with the Neutral Chair’s interpretation and findings with respect to which hearing procedures comprised the parties’ *status quo*, courts “may not disturb the arbitrator's findings on these issues.” *Vill. of Posen*, 2014 IL App (1st) 133329, ¶ 43. The majority erred in second-guessing the DRB’s findings of fact and interpretations of the prior contract and past practices of the parties. If, as required by well-established case law, this Court accepts the DRB’s findings on this issue, then it follows that the DRB’s decision to ***continue*** to hold disciplinary arbitration hearings in private is not a deviation from historical practices, and therefore does not support the conclusion that this provision violates any public policy.

VI. Neither the City Nor the Appellate Court Has Shown that the Award Clearly Violates Any Public Policy

Even if the Court were to assume, for the sake of argument, that FOIA or some other source of Illinois law embodies a well-defined and dominant public policy in favor of transparency and accountability for public employees in Illinois, the City has still failed to show that the DRB’s Award violates that policy. As noted *supra*, in applying the public policy exception, the second step requires the Court to determine whether the arbitrator’s award clearly violates that public policy. *AFSCME II*, 173 Ill.2d at 307-08. There was no basis for the Appellate Court to conclude that the DRB’s order to continue private arbitration hearings violated any identified public policy.

In *Eastern Associated Coal Corp.*, 531 U.S. 57, an employer sought to vacate an arbitration award that ordered a truck driver to be reinstated after he had twice tested positive for marijuana. The employer argued that this award violated a public policy against the reinstatement of workers who use drugs, derived from the Omnibus Transportation Employee Testing Act of 1991 and the Department of Transportation’s implementing regulations. *Id.* at 63. The U.S. Supreme Court held that although these statutory and regulatory provisions identified policies against drug use by employees in safety-sensitive transportation positions and in favor of drug testing, they also reflected a policy in favor of rehabilitation, and there was no specific law or regulation that required termination in these circumstances. *Id.* at 65. As the Supreme Court explained, “We hesitate to infer a public policy in this area that goes beyond the careful and detailed scheme Congress and the Secretary have created.” *Id.* at 67.

Similarly, in *AFSCME I*, this Court identified a public policy but held that no clear violation of that policy was proven. The employer in that case sought to vacate an arbitrator’s award that ordered reinstatement of an employee, after a four-month suspension, based on their mistreatment of a patient, asserting that public policy prohibited their reinstatement. *Id.* at 253. The Court found a public policy favoring the protection and care for persons with developmental disabilities. 124 Ill. 2d at 259. Yet the Court refused to vacate and instead confirmed the award, explaining: “There is simply no policy that mandates the discharge of all employees found guilty of mistreatment of a service recipient when the arbitrator expressly finds that the grievants were exemplary mental health employees, when punishment has been imposed, and where no nexus [sic] exists between the infraction and the patient’s tragic death.” *Id.* at 541.

Recently, in *Village of Hampshire v. Illinois Fraternal Order of Police Labor Council*, 2026 IL App (2d) 250080, an arbitrator ruled that the employer did not have just cause to terminate a police officer and ordered his reinstatement, and the employer sued to vacate on public policy grounds. The Appellate Court agreed that “there is a recognized public policy in Illinois that a police officer must be honest and not provide false, misleading, or incomplete statements in connection with his duties”, but clarified that this generalized policy does not mean that there is any “public policy against reinstatement of police officers found to be untruthful.” *Id.* at ¶ 40. Instead, that court explained, “[w]here there is neither an explicit nor implicit prohibition against the reinstatement, ‘the reinstatement of an employee who has violated an important public policy does not necessarily itself violate public policy.’” *Id.* at ¶¶ 31, 44 (citing *City of Highland Park v. Teamster Local Union No. 714*, 357 Ill. App. 3d 453, 462 (2d Dist. 2005)) (it cannot be “merely a value judgment or notion of the public interest, that implicitly forbids the employee's reinstatement”). Accordingly, the employer could not prove that the arbitrator’s award clearly violated the identified public policy.

Thus, even where a broad and generalized public policy is shown to exist, courts will uphold an arbitration award unless it is clearly proven that the award violates the explicit requirements of that policy. Here, the Court should hesitate to infer a violation of public policy that goes beyond the specific statutory provisions upon which that policy is based. Even assuming that FOIA and other sources represent a public policy in favor of transparency and accountability in all matters relating to municipal employees, the statute achieves those goals not by requiring real-time public access to any proceedings, but

instead by requiring that certain records be retained and made available to the public upon request. *See* 5 ILCS 140/1, 3, 7(1)(n).

The Consent Decree similarly does not support the City’s claim that the policy goals of transparency and accountability require public disciplinary arbitration hearings, because one of the guiding principles of transparency is stated in that Decree as providing for a thorough, fair, timely and efficient investigation to hold Police Officers accountable pursuant to a discipline system that is fair, timely, and consistent with due process. Consent Decree ¶ 423, *State of Illinois v.*, 2019 WL 398703, Dkt. 703-1. The Consent Decree does not explicitly or implicitly call for public disciplinary hearings, and the DRB’s order in this case amply satisfies the Consent Decree’s stated goals.

As held by the Appellate Court, there is no law, regulation or Consent Decree provision that requires a Police Officer’s arbitration hearing to be conducted in public. App. Ct. Op., ¶ 82. Neither the City nor the Appellate Court has shown that conducting an arbitration hearing in private, but subsequently making the final arbitration award public, clearly violates (or fails to satisfy) the policy of transparency underlining that statute. Similarly, even accepting that the Appellate Court has identified a public policy in favor of “effective law enforcement and the exposure of crime,” there is no basis to conclude that the DRB’s decision allowing for private grievance arbitration hearings would in any way undermine those policies, let alone clearly violate the specific requirements of those policies.

Indeed, any argument that the DRB’s Award violates public policy comes down to a political argument about what types of policies could potentially improve upon the level of transparency in local government. *See* App. Ct. Op., ¶ 84 (under second step of

public-policy analysis, court noted that “More importantly, there was no finding that such open hearings violated the officers’ due process or otherwise negatively impacted the officers,” without identifying any specific strictures of public policy being violated).

But as the opening paragraph of the Dissent explains: “In light of the impassioned political arguments raised by the City of Chicago and its *amici*, it is worth reiterating what this case is *not* about. It is *not* about the relative merit of open, public disciplinary proceedings for police. That public policy question properly belongs to the political branches of government, not well-intentioned judges.” *Id.*, ¶ 102 (Mitchell, J., Dissenting). There is no question that certain individuals believe that our State’s legal system could be improved upon and made more transparent by opening up Police Officers’ disciplinary arbitration hearings to public attendance. The Court’s decision in this case is not likely to put an end to the debate about what that system could or should look like. However, advancing the political argument that police discipline could be improved by making certain procedural changes to make hearings public, is not the same as proving that existing law clearly prohibits private arbitration hearings. If those changes are to be made at some point in the future, it will be through action by the General Assembly, not the Court. Unless and until Illinois law is changed to explicitly require publicly-held disciplinary arbitration hearings for government employees, there cannot be any public policy basis to vacate the DRB’s Award providing for private arbitration.

VII. The Appellate Court Erred by Considering Public Policy Arguments That Were Never Raised at the Circuit Court and Were Therefore Waived

The Appellate Court committed further reversible error by considering and relying upon brand-new public policy arguments raised by *amici* that were never raised by any party at the trial court and were therefore waived, including public policy

arguments for vacatur of the Award. “It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal.” *City of Chicago v. Int’l Bhd. of Elec. Workers, Local No. 9*, 2022 IL App (1st) 210850, ¶ 21 n.2 (quoting *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996)). This “prohibition on raising new arguments applies to vacatur appeals” in which parties seek to vacate labor arbitration awards. *Id.* (citing *Forest Pres. Dist. of Cook Cnty. v. Ill. Fraternal Order of Police Labor Council*, 2017 IL App (1st) 161499, ¶ 26). In *City of Chicago v. Int’l Bhd. of Elec. Workers, Local No. 9*, the City of Chicago attempted to raise a new public-policy argument for vacatur of an arbitrator’s award for the first time on appeal, based on a statute that was not cited or argued at the trial court, and the Appellate Court held that this argument was waived. 2022 IL App (1st) 210850, ¶ 21 n.2.

In the instant case, the only public policy argument advanced by the City at the trial court level was the policy of “transparency and accountability,” based solely upon the Consent Decree. (See C 903, ¶¶ 26, 55) (City’s Counterclaim); (C 1018-1023) (City’s Brief in Support of Motion for Summary Judgment) (both relying only on Consent Decree and no statutory or constitutional authorities). The Circuit Court’s decision to vacate the provision of the Award allowing for private arbitration hearings was based solely on this public policy of “accountability and transparency,” relying only on the Consent Decree and FOIA. (C 1838-1843).

On appeal, the City attempted to raise numerous new public policy arguments, including a public policy of “granting public access to government-sponsored adjudicatory proceedings” reflected in the “constant practice of government officials” (City’s App. Br. at 24), as well as other statutory and constitutional arguments. (*Id.* at 28-

32). In addition, *amici curiae* raised several more public policy arguments that were never presented to or considered by the Circuit Court, or raised by any party to this litigation. *See, e.g.*, (Academics *Amicus* Brief, p. 18) (public policy in favor of “effective enforcement of the State’s criminal law”); (Community *Amicus* Brief, pp. 12, 43) (public policy “favoring the effective protection of the lives and property of citizens”); (*id.*, p. 9) (public policy “providing remedies for violations of the State’s most fundamental laws”).

The Appellate Court denied the Lodge’s motion to strike the *amici curiae* briefs despite these brand-new arguments, concluding that the *amici* were addressing the issue of public policy before the court. App. Ct. Op., ¶¶ 52-53.¹² Then, when the Appellate Court announced a new public policy prohibiting private arbitration hearings for police disciplinary proceedings, the majority did not limit its analysis to the arguments that were raised at the Circuit Court (namely, transparency and accountability, based on the Consent Decree and FOIA). Instead, the Appellate Court incorporated several of the new public policy arguments raised by *amici*, including purported public policies “favoring effective law enforcement,” “favoring the exposure of crime,” and “favoring the investigation and prosecution of criminal offenses.” *Id.* at ¶¶ 78-82. None of these public policy arguments were raised by the City at the trial court level, so no record was developed in connection with any of these arguments. Accordingly, each of these new

¹² The Illinois Supreme Court “has repeatedly rejected attempts by *amicus* to raise issues not raised by the parties to the appeal.” *Karas v. Strevell*, 227 Ill. 2d 440, 450 (2008) (collecting cases). “[A]n *amicus* takes the case as he finds it, with the issues framed by the parties.” *Id.* (striking portion of *amicus* brief urging the court to abandon fact pleading in favor of notice pleading, where no party had raised that argument); *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 62 (2001) (disregarding argument of *amicus* that statute violated single subject rule, where that argument was not advanced by any party on appeal). Here, the Appellate Court should not have allowed the *amici* to raise public policy arguments that had never been raised by any party to this litigation, and it should not have relied upon those new arguments in formulating its declaration of public policy.

public policy arguments should have been deemed waived. The Appellate Court erred by considering these arguments, and by incorporating them into its ruling vacating a portion of the Award.

VIII. The Appellate Court’s Partial Vacatur of the Award Should Be Reversed Because the City Failed to Timely Raise Any Challenge to the Final Opinion and Award Within 90 Days of Its Issuance

The City’s challenge to the arbitration provisions included in the DRB’s Award was not filed within 90 days of the issuance of the October 19, 2023 Award. As such, neither the Circuit Court nor the Appellate Court should have even considered this untimely petition to vacate the Award. This provides an addition basis for this Court to reverse the Appellate Court and confirm the Award in its entirety.

The IPLRA requires a party challenging an interest arbitration award to file suit “within 90 days following the issuance of the arbitration order.” 5 ILCS 315/14(k). As used in Section 14(k), “[t]he term ‘issue’ means ‘to publish, put forth, circulate and to give out publicly or officially.’” *City of Calumet City v. Illinois Fraternal Order of Police Labor Council*, 344 Ill. App. 3d 1000, 1003 (1st Dist. 2003) (interest arbitration award was “issued” as of the day it was signed by all three members of the tripartite panel). This 90-day deadline is strictly enforced. *See, e.g., County of Peoria v. AFSCME, Council 31*, 167 Ill.App.3d 247 (3rd Dist. 1988) (affirming dismissal of Section 14(k) challenge filed just one day late, and explaining: “There is no dearth of instances where federal and state courts have dismissed actions seeking to challenge arbitration awards which were filed after the running of the applicable statute of limitations.”).

The UAA similarly imposes a 90-day limitation period for any petition to vacate an award. 710 ILCS 5/12(b). That provision of the UAA is incorporated in the IPLRA for purposes of judicial review of contractual labor arbitration awards. 5 ILCS 315/8 (“The

grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois ‘Uniform Arbitration Act’.”). Like Section 14(k), the limitations period under the UAA (and by extension, the IPLRA), is strictly enforced. “If, within the 90-day period following receipt of the arbitration award, a party fails to assert section 12 grounds for vacatur of an arbitration award, such grounds are barred and a trial court must confirm the award.” *Best Coin-Op, Inc. v. Clementi*, 120 Ill. App. 3d 892, 899 (1st Dist. 1983); *see also Illinois Dept. of Cent. Mgmt. Services v. AFSCME*, 298 Ill. App. 3d 640 (4th Dist. 1998) (petition to vacate award under UAA and IPLRA “filed 91 days after the award was received” properly dismissed as untimely).

The UAA only allows for judicial review of arbitration awards that are final; thus, courts do not have any authority to review “interlocutory” rulings. *See, e.g., Klehr v. Illinois Farmers Ins. Co.*, 2013 IL App (1st) 121843, ¶¶ 8, 16 (declining to review arbitrators’ interlocutory order granting discovery, explaining that “the courts cannot review the arbitrator’s ruling on that issue until after the arbitration process is complete.”). Once the final award is issued, however, the 90-day clock immediately starts, and the award may be confirmed and enforced in court. *See Kalish v. Illinois Educ. Ass’n*, 166 Ill. App. 3d 406, 410 (1st Dist. 1988) (award deciding merits of the dispute was final and subject to enforcement, even while a motion to reconsider was pending, because the parties had agreed to the finality of the award in their contract).

As the DRB noted in its Award, the Lodge and the City have adopted their own impasse resolution procedures through Section 28.3(B) of their CBA “*as a matter of contract*,” but have incorporated some of the specific interest arbitration provisions of the IPLRA. (C 1559) (emphasis in original). This alternative procedure is authorized by

Section 14(p) of the IPLRA. As a result, “this interest arbitration is really a quasi-contractual and statutory process,” governed in part by Section 14(k) of the IPLRA, and in part by the UAA’s provisions for contractual arbitration awards. (*Id.*). Under either statute, the City was required to file any petition to vacate the Award within 90 days.

The Award was issued via email and received by the City on October 19, 2023. (C 892, 895; C 1533-87). Thus, October 19, 2023, is the date of “issuance of the arbitration order” under Section 14(k), and is also the date on which the final award was delivered, for purposes of Section 12(b) of the UAA. The Award incorporated all prior awards and fully resolved all remaining issues. (C 1533-87). The City’s Counterclaim, in which it first raised a challenge to the Award, was filed as an attachment to a motion on February 15, 2024 – 119 days after the Award was issued – and filed as a pleading on February 22, 2024. (C 887-928; C 8-9). This is plainly beyond the 90-day window.

The Lodge moved to dismiss the City’s challenge as untimely. In response the Circuit Court held that only Section 14(k), and not the UAA, applies to the City’s challenge to the Award. (C 1833-34). It then concluded that because the DRB issued a “Supplemental Final Opinion and Award” on January 4, 2024, this effectively reset the 90-day clock, making the City’s challenge timely. (C 1833-35). The Appellate Court upheld this ruling without any substantive discussion or analysis whatsoever, simply concluding: “We also affirm the circuit court's determination that the City's counterclaim was not untimely filed.” App. Ct. Op., ¶ 99.

The Circuit Court’s focus on the January 4, 2024 Supplemental Award, and the Appellate Court’s apparent acceptance of that reasoning, is misplaced. The October 19, 2023 Award was not an “interlocutory” ruling, like the interlocutory decisions on

discovery matters discussed in *Klehr*, 2013 IL App (1st) 121843, or like the various scheduling orders and interim rulings made by the DRB in this case (discussed at App. Ct. Op., ¶¶ 19-31). Each of those interim rulings was an “interlocutory” award that was not ripe for confirmation or vacatur under Section 14(k) or the UAA until a final award issued. In contrast, the “Final Opinion and Award,” which fully and finally decided all disputed matters, was not interlocutory – as its title suggests, it was a final award, addressing and deciding all open issues, and subject to immediate confirmation.

The DRB Neutral Chair’s decision to issue a “Supplemental Final Award” on January 4, 2024, does not replace the Award or render the Award interlocutory in nature. Unlike the October 19th Final Award, the January 4th Supplemental Award does not include as attachments any specific contract language for the CBA being awarded by the DRB. (C 1598-61). That Supplemental Award centered on the Neutral Chair’s determination that the Mayor and members of the Chicago City Council violated their oaths of office by refusing to adopt the October 19th Final Award. (*Id.*). It did not amend, modify, or reconsider the contract language previously adopted in the Final Award, and instead simply confirmed that “the arbitration provisions of the Final Award stand unchanged.” (C 1661).

More importantly, that Supplemental Award was not authorized or required by the CBA’s language. Instead, the parties’ CBA simply required that the parties meet to determine whether they would agree to make any modification to the Award. (C 1059).

The CBA specifically provides:

If the City Council should reject the arbitrated agreement, the parties shall meet again within ten (10) days of the Council's vote to discuss the reasons for the Council's rejection and to determine whether any modifications can

be made to deal with the problems; but either party may thereafter terminate this Agreement upon ten (10) days' written notice to the other.

(C 1061) (CBA Section 28.3(B)(9)). Under this language, the “parties,” meaning the Lodge and the City, were required to meet after City Council rejected the October 19th Award, in order to discuss the reasons behind that rejection and to see if they could reach some agreement to address the City Council’s concerns. However, that Section does not state that the DRB must be reconvened, or that the DRB is required (or empowered) to issue a “Second Final Award” that would then be submitted to the City Council for another vote. Contrary to the City’s arguments and the conclusions of the lower courts, this procedure does not require, authorize, or even contemplate a second final award.¹³

Although the Appellate Court does not provide any analysis of the issue of timeliness, it does state: “The City and the Lodge understood and agreed that if the City Council rejected the arbitration terms included in the October 19, 2023, Final Opinion and Award, the matter would be returned to the DRB for further consideration and issuance of a supplemental award. This understanding was also reflected in the October 19, 2023, award itself.” App. Ct. Op., ¶ 33. This purported understanding and agreement is not reflected anywhere in the record. With respect to the Award itself, the DRB only noted that if it were rejected by City Council, the matter would be returned to the DRB to discuss the reasons for rejection, consistent with the text of the CBA:

¹³ Although the “Supplemental” Award was not authorized by the CBA, the City Council took a second vote, and also rejected it. App. Ct. Op., ¶ 33. If the City and the lower courts’ proposed reading of Section 28.3 is accepted, then the parties should have subsequently been required to reconvene the DRB after that second vote, to discuss any potential adjustments, followed by the issuance of a third “final” award to be submitted to City Council for another vote. Notably, the City did not request another hearing or issuance of a second Supplemental Award, nor do they challenge the finality of the January 4th “Supplemental” Award. This illustrates the absurdity of this proposed interpretation of the relevant CBA language.

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).

(C 1558-59). That Award makes no reference to any supplemental awards to be issued, which is in line with Section 28.3(B)(9)'s procedures.

In finding the City's challenge to be timely, the Circuit Court relied upon two appellate court cases in which an interest arbitration award was rejected by the governing body, and a supplemental decision was issued that replaced the previous award, thereby resetting the 90-day limitations clock. (C 1834-35) (citing *County of Peoria*, 167 Ill.App.3d 247; *County of Cook v. Ill. Fraternal Order of Police Labor Council*, 358 Ill.App.3d 667 (1st Dist. 2005)). However, the question of timeliness in each of those cases was governed by Section 14(n) of the IPLRA, which explicitly does not apply to the alternative impasse procedure in the CBA between the Lodge and the City. That Section of the IPLRA provides in relevant part:

If the governing body affirmatively rejects one or more terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and **the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms.** Any supplemental decision by an arbitration panel or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section.

5 ILCS 315/14(n) (emphasis added).

Thus, Section 14(n) affirmatively requires the issuance of a supplemental arbitration award, which must be submitted for ratification, whenever an interest

arbitration award is rejected by an employer. The proceedings in both *County of Peoria* and *County of Cook* were subject to all of the IPLRA's statutory impasse resolution procedures, including Section 14(n), meaning that in both of those cases, the supplemental decision was mandatory, as was a second ratification vote on that decision.

In contrast, as previously noted, the Lodge and the City have agreed to their own contractual impasse resolution procedures under Section 28.3(B) of the CBA. App. Ct. Op., ¶ 18; (C 1059-61). Section 14(p) of the IPLRA expressly authorizes parties to remove themselves from the Act's statutory interest arbitration procedures in this manner. 5 ILCS 315/14(p) ("Notwithstanding the provisions of this Section 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."). Consistent with that provision, Section 28.3(B) establishes its own timelines, procedures, and rules that govern impasse resolution for successor CBAs between these parties. (C 1059-61).

With respect to the procedures outlined in Section 14 of the IPLRA, the parties' CBA only adopts four subsections: "As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein above shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply: Subsections (h), (i), (k) and (m)." (C 1061). Absent from this list is Section 14(n), which required the arbitrators in *County of Peoria* and *County of Cook* to issue a supplementary decision subject to a second governing body vote. In place of Section 14(n), the Lodge's CBA only requires that the Lodge and the City "meet again ... to discuss the reasons for the Council's rejection and to determine

whether any modifications can be made to deal with the problems.” (C 1061). The parties did that, without reaching an agreed resolution. The October 19th Award remained the final authorized interest arbitration award, and there is no statutory or contractual basis to extend the strict 90-day deadline for the City to challenge that Award.

There was no justification for the City not to raise its public-policy challenges to the Award within 90 days of its issuance. The Lodge had already filed its lawsuit to confirm the Award on January 4, 2024, which was served on the City on January 9, 2024. (C 1622; C 509). Both of those dates fall within the 90-day period following the issuance of the October 19th Award, so from a practical standpoint, the City did not even have to commence a new civil action in order to timely raise its challenge to the Final Award. Furthermore, neither the Neutral Chair, nor the Lodge, nor the plain text of the CBA had given the City any reason to expect that a supplemental final award would be issued – the Award would not be disturbed absent agreement of the parties (and in fact it was not disturbed). For these reasons, the City’s petition to vacate the Award was untimely, and both lower courts erred in considering these time-barred challenges to the Award.

CONCLUSION

The Lodge respectfully requests that this Court reverse the Appellate Court’s partial vacatur of the Arbitration Award and instead confirm the Award in its entirety.

Respectfully submitted,

/s/ Matt Pierce

Matt Pierce

/s/ Joel A. D'Alba

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CERTIFICATE OF COMPLIANCE

I certify that this Appellant's Brief conforms to the requirements of Rules 315 and 341(a) and (b). The length of this Brief, excluding those items identified as excluded from the length limitation in Rule 341(b)(1), and those matters to be appended to the Brief under Rule 342(a), is 48 pages.

/s/ Matt Pierce

Matt Pierce

CERTIFICATE OF SERVICE

The undersigned certifies that on February 4, 2025, a copy of the foregoing Brief of Appellant, Chicago John Dineen Lodge #7, was served on the following counsel of record by the Odyssey eFileIL system and via email:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

By: /s/ Matt Pierce
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corrected copy

NOTICE
 The text of this opinion may
 be cited as authority
 prior to the filing of
 a Petition for Writ or
 the disposition of the case.

2025 IL App (1st) 240875

FIFTH DIVISION

August 8, 2025

No. 1-24-0875

IN THE
 APPELLATE COURT OF ILLINOIS
 FIRST JUDICIAL DISTRICT

CHICAGO JOHN DINEEN LODGE No. 7,	)	
	)	
Plaintiff-Appellant,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
v.	)	
THE CITY OF CHICAGO; THE DEPARTMENT OF	)	No. 24 CH 00093
POLICE; BRANDON JOHNSON, in His Official	)	
Capacity as Mayor; LARRY SNELLING, in His Official	)	The Honorable
Capacity as Superintendent of the Chicago Police	)	Michael T. Mullen,
Department; and THE CHICAGO CITY COUNCIL,	)	Judge, Presiding.
	)	
	)	
Defendants-Appellees.	)	

JUSTICE ODEN JOHNSON delivered the judgment of the court, with opinion.
 Presiding Justice Mikva concurred in the judgment and opinion.
 Justice Mitchell concurred in part and dissented in part, with opinion.

OPINION

¶1 Following interest arbitration proceedings after an impasse in collective bargaining negotiations before the Dispute Resolution Board (DRB), Chicago John Dineen Lodge #7 (the Lodge) filed a petition to confirm and enforce final and binding arbitration awards in the circuit

A 001

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court of Cook County. The City of Chicago, Department of Police, Brandon Johnson in his official capacity as Mayor (Mayor), Larry Snelling in his official capacity as Superintendent of the Chicago Police Department (Superintendent), and the Chicago City Council (City Council) (collectively the City), filed a counterclaim to reject the arbitration award. The parties then filed cross motions for summary judgment, while the Lodge additionally filed a section 2-619.1 (735 ILCS 5/2-619.1 (West 2022)) motion that the City's counterclaim was untimely.

¶ 2 The circuit court issued a memorandum opinion and order, which denied the Lodge's section 2-619.1 motion, finding that the City's counterclaim arose under section 14(k) of the Illinois Public Labor Relations Act (Public Labor Act) (5 ILCS 315/14(k) (West 2022)) rather than section 12(b) of the Uniform Arbitration Act (710 ILCS 5/12(b) (West 2022)). The court further concluded that several portions of the arbitrator's award were neither arbitrary nor capricious. However, the circuit court concluded that the arbitrator's decision to require private arbitration was contrary to public policy and that the decision to require that officers facing serious discipline should remain on pay status was arbitrary and capricious.

¶ 3 The Lodge appeals, contending that the circuit court (1) failed to give proper deference to the arbitration award and impermissibly rejected contract interpretations and factual findings made by the arbitrator; (2) misapplied the public policy exception to the presumption of validity for arbitration awards in vacating the arbitrator's finding that private arbitrations for serious disciplinary matters was required; (3) ignored the arbitrator's factual findings with respect to the status quo of the pay status for officers subject to suspensions over one year or discharge and the arbitrator's application of the presumption of innocence; and (4) erred in finding that the City's counterclaim was timely. The Lodge also contends that it was entitled to attorney fees under section 14(k) of the Public Labor Act (5 ILCS 315/14(k) (West 2022)).

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This court held oral arguments on this matter on June 17, 2025. For the following reasons, we affirm in part and reverse in part.

¶ 4

I. BACKGROUND

¶ 5

The factual background comes from the circuit court's memorandum opinion and order entered on March 21, 2024.

¶ 6

A. The Collective Bargaining History Between the Parties

¶ 7

The Lodge is the exclusive collective bargaining representative for Chicago Police officers below the rank of Sergeant. A summary of the bargaining history is fully set forth in the arbitrator's Supplemental Interim Opinion and Award, dated August 2, 2023; in the Final Opinion and Award, dated October 19, 2023; and in the Supplemental Final Opinion and Award, dated January 4, 2024. We will only reference information that is relevant to the determination of this appeal.

¶ 8

The Lodge and the City have been engaged in formal collective bargaining since 1981. Since 1981, the Lodge and the City have negotiated 12 collective bargaining agreements. Relevant to this appeal, the City and the Lodge were parties to a collective bargaining agreement (CBA) originally in effect from July 1, 2012, to June 30, 2017.

¶ 9

The Superintendent of Police does not have the authority to discharge or separate a non-probationary Chicago Police Department (CPD) officer. This was reflected in section 8.8 of the 2012-2017 CBA, which provided that the Superintendent's authority was capped at suspending an officer up to 365 days. Additionally, this is reflected in both a City ordinance and the Illinois Municipal Code, which provide that the authority to discharge or suspend an officer for more than 365 days is reserved for the Chicago Police Board (Police Board). See 65 ILCS 5/10-1-18.1 (West 2022); Chicago Municipal Code § 2-84-030 (amended Nov. 17,

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2021). The Police Board is an independent civilian body that provides oversight of the Chicago Police Department. The Police Board's nine members are all Chicago residents who were nominated by the Community Commission for Public Safety and Accountability, appointed by the Mayor and approved by the City Council.

¶ 10 Section 8.8 of the 2012-2017 CBA also provided that officers facing serious discipline were suspended without pay pending separation. Any such suspension was subject to review by a Police Board hearing officer within seven days of the notice of suspension. See Police Board Rules, § IV(D). All other City CBAs allow for arbitration or Human Resources Board hearings as an appeal from dismissal; however, none of the CBAs permit an employee to remain in paid status pending a hearing or arbitration.

¶ 11 B. The City's Consent Decree

¶ 12 On August 29, 2017, the State of Illinois filed a lawsuit in the United States District Court for the Northern District of Illinois (District Court) against the City under several statutes and constitutional provisions seeking to enjoin the CPD from engaging in a repeated pattern of using excessive force, including deadly force, and other misconduct that disproportionately harmed Chicago's African American and Latino residents. On January 31, 2019, the District Court issued a Memorandum and Opinion approving a final Consent Decree between the State of Illinois and the City in which it stated that the decree aimed to ensure that the critically important job of policing in Chicago was done fairly, transparently, and without bias, affording dignity to those who were served and protected and providing proper guidance, training, and support for the women and men who comprised the police force.

¶ 13 The Consent Decree identified "accountability and transparency" as key principles in its process for holding officers accountable for misconduct. Among other things, the Consent

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Decree required the City to establish criteria for the selection of Police Board members and to ensure that the Police Board members and hearing officers received training on topics including constitutional law, police tactics, investigations of police conduct, impartial policing, policing individuals in crisis, CPD policies, procedures, and disciplinary rules, procedural justice, and community outreach.

¶ 14 C. The Successor Agreement to the 2012-2017 CBA

¶ 15 In October 2017, the City and the Lodge began negotiations over a successor agreement to the 2012-2017 CBA. In the initial phase of negotiations, completed in July 2021, the parties reached an agreement on various terms for a successor agreement, including the time period of the agreement (July 1, 2017, through June 30, 2025); a 20% base salary increase; a duty availability allowance; a uniform allowance; health care commitments and contribution increases; salary cap increases; prescription drug deductible modifications; retiree health insurance contributions; and police accountability provisions. Those terms were ratified by the City Council on September 14, 2021.

¶ 16 After completion of the first phase of negotiation, the parties continued to negotiate over numerous unresolved issues. The parties exchanged proposals in late 2021 and participated in six formal bargaining sessions in February, May, June, July, and November 2022. After reaching an impasse, the Lodge and the City engaged in seven mediation sessions in August, September, and October 2022. Despite the negotiations and mediation sessions, the parties were unable to resolve many of the remaining disputed issues.

¶ 17 D. Impasse Arbitration

¶ 18 Under Section 28.3(B) of the 2012-2017 CBA, if the parties were unable to reach complete agreement on terms of a successor agreement, the disputed issues are referred to a three-person

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Dispute Resolution Board (DRB), consisting of one member selected by each of the parties and a third member to be jointly selected by the parties, with the third member serving as the Neutral Chair. This provision essentially encompassed impasse interest arbitration as provided for in the Public Labor Act. See 5 ILCS 315/1 *et seq.* (West 2022). A DRB was established to address the issues remaining unresolved between the City and the Lodge after their negotiations and mediation sessions stalled.

¶ 19 In September 2022, the Neutral Chair was appointed pursuant to procedures established by the American Arbitration Association (AAA). After meeting with the parties, the Neutral Chair issued a scheduling order that formalized the process for proceedings so that any remaining matters in dispute between the parties could be addressed. The order also set deadlines for the submission of evidence and pre-hearing and responsive briefs, the potential for mediation, and the identification of issues that the Neutral Chair deemed necessary to be heard in any hearing. The process was to be completed by April 20, 2023.

¶ 20 The City identified 15 issues and the Lodge identified 17, with over 50 sub-issues to be resolved. Both sides also submitted their final offers. The Lodge's final offer on December 16, 2022, proposed that the separation of an officer from service should be subject to grievance arbitration. The Lodge also proposed that officers would not be subject to suspension without pay pending dismissal.

¶ 21 In its December 16, 2022, final offer and response to the Lodge's request for arbitration of dismissal cases, the City proposed that cases of dismissal or suspensions in excess of 365 days would continue to be heard by the Police Board in the first instance, but if a Police Board decision resulted in the separation or suspension in excess of 365 days, the Lodge would then be entitled to invoke grievance arbitration challenging the suspension or separation under

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Article 9 of the Agreement. The City also proposed that the arbitrator should be a resident of Cook County and have completed the same training as required for members of the Police Board under the Consent Decree. Further, the City proposed that the arbitration hearings should be open to the public in the same manner as hearings before a hearing officer employed by the Police Board. The City further proposed that the arbitrator should be supplied with the complete record of the Police Board hearing process and that the arbitrator should give deference to the findings of the Police Board. However, the arbitrator could not overrule the Police Board's findings unless the Lodge demonstrated by clear and convincing evidence that the findings were erroneous with respect to an issue of fact or the existence of cause for separation.

¶ 22 E. Interim Arbitration Opinion and Award

¶ 23 On June 26, 2023, the Neutral Chair issued a 74-page Interim Opinion and Award that accepted the Lodge's proposal in its entirety, specifically allowing CPD officers the option of having their grievances regarding separations and suspensions in excess of one year to be decided by an arbitrator in the first instance rather than by the Police Board. In accordance with the Interim Opinion and Award, on July 13 and 14, 2023, the Lodge and the City submitted their proposed language for the CBA regarding the arbitration of serious discipline.

¶ 24 In response, the City modified its prior proposal by dropping the requirement that separations and suspensions in excess of one year first be heard by the Police Board; however, the City's proposal preserved the existing practice of the Superintendent filing charges for suspension in excess of 365 days or separation. In such cases, an officer would not receive pay once the written charges were filed, in accordance with the existing rules, subject to review by a Police Board hearing.

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¶ 25 The City further proposed that the arbitrator be a resident of Illinois and have completed the same training (or certify that he or she had read the City's training materials) required for members of the Police Board pursuant to Paragraphs 540-543 of the Consent Decree. The City also proposed that the arbitration hearing be open to the public in the same manner as hearings before the Police Board. Additionally, the City proposed that its suggested procedure would apply only in those instances where written charges were filed by the Superintendent on or after the date of ratification of the Successor CBA.

¶ 26 In contrast, the Lodge proposed that arbitration proceedings for separation or suspensions exceeding 365 days be private and not open to the public. The Lodge further proposed that the award should apply retroactively to any case filed after August 1, 2021, that had not proceeded to a full evidentiary hearing.

¶ 27 The Neutral Chair subsequently requested that the parties submit comments on each other's proposals. In the City's comments, the City noted that the Lodge's proposal that an officer subject to discharge remain in pay status pending an arbitration hearing was unprecedented and at odds with how challenges to discharges were handled under the City's 43 collective bargaining agreements with other unions. The City further maintained that retroactive application of the arbitration option would be unworkable and that no consideration of the professional responsibility of arbitrators mandated that discharge hearings should be closed to the public.

¶ 28 On August 2, 2023, the Neutral Chair issued a 52-page Supplemental Interim Opinion and Award. With respect to the arbitration of grievances protesting separations and suspensions in excess of 365 days, the Neutral Chair found that the proposals from both the Lodge and the

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City were so unreasonable that the “selection of the more reasonable offer was not possible, thus again forcing a formulation of the language by [the] Board.”

¶ 29 In formulating such language, the Neutral Chair rejected the City’s proposals that the arbitration option include maintenance of the long-established practice that officers confronting the prospect of separation do not remain on pay status (subject to review by a Police Board hearing officer); that the arbitration hearing be open to the public; that the arbitrator be provided with the same training materials required of Police Board members; and that the arbitration option apply prospectively. The Neutral Chair deemed the City’s proposal facially unreasonable, finding that the City sought to “maintain crucial elements of the Police Board process.”

¶ 30 The Neutral Chair further determined that the City’s proposal that arbitration hearings in cases involving serious discipline cases be open to the public was contrary to the law, as arbitration was inherently private. In support of that finding, the Neutral Chair referenced the rules of the AAA and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators.¹ The Neutral Chair did not address whether there was a public interest in transparency and accountability in cases involving serious discipline of sworn police officers. Further, the Neutral Chair did not identify problems of any kind resulting from the lengthy history of Police Board hearings being open to the public.

¶ 31 In the August 2, 2023, Supplemental Interim Opinion and Award, the Neutral Chair concluded that the arbitration option for serious disciplines would be retroactive to September

¹The circuit court noted that those rules were promulgated by private bodies that apply only to arbitrators and private parties that agree to follow them.

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14, 2022, which was the date of his appointment as Neutral Chair. Despite not finding that the City had stalled the interest arbitration proceedings, the Neutral Chair nevertheless concluded that not awarding retroactivity on this issue would have a chilling effect on collective bargaining by encouraging one party to delay the outcome.

¶ 32 On October 19, 2023, the Neutral Chair issued a Final Opinion and Award incorporating the prior tentative agreements between the parties and the Interim and Supplemental Interim Opinions and Awards regarding procedures for grievance arbitration of serious police discipline. The City dissented from that award. On December 13, 2023, the City Council ratified by ordinance all the remaining terms resolved through negotiation, mediation, and impasse arbitration proceedings, with the exception of the grievance arbitration option for police officer discipline cases involving separation or suspensions in excess of 365 days. As to those provisions, the City Council expressly rejected the contract language included in the Neutral Chair's award. The City Council also rejected the provision that officers facing serious discipline would remain in pay status during their disciplinary proceedings.

¶ 33 The City and the Lodge understood and agreed that if the City Council rejected the arbitration terms included in the October 19, 2023, Final Opinion and Award, the matter would be returned to the DRB for further consideration and issuance of a supplemental award. This understanding was also reflected in the October 19, 2023, award itself. In accordance with the parties' agreement, the terms rejected by the City Council were referred back to the DRB to discuss the concerns of the City Council that led to its rejection and to determine whether modifications to the contract could be made. The DRB subsequently met on December 21, 2023, and on January 4, 2024, the Neutral Chair issued a 64-page Supplemental Final Order and Award, restating the previous terms included in the Final Award from October 2023. The

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City Council subsequently rejected the Supplemental Final Award on February 15, 2024, by a vote of 32-18.

¶ 34 F. The Circuit Court's Judicial Review of the Arbitration Award

¶ 35 As noted above, on January 4, 2024, the Lodge filed a petition to confirm the arbitration award in the circuit court of Cook County and the City filed a counterclaim on February 23, 2025, with leave of court. The Lodge subsequently filed a combined section 2-619.1 (735 ILCS 5/2-619.1 (West 2022)) motion based on sections 2-615 (*id.* § 2-615) and 2-619(a)(5) (*id.* § 2-619(a)(5)) to dismiss the City's counterclaim as untimely because it was filed more than 90 days after issuance of the Neutral Chair's October 19, 2023, Final Order.

¶ 36 The circuit court rejected the Lodge's section 2-619.1 motion in its entirety. First, the court rejected the section 2-615 portion of the motion on the basis that it could not determine that the City violated the applicable statute of limitations based on the well-pled facts in its counterclaim. With respect to the section 2-619(a)(5) portion of the motion, the court noted that the Lodge argued that the City's counterclaim was based on section 12(b) of the Uniform Arbitration Act (710 ILCS 5/12(b) (West 2022)). However, the court found that the City's counterclaim actually arose under section 14(k) of the Public Labor Act (5 ILCS 315/14(k) (West 2022)), which specifies that the deadline to file such petition runs from the date of the issuance of the arbitration order that became the subject of further interest arbitration proceedings. The circuit court found that it was undisputed that the City's counterclaim was filed within 90 days of the supplemental final award, which became the final award, and thus denied the Lodge's section 2-619(a)(5) portion of the motion.

¶ 37 The circuit court further found that the Neutral Chair's decisions to allow the Lodge the option of having an arbitrator or the Police Board for serious disciplinary cases and to require

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that any arbitration proceed in a private forum were neither arbitrary nor capricious, finding that the conclusions were thorough and considered. The court further found that the decision to allow an officer to elect either arbitration or a Police Board hearing was not against public policy and granted the Lodge's request to confirm that part of the award. The circuit court also found that the Neutral Chair's retroactivity ruling and the rejection of arbitrator training were neither arbitrary nor capricious and granted the Lodge's request to confirm those parts of the award.

¶ 38

However, although the circuit court concluded that the Neutral Chair's decision to require private arbitration was not arbitrary or capricious, the court found that it was contrary to public policy. The circuit court determined that, with respect to the award's restriction on public access to arbitrations of serious police disciplinary cases, there was a well-defined and dominant public policy that existed. The court based this conclusion in part on the January 2019 Consent Decree between the City of Chicago and the State of Illinois that was the result of an investigation initiated by the United States Department of Justice as noted above. The stated goals of the Consent Decree were to address and reform "critical deficiencies at the CPD, including departmental policies and practices, such as the use of force, accountability, training, community policing and engagement, supervision and promotion, transparency and data collection and officer assistance and support." Pursuant to the Consent Decree, the City was required to increase and promote transparency in matters of police accountability. The circuit court found that this was clear evidence of the public policy in this State—the goal of having an open and transparent government—and that accountability and transparency were clearly identified in the Consent Decree, which evidences the State's determination to ensure that police discipline cannot occur in a private forum. The court specifically found it clear that

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accountability and transparency, as it related to the CPD, was a well-defined and dominant public policy of the State of Illinois and pointed to specific paragraphs contained in the Consent Decree to support its finding.

¶ 39 The court further found that the State has legislatively demonstrated the importance of transparency regarding the affairs of government through its Freedom of Information Act (FOIA). 5 ILCS 140/1 *et seq.* (West 2022). FOIA explicitly states in section (1) that

“[i]t is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.” 5 ILCS 140/1 (West 2022).

¶ 40 The circuit court noted that nothing in the Public Labor Act or any other provision of applicable law mandated reversal of the longstanding practice of hearings in serious police disciplinary cases being open to the public. The court further noted that it was well known that many members of the community were deeply and unfortunately suspicious of police and the process by which the CPD seeks to hold officers accountable for serious misconduct; as such, there was a paramount public interest and need for the transparency of the more serious disciplinary cases. Additionally, the circuit court noted that it was significant that there was no legally mandated presumption of privacy in arbitration, finding that the standards relied on by the Neutral Chair were rules set in place by private bodies and that private parties in those instances chose to avail themselves of those rules. The court ultimately denied the Lodge’s

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request to confirm that portion of the award and granted the City's request to vacate that portion of the award.

¶ 41 With respect to the Neutral Chair's decision to require pay pending dismissal or suspensions of more than 365 days, the circuit court found that it was arbitrary and capricious. The court noted that, for the entirety of the City's more than 40-year collective bargaining history with the Lodge, the City has always had the authority to suspend an officer without pay pending dismissal or suspension in excess of 365 days, subject to the officer's right to challenge the suspension through a preliminary hearing before the Police Board.

¶ 42 The court found that the present system struck an appropriate balance between protecting officers from unfair suspension and the City's interest in not having to continue paying an officer during a period when it could not send the officer out on emergency calls. The court questioned the Neutral Chair's conclusion that officers should be entitled to remain in pay status pending serious discipline because there was no "rational basis" to distinguish between cases involving suspensions of up to 365 days and suspensions of 366 days or more. The court found that there was a clear and rational basis for the current practice; in a suspension case, the employer implicitly agrees that the officer is potentially deserving of reinstatement at some point in time. In a case involving separation, that employee is no longer a police officer. An officer who is acquitted and reinstated after a hearing can be made whole through back pay and monetary relief, but if the City prevailed at the disciplinary hearing, there was no mechanism that would allow the City to recover wages paid to the employee while the dismissal case was pending.

¶ 43 The court distinguished the Neutral Chair's reliance on the bedrock presumption that "a defendant was innocent until proven guilty," noting that it was a constitutional protection that

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only applied in criminal proceeding and the suspension or termination of employment was not a criminal proceeding. The circuit court concluded that the Neutral Chair's decision that the constitutional notion of innocent until proven guilty, without a finding that the current policy implicated the officers' due process rights, required upending the balance that the City and the Lodge had maintained for the past 40 years. The court found that this ran directly contrary to the fundamental principles that the Neutral Chair was required to follow when issuing his award. The court further concluded that the right to arbitration did not imply the existence of a statutory right to remain on the payroll during the discharge proceeding, as evidenced by the fact that no other city employee accused of dischargeable conduct had a right to suspension with pay pending arbitration, and the Neutral Chair did not identify any rational basis to radically depart from, instead of preserving, the status quo on that issue. The circuit court found that this decision was arbitrary and capricious and denied the Lodge's request to confirm that portion of the award.

¶ 44 The circuit court further found that the City's request for a declaratory judgment did not have a proper basis because the doctrine of nonliability for past conduct bars such a request and that it was an arbitrable issue that should be necessarily decided in an arbitration proceeding. The court denied the City's motion for summary judgment on that issue and granted the Lodge's cross-motion for summary judgment on that issue.

¶ 45 Finally, the circuit court denied the Lodge's request for attorney fees, noting that its argument was not well-developed and that while the court had both agreed and disagreed with the City's analysis of certain issues, it did not mean that the City was without a proper basis to pursue the litigation. The court found that the City had a clear and good faith basis to address

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the underlying awards in the manner that it did and, based on the court's conclusions, both parties could be considered prevailing parties.

¶ 46 The circuit court's order was entered on March 21, 2024, and the Lodge filed its timely notice of appeal on April 19, 2024.

¶ 47 During briefing, this court allowed the filing of *amicus curiae* briefs in support of the City. The Illinois Attorney General's *amicus curiae* brief asserted that this court should affirm the circuit court's rejection of the arbitration award as to serious CPD disciplinary matters because public transparency was a cornerstone goal of the Consent Decree, including in police disciplinary matters and eliminating public access to hearings would undermine both the Consent Decree's reforms and public confidence in CPD. The *amicus curiae* brief of Academics and Policy Groups for Police Accountability also asserted that the circuit court correctly concluded that the State of Illinois has a well-defined and dominant public policy requiring transparency and accountability related to police disciplinary matters and further that private arbitration proceedings would undermine that public policy. The *amicus curiae* brief of Organizations and Community Leaders that Represent Victims and Survivors of Chicago Police Misconduct echoed the sentiments of the other briefs regarding the well-defined and dominant public policy of accountability and transparency and discussed well-known examples of serious police misconduct. The Lodge filed a motion to strike the *amicus curiae* briefs, which is taken with the case.

¶ 48 II. ANALYSIS

¶ 49 While the Lodge divides its issues into several separate contentions as noted above, they amount to the following: (1) whether the City's counterclaim was untimely; (2) whether the circuit court misapplied the public policy exception to the presumption of validity for labor

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arbitration awards by ignoring statutory and constitutional statements of public policy and asserting its own unsupported notions of public policy instead; specifically, that FOIA does not create a well-defined public policy, nor was the consent decree a well-defined public policy; (3) whether the circuit court erred by vacating the DRB's decision to require pay pending a hearing on an officer's dismissal, as the DRB's decision was neither arbitrary nor capricious, essentially ignoring the DRB's factual findings with respect to the status quo of the pay status for officers subject to disciplinary adjudications and rejecting the DRB's factual findings on the past practice of the presumption of innocence; and (4) whether plaintiff is entitled to attorney fees under section 14(k) of the Public Labor Act(5 ILCS 315/14(k) (West 2022)). We will also address the Lodge's motion to strike the *amicus curiae* briefs of the Illinois Attorney General, community organizations, and academics that were filed in support of the City, which was taken with the case.

¶ 50

A. Motion to Strike *Amicus Curiae* Briefs

¶ 51

The Lodge filed a motion in this court to strike the *amicus curiae* briefs that were filed by the Illinois Attorney General, a group of organizations and community leaders that represent victims and survivors of Chicago police misconduct, and a group of academics and policy groups for police accountability on the grounds that the briefs advance arguments that were not raised by any party in this litigation and improperly rely on matters outside the record on appeal.

¶ 52

An *amicus curiae* is not a party to an action but rather is a "friend" of the court. *Kroft v. Viper Trans, Inc.*, 2025 IL App (1st) 240220, ¶ 79. Consequently, the sole function of an *amicus* is to advise or make suggestions to the court. *Id.* An *amicus* takes the case as he finds it, with the issues framed by the parties. *Id.*

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¶ 53 A review of the *amicus curiae* briefs filed in this case indicate that they addressed the matter currently before this court—namely, whether the arbitrator’s decision was arbitrary and capricious and the application of the public policy exception. Therefore, the *amicus curiae* briefs properly advise this court as “friends” of the court. See *Independent Trust Corp. v. Kansas Bankers Surety Co.*, 2016 IL App (1st) 143161, ¶ 35. Accordingly, the *amicus curiae* briefs should not be stricken, where they do not interfere with or preclude appellate review.

¶ 54 B. Standard of Review

¶ 55 1. Summary Judgment

¶ 56 This matter was before the circuit court on the parties’ cross motions for summary judgment. Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits demonstrate that no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022); *City of Chicago v. Fraternal Order of Police*, 399 Ill. App. 3d 707, 711 (2010). In ruling on a motion for summary judgment, the trial court must view all evidence in the light most favorable to the nonmovant. *State Police v. Fraternal Order of Police Troopers Lodge No. 41*, 323 Ill. App. 3d 322, 326 (2001). We review an order granting summary judgment *de novo*. *City of Chicago*, 399 Ill. App. 3d at 711.

¶ 57 2. Review of Arbitration Awards

¶ 58 In order to review the circuit court’s determinations regarding the parties’ cross motions for summary judgment, we must look at the underlying arbitration award. For clarity’s sake, this case involves statutory impasse interest arbitration involving a public entity employer and public employees who are not allowed to strike. See 5 ILCS 315/2 (West 2022). Interest arbitration involves settling the terms of a contract being negotiated between the parties;

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especially in labor law, it involves arbitration of a dispute concerning what provisions will be included in a new collective bargaining agreement. *Glass v. Department of Corrections*, 2022 IL App (4th) 210740, ¶ 33 (sub-definition of “interest arbitration” under the definition of “arbitration” (citing Black’s Law Dictionary (11th ed. 2019))).

¶ 59 The object of arbitration is to avoid the formalities, delay, and expenses of litigation in court. Limited judicial review fosters the long accepted and encouraged principle that an arbitration award should be the end, not the beginning, of litigation. *Town of Cicero v. Illinois Ass’n of Firefighters, IAFF Local 717 AFL-CIO, CLC*, 338 Ill. App. 3d 364, 371 (2003). Thus, whenever possible, a court must construe an award so as to uphold its validity. *Id.* at 372. Additionally, in determining whether grounds exist to vacate an arbitration award, judicial review generally extends only to those areas expressly stated by statute. *Id.*

¶ 60 Judicial review of an arbitrator’s award is extremely limited. *Forest Preserve District v. Illinois Fraternal Order of Police Labor Council*, 2017 IL App (1st) 161499, ¶ 19. Under this limited review, we must enforce a labor-arbitration award if the arbitrator acts within the scope of his or her authority and the award draws its essence from the parties’ collective-bargaining agreement. *Id.* Whether an arbitrator’s decision fails to draw its essence from the collective bargaining agreement is a question of law, which we review *de novo*. *Id.* However, arbitration in a collective bargaining situation is a unique type of arbitration, and special rules apply. *County of Tazewell v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (3d) 140369, ¶ 12.

¶ 61 An arbitration award draws its essence from the collective bargaining agreement when the arbitrator, in making a decision, limits himself or herself to interpreting and applying the agreement. *Forest Preserve District*, 2017 IL App (1st) 161499, ¶ 20. An arbitrator may not

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change or alter the terms of the collective bargaining agreement or dispense his or her own brand of “industrial justice.” (Internal quotation marks omitted.) *Id.* Although an arbitrator may look to many sources for guidance, should the award be based on a body of thought, feeling, policy, or law outside of the collective bargaining agreement, it will be set aside as not rationally derived from the essence of the agreement. *Id.*

¶ 62 Generally, the grounds for vacating an arbitration award are listed in section 12(a) of the Uniform Arbitration Act (Act). 710 ILCS 5/12(a) (West 2022). However, in collective bargaining cases, courts have applied the standards that existed for vacating an agreement at common law. *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (1st) 133329, ¶ 36; 710 ILCS 5/12(e) (West 2022). Where, as here, the arbitration involved collective bargaining, a court will disturb the arbitration award only on the common-law grounds like fraud, corruption, partiality, misconduct, mistake, or failure to submit the question to arbitration. *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, 2018 IL App (1st) 170702, ¶ 16.

¶ 63 C. Interest Arbitration Provisions

¶ 64 The Public Labor Act regulates labor relations between public employers and employees. Section 2 of the Public Labor Act provides:

“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 the labor disputes subject to approval procedures mandated by this Act. To that end, the provisions for such awards shall be liberally construed.” 5 ILCS 315/2 (West 2022).

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¶ 65 To that end, the legislature has empowered such employees through interest arbitration, found in section 14 of the Public Labor Act. See § 14. Interest arbitration addresses “unresolved disputes concerning wages, hours, terms and conditions of employment.” *Id.* § 14(p); *Glass*, 2022 IL App (4th) 210740, ¶ 51.

¶ 66 Section 14(k) of the Public Labor Act provides for the judicial review of interest arbitration orders:

“Orders of the arbitration panel shall be reviewable, upon appropriate petition by either the public employer or the exclusive bargaining representative, by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or other similar and unlawful means. Such petitions for review must be filed with the appropriate circuit court within 90 days following the issuance of the arbitration order.” 5 ILCS 315/14(k) (West 2022).

¶ 67 Our supreme court has held that agency action is arbitrary and capricious if the agency (1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Town of Cicero*, 338 Ill. App. 3d at 372 (citing *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 505-06 (1988)). The standard is one of rationality. *Greer*, 122 Ill. 2d at 506.

¶ 68 Section 14(h) of the Public Labor Act lists eight factors to be considered by the arbitrator as applicable in interest arbitration. Those factors are:

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“(1) The lawful authority of the employer.

(2) Stipulation of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment during voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.” 5 ILCS 315/14(h) (West 2022).

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¶ 69 D. Whether the Arbitrator's Decision Violated Public Policy

¶ 70 We first determine whether the arbitrator's decision that private arbitration hearings for serious police misconduct proceedings violated public policy as the circuit court found.

¶ 71 1. Public Policy Exception

¶ 72 Courts have crafted a public policy exception to vacating arbitration awards, which otherwise draw their essence from a collective bargaining agreement. *Decatur Police Benevolent & Protective Ass'n Labor Committee v. City of Decatur*, 2012 IL App (4th) 110764, ¶ 22. The public policy must be well defined and dominant and determined by reference to the laws and legal precedents and not from general considerations of supposed public interests. *Id.* ¶ 23. Such vacatur is rooted in the common law doctrine that a court may refuse to enforce contracts that violate law or public policy. *Illinois State Police*, 323 Ill. App. 3d at 328.

¶ 73 Public policy is the legal principle that no one may lawfully do that which has the tendency to injure the welfare of the public. *Jordan v. Knafel*, 355 Ill. App. 3d 534, 539 (2005). Thus, agreements are not void as against public policy unless they are clearly contrary to what the constitution, the statutes, or the decisions of the courts have declared to be the public policy or unless they are manifestly injurious to the public welfare. *Id.*

¶ 74 The public policy exception is a narrow one that should only be invoked when a party clearly shows enforcement of the contract, as interpreted by the arbitrator, contravenes some explicit public policy. *Decatur Police Benevolent & Protective Ass'n*, 2012 IL App (4th) 110764, ¶ 23. The application of the public policy exception requires a two-step analysis. First, we must determine whether a well-defined and dominant public policy can be identified. *County of De Witt v. American Federation of State, County & Municipal Employees, Council*

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31, 298 Ill. App. 3d 634, 637 (1998). If so, we must then determine whether the arbitrator's award, as reflected in his interpretation of the Agreement, violated the public policy. *Id.*

¶ 75 Questions of public policy are left to the courts, not the arbitrators. *Id.* at 638. A reviewing court is not bound by the arbitrator's consideration of public policy, and we may not abdicate our responsibility to the arbitrator to protect the public interest at stake. *Id.* at 639. Further, we may affirm the circuit court for any reason or ground appearing in the record, regardless of whether the particular reasons given by the circuit court or its specific findings are correct or sound. *Akemann v. Quinn*, 2014 IL App (4th) 130867, ¶ 21.

¶ 76 2. Discussion

¶ 77 The Neutral Chair's decision accepted the Lodge's proposal in its entirety, which provided the Lodge with the option of having grievances protesting separations and suspensions in excess of one year to be decided by an arbitrator rather than by the Police Board. The Neutral Chair rejected the City's proposal that such arbitration hearing be open to the public in the same manner as Police Board hearings. As noted above, the Neutral Chair further determined that the City's proposal that arbitration hearings in cases involving suspension and separations in excess of 365 days be open to the public was contrary to the law, as arbitration was inherently private. In support of that finding, the Neutral Chair referenced the rules of the AAA and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators. The Neutral Chair did not address whether there was a public interest in transparency and accountability in cases involving serious discipline of sworn police officers. Further, the Neutral Chair did not identify problems of any kind resulting from the lengthy history of Police Board hearings being open to the public.

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¶ 78 A cursory examination of the arbitration award's allowance of private grievance arbitrations in matters of serious police misconduct implicates several unquestionably well-defined and dominant public policies established by statute and case law—namely, effective law enforcement and the exposure of crime to protect the citizens of this State, as well as police accountability and transparency. Arbitration awards that are contrary to state public policy are void and not enforceable. *City of Chicago v. Fraternal Order of Police, Chicago Lodge No. 7*, 2020 IL 124831, ¶ 44.

¶ 79 The public policy favoring effective law enforcement can be found in the Civil Administrative Code of Illinois (20 ILCS 2605/2605-200(a)(3) (West 2022)), the Citizen Participation Act (735 ILCS 110/5 (West 2022)), and the Illinois Uniform Conviction Information Act (20 ILCS 2635/2(B) (West 2022)). This policy has also been previously identified by this court in a number of cases. See, e.g., *City of Springfield v. Police Protective & Benevolent Ass'n Unit No. 5*, 2023 IL App (4th) 220321-U, ¶ 16;² *State Police v. Fraternal Order of Police Troopers Lodge*, 323 Ill. App. 3d 322, 329 (2001); *Davenport v. Board of Fire & Police Commissioners*, 2 Ill. App. 3d 864, 869 (1972). Inherent in effective law enforcement is the public policy favoring the exposure of crime. *Illinois State Police*, 323 Ill. App. 3d at 329.

¶ 80 Additionally, our supreme court has also recognized a clear public policy favoring the investigation and prosecution of criminal offenses. See *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 132-33 (1981); see also *Leweling v. Schnadig Corp.*, 276 Ill. App. 3d 890,

²Unpublished appellate dispositions filed under Illinois Supreme Court Rule 23(b) (eff. Feb. 1, 2023) on or after January 1, 2021, may be cited for persuasive purposes.

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896-97 (1995) (public policy favors the exposure of criminal activity). This public policy is well-defined to protect the citizens of this State.

¶ 81 The public policy favoring police accountability and transparency, as noted by the circuit court, has its roots in FOIA, which specifically states that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and employees. 5 ILCS 140/1 (West 2022); *City of Chicago v. Fraternal Order of Police*, 2019 IL App (1st) 172907, ¶ 31. Further, the General Assembly declared that “it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and accountability of public bodies at all levels of government,” and that “it is a fundamental obligation of government to operate openly.” (Internal quotation marks omitted.) *City of Chicago*, 2019 IL App (1st) 172907, ¶ 31. It is clear that it was the intention of the General Assembly to promote transparency in government. Further, public policy in favor of such transparency was demonstrated by the adoption of the consent decree between the state and the City, which specifically stated that it aimed to ensure that the critically important job of policing in Chicago was done fairly, transparently, and without bias, affording dignity to those who were served and protected and providing proper guidance, training, and support for the women and men who comprised the police force.

¶ 82 Additionally, it bears mentioning that the City and CPD have maintained a decades-old policy of having hearings for serious misconduct open to the public. While there is no specific public policy that requires all police misconduct hearings to be open to the public, we find that to suddenly shut the door after 60 years of open hearings severely undermines the public policies discussed above. We note that during oral argument, the Lodge conceded that records of what occurred at a private grievance arbitration for serious disciplinary matters would never

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be available to the public, even after the fact. Instead, the public would only know what the charges were and what the result was. We find that changing the 60-year policy at this juncture in favor of shrouding the proceedings in secrecy is counter to the public policy of transparency and accountability.

¶ 83 We therefore conclude that the public policy of police transparency and accountability is a well-defined public policy codified by statute, contrary to the Lodge's assertion, and applies here.

¶ 84 The second step is to determine whether the arbitrator's award violated those identified public policies in requiring private grievance arbitration for serious police misconduct, and it is clear that it did. In this case, the arbitrator's award regarding private grievance arbitration was based on the arbitrator's reliance on arbitration rules governing private arbitrations that are not applicable to public government employees. There was no consideration of effective law enforcement or the policy of public accountability and transparency in the arbitrator's award. There was no consideration of the 60-year policy of open hearings for serious police misconduct. More importantly, there was no finding that such open hearings violated the officers' due process or otherwise negatively impacted the officers. Law enforcement is charged with the duty of exposing crime, not concealing it. When public policy is at issue, it is the court's responsibility to protect the public interest at stake. *American Federation of State County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 333 (1996) (*AFSCME II*). We find that the portion of the arbitration award requiring closed door arbitrations for serious police misconduct violates public policy.

¶ 85 Accordingly, we find that the arbitrator's determination that closed arbitration hearings for serious police misconduct violates the well-defined and dominant public policies of effective

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law enforcement, the exposure of crime to protect the citizens of this State, and police accountability and transparency. As such, we conclude that the circuit court did not err in granting the City's motion for summary judgment on this issue.

¶ 86 E. Officers Remaining in Pay Status Pending Serious Disciplinary Proceedings

¶ 87 We next review the Lodge's contention that the circuit court erred in finding that the portion of the arbitrator's award that allowed officers to remain in pay status pending serious disciplinary proceedings was arbitrary and capricious.

¶ 88 As noted above, section 14(k) of the Public Labor Act provides for the judicial review of interest arbitration orders when the arbitration panel was without or exceeded its statutory authority; the order is arbitrary or capricious; or the order was procured by fraud, collusion, or other similar and unlawful means. 5 ILCS 315/14(k) (West 2022). Our supreme court has held that agency action is arbitrary or capricious if the agency (1) relies on factors which the legislature did not intend for the agency to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for its decision which runs counter to the evidence before the agency, or which is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Greer*, 122 Ill. 2d at 505-06; *Town of Cicero*, 338 Ill. App. 3d at 372. The standard is one of rationality. *Greer*, 122 Ill. 2d at 505-06; *Town of Cicero*, 338 Ill. App. 3d at 372.

¶ 89 Because the object of arbitration is to avoid the formalities, delay, and expenses of litigation in court, judicial review of an arbitration decision is highly deferential. *Seither & Cherry Co. v. Illinois Bank Building Corp.*, 95 Ill. App. 3d 191, 195 (1981). Thus, whenever possible, a court must construe an award so as to uphold its validity. *Garver v. Ferguson*, 76

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III. 2d 1, 10 (1979). That a court might have decided the issue differently does not make an arbitrator's award arbitrary or capricious. *Town of Cicero*, 338 Ill. 3d at 376.

¶ 90

As noted by the circuit court, none of the City's 43 collective bargaining agreements with unions allow an employee facing discharge for serious misconduct to remain on payroll. As the circuit court noted, the arbitrator's reliance on tenets of criminal law were misplaced as a discharge or suspension from employment is not akin to a criminal proceeding where an individual's fundamental liberty interest is at stake. Nor did the arbitrator's award discuss how an employee's due process rights were violated or how the City could recoup the paid out funds if the employee was subsequently discharged as a result of the proceedings. Further, the arbitrator's award did not provide a basis for overturning the decades-long practice of treating officers facing an extended period of suspension or discharge differently than officers facing short term suspension or minor discipline.

¶ 91

Nevertheless, although we disagree with the arbitrator's reasoning and would have decided the issue differently, we must conclude that the arbitrator's award was not arbitrary or capricious because it did not rely on factors unintended by the legislature; did not entirely fail to consider an important aspect of the problem; nor was it implausible or counter to the evidence, despite none of the City's other collective bargaining agreements having this provision. Accordingly, we must reverse the circuit court's grant of summary judgment as to this portion of the award.

¶ 92

F. The Lodge's Request for Attorney Fees

¶ 93

Finally, the Lodge sought attorney fees under section 14(k) of the Public Labor Act (5 ILCS 315/14(k) (West 2022)), which was denied by the circuit court.

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¶ 94 Generally, a trial court has broad discretionary powers in awarding attorney fees. *Kirk v. Arnold*, 2020 IL App (1st) 190782, ¶ 12. However, when the question on appeal is whether the trial court properly applied the law when it denied a request for attorney fees, this presents a question of law that we review *de novo*. *Id.*

¶ 95 Our review of the circuit court's denial of attorney fees begins with an interpretation of the statute that provides the basis for fee-shifting in this case (*id.* ¶ 13), which is section 14(k) of the Public Labor Act as noted above. The fundamental principle of statutory construction is to ascertain and give effect to the legislature's intent. *Id.* The statutory language, given its plain and ordinary meaning, is the best indication of that legislative intent. *Id.*

¶ 96 The statute at issue provides, in pertinent part, that "[t]he party against whom the final decision of any such court shall be adverse, if such court finds such appeal or petition to be frivolous, shall pay reasonable attorneys' fees and costs to the successful party as determined by said court in its discretion." 5 ILCS 315/14(k) (West 2022). According to the plain language of the statute, attorney fees are to only be awarded against the losing party if the court finds such appeal or petition to be frivolous.

¶ 97 On review of the circuit court's memorandum opinion, there was no such finding. In fact, the circuit court made a contrary determination by concluding that while it had both agreed and disagreed with the City's analysis of certain issues, it did not mean that the City was without a proper basis to pursue the litigation. The court found it to be clear that the City had a clear and good faith basis to address the underlying awards in the manner that it did and based on the court's conclusions, both parties could be considered prevailing parties. Our review of the circuit court's determination yields the same result. As the Lodge has failed to

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establish that the circuit court found the City's petition to be frivolous or decided that the Lodge was the prevailing party, we affirm the circuit court's denial of attorney fees to the Lodge.

¶ 98

III. CONCLUSION

¶ 99

For the foregoing reasons, we affirm the circuit court's entry of summary judgment in favor of the City, regarding the portion of the arbitrator's award that ordered private arbitration for serious police misconduct hearings, as against public policy. We also affirm the circuit court's determination that the City's counterclaim was not untimely filed and the denial of the Lodge's request for attorney fees. However, we reverse the circuit court's determination that officers facing serious discipline should not remain in pay status because the arbitrator's award was not arbitrary or capricious.

¶ 100

Affirmed in part and reversed in part.

¶ 101

JUSTICE MITCHELL, concurring in part and dissenting in part:

¶ 102

In light of the impassioned political arguments raised by the City of Chicago and its *amici*, it is worth reiterating what this case is *not* about. It is *not* about the relative merit of open, public disciplinary proceedings for police. That public policy question properly belongs to the political branches of government, not well-intentioned judges. Indeed, when sister states decided to mandate public disciplinary proceedings, they did so not by judicial fiat but through legislation. See, e.g., Tex. Loc. Gov't Code Ann. § 143.010(c) (West 2022) ("Each [police and fire fighter commission] proceeding shall be held in public."); *id.* § 143.003(1); Fla. Stat. § 286.011(1) (West 2022) ("All meetings of any board *** are declared to be public meetings open to the public at all times ***."); 1978 Fla. Att'y Gen. Op. No. AGO 078-105, at 2 ("[P]olice complaint review boards *** are within the purview of and required to comply with the provisions of s. 286.011 ***."). There is no statute in Illinois even remotely equivalent.

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Illinois public policy makers have been *silent* on the question, and in practice, police disciplinary proceedings have been handled for generations in private arbitration in jurisdictions across Illinois consistent with state labor law.

¶ 103 In affirming the circuit court’s decision to partially vacate an arbitrator’s decision on public policy grounds, the majority has exceeded the traditionally very narrow boundaries that govern the judicial review of labor arbitration decisions. And in the process, the majority severely undermines a deeply entrenched public policy in Illinois favoring collective bargaining agreements and enforcement of labor arbitration awards:

“It is the public policy of the State of Illinois to grant public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection.” 5 ILCS 315/2 (West 2022).

In approving the Senate bill that would become the Public Labor Relations Act, Governor James R. Thompson declared collective bargaining a “fundamental right.” Journal of the Senate of the 83rd Gen. Assembly, Reg. Sess., at 6462 (Oct. 5, 1983) (amendatory veto message).

¶ 104 At its core, the *legal* question presented in this appeal is about deference—deference that judges owe to arbitrators acting within the confines of their authority and the interest arbitration process defined in the parties’ collective bargaining agreement. Our Illinois Supreme Court has instructed that “[a] labor arbitration award must be enforced if the arbitrator acts within the scope of his authority and his award draws essence from the parties’ collective-bargaining agreement.” *American Federation of State, County & Municipal Employees, AFL-CIO v. State of Illinois*, 124 Ill. 2d 246, 254 (1988) (*AFSCME I*). This rule is consistent with United States Supreme Court precedent that articulates the same principle:

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“The reasons for insulating arbitral decisions from judicial review are grounded in the federal statutes regulating labor-management relations. These statutes reflect a decided preference for private settlement of labor disputes without the intervention of government ***. *** [A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.” *United Paperworkers International Union, AFL-CIO v. Misco, Inc.*, 484 U.S. 29, 37-38 (1987).

¶ 105

While Illinois and federal law recognize that a court may refuse to enforce an arbitration award that violates public policy, this exception is “extremely limited.” *AFSCME I*, 124 Ill. 2d at 254. The Illinois Supreme Court has cautioned that “in order to vacate an arbitral award upon these grounds, the contract, *as interpreted* by the arbitrator, must violate some explicit public policy.” (Emphasis in original.) *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 307 (1996) (*AFSCME II*). Further, the public policy “must be ‘well-defined and dominant’ and ascertainable ‘by reference to the laws and legal precedents and not from generalized considerations of supposed public interests.’ ” *Id.* (quoting *W.R. Grace & Co. v. Local Union No. 759*, 461 U.S. 757, 766 (1983)). To ensure that a judge is not merely giving voice to her personal preference, the law requires a clear, explicit, well-defined, and dominant expression of public policy found in positive law before a court can properly invoke the public policy exception.

¶ 106

Here there is no expression of well-defined and dominant public policy in Illinois that precludes hearing police disciplinary cases in private arbitration. No statute speaks to it. No constitutional provision prohibits it. No judicial decision forbids it. How could there be such a

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public policy? Again, in jurisdictions across Illinois and the country, police disciplinary cases have been handled in private labor arbitration. It is difficult to imagine that the General Assembly would allow such a practice to persist if it actually offended the public policy of the state.

¶ 107 The circuit court rested its conclusion to the contrary on a consent decree between the City of Chicago and the United States Department of Justice. But a consent decree is nothing more than a settlement agreement; it is not a judicial determination. No published decision in America has ever found a consent decree to be a source of public policy. More significantly, there is nothing in the consent decree that mandates that police disciplinary proceedings be open to the public, and it expressly provides that nothing in the consent decree alters the City's collective bargaining agreement with the police.

¶ 108 Additionally, the circuit court cited to the Illinois Freedom of Information Act and its precatory language referencing "transparency." 5 ILCS 140/1 (West 2022). But that statute expressly exempts employee disciplinary matters from disclosure. *Id.* § 7(n). Again, there is no provision in the FOIA law that mandates public disciplinary proceedings for police. Hortatory but vague references to "transparency" and "accountability" are precisely the generalized considerations that fail to establish an explicit, well-defined, and dominant public policy.

¶ 109 Now the City contends that a public policy can be derived from the parties' past practice of allowing more serious police disciplinary cases to go before the Police Board in a public forum. But that was by *consent*: there was no legislative or judicial expression of public policy that required a public proceeding. To be sure, a prior course of dealing between the parties to a contract can be an interpretative device that informs the parties' intent, E. Allan Farnsworth, *Contracts* § 7.13 at 528 (2d ed. 1990), but it does not create public policy. No court in America has ever before

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found a well-defined and dominant public policy from the parties' past practice. Moreover, the City made this course of dealing argument to the arbitrator, and the arbitrator rejected it with reasoned elaboration. That type of contract decision rooted in the interpretation and construction of the parties' prior collective bargaining agreements is necessarily binding on courts. The parties expressly agreed to submit this type of question to the arbitrator, an expert in labor law and the parties' prior agreements. Even if the arbitrator made a mistake of law, it is his interpretation of the contract—not ours—that must control. See, e.g., *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 599 (1960) ("It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his.").

¶ 110 For these reasons, I would reverse the judgment of the circuit court setting aside that portion of the arbitrator's decision on public policy grounds. To conclude otherwise invites parties to relitigate every labor arbitrator's decision under the guise of public policy, and that is repugnant to the explicit, well-defined, and dominant public policy in favor of collective bargaining and the arbitration process that goes with it. I do agree with the majority that the circuit court erred in setting aside the arbitrator's decision to allow officers to remain in pay status pending disciplinary proceedings, and I concur in that portion of the judgment.

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Chicago John Dineen Lodge No. 7 v. City of Chicago, 2025 IL App (1st) 240875

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 24-CH-00093; the Hon. Michael T. Mullen, Judge, presiding.
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Attorneys for Appellant:	Joel A. D’Alba, Matt Pierce, and Joe Weishampel, of Asher, Gittler & D’Alba, Ltd., of Chicago, for appellant.
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Attorneys for Appellee:	Mary B. Richardson-Lowry, Corporation Counsel, of Chicago (Myriam Zreczny Kasper, Suzanne M. Loose, and Aya R. Barnea, Assistant Corporation Counsel, of counsel), for appellees.
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<i>Amicus Curiae:</i>	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Alex Hemmer and R. Sam Horan, Assistant Attorneys General, of counsel), <i>amicus curiae</i> .
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Craig B. Futterman and Benjamin Postone (law student), of Mandel Legal Aid Clinic at the University of Chicago Law School, of Chicago, for *amici curiae* Organizations and Community Leaders that Represent Victims and Survivors of Chicago Police Conduct.

Loren V. Jones, of Impact for Equity, and Sharon Fairley, both of Chicago, and David Melton, of Evanston, for *amicus curiae* for Academics and Policy Groups for Police Accountability.

**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.: AAA 01-22-0003-6534
Arb. Ref. 22.372
(Interest Arbitration)**

SUPPLEMENTAL INTERIM OPINION AND AWARD

**(RETENTION BONUSES AND ARBITRATION OF CERTAIN
DISCIPLINE GRIEVANCES)**

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Dated: August 2, 2023

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I. BACKGROUND

By Interim Opinion and Award (“Interim Award”) dated June 26, 2023, a majority of this Dispute Resolution Board (“Board”) adopted the Lodge’s proposals on the issues of retention bonuses and an option for arbitration for grievances protesting disciplinary actions in excess of 365 days and separations (dismissals).¹

The Interim Award remanded the two issues to the parties for the drafting of contract language consistent with the findings of that award with instructions to the parties to submit final language proposals with the more reasonable proposal on each issue to be selected as language for the Agreement [emphasis added]:²

These two adopted proposals are now remanded to the parties for drafting of language consistent with the terms of this Interim Award with this Board retaining jurisdiction over any drafting disputes.

* * *

To be clear, with respect to the contract language reflecting the adopted proposals decided by this Interim Award, the proposed specific language offered by the Lodge is not presently adopted. For now, all that has been adopted by this Interim Award are the concepts that (1) there shall be retention bonuses for officers who have served more than 20 years who shall receive an annual retention bonus of \$2,000 payable on September 1 of each year of service after the completion of the 20th year of service; and (2) there shall be an option for the Lodge to have grievances protesting discipline given to officers in excess of 365-day suspensions and separations decided by an arbitrator in final and binding arbitration or by the Police Board. The parties must have the opportunity in the first instance to modify or add to current contract terms language that covers the awarded proposals.

¹ [https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016 Interim Award.pdf](https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016%20Interim%20Award.pdf)

² Interim Award at 72-74.

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Following Section 14(f) of the IPLRA as a guide (allowing remands “... for a period not to exceed 2 weeks”), the remand for drafting language shall be for 14 days from the date of this Interim Award (or to a different date is agreed to by the parties). If the parties are unable to agree upon the language needed to implement the adopted proposals and upon notice to this Board and the opposing party, this Board shall formulate that language based upon final positions submitted by the parties.

The City’s request to extend the due date for the parties’ submissions to July 14, 2023 was granted. The parties have now filed their submissions on proposed final language. The specific language proposals from the parties are attached to his Supplemental Award as appendices. Appendix A is the Lodge’s language proposal and Appendix B is the City’s language proposal.

After receiving the parties’ language proposals, I requested that the parties submit comments on the opposing proposed language. That has now been done.

The parties’ language proposals have now been considered.

I purposely put the parties in the position of having to submit final language offers with this Board selecting the more reasonable of two final offers on each issue and not altering a proposal from the final language proposals. The requirement for final offers theoretically forces parties to be reasonable else an unreasonable offer causes rejection of a proposal. The final offer process is permitted by Section 28.3(B)(11) of the parties’ Agreement. *See* Interim Award at 18-20 with the conclusion that “... while the parties have agreed upon an impasse resolution procedure in their Agreement that does not require adoption of a final offer on any issue, there is nothing in the Agreement that prevents adoption of a final offer through use of the traditional standards utilized in typical interest arbitrations.” *Id.* at 20. Given the substantial number of issues remaining to be resolved for a contract that so long ago expired on June 30, 2017 (*see* Interim Award at 8) and the fact that the parties have

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been through extensive negotiations (six formal bargaining sessions in 2022 and seven sessions with a mediator in 2022) without resolution,³ the final offer selection process was hopefully the catalyst to force resolution *by the parties* of the language disputes on these two issues. The underlying assumption of that process is that the parties will submit reasonable final offers and then come to agreement and if agreement cannot be reached, to allow the Board the ability to choose a *reasonable* final offer.

Unfortunately, that did not happen. Not only did that not happen, but as explained below, the parties' language submissions on both issues are not reasonable which puts this Board in the position of having to choose a lesser unreasonable offer as opposed to a more reasonable offer.

To choose one of the parties' offers as written on the two decided issues will result in adoption of contract language that will, in part, be meaningless or go far beyond what was intended by the Interim Award.

Paragraph II(12) of the Scheduling Order establishing the procedures for this matter provides that "... the Neutral Chair reserves the right to modify this procedure at his discretion." My desire after issuance of the Interim Award with the remand for the parties to formulate language and discuss their positions was to see if a common ground could be reached (as they have done in other similar proceedings in the past with the undersigned serving as the Neutral Chair).

Placing parties in choice of final offer positions assumes that reasonable offers will be made. Since that did not happen and because choosing one of the parties' offers on each issue will not accomplish the goal of the resolution of the two issues in any meaningful way, unfortunately, for these two issues, I am going to have to deviate

³ City Pre-Hearing Brief at 3.

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from the final offer procedure and formulate language that I believe meets the intent of the Interim Award's resolution of those issues. The parties are obviously free to agree to modifications, but the language formulated below shall be the contract language for the new Agreement on these two issues.

II. THE RETENTION BONUS

The purpose of the retention bonus proposal that has been adopted is to serve as an incentive for the more senior officers nearing, at, or past the 20-year mark to not leave the Department and was imposed in light of the staffing shortage facing the Department as the more senior officers have been leaving in substantial numbers leaving the Department understaffed.⁴ However, the retention bonus cannot be one that lasts forever. Hopefully, there will come a time (more sooner than later) that the Department will have enough Officers to meet the needs of whatever policing policies are put in place by the new Johnson Administration and the yet-to-be selected new Superintendent and a retention bonus will no longer be needed. Or there may come a time when it is clear that a retention bonus is not working to stop the outflow of Officers from the Department and therefore should be discontinued as an expenditure of taxpayer funds that has not worked. That was recognized by me at the Show Cause Hearing:⁵

ARBITRATOR BENN: And similarly, with the first issue concerning the incentive, that would work the same way, there would be questions of, well, okay, how are we going to do this? · How are we going to guarantee that the incentive is going to work? · What kind of restrictions will we put on the officers who accept the incentive payment? · And, perhaps, even under what kind of metrics, as was referred to before? · Should it continue?

⁴ Interim Award at 26-43.

⁵ Show-Cause Hearing Tr. at 21.

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I mean, there may well become a point, hopefully soon, where we don't have the kinds of issues that, you know, were brought about by so many, the City being so short on officers, at least as the Chief of Patrol McDermott said, we're down 1400 officers [and now increasing to over 1,500 Officers]. ...

A. The Lodge's Proposed Language Is Not Reasonable And Appropriate For Selection

The Lodge's language proposal is not reasonable and appropriate for selection for the following reasons:

First, the Lodge proposes that to modify the retention bonus, "[e]ither party may notify the other no more than thirty days (30) before December 31, 2025, of a desire to modify the bonus." Waiting for the ability to modify payment of the retention bonus (either to eliminate the bonus, maintain it or increase it) until December 2025 at the earliest is too long. Given the nature of the benefit that caused it to be decided on an expedited basis through the Interim Award process assuring that the first payment is made on September 1, 2023, it was not my intention that the parties could not attempt to modify the benefit prior to December 31, 2025 if events on the ground dictated a needed change. My intent, as expressed to the parties at the Show-Cause Hearing quoted above, was to adopt the benefit and see if the benefit was working and whether changes were required to meet a goal to incentivize Officers to remain members of the Department. Locking in the benefit without the ability to change it until December 31, 2025 at the earliest defeats the flexibility of that desired goal.

Second, the Lodge proposes that after notice of desired modification is given, "[i]f the parties are unable to reach agreement, the matter will be referred to Arbitrator Edwin H. Benn, who has retained jurisdiction over this matter ... [and] if Mr. Benn is not available, the parties will select another arbitrator." The City has not

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agreed to my hearing any such dispute. According to the City, "... because extension/modification of the bonus will be discussed in the next round of negotiations, it is just not appropriate to stipulate at this point that the Neutral Chair be the individual charged with resolving a possible future impasse."⁶

"Arbitration is consensual" *Howard Electric Company v. IBEW, Local 570*, 423 F.2d 164, 166 (9th Cir. 1970). I do not have the authority to force the parties to use me as an arbitrator to resolve an impasse. Nor, absent a court order or agreed upon selection process appointing me to serve as the arbitrator, would I unilaterally make myself the decision maker to resolve a future dispute where one party does not agree that I do so. To have such a clause as proposed by the Lodge may well make anything I would do unenforceable or delay implementation of the benefit while the matter is thrashed out in court. I choose not to go that route on such an important issue as this and potentially jeopardize the Interim Award.

B. The City's Proposed Language Is Not Reasonable And Appropriate For Selection

The City's language proposal is not reasonable and appropriate for selection for the following reasons:

First, the Lodge's proposed language has a commencement date for the bonus – September 1, 2023 ("[a]ny Officer who has served more than twenty years *as of September 1, 2023*, or thereafter shall receive an annual retention bonus of \$2,000 payable on September 1 of each year of service after the completion of the twentieth year of service" [emphasis added]). Under that language the goal of paying Officers a bonus to stay on with the Department has a defined commencement date – September 1, 2023.

⁶ City Comments on Language Proposals at 10.

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The City's proposed language leaves the commencement date for the retention bonus open because, according to the City, the bonus will only commence upon when the City ratifies the provisions imposed (*"[e]ffective upon contract ratification an Officer who as of September 1 has attained has attained twenty (20) or more years of service shall receive a retention bonus ... in the amount of \$2,000, payable in the first full pay period after September 1"* [emphasis added]). What if the City Council does not ratify the retention bonus provisions until after September 1, 2023? That scenario could occur if the City rejects the Interim Award causing the issue to be perhaps returned to this Board for further proceedings under Section 14(n) (and 14(o)) of the IPLRA with the result of those proceedings before this Board again returned to the governing body for further consideration. That process easily could play out beyond September 1, 2023 thus depriving eligible Officers of a year's retention bonus payment.

As explained in the Interim Award, given the significant shortage of staff in 2022 "being down approximately 1,400 people" as testified by the Department's Chief of Patrol which has increased as of June 2023 to being down over 1,500 in the bargaining unit (*see* Interim Award at 28-30) and the delays due to the election for mayor (and temporary loss of the City's Labor Counsel after former Mayor Lightfoot terminated his services after she was disqualified from being in a runoff election rather than leaving the new mayor the ability to choose his representative), immediate action was required which resulted in adopting the Lodge' proposal that there be a retention bonus through the vehicle of an Interim Award. To leave the effective date of the retention bonus open until ratification as proposed by the City rather than to have a definitive commencement date is an invitation to delay in implementation of the bonus and defeats the purpose of the bonus – an immediate incentive for the affected senior Officers to not leave the Department. The City's continuing objection

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that I did not have authority to even issue an interim award (*see* discussion *infra* at IV) is a veiled statement that it intends to challenge the Interim Award through court proceedings, thereby causing further delays until it is compelled to ratify the provisions of the Interim Award. A definitive effective date for the retention bonus is therefore needed.

Second, the City's language proposes numerous limitations and exclusions on receipt of the bonus, some of which are clearly not reasonable. Two of those limitations jump out as patently unreasonable.

According to the City, if an Officer resigns or retires prior to completing the 12-month measuring period for receipt of the retention bonus, "the *full* amount of the retention bonus shall be deducted from the Officer's accumulated non-FLSA compensatory time ..." [emphasis added]. What if an Officer resigns or retires a few days (or even one day) prior to completing the 12-month period? Should that Officer be required to repay the "the *full* amount of the retention bonus" as opposed to repaying a minimal fraction of the bonus? There is no rational basis for such a full-forfeiture requirement.

Third, according to the City, "[a]n officer shall be ineligible for the retention bonus if he/she has received a 10 day suspension or greater during the 12 months prior to September 1st in any year in which the bonus would otherwise be payable" What if the Officer received a nine-day suspension during that prior 12-month period? Under the City's proposed language, that Officer is eligible to receive the retention bonus but the 10-day suspension Officer is not. Why draw the line at 10 days? Why not 15 days (or more)? There is no rational basis for drawing the line at 10 days as the City has done.

Fourth, but staying with the 10-day suspension or more period proposed by the City as a forfeiture of the entire year's retention bonus, as the Lodge points out, that

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kind of provision “... amounts to double punishment and is unfair.”⁷ The disciplined Officer will lose pay as a result of a disciplinary action. Why punish that Officer further through loss of a year’s retention bonus benefit? That kind of approach – discipline (the suspension) and then more discipline (loss of the retention bonus) arising from the same event (the incident causing the issuance of discipline) – smacks of double jeopardy.

Fifth, there may well be situations where Officers can lose access to the retention bonus benefit. Again, my hope was for the parties to have flushed that out during the remand period imposed by the Interim Award. And again, that did not happen. Should those kinds of disputes arise and as with disputes over contract language, the parties will have to resort to the grievance and arbitration process to sort those out. And if such arbitrations occur, nothing in this Supplemental Interim Award prevents either party from using the fact that a proposed language change was offered and was rejected.

C. The Language For The Retention Bonus Benefit

Because the parties were unable to resolve the language drafting on remand and because the parties’ language proposals are both unreasonable leaving this Board with having to choose the lesser unreasonable offer instead of choosing the desired more reasonable offer, this Board must formulate the language. As the Neutral Chair, I will do so. The following language shall be the contract language for the retention bonus:

Section 26.7 – Retention Bonus

Any Officer who has served more than twenty years as of September 1, 2023, or thereafter, shall receive an annual retention bonus of \$2,000 payable on September 1 of each year of service

⁷ Lodge Comments on Language at 2.

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after the completion of the twentieth year of service. To be eligible to receive the bonus (and to allow the City the ability to determine which Officers are eligible to receive the bonus and make timely payments to the eligible Officers by September 1 as required by this section), the Officer must have been on the Department's payroll at the end of the first August payroll period prior to September 1 of the year in which the bonus is to be paid.

Should either party desire to modify the retention bonus, notification shall be given by that party of such a desire no more than 30 days prior to the expiration of this Agreement or at the time either party notifies the other of termination of the Agreement under the Duration provisions of the Agreement, whichever is sooner. The parties shall then meet to discuss any proposed changes to the bonus. If the parties are unable to reach agreement, the dispute shall proceed to arbitration. The decision of the arbitrator to keep, modify, or eliminate the bonus shall be based on the objective of the retention bonus, which is to incentivize Officers to remain members of the Department.

III. ARBITRATION OF GRIEVANCES PROTESTING DISCIPLINARY ACTIONS IN EXCESS OF 365 DAYS AND SEPARATIONS (DISMISSALS)

As were the parties' language proposals on the retention bonus, the parties' proposed language for grievances protesting disciplinary actions in excess of 365 days and separations (dismissals) are so unreasonable that the selection of the more reasonable offer is not possible thus again forcing a formulation of the language by this Board.

In simple terms, the parties already have arbitration procedures for grievances challenging disciplinary actions of up to 365 days. *See* Article 9 and Appendix Q of the Agreement. Following the statutory mandate in Section 8 of the IPLRA and the long line of arbitral authority on the issue, the Interim Award simply extended that existing right for arbitration to give the Lodge the ability to arbitrate grievances protesting discipline in excess of 365 days and separations, with the condition that there be an option of having those disputes decided in arbitration or, as in the past, before the Police Board. Interim Award at 43-70. That simple extension of the statutory

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right to have arbitration was not reasonably accomplished by the parties' proposed language to allow selection of the more reasonable offer.

A. The City's Proposed Language Is Not Reasonable And Appropriate For Selection

First, as with the retention bonus, the City's proposal is keyed to ratification with a non-specific effective date [emphasis added]:

The provisions of this Section shall be applicable to any case where, *on or after the date of ratification*, the Superintendent files written charges with the Police Board seeking i) the separation of an Officer from service, or ii) the suspension of an Officer for a period of more than three hundred sixty-five (365) days. The provisions of this Section shall also apply in a case where the filing of written charges seeking separation or a suspension for a period more than three hundred sixty-five (365) days is the result of the application of §2-78-130(a)(iii) of the COPA Ordinance. This Section shall have no applicability to any other disciplinary action.

For the same reasons discussed *supra* at II(B), any further delays due to the City's ratification process to some unknown date potentially far down the road just delays implementation of the statutory right of arbitration found in Section 8 of the IPLRA (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) and the long line of cases deciding this issue and is also the policy of the State as specified in Section 2 of the IPLRA. Interim Award at 43-57.

Second, in short – and to be direct – if the option for arbitration of grievances protesting suspensions in excess of 365 days and separations is selected, as a result of the Interim Award and Section 8 of the IPLRA, the Police Board is simply out of

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the picture and the statutorily-required arbitration process takes over. However, in its proposed language, the City seeks to maintain crucial elements of the Police Board process, which makes the City's proposal unreasonable.

For example, the Police Board's Rules of Procedure at III(C) require that "[t]he evidentiary hearing shall be open to the public, except for good cause shown upon the filing of a written motion."⁸ The same requirement exists for status hearings.⁹ That same requirement for open proceedings is found in the City's language proposal with the requirement that "[t]he arbitration hearing shall be open to the public in the same manner as hearings before a hearing officer employed by the Board."

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. ...

The American Arbitration Association's Rules follow the requirement that arbitration hearings are not open to the public (this is a AAA case) at Rule 21 ("The arbitrator and the AAA shall maintain the privacy of the hearing unless the law

⁸ <https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/RulesofProcedure20210218.pdf>

⁹ *Id.* at I(L),

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provides to the contrary”).¹⁰ 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:¹¹

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.

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.

...

The City points to no law requiring that arbitration proceedings be open to the public. The City’s pointing to rules of the Police Board¹² 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 a grievance protesting a suspension 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. The City is obviously free to request an arbitrator in an individual case open the proceedings to the public. But there can be nothing in the contract that requires such a result. If there is any doubt

¹⁰ https://www.adr.org/sites/default/files/Labor_Arbitration_Rules_3.pdf

¹¹ <https://naarb.org/code-of-professional-responsibility/>

¹² City Comments on Language Proposals at 6-8.

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about whether the Police Board's requirement must be adopted for arbitration hearings, 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 in its language proposal that "... the parties past practice" is that "arbitration proceedings under this collective bargaining agreement shall be private and not open to the public." The City has not disputed that assertion. Therefore, for discipline up to 365 days, nothing in the Agreement or the practice of the parties required having those hearings open to the public. If that is the case, why should a grievance over discipline 366 days (or more) be open to the public when the past practice of the parties has been that arbitrations for significant disciplinary actions not be open to the public? Again, the Interim Award merely extended the IPLRA's statutory right for arbitration to include 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 it did not exist before.

Third, the City proposes that for these cases, "[f]or an arbitrator to be deemed qualified ... the arbitrator must satisfy each of the following requirements:

* * *

2. 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. ..."

A reading of those provisions of the Consent Decree shows them to be applicable to the Police Board. But again, if the option to arbitrate is selected for a discipline

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case in excess of 365 days or separation, the Police Board is not part of the process and training requirements for Police Board members cannot be forced upon arbitrators to determine if they are “qualified” for cases that are to heard as a result of the statutory requirements of the IPLRA. And most important, Paragraph 711 of the Consent Decree provides:

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 CBAs, including any Successor CBAs 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 CBAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAs 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.

By the terms of Paragraph 711 of the Consent Decree, the requirement for training of arbitrators to be “qualified” under the Consent Decree does not apply to “any Successor CBAs 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” This proceeding is a “Statutory Impasse Resolution Procedure ... mandated by the IPLRA” which is specifically carved out from coverage from the Consent Decree. The City’s proposed training requirement for Police Board members language for determining qualifications of arbitrators – even if not imposing – cannot make its way into the parties’ collective

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bargaining agreement when the Consent Decree specifically exempts the establishment of collective bargaining agreements from coverage by the Consent Decree.

Arbitrators are “trained” through their experience in the application of the doctrine of an employer needing to have “just cause” for discipline. *See* Agreement at Section 8.1 (“No Officer covered by this Agreement shall be suspended, relieved from duty or otherwise disciplined in any manner without just cause”) and Article 4(M) (“The Employer has and will continue to retain the right ... to suspend, demote, discharge, or take other disciplinary action against Officers for just cause”). And to be an arbitrator agreed upon by the parties, an arbitrator must be a member of the National Academy of Arbitrators (*see* Section 28.3(B) and Appendix Q of the Agreement) – an organization that requires extensive qualifications and experience as an arbitrator for admission.¹³ Training of arbitrators on Police Board standards for hearing officers making determinations over whether disciplining Officers is appropriate is not relevant to how arbitrators decide whether “just cause” for discipline under the parties’ collective bargaining agreement has been shown. Because the cases now eligible for arbitration are to be decided under the “just cause” standards in the same manner as arbitrators under the parties’ Agreement have been deciding grievances protesting disciplinary actions up to 365-day suspensions, imposing a separate procedure for “training” arbitrators mutually selected by the parties to hear these cases addressing lengthier discipline is just not relevant and is unreasonable. In any event, if there is a topic that a party believes an arbitrator needs to be educated on, as in many arbitration proceedings, evidence is put on by that party at the hearing to educate the arbitrator.

¹³ <https://naarb.org/membership-guidelines/>

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Fourth, the City proposes in its language that “[t]he practice of suspending the Officer without pay upon the filing of written charges seeking separation shall continue” That position is consistent with the April 1, 2021 version of “A Guide To The Complaint And Disciplinary Process of the Chicago Police Board” that is a practice of the Police Board:¹⁴

Discharge Cases

... When charges are filed, the officer is ordinarily suspended without pay pending the outcome of the case. ...

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 Section 9.6(C) of the Agreement as that section refers 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 those classes of discipline between 11 and 365 days as provided in the Agreement. Focusing particularly on Appendix Q 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

¹⁴

<https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/AllegMiscond20210401.pdf>

This is from an April 1, 2021 version of “A Guide To The Complaint And Disciplinary Process of the Chicago Police Board issued subsequent to the Police Board’s Rules and Procedure dated February 18, 2021:

<https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/RulesofProcedure20210218.pdf>

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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.

The point of all of this discussion about the City's proposed language for disciplinary suspensions in excess of 365 days and separations is that the City is clearly attempting to transfer standards used for cases before the Police Board to this class of cases which are now to be heard in arbitration if the option to do so is exercised. If the Lodge's proposed language is unreasonable (which for reasons discussed below, it is), then this Board is again forced to choose between two unreasonable offers. Particularly on this issue, that is not a viable choice and this Board cannot be placed in that position.

B. The Lodge's Proposed Language Is Not Reasonable And Appropriate For Selection

The Lodge's proposed language is not reasonable and appropriate for selection for one major reason – the retroactivity of the Lodge's proposal.

While the City's proposal is not reasonable because it has no real effective date but is to take effect at some point in the future ("on or after the date of ratification"), the Lodge effectively takes the opposite approach by seeking retroactive application of its proposed language back to August 1, 2021:

The Interim Award shall apply to any case that was filed before the Police Board after August 1, 2021, for which the full evidentiary hearing before the Police Board has not commenced. This Interim Award also covers any case filed after August 1, 2021, and currently pending before the Police Board where pre-hearing

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motions, filings or rulings have occurred and the full evidentiary hearing before the Police Board has not commenced.

While there is reason to apply retroactivity to provide the option for arbitration as determined by the Interim Award for cases pending before the Police Board before a date prior to an undetermined date after ratification by the City Council, there is no rational basis for a retroactive application of the option for arbitration to go back to August 1, 2021.

According to the Lodge, on October 25, 2019, the Lodge sent the Illinois Labor Relations Board a Notice of No Agreement and Demand for Compulsory Interest Arbitration. Lodge Pre-Hearing Brief at 41, footnote 18. Then, according to the Lodge (*id.*):

... On May 12, 2020, the Lodge sent a letter to counsel for the City to advise that a prior letter suggesting names for the interest arbitrator would be withdrawn and that the Lodge wished to continue bargaining with the City, but would not withdraw its October 25, 2019, request for interest arbitration.

Thus, as of May 12, 2020, the Lodge held its October 25, 2019 interest arbitration demand in abeyance and the parties continued to negotiate.

The Lodge is correct that not awarding retroactivity on this issue would have a chilling effect on collective bargaining by encouraging one party to delay the outcome; it is unfair to penalize employees for delays in the collective bargaining and interest arbitration procedures; and denying retroactivity encourages delay in reaching a settlement.¹⁵ Thus, retroactivity is required in this case – but why to August 1, 2021 as proposed by the Lodge? And how can that date be chosen when the Lodge

¹⁵ Lodge Comments on Language Proposals at 7, citing *Lemont & Metropolitan Alliance of Police Lemont Chap. 39*, S-MA-99-220 (McAlpin, 1999) at 9.
<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-99-220.pdf>

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held its October 25, 2019 demand for interest arbitration in abeyance? That is not explained.

And the retroactive date has a very big impact. According to the City:¹⁶

... According to the spreadsheet maintained on the Police Board's website, between that date [August 1, 2021] and the present charges were filed against 37 officers represented by the Lodge. Sixteen of those cases have been resolved, either through a final decision by the Police Board, a settlement agreement, or the officer resigning. Of the 21 active cases, at least three Officers have had their initial hearing date. ...

Thus, the Lodge began the interest arbitration process on October 25, 2019 and then held that process in abeyance as of May 12, 2020 and now seeks a retroactive date for the arbitration language back to August 1, 2021, without sufficient justification. But retroactivity is required, else delays are encouraged and Officers are will be deprived of statutory rights for arbitration under Section 8 of the IPLRA. However, given the circumstances, the August 1, 2021 date is just not reasonable.

Thus, as with the retention bonus issue, this Board is left with a choice between two unreasonable positions resulting in a selection of the lesser unreasonable position as opposed the more reasonable position as the process was designed. As the Neutral Chair, once again, I cannot go that route and this Board is therefore forced to formulate the language.

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 Board was composed and had authority to act. Given the Lodge's demand for interest arbitration which was then held in abeyance

¹⁶ City Comments on Language Proposals at 6 citing:
https://www.chicago.gov/city/en/depts/cpb/provdrs/police_discipline.html

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by the Lodge, it cannot be found that the City was solely responsible for the delays justifying the retroactive date sought by the Lodge. 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.

C. The Language For The Arbitration Provision

The Interim Award extended the existing right for arbitration of discipline in the parties' Agreement to give the Lodge the ability to arbitrate grievances protesting discipline in excess of 365 days and separations, with the condition that there be an option of having those disputes decided in arbitration or, as in the past, before the Police Board. To incorporate that extension of the right for an option for arbitration of suspensions in excess of 365 days and separations, the parties' existing language concerning arbitration shall be modified as follows to accomplish that goal:¹⁷

¹⁷ The City asserts that the Civilian Office of Police Accountability ("COPA") only recommends discipline of an Officer and such a recommendation "is of no actionable consequence as far as the Officer is concerned ... [and] has no impact on the Officer" and therefore should not be the catalyst for arbitration. City Comments on Language Proposals at 2-3. Upon initial operation of the disciplinary recommendation process, that is accurate because only a recommendation is made by an entity such as COPA after performing an investigation. However, a recommendation by COPA becomes of consequence to an Officer when COPA forwards its recommendation to the Superintendent and the Superintendent acts based on COPA's recommendation or when the Superintendent disagrees with COPA's recommendation and the Police Board gets involved. As to any such disagreement between COPA and the Superintendent of Police, according to the April 1, 2021 Allegations of Police Misconduct: A Guide To The Complaint And Disciplinary Process published by the Police Board, if there is a disagreement between the head of COPA and the Superintendent, the dispute goes to a Police Board Member who [emphasis added]:

... shall then rule on the disagreement between the Chief Administrator and the Superintendent. If, in the opinion of the reviewing member, the Superintendent's response does not meet its burden of overcoming the Chief Administrator's recommendation for discipline, *the recommendation shall be deemed to be accepted by the Superintendent.*

<https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/AllegMiscond20210401.pdf>

The added language in Section 9.6(C) "or from the Civilian Office of Police Accountability ("COPA") or other entity which recommended discipline must be followed by the Employer" contemplates that the City is at a point where it is moving against an Officer and the discipline process has progressed past the investigation/recommendation stage and a suspension greater than 30 days or separation is going to be imposed and the Officer must exercise an option to go before the Police Board, file a grievance, or accept the recommended discipline. *[footnote continued on next page]*

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ARTICLE 9 — GRIEVANCE PROCEDURE

Section 9.1 — Definition and Scope

A grievance is defined as a dispute or difference between the parties to this Agreement concerning interpretation and/or application of this Agreement or its provisions. Summary Punishment shall be excluded from this procedure, except as provided in Article 7.2. ~~The separation of an Officer from service is cognizable only before the Police Board and shall not be cognizable under this procedure, provided, however, that the provisions of Article 17 shall be applicable to separations.~~

* * * [no changes]

Section 9.6 — Suspension and Separation Grievances

* * * [no changes]

C. Suspensions Greater Than from Thirty (30) ~~One (31) to Three Hundred Sixty Five (365)~~ Days and Separations

Officers who receive a recommendation for discipline greater than from thirty-one (31) to three hundred sixty-five (365) days or separations as a result of a sustained CR#, by the Superintendent (or designee), or from the Civilian Office of Police Accountability (“COPA”) or other entity which recommended discipline must be followed by the Employer, shall have one of three options, the selection of which shall preclude the Officer, or the Lodge acting on his or her behalf, from selecting any of the other options listed below, except that the Officer is permitted to accept the recommendation at any time. Within ten (10) working days of receiving the recommendation for discipline the Officer(s) shall elect one of the following options:

1. A review by the Police Board as set forth in the Police Board's Rules of Procedure, ~~Article I, II and III (published November 1, 1975)~~; or
2. The filing of a grievance challenging the recommendation for discipline; or
3. Accept the recommended discipline.

[continuation of footnote]

The deleted language in Section 9.6(C)(1) “~~Article I, II and III (published November 1, 1975)~~” is removed because the Police Board’s rules have changed since the prior Agreement (and may change again). The intent is only that if an Officer opts for pursuing a case to the Police Board, as before, the rules of the Police Board shall apply.

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In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension will be reviewed by the Police Board.

When an Officer files a grievance, the Lodge will have sixty (60) days from the receipt of the investigative file to inform the Department whether the Lodge will advance the grievance to arbitration. Arbitration of suspension and separation grievances pursuant to this Paragraph C shall be conducted in accordance with the provisions of Appendix Q. The parties will cooperate in the scheduling of all arbitration hearings.

In the event the Lodge decides not to advance the grievance to arbitration, the Officer will have ten (10) working days to elect review of the recommendation for suspension or separation by the Police Board as set forth in paragraphs 9.6.C.1 above. In the event the Officer elects review of the recommendation for suspension or separation by the Police Board, the Officer will not be required to serve the recommended suspension or separation, nor will the suspension or separation be entered on the Officer's disciplinary record, until the Police Board rules on the merits of the recommended suspension.

In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension or separation will be deemed accepted, absent a written agreement between the Lodge and the Department to extend the election period.

D. When an Officer exercises his or her right to contest a disciplinary recommendation, whether by filing a grievance or electing review by the Police Board, Complaint Register files and other similar investigative files from the entity recommending discipline shall be provided to the Lodge promptly upon written request.

* * *

APPENDIX Q

GROUND RULES FOR ARBITRATION OF SUSPENSION AND SEPARATION GRIEVANCES PURSUANT TO SECTION 9.6.B AND 9.6.C

The following procedures shall apply to arbitrations of grievances challenging suspensions of greater than ten (10) eleven (11) to three hundred sixty five (365) days and separations.

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A. The Lodge and the Employer have agreed to a panel of five (5) Arbitrators who shall comprise the exclusive list of Arbitrators to preside over the suspension grievances. The five (5) Arbitrators are: _____, _____, _____, _____, and _____. Each December the Lodge and the City shall each be permitted to strike one (1) Arbitrator from the panel for any reason. In the event an Arbitrator is removed from the panel, the parties shall attempt to agree upon a replacement Arbitrator. If the parties are unable to agree upon a replacement, they shall request a list of seven (7) Arbitrators from the American Arbitration Association, each of whom must be a member of the National Academy of Arbitrators. Within ten (10) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and the Lodge shall alternately strike names from the list. The remaining person shall be the added to the panel. In the event the Lodge and the City each strike an Arbitrator from the panel as part of the December process, and if the parties are unable to agree upon replacement Arbitrators, the parties shall request two lists from the American Arbitration Association to be used to select the two replacement Arbitrators.

B. Within ten (10) days of the Lodge electing to forward the suspension or separation grievance to arbitration, the parties shall meet and select an Arbitrator from the panel. The parties shall inform the Arbitrator of the Arbitrator's appointment and request a hearing date within sixty (60) days. If the Arbitrator is unable to provide a hearing date within sixty (60) days from the date of being contacted, the parties shall select another Arbitrator from the panel who is able to provide a hearing date within sixty (60) days. Upon appointment of the Arbitrator, but prior to the date on which a cancellation fee would be incurred, and unless they have already done so, the parties shall schedule a date to conduct a settlement conference to attempt to resolve the grievance. More than one suspension or separation grievance (or combination thereof) may be discussed at the settlement conference. If the parties are unable to resolve the suspension grievance, they shall proceed with the Arbitration Process outlined in this Memorandum of Understanding.

C. Provided the Lodge accepts a hearing date within sixty (60) days of appointment of the Arbitrator, the Officer will not be required to serve the suspension or separation, nor will the suspension or separation be entered on the Officer's disciplinary record, until the Arbitrator rules on the merits of the grievance. In the

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event additional day(s) of hearing may be required to resolve the grievance, such additional day(s) shall be scheduled within thirty (30) days of the first day of hearing. If the Lodge is not ready to proceed on a scheduled hearing date, the Officer shall be required to serve the suspension or separation prior to the Arbitrator ruling on the merits of the grievance.

D. The authority and expenses of the Arbitrator shall be governed by the provisions of Sections 9.7 and 9.8 of the Agreement.

E. The provisions of this Appendix Q supersede Appendix S of the predecessor collective bargaining agreement. However, nothing shall prohibit or require the parties agreeing upon an expedited or “fast track” arbitration procedure for a specific grievance or category of grievances.

F. Modifications to this Appendix Q which change this Appendix Q and Article 9 from the prior Agreement are retroactive to September 14, 2022.

IV. THE CITY’S MAINTAINED JURISDICTIONAL ARGUMENT

As discussed in the Interim Award at 20-26, the City objected to this Board’s issuance of an Interim Award (City Board Member dissenting). The City maintains its position. In an email dated July 14, 2023, with the language proposals required by the Interim Award, the City states:

... [T]he City has vigorously disagreed with separating out these two issues from the rest of the arbitration process. The City has consistently taken the position that the arbitrator is without the authority to issue an interim interest arbitration award. Thus our submission is made under protest, recognizing that as a practical matter the City has no other alternative. We appreciate that you and the union disagree. We ask only that the City’s position be specifically recognized in your Award.

The City’s position is noted.

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However, as explained in the Interim Award at 20-26, this Board has the authority to issue interim awards as there is precedent for doing so;¹⁸ there is language in the Agreement that allows doing so;¹⁹ there is language in the Illinois Labor Relations Act which allows doing so;²⁰ the Illinois Uniform Arbitration Act, gives the Board the authority to do so;²¹ it is well-established that “... the arbitrator generally controls the conduct of the arbitration proceedings” allowing for issuance of interim awards;²² interim awards are used in cases that have “phases” such as this one;²³ and, in the end, whether to do so is a procedural question which the U.S. Supreme Court has clearly stated is within the authority of the arbitrator.²⁴ Moreover, the

¹⁸ See *State of Illinois and AFSCME Council 31 (Vaccine Mandate Interest Arbitration Interim Opinion and Award)*, S-MA-22-121 (2021)

<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-22-121.pdf>

See also, *Village of Skokie and Skokie Firefighters Local 3033 (IAFF) Interim Award (Promotions)*, Arb. Ref. 12.250 (2013).

<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-197-02.pdf>

¹⁹ Section 28.3(B)(5) of the Agreement (Impasse Resolution, Ratification and Enactment) provides “[t]he Chairman [of the Dispute Resolution Board] shall have the authority to convene and adjourn proceedings ... compel testimony ... as in his or her judgment and discretion are deemed warranted.” Section 28.3(B)(6) of the Agreement provides that “[d]uring the course of proceedings, the Chairman of the Board shall have the authority as necessary to ... direct, (absent mutual agreement) the order of procedure”

²⁰ See Section 14(d) of the IPLRA which provides that “[t]he chairman shall preside over the hearing and shall take testimony.” “[P]resid[ing] over the hearing” carries with it the authority to act as I have in breaking out these two issues into a show-cause hearing from a very complete and voluminous record that has been thus far established and expeditiously resolving those issues through an interim award. Further, that section of the IPLRA provides that “[m]ajority actions and rulings shall constitute the actions and rulings of the arbitration panel.”

²¹ 710 ILCS 5/4, provides that “[t]he powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or this Act.”

²² Schoonhoven, *Fairweather’s Practice and Procedure in Labor Arbitration* (BNA, 3d. ed.), 156.

²³ *How Arbitration Works*, *supra* at 354 (“Where the case is divided into phases ... the arbitrator may use what is called an ‘Interim Award’ is disposing of the first phase and a ‘Supplemental Award’ or ‘Final Award’ in disposing of the later phase.”).

²⁴ *John Wiley & Sons, Inc., v. Livingston*, 376 U.S. 543, 557 (1964) (“[o]nce it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, ‘procedural’ questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator.”).

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Scheduling Order in this matter provides at II (Proceedings and Hearings), paragraph 12 that “... the Neutral Chair reserves the right to modify this procedure at his discretion.”

A challenge to this Board’s decision to issue an interim award on the two issues involved in this matter would be, in this arbitrator’s opinion, a futile action and will only prolong a labor dispute that has gone on since the expiration of the June 30, 2017 Agreement – an excessively long period of time, to say the least. And ultimately, in light of the law, success in such a challenge has little chance.

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

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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. ...

It's time to move on and address the remaining (and many) disputes between the parties.

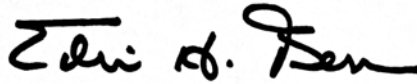
V. CONCLUSION

After remand to the parties for the drafting of language pursuant to the June 26, 2023 Interim Opinion and Award, the parties were to submit language proposals and the more reasonable proposal was to be adopted by this Board on the two remanded issues. However, the parties did not submit reasonable language proposals, which put this Board in a position of having to choose the lesser unreasonable proposal. We refuse to do so because given the unreasonable choices provided by the parties, we would not be following the intent of the concepts adopted by the Interim Award. As the Neutral Chair, I therefore had to draft language to meet the intentions of the adopted proposals found by the Interim Award. The language determined in Sections II(C) and III(C) shall be the contract language for the retention bonus and

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arbitration of suspensions in excess of 365 days and separations. If the parties desire to modify that language, that is up to them – but that must be done by agreement and must be done within seven days from the date of this Supplemental Interim Opinion.

In addition to the parties' language proposals attached to this Supplemental Award as Appendices A (the Lodge's language proposal) and B (the City's language proposal) for ease of reference, the language drafted by this Neutral Chair is attached as Appendix C.



Edwin H. Benn
Neutral Chair

Given the result, the City's Board Member's position will be taken as a dissent. The Lodge's Board Member's position will be taken as a concurrence in the result, but not necessarily in the rationale and limitation on retroactivity for the arbitration language.

Dated: August 2, 2023

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APPENDICES

APPENDIX A - LODGE'S PROPOSED LANGUAGE

FILED DATE: 3/7/2024 5:51 PM 2024CH00093

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”)	)		

The Lodge submits the following two final offers on the issues of bonus retention and arbitration of separation cases to the Dispute Resolution Board pursuant to the Neutral Chair's Interim and Award.

Joel A. D'Alba

Margaret A. Angelucci

A 070

ARBITRATION OF DISCIPLINE

Lodge's Proposal for Changes to Articles 8, 9 and Appendix Q. All other provisions of these sections are to remain unchanged.

PROPOSAL NO. 1

Section 9.1 – Definition and Scope

Amend Section 9.1 by deleting the second and third sentences of Section 9.1 and substituting the following:

A grievance is defined as a dispute or difference between the parties to this Agreement concerning interpretation and/or application of this Agreement or its provisions. The separation of an Officer from service is cognizable pursuant to the provisions of Sections 9.6 (C), as provided herein, and the Police Board shall not have exclusive authority to determine separation cases. An Officer shall be given an option pursuant to section 9.6 (C) and Appendix Q. The provisions of Article 17 shall be applicable to separation cases. Pursuant to the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes and the parties' past practice, the arbitration proceedings under this collective bargaining agreement shall be private and not open to the public.

The Interim Award shall apply to any case that was filed before the Police Board after August 1, 2021, for which the full evidentiary hearing before the Police Board has not commenced. This Interim Award also covers any case filed after August 1, 2021, and currently pending before the Police Board where pre-hearing motions, filings or rulings have occurred and the full evidentiary hearing before the Police Board has not commenced.

Amend Section 8.8 as follows:

The Superintendent's authority to suspend an Officer, as set forth in Section 2-84-030 of the Municipal Code of Chicago, shall be increased from the current limit not to exceed thirty (30) days to the discipline set forth herein.

In cases where the Superintendent seeks the separation or the suspension of an Officer from the Department, the Officer may exercise rights to challenge such decision pursuant to Section 9.6 (C) and Amended Appendix Q of this agreement and related provisions.

Section 9.6 – Suspension Grievances.

Grievances challenging reprimands and recommendations for suspension (excluding Summary Punishment except as specified in Section 7.2 and suspensions accompanied by a recommendation for separation) will comply with the following procedures:

C. Suspensions from Thirty-One (31) to Three Hundred and Sixty-Five (365) Days and suspensions of Three Hundred and sixty-six (366) Days or more and Separations

Officers who receive a recommendation for discipline from thirty-one (31) to three hundred and sixty-five (365) days as a result of a sustained CR# or a recommendation for suspension of more than three hundred and sixty-six (366) days or more, or a separation shall have one of three options, the selection of which shall preclude the Officer, or the Lodge acting on his or her behalf, from selecting any of the other options listed below, except that the Officer is permitted to accept the recommendation at any time.

Within ten (10) working days of receiving actual notice of a recommendation for discipline from thirty-one (31) to three hundred and sixty-five (365) days or a recommendation for suspension of more than three hundred and sixty-six (366) days or more, or a recommendation for separation issued by the Department's Superintendent, or a recommendation for discipline or separation issued by COPA pursuant to its Rules and Regulations dated April 13, 2018, or the OIG pursuant to its respective rules of procedure, the Officer(s) shall elect one of the following options:

1. A review by the Police Board as set forth in the Police Board's Rules of Procedure and by filing a request for such review; or
2. The filing of a grievance challenging the recommendation for discipline; or
3. Accept the recommended discipline.

In the event an Officer does not make an election for arbitration within ten (10) working days, the recommendation for suspension or separation from the Department will be reviewed by the Police Board, and the Complaint Register/Investigative file will be presented to the Police Board.

When an Officer files a grievance, the Lodge will have ninety 90 days from the receipt of the Complaint/Investigative file to inform the Department whether the Lodge will advance the grievance to arbitration. Arbitration of suspension and separation grievances pursuant to this Paragraph C shall be conducted in accordance with the provisions of Amended Appendix Q. The parties will cooperate in the scheduling of all arbitration hearings.

In the event the Lodge decides not to advance the grievance to arbitration, the Officer will have ten (10) working days to elect review of the recommendation for separation or suspension by the Police Board as set forth in paragraphs 9.6 C.1 above by written election to the attention of the Police Board's Executive Secretary. In the event the Officer elects review of the recommendation for suspension or separation by the Police

Board, the Officer will not be required to serve the recommended suspension or separation, nor will the suspension or separation be entered on the Officer's disciplinary record until the Police Board rules on the merits of the recommended suspension or separation.

When an Officer exercises his or her right to contest a disciplinary recommendation or a separation from the Department by filing a grievance, the Officer's Complaint Register/Investigative File shall be provided to the Lodge within ten (10) calendar days.

When an Officer exercises his or her right to contest a disciplinary recommendation or a separation from the Department by electing review by the Police Board, a copy of the written election shall be sent to the Department and shall be provided to the Police Board within fourteen (14) calendar days.

Section 9.7 – Authority of the Arbitrator shall be amended by adding the following to the last sentence of the first paragraph:

The Arbitrator shall have the authority to review and decide grievances filed to challenge the Superintendent's recommendation or recommendation of COPA, or the OIG for separation or suspension of an Officer. The parties agree that the decision of the Arbitrator shall be final and binding.

Amended Appendix Q as follows:

AMENDED APPENDIX Q

GROUND RULES FOR ARBITRATION OF SUSPENSION AND SEPARATION
GRIEVANCES PURSUANT TO SECTION 9.6 (B), 9.6 (C), AND 9.6 (D)

The following procedures shall apply to arbitrations of grievances challenging suspensions of eleven (11) to three hundred and sixty-five (365) days, suspensions for

three hundred and sixty-six or more (366) or more days) and separations from the Department.

A. The Lodge and the Employer have agreed to a panel of five (5) Arbitrators who shall comprise the exclusive list of Arbitrators to preside over the suspension and separation grievances. Each December the Lodge and the City shall each be permitted to strike one (1) Arbitrator from the panel for any reason. In the event an Arbitrator is removed from the panel, the parties shall attempt to agree upon a replacement Arbitrator. If the parties are unable to agree upon a replacement, they shall request a list of seven (7) Arbitrators from the Federal Mediation and Conciliation Service, each of whom must be a member of the National Academy of Arbitrators. Within ten (10) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and the Lodge shall alternately strike names from the list. The remaining person shall be added to the panel. In the event the Lodge and the City each strike an Arbitrator from the panel as part of the arbitration process, and if the parties are unable to agree upon replacement Arbitrators, the parties shall request two lists from the Federal Mediation and Conciliation Service to be used to select the two replacement Arbitrators.

B. Within ten (10) days of the Lodge electing to forward the suspension grievance or grievance challenging a recommendation for separation from the Department to arbitration, the parties shall meet and select an Arbitrator from the panel. The parties shall inform the Arbitrator of the Arbitrator's appointment and request and set a hearing date within ninety (90) days, unless the parties mutually agree otherwise. If the Arbitrator is unable to provide a hearing date within ninety-days (90) from the date of being contacted, the parties shall select another Arbitrator from the panel who is able to provide a hearing date within ninety (90) days. Upon appointment of the Arbitrator, but prior to the date on which a cancellation fee would be incurred, and unless they have already done so, the parties shall schedule a date to conduct a settlement conference to attempt to resolve the grievance. More than one suspension or separation grievance may be discussed at the settlement conference. If the parties are unable to resolve the suspension or separation grievance, they shall proceed with the Arbitration Process outlined in this Memorandum of Understanding.

C. Provided the Lodge accepts a hearing date within ninety (90) days of the appointment of the Arbitrator, the Officer will not be required to serve the suspension or separation, nor will the suspension or separation be entered on the Officer's disciplinary record, until the Arbitrator or the Police Board if the Officer has elected to proceed before the Police Board rules on the merits of the grievance. In the event additional day(s) of hearing may be required to resolve the grievance, such additional day(s) shall be scheduled by the arbitrator for a date that is mutually acceptable to the parties. If the Lodge is not ready to proceed on a scheduled hearing date, the Officer shall be required to serve the suspension or separation prior to the Arbitrator ruling on the merits of the grievance.

PROPOSAL NO. 2**Section 9.12 – Lodge Rights**

Amend Section 9.12 by deleting the last sentence and replacing it with the following:

In the event the Lodge determines it will not advance any grievance(s) to arbitration, the Officer(s) who filed the grievance(s) will be afforded the existing procedures for the review and/or challenge of reprimands, recommendations for discipline or separation from the Department to the extent provided for herein.

Section 26.7 - Retention Bonus

Any Officer who has served more than twenty years as of September 1, 2023, or thereafter shall receive an annual retention bonus of \$2,000 payable on September 1 of each year of service after the completion of the twentieth year of service. To be eligible to receive the bonus, the Officer must have been on the Department's payroll as of August 15 of the year in which the bonus is to be paid.

Either party may notify the other no more than thirty days (30) before December 31, 2025, of a desire to modify the bonus. The parties shall thereafter meet to discuss any proposed changes to the retention bonus. If the parties are unable to reach agreement, the matter will be referred to Arbitrator Edwin H. Benn, who has retained jurisdiction over this matter. If Mr. Benn is not available, the parties will select another arbitrator.

APPENDIX B - CITY'S PROPOSED LANGUAGE

FILED DATE: 3/7/2024 5:51 PM 2024CH00093

A 077

C 1520

**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 SUBMISSION OF PROPOSED
LANGUAGE RE: RETENTION BONUS AND ARBITRATION OF SEPARATIONS
AND SUSPENSIONS IN EXCESS OF 365 DAYS**

Pursuant to the June 26, 2023 Interim Opinion and Award, the City of Chicago submits the following as proposed contract language with respect to the retention bonus and the option to have certain grievances protesting discipline given to officers in excess of 365-day suspensions and separations (dismissals).

RETENTION BONUS

New Section in Article 26:

Effective upon contract ratification, an Officer who as of September 1 has attained twenty (20) or more years of service shall receive a retention bonus (non-pensionable) in the amount of \$2,000, payable in the first full pay period after September 1. This bonus is conditional upon the Officer continuing to work for the Department for twelve (12) full months following September

1. In computing the twelve (12) full months of work, any period of time in no pay status, on suspension, or on non-IOD medical leave pursuant to Section 18.2, shall not be included. Time spent on an approved Injury on Duty leave pursuant to Section 18.1 shall be included in the computation of the twelve (12) months. If an Officer who has received the retention bonus resigns or retires prior to completing the twelve (12) full months of work, the full amount of the retention bonus shall be deducted from the amount of the Officer's accumulated non-FLSA compensatory time based on the Officer's rate of pay in effect at the time of resignation or resignation.¹ If the amount of non-FLSA compensatory time is less than \$2,000, the balance shall be satisfied by deduction from the Officer's unused elective time provided by the Agreement (e.g., furlough days, Baby Furlough Days and personal days). Officers receiving the retention bonus shall, as a condition of receiving such bonus, execute an appropriate form consistent with this paragraph.² In the event an Officer receives a retention bonus and retires in that calendar year or in the calendar year following receipt of the retention bonus, the Officer shall be ineligible for the Retiree Health Care Benefits provided in the Memorandum of Understanding Regarding Retiree Health Care Benefits for any portion of either calendar year.

An officer shall be ineligible for the retention bonus if he/she has received a 10 day suspension or greater discipline during the 12 months prior to September 1st in any year in which the bonus would otherwise be payable provided such discipline is either sustained by an arbitrator; or sustained by the police board (if applicable); or is not contested by the officer; or there is a mutually agreed upon settlement.

¹ Section C(2) of the "Memorandum of Understanding Regarding Retiree Health Care Benefits" provides for staggering payment of non-FLSA compensatory time for those officers opting for the "Age 55" benefit.

² The Educational Reimbursement Article, in Section 24.I, provides for execution of such a form by officers receiving tuition reimbursement who then resign from the Department prior to the time provided for in that paragraph.

This retention bonus is for the express purpose of incentivizing Officers to remain active, sworn members of the Department. Accordingly, after the September 2024 payment, the parties shall meet to determine whether the retention bonus has furthered this objective, whether its provisions should be modified, or whether it should be discontinued. If the parties cannot agree on continuation of the retention bonus for calendar year 2025, they shall proceed to arbitration. The Lodge and the Employer shall submit their respective offers to the arbitrator, who shall select the most reasonable offer (which may include elimination of the retention bonus) in light of the objective of the retention bonus.

ARBITRATION OF DISCIPLINE

Amended Section 9.1:

Section 9.1 – Definition and Scope

A grievance is defined as a dispute or difference between the parties to this Agreement concerning interpretation and/or application of this Agreement or its provisions. Summary Punishment shall be excluded from this procedure, except as provided in Section 7.2. ~~The separation of an Officer from service is cognizable only before the Police Board and shall not be cognizable under this procedure, provided, however, that the provisions of Article 17 shall be applicable to separations.~~

New contract Section 9.13³:

Separations and Suspensions Over Three Hundred Sixty-Five (365) Days

The provisions of this Section shall be applicable to any case where, on or after the date of ratification, the Superintendent files written charges with the Police Board seeking i) the separation of an Officer from service, or ii) the suspension of an Officer for a period of more

³ Because the Superintendent does not currently have, and never has had, authority to impose discipline greater than a suspension of one year, it is appropriate that there be a separate contract section devoted exclusively to this species of discipline.

than three hundred sixty-five (365) days. The provisions of this Section shall also apply in a case where the filing of written charges seeking separation or a suspension for a period more than three hundred sixty-five (365) days is the result of the application of §2-78-130(a)(iii) of the COPA Ordinance.⁴ This Section shall have no applicability to any other disciplinary action.

The practice of suspending the Officer without pay upon the filing of written charges seeking separation shall continue, except that the Officer may invoke Section IV(D) of the Police Board's Rules of Procedure and request a review of the order of suspension by a Police Board hearing officer.⁵ If the Officer so requests, the review shall be in accordance with Section IV(D).

Upon being served with charges seeking an Officer's separation or suspension for a period of more than three hundred sixty-five (365) days, the Officer shall have ten (10) working days⁶ to file a grievance seeking to have the matter submitted to arbitration. If the Officer does not file a grievance within that period, the matter shall proceed before the Police Board in accordance with Articles I, II, and III of its Rules of Procedure and there shall be no review of the disciplinary action under the provisions of this Agreement, except that the provisions of

⁴ Since the creation of IPRA in 2006, where the independent police investigative body (now COPA) recommends a disciplinary penalty with which the Superintendent disagrees, the mechanism to resolve that disagreement has consisted of designating one or more members of the Police Board to make the final determination with respect to the amount of discipline to be sought. That determination is binding on the Superintendent and COPA. This proposal preserves that mechanism. The underlying point is that regardless of whether the CR investigation originated in BIA, COPA, or the OIG, only the Superintendent (as the head of the Department) has authority to impose discipline (in the case of suspensions of up to one year) or to file charges seeking a penalty greater than a year's suspension. This is why it is appropriate to key the arbitration option to the moment in time where the Superintendent has filed charges with the Police Board.

⁵ From time immemorial, the Superintendent has had the authority to impose a suspension without pay upon the filing of charges at the Police Board seeking separation. The limitation on this authority is in the referenced section of the Police Board's Rules of Procedure, pursuant to which an officer has up to seven (7) days after service of the charges to request a review of the suspension order by a Police Board hearing officer, who "shall at that time determine whether suspension pending the disposition of charges is warranted." Because the seven (7) day period expires prior to the deadline for filing a grievance (let alone the period for the Lodge to determine whether to advance the grievance to arbitration) it is appropriate to provide that this review be available to the officer.

⁶ This is the same timeline applicable to filing a grievance seeking review of a suspension under §§9.6.A.2; 9.6.B; and 9.6.C.

Article 17 shall continue to be applicable. If the Officer files a grievance within the ten (10) working day period, the Lodge shall have sixty (60) days⁷ from the filing of the grievance to inform the Department whether the Lodge will advance the grievance to arbitration. Proceedings before the Police Board shall be stayed while the Lodge determines whether to advance the grievance to arbitration. If the Lodge decides not to advance the grievance to arbitration, the matter shall proceed before the Police Board in accordance with Articles I, II, and III of its Rules of Procedure⁸ and there shall be no review of the disciplinary action under the provisions of this Agreement, except that the provisions of Article 17 shall continue to be applicable.

If the Lodge informs the Department within the sixty (60) day period that it is advancing the grievance to arbitration, the following procedures shall apply. The parties shall attempt to agree upon a qualified arbitrator. If they cannot agree, they shall request a list of seven (7) arbitrators from the American Arbitration Association, each of whom must be a member of the National Academy of Arbitrators and, further, must satisfy (1) and (2) below. For an arbitrator to be deemed qualified within the meaning of this Section, the arbitrator must satisfy each of the following requirements:

- 1) be an actual resident of Illinois⁹;
- 2) 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. The arbitrator may satisfy this requirement by certifying to the parties that he has read the materials comprising the required training, which shall be provided to the arbitrator by the City;

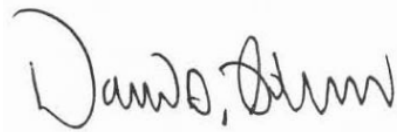
⁷ This is the same timeline set forth in §§9.6.B and 9.6.C.

⁸ Articles I – III of the Rules of Procedure address conduct of the hearing process. Article IV addresses the “paper review” (i.e., no actual hearing as such) of a suspension between 6 and 30 days. The FOP Agreement references this distinction in §§9.6.B and 9.6.C.1.

⁹ This approach is consistent with the IPLRA’s approach to residency provisions in §14(i).

The arbitration hearing shall be open to the public in the same manner as hearings before a hearing officer employed by the Board. A transcription of all proceedings before the arbitrator shall be prepared. The arbitrator shall determine whether the written charges filed by the Superintendent and the requested discipline are supported by just cause. Upon the conclusion of the hearing the arbitrator shall prepare a detailed report setting forth the arbitrator's findings of fact and conclusion(s) with respect to whether just cause exists. If the arbitrator determines that lesser discipline than what the Superintendent sought is appropriate, the arbitrator shall provide a written explanation for that determination.

Respectfully submitted,



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APPENDIX C - LANGUAGE OF BOARD (By The Neutral Chair)

FILED DATE: 3/7/2024 5:51 PM 2024CH00093

Section 26.7 – Retention Bonus

Any Officer who has served more than twenty years as of September 1, 2023, or thereafter, shall receive an annual retention bonus of \$2,000 payable on September 1 of each year of service after the completion of the twentieth year of service. To be eligible to receive the bonus (and to allow the City the ability to determine which Officers are eligible to receive the bonus and make timely payments to the eligible Officers by September 1 as required by this section), the Officer must have been on the Department's payroll at the end of the first August payroll period prior to September 1 of the year in which the bonus is to be paid.

Should either party desire to modify the retention bonus, notification shall be given by that party of such a desire no more than 30 days prior to the expiration of this Agreement or at the time either party notifies the other of termination of the Agreement under the Duration provisions of the Agreement, whichever is sooner. The parties shall then meet to discuss any proposed changes to the bonus. If the parties are unable to reach agreement, the dispute shall proceed to arbitration. The decision of the arbitrator to keep, modify, or eliminate the bonus shall be based on the objective of the retention bonus, which is to incentivize Officers to remain members of the Department.

ARTICLE 9 — GRIEVANCE PROCEDURE

Section 9.1 — Definition and Scope

A grievance is defined as a dispute or difference between the parties to this Agreement concerning interpretation and/or application of this Agreement or its provisions. Summary Punishment shall be excluded from this procedure, except as provided in Article 7.2. ~~The separation of an Officer from service is cognizable only before the Police Board and shall not be cognizable under this procedure, provided, however, that the provisions of Article 17 shall be applicable to separations.~~

* * * [no changes]

Section 9.6 — Suspension and Separation Grievances

* * * [no changes]

C. Suspensions Greater Than ~~from Thirty (30) -One (31) to Three Hundred Sixty Five (365)~~ Days and Separations

Officers who receive a recommendation for discipline greater than ~~from thirty-one (31) to three hundred sixty-five (365)~~ days or separations as a result of a sustained CR#, by the Superintendent (or designee), or from the Civilian Office of Police Accountability ("COPA") or other entity which recommended discipline must be followed by the Employer, shall have one of three options, the selection of which shall preclude the Officer, or the Lodge acting on his or her behalf, from selecting any of the other options listed below, except that the Officer is permitted to accept the recommendation at any time. Within ten (10) working days of receiving the recommendation for discipline the Officer(s) shall elect one of the following options:

1. A review by the Police Board as set forth in the Police Board's Rules of Procedure, ~~Article I, II and III (published November 1, 1975)~~; or
2. The filing of a grievance challenging the recommendation for discipline; or
3. Accept the recommended discipline.

In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension will be reviewed by the Police Board.

When an Officer files a grievance, the Lodge will have sixty (60) days from the receipt of the investigative file to inform the Department whether the Lodge will advance the grievance to arbitration. Arbitration of suspension and separation grievances pursuant to this Paragraph C shall be conducted in accordance with the provisions of Appendix Q. The parties will cooperate in the scheduling of all arbitration hearings.

In the event the Lodge decides not to advance the grievance to arbitration, the Officer will have ten (10) working days to elect review of the recommendation for suspension or separation by the Police Board as set forth in paragraphs 9.6.C.1 above. In the event the Officer elects review of the recommendation for suspension or separation by the Police Board, the Officer will not be required to serve the recommended suspension or separation,

nor will the suspension or separation be entered on the Officer's disciplinary record, until the Police Board rules on the merits of the recommended suspension.

In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension or separation will be deemed accepted, absent a written agreement between the Lodge and the Department to extend the election period.

D. When an Officer exercises his or her right to contest a disciplinary recommendation, whether by filing a grievance or electing review by the Police Board, Complaint Register files and other similar investigative files from the entity recommending discipline shall be provided to the Lodge promptly upon written request.

* * *

APPENDIX Q

GROUND RULES FOR ARBITRATION OF SUSPENSION AND SEPARATION GRIEVANCES PURSUANT TO SECTION 9.6.B AND 9.6.C

The following procedures shall apply to arbitrations of grievances challenging suspensions of greater than ten (10) ~~eleven (11)~~ to three hundred sixty-five (365) days and separations.

A. The Lodge and the Employer have agreed to a panel of five (5) Arbitrators who shall comprise the exclusive list of Arbitrators to preside over the suspension grievances. The five (5) Arbitrators are: _____, _____, _____, _____, and _____. Each December the Lodge and the City shall each be permitted to strike one (1) Arbitrator from the panel for any reason. In the event an Arbitrator is removed from the panel, the parties shall attempt to agree upon a replacement Arbitrator. If the parties are unable to agree upon a replacement, they shall request a list of seven (7) Arbitrators from the American Arbitration Association, each of whom must be a member of the National Academy of Arbitrators. Within ten (10) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and the Lodge shall alternately strike names from the list. The remaining person shall be the added to the panel. In the event the Lodge and the City each strike an Arbitrator from the panel as part of the December process, and if the parties are unable to agree upon replacement Arbitrators, the parties shall request two lists from the American Arbitration Association to be used to select the two replacement Arbitrators.

B. Within ten (10) days of the Lodge electing to forward the suspension or separation grievance to arbitration, the parties shall meet and select an Arbitrator from the panel. The parties shall inform the Arbitrator of the Arbitrator's appointment and request a hearing date within sixty (60) days. If the Arbitrator is unable to provide a hearing date within sixty (60) days from the date of being contacted, the parties shall select another Arbitrator from the panel who is able to provide a hearing date within sixty (60) days. Upon appointment of the Arbitrator, but prior to the date on which a cancellation fee would be incurred, and unless they have already done so, the parties shall schedule a date to conduct a settlement conference to attempt to resolve the grievance. More than one suspension or separation grievance (or combination thereof) may be discussed at the settlement conference. If the parties are unable to resolve the suspension grievance, they shall proceed with the Arbitration Process outlined in this Memorandum of Understanding.

C. Provided the Lodge accepts a hearing date within sixty (60) days of appointment of the Arbitrator, the Officer will not be required to serve the suspension or separation, nor will the suspension or separation be entered on the Officer's disciplinary record, until the Arbitrator rules on the merits of the grievance. In the event additional day(s) of hearing may be required to resolve the grievance, such additional day(s) shall be scheduled within thirty (30) days of the first day of hearing. If the Lodge is not ready to proceed on a scheduled hearing date, the Officer shall be required to serve the suspension or separation prior to the Arbitrator ruling on the merits of the grievance.

D. The authority and expenses of the Arbitrator shall be governed by the provisions of Sections 9.7 and 9.8 of the Agreement.

E. The provisions of this Appendix Q supersede Appendix S of the predecessor collective bargaining agreement. However, nothing shall prohibit or require the parties agreeing upon an expedited or "fast track" arbitration procedure for a specific grievance or category of grievances.

F. Modifications to this Appendix Q which change this Appendix Q and Article 9 from the prior Agreement are retroactive to September 14, 2022.

**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

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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*

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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

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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

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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.

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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](https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016%20Interim%20Award.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](https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016%20Supp%20award.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>

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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.

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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.

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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>

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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>

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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. ...

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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>

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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.).

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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

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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

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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>

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(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”).

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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>

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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

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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.](https://www.adr.org/StatementofEthicalPrinciples-#:~:text=An%20arbitration%20proceeding%20is%20a%20and%20award%20confidential%20between%20themselves.)

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

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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.

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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.

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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

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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>

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CBAs, including any Successor CBAs 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 CBAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAs 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 CBAs 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

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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.

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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.

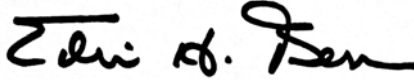
V. CONCLUSION

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

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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”)

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)

SUPPLEMENTAL 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: January 4, 2024

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Following the Chicago City Council's rejection of the arbitration provisions of this Dispute Resolution Board's October 19, 2023 Final Award (City's Board Member dissenting) and after return of the matter to this Board, a majority of this Board re-affirms the mandate for arbitration found in the Final Award.

Because of the length of this Supplemental Final Award, I have provided a summary (pages 3-10) and a more complete full discussion (pages 11-end).

SUMMARY

1. Background

By vote of 33 to 17 on December 13, 2023, the Chicago City Council rejected the arbitration provisions of this Dispute Resolution Board's October 19, 2023 Final Award (City Member dissenting in the Final Award). The remaining terms for changes to the parties' successor collective bargaining agreement to the contract that expired June 30, 2017 adopted by the Final Award through this interest arbitration proceeding were ratified in a separate vote by the City Council.

The Final Award provided for an option for the Lodge to protest disciplinary actions in excess of 365 days and separations (dismissals) issued to police officers to arbitration rather than having those disputes exclusively decided by the Chicago Police Board. That option currently exists for officers who receive suspensions ranging from 11 to 365 days. The Final Award extended that option to those officers who are charged to receive disciplinary suspensions in excess of 365 days and dismissals.

The rejected arbitration provisions of the Final Award have been returned to this Board for consideration.

2. Violation Of The Oath Of Office

The Workers' Rights Amendment of the Illinois Constitution provides that "[n]o 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" The Workers' Rights Amendment is a constitutional protection of the statutory right for final and binding arbitration explicitly provided in Sections 8, 2 and 15 of the Illinois Public Labor Relations Act ("IPLRA"). Those sections of the IPLRA specifically *guarantee* police officers the right to have final and binding arbitration in their collective bargaining agreements. That is the "Rule of Law". That firmly established rule has been followed in 17 published interest arbitration awards dating back to 1988 (prior to this case, six of those awards issued by this Neutral Chair going back to 1990).

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The alderpersons of the City Council (as did Mayor Johnson) took an oath that “I _____ do solemnly swear that I will support ... the Constitution of the State of Illinois”

Those alderpersons who voted to reject the arbitration requirements of the Final Award which placed the statutory and constitutional right of arbitration for protests of disciplinary matters in excess of 365 days into the parties’ collective bargaining agreement therefore violated their oath of office to “... support ... the Constitution of the State of Illinois.” Mayor Johnson’s statements advocating for rejection by the City Council and then supporting that rejection after it occurred (“*So if you’re asking this body to just simply accept something because it’s law*, that would be the antithesis to how this stage even exists”) similarly constituted a violation of his oath of office. The laws of Illinois are not merely “*asking* this body to just simply accept something because it’s law” – the laws of Illinois are *telling* the City that it *must* accept “something because it’s law”. Rejecting a constitutionally protected right of arbitration and therefore denying that right to police officers is not an action consistent with an oath “... that I will support ... the Constitution of the State of Illinois”

**3. Reasons Offered By Those Alderpersons Voting For Rejection
Of The Arbitration Provisions Of The Final Award Do Not Permit
Them To Ignore The Rule of Law**

The right for police officers to have arbitration is a statutory and constitutional mandate that if the Lodge requests to have arbitration over these disciplinary actions in its collective bargaining agreement with the City as it has done in this case, such a provision *must* be placed into the parties’ collective bargaining agreement providing for that right.

The reasons offered for rejection of the arbitration provisions of the Final Award as stated by alderpersons speaking at the December 13, 2023 City Council meeting show strongly held beliefs that arbitration is a corrupt form of dispute resolution because the requirement for arbitration “just is not right”; the process occurs “behind closed doors”; and for some, there is a distrust – indeed, a disdain – of the police.

However, adherence to the Rule of Law is not a request or a cafeteria selection process for the City to choose which State of Illinois laws should apply and which should not. Compliance with the Rule of Law is an obligation. And that obligation applies equally to everyone – individuals and governing bodies, be they large or small in stature or size, powerful or not.

Taking the City Council’s reasons for rejection to its logical extent, if laws such as the IPLRA could be ignored because it is felt by the City Council that those laws are not “just” or “right”, then the City could ignore all State or federal laws applicable to the City and, going further, individuals could opt to not pay taxes, fees,

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fines, comply with City ordinances, state and federal laws, etc. which they similarly believe are not “just” or “right”.

In a democracy, that is not how it works.

4. The Coming Litigation And The City’s Chances Of Prevailing

Should the City Council’s rejection of the arbitration provisions of the Final Award remain unchanged, there will be court action instituted by the Lodge to enforce the arbitration provisions of the Final Award.

At the December 7, 2023 Committee on Workforce Development, labor counsel for the City Jim Franczek was asked about the chances of the City prevailing in that sure-to-come court challenge. Jim Franczek is one of the most highly regarded, respected and experienced management-side attorneys in the country. Mr. Franczek candidly responded with the assessment that although the City has what he characterized as “pretty strong” arguments to present to a court, “... a challenge in the Circuit Court of Cook County to an interest arbitrator decision is a steep hill to climb and that would be a challenging legal proceeding for the City of Chicago ... the challenge in circuit court, yes, is going to be significant”

From my view of this matter, the City’s chances of prevailing in that litigation will be a *very* steep hill to climb that will be a *very* challenging legal proceeding for the City (indeed, a course of action with no possibility of prevailing).

The City’s overwhelming hurdle in court will be because:

1. The courts give great deference to interpretations made by arbitrators.
2. The Federal Court Consent Decree in paragraph 711 specifically carves out collective bargaining and interest arbitrations such as this proceeding from coverage by that decree. Moreover, aside from the carve out for these proceedings in paragraph 711 of the Consent Decree, the Federal Court would be hard pressed to deny the statutory and constitutionally protected right for arbitration due to a consent decree to which the Lodge was not a party and was even denied the ability to become a party when the Lodge was denied intervention by the Federal Court. In short, the Consent Decree does not apply to this case.
3. The City does not have a winnable public policy argument because the Illinois Supreme Court has stated “... Illinois public policy is shaped by our statutes, through which the General Assembly speaks.” Because of the IPLRA’s mandate for final and binding arbitration for police officers found in Section 8; the specific public policy declaration for arbitration for police officers’

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collective bargaining disputes found in Section 2; and the supremacy clause found in Section 15, the public policy in Illinois is to require final and binding arbitration for protests of the kinds of discipline cases at issue in this matter.

4. Because the Lodge no longer “mutually agree[s] otherwise” to have the Police Board decide these cases rather than to have arbitration, under Section 8’s mandate for arbitration in collective bargaining agreements, the fact that there has been a long history of having the Police Board resolve the type of disciplinary actions involved in this case is not relevant.
5. The City’s argument that arbitration is not “transparent” because the proceedings are not open to the public cannot prevail over the right for arbitration found in the IPLRA which is a right supported by the Workers’ Rights provisions of the Illinois Constitution. The legal precedent is that “[a]rbitration is, however, a private proceeding which is generally closed to the public.” Further, the ethics rules of the American Arbitration Association and National Academy of Arbitrators which provide for the privacy of arbitration support the privacy of arbitration in this case. However, the parties are free to request an arbitrator in an individual case to open the proceedings to the public. In any event, whether the proceedings are open to the public is a procedural question and the U. S. Supreme Court has found that “[o]nce it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, ‘procedural’ questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator.”
6. Any argument that adoption of arbitration and doing so as a private proceeding is inconsistent with “the interests and welfare of the public” under the IPLRA cannot prevail because the interests and welfare of the public are that the Rule of Law from Sections 8, 2 and 15 of the IPLRA and the Illinois Constitution must be followed. The “interests and welfare of the public” are not to have the City Council pick and choose which laws of the State of Illinois are to apply to the City on the basis of what the City Council believes are laws that are not “just” or “right”. Moreover, the IPLRA provides that “[t]he lawful authority of the employer” can be considered by interest arbitrators. The City has no “lawful authority” to act in direct contradiction of the Rule of Law from Sections 8, 2 and 15 the IPLRA and the Illinois Constitution requiring final and binding arbitration in police collective bargaining disputes.

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7. Since 1988 there have been 17 published interest arbitration awards (prior to this dispute, six by this Neutral Chair going back to 1990) that have held consistent with Sections 8, 2 and 15 of the IPLRA that if a party requests to have arbitration of disputes, including discipline, that party is entitled to that right to be placed in the collective bargaining agreement.
8. An interest arbitration such as this requiring the mandate for arbitration as provided in Sections 8, 2 and 15 of the IPLRA is a proceeding to *apply* the law as set forth in those sections – it is not a proceeding to *make* the law. Those who oppose arbitration of police discipline because they believe it “just is not right” or because they distrust (or disdain) the police, can only get the requirement for arbitration changed through changing the law. That result cannot be obtained in an interest arbitration proceeding before this Dispute Resolution Board.

Therefore, in reality, the likelihood of the City prevailing in the coming court challenge to the Final Award is none. The result of a court challenge will be costly to the City – monetarily and to the morale of the police officers as they see the City thumbing its nose at such a clear statutorily and constitutionally mandated right that the Lodge seeks in this case.

5. The City’s Potential Liability

The coming court battle may well go on for years. In the end, the officers who were adversely affected because they were not afforded the right to arbitration will be entitled to be made whole for losses they suffered as a result of being deprived of the statutory and constitutional right of arbitration and they will be entitled to make-whole relief for the delay caused by the City in refusing to follow the Final Award.

Make-whole relief is not just backpay for lost wages. Not only are lost wages part of make-whole relief, but so are costs that are a direct or indirect but foreseeable consequence of the deprivation of a right. Here, for the adversely affected officers, that would include, out-of-pocket medical expenses; credit card debt incurred due to lost wages; and other costs simply to make ends meet. Further, make-whole relief could also include those costs resulting from loss of a car or a home. Those elements of make-whole relief are consistent with the broad authority to formulate remedies possessed by arbitrators as remedies are designed to restore the *status quo ante* – i.e., to put the parties back to where they would have been before a contract violation occurred and to make whole those who have been harmed by a breach of the contract.

The remedy for the City Council’s refusal to ratify the arbitration provisions of the Final Award will apply to *all* officers who were suspended for periods greater than 365 days or dismissed who were or become deprived of the right of arbitration going back to the retroactive date of September 14, 2022 – whether those officers’ discipline

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is ultimately upheld or denied in arbitration. That is because, like disciplinary actions for officers between 11 and 365 days, under the Final Award those officers who are being forced to have their disciplinary actions adjudicated by the Police Board now have the same right that exists under the prior contract for officers whose discipline was between 11 and 365 days to remain on the payroll until their cases are decided in arbitration.

In her presentation to the City Council opposing rejection, Alderwoman Silvana Tabares recognized that prospect of wasted taxpayers' money on police officers whose discipline would have been upheld in arbitration, but who will be entitled to a remedy because of the City's delay caused by its challenging the arbitration provisions of the Final Award. Alderwoman Tabares pointed out to the City Council:

These cases will last years and could cost the City hundreds of millions of dollars. Those are dollars that will go into the pockets of police officers who were rightfully suspended or terminated. None of us – I'm sure none of us want public dollars to be awarded in court to bad cops as opposed to being used to fund mental health clinics or homeless services.

Alderwoman Tabares is correct.

6. The Detractors Of Arbitration And Chicago's Version Of "The Big Lie"

The detractors of arbitration have successfully persuaded some members of the public and those alderpersons who voted to reject with assertions that the privacy of arbitration which occurs "behind closed doors" is somehow a corrupt process for dispute resolution – even though arbitration is required by the Rule of Law and is the long-held policy of this state (as well as at the federal level). Misinformation, untruths and half-truths about the arbitration process have been fed to the public and have been repeated over and over to the point that the misinformation, untruths and half-truths have now become fact. That misinformation, untruths and half-truths are that the Lodge selects the arbitrators and the arbitrators therefore have a financial incentive to please the Lodge and the arbitrators therefore compromise their decisions and rule in the Lodge's favor in order to get future work. The fact and truth are that arbitrators are *mutually* selected *by the parties* (and *not* solely by the Lodge as has been misrepresented) and that the arbitrators cannot compromise their decisions to curry favor with the Lodge because doing so will (and should) get those arbitrators removed from hearing future cases. The rule for the arbitrators is "Good cases win. Bad cases lose. Split no babies. Throw no bones." If arbitrators do not follow that rule, they should not be used.

The strategy that has been used to disparage arbitration through repeated misinformation, untruths and half-truths is the same type of strategy used by those

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now seeking to divide the country through repetition of “The Big Lie” that former President Trump actually won the 2020 election and that election was “rigged.” As former President Trump told his White House press secretary Stephanie Grisham, to make a falsity into truth “[a]s long as you keep repeating something, it doesn’t matter what you say.” That is what happened here when the phrase “behind closed doors” and untrue inherent biases of arbitrators whose goal has been made out to be that arbitrators decide and compromise cases based upon their desire to be selected for future work were repeatedly used in a negative fashion to describe the decades-old statutory right to arbitration. Disputes decided in arbitration by arbitrators are decided on the basis of the circumstances and facts presented in each case – arbitrators call balls and strikes – period.

It should be lost on no one that this interest arbitration proceeding resolved many unresolved issues between the parties that festered for now over six and one-half years and arbitration of discipline was only one of those issues. The end product of this interest arbitration proceeding was captured by the City Member’s dissenting opinion in the Final Award:

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.

This interest arbitration that resulted in resolution of the many remaining long-running disputes between the parties was an arbitration proceeding that was conducted “*behind closed doors.*”

7. The Simple And Required Result

All of this really returns to one simple notion. With the statutory mandate for arbitration found in the IPLRA as protected by the Workers’ Rights Amendment to the Illinois Constitution which constitute the Rule of Law, those alderpersons who voted to reject the arbitration provisions of the Final Award violated their oath of office that “I _____ do solemnly swear that I will support ... the Constitution of the State of Illinois” And while slogans, catch phrases, public relations efforts and talking points like “behind closed doors” have been successfully utilized to disparage and demean arbitration to achieve the result from the City Council (but at the same time has allowed those voting to reject to make their no doubt heart-felt positions publicly known), the real phrase for those alderpersons who voted to reject is this:

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“You took an oath.”

Therefore, the City Council must not reject the arbitration provisions of the Final Award.

8. A Plea

Therefore, I make a last-ditch plea to the City Council. Please, don't do this and continue with the rejection and go down a path of years of fruitless, expensive and wasteful litigation and resulting discord – only to lose that litigation and then to have to pay make-whole relief for those officers who were affected by the delay – whether those officers ultimately prevail in arbitration or not. Please, consider the absolutely correct legal assessment given to you by the City's attorney that although there are arguments that can be presented, “... a challenge in the Circuit Court of Cook County to an interest arbitrator decision is a steep hill to climb and that would be a challenging legal proceeding for the City of Chicago ... the challenge in circuit court, yes, is going to be significant”

To those alderpersons who voted to reject and to Mayor Johnson, your disagreement and dislike of the result of the arbitration requirements of the Final Award which you made on behalf of some of your constituents have been heard and preserved by this Supplemental Final Award and video of the City Council proceedings. If you voted to reject to make a protest, your point has been made. Now please don't throw away potentially large sums of taxpayers' money that could be used better elsewhere than on a legal fight you cannot win which you are undertaking to make a point you have already resoundingly made. The law is clear – and you took an oath to support that law. If you don't like the results coming from the Rule of Law, then seek to change the law. However, you cannot ignore or defy the results of the Rule of Law merely because you do not like those results.

Again, “You took an oath.”

9. Conclusion

The arbitration provisions of the Final Award therefore remain.

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FULL DISCUSSION

I. BACKGROUND

To reject the terms of an interest arbitration award, the Chicago City Council must do so by a three-fifths vote (30 votes needed to reject). If not rejected by the required number of votes, the terms of an interest arbitration award become the parties' collective bargaining agreement.

By a vote of 33 to 17 on December 13, 2023, the Chicago City Council rejected a portion of an interest arbitration award ("Final Award") issued by this Dispute Resolution Board on October 19, 2023 (City's Member dissenting) adopting a proposal made by the Lodge to be part of the parties' new Agreement. That proposal was to provide to the Lodge the option to protest disciplinary actions of greater than 365 days and separations (dismissals) issued to police officers to final and binding arbitration rather than having the Chicago Police Board decide all of those disputes. The remainder of the new Agreement which was resolved through the interest arbitration process was ratified by the City Council.

This Supplemental Final Award issues as a result of that partial rejection vote by the City Council to place the arbitration provisions into the new Agreement between the parties and the returning of this matter to this Board.

As the Neutral Chair of the Dispute Resolution Board, I have issued three prior decisions in this dispute – an Interim Award dated June 26, 2023; a Supplemental Interim Award dated August 2, 2023; and the Final Award dated October 19, 2023.¹

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](https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016%20Interim%20Award.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](https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016%20Supp%20award.pdf)

The Final Award is posted at (copy and paste the URL into a browser if the link doesn't open to the award):
[https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/City of Chicago - FOP Lodge 7 Interest Arbitration Award \(L-MA-18-016\).pdf](https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/City%20of%20Chicago%20-%20FOP%20Lodge%207%20Interest%20Arbitration%20Award%20(L-MA-18-016).pdf)

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The Final Award contained numerous changes to the parties' prior Agreement which expired June 30, 2017.

The rationale in the Final Award adopting the arbitration requirement was as follows [emphasis added]:²

1. Section 8 of the Illinois Public Labor Relations Act ("IPLRA") provides that collective bargaining agreements for police officers "... *shall provide* for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise."
2. The Lodge no longer "agree[s] otherwise", therefore, in accord with Section 8, the Agreement "*shall provide* for final and binding arbitration of disputes"
3. The parties' Agreement requires that the City have "just cause" to discipline police officers. If there are "disputes" over whether "just cause" exists for discipline of police officers, those are "disputes concerning the administration or interpretation of the agreement" under Section 8 of the IPLRA which, if contested, "shall" be submitted "for final and binding arbitration of disputes."
4. Section 15 of the IPLRA (Act Takes Precedence) is a supremacy clause which provides that "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."
5. Section 2 of the IPLRA provides that for employees such as police officers, it is the "policy" of the State of Illinois that "*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."

² Final Award at 10-26.

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6. Since 1988 there have been 17 published interest arbitration awards (six by this Neutral Chair going back to 1990) that have held that if a party requests to have arbitration of disputes, including discipline, the quoted sections of the IPLRA require that the interest arbitrator rule that final and binding arbitration must be part of the parties' collective bargaining agreement.
7. The Illinois Constitution now provides the "Workers' Rights" Amendment that for "employees" – which include police officers – "[n]o 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"

In accord with the provisions of Section 28.3(B)(9) of the existing Agreement, the parties met after the City Council's rejection vote, but were unable to agree upon modifications to the resolve the arbitration of discipline dispute.

On December 21, 2023, the parties met with the undersigned Neutral Chair and the other Board members. Discussion was had on the unresolved arbitration dispute, but again, resolution of the unresolved arbitration dispute did not occur.³

II. A PROCEDURAL ISSUE RAISED BY THE CITY CONCERNING PROCEEDINGS AFTER THE CITY COUNCIL'S REJECTION

At the December 21, 2023 meeting of the parties with this Board, the City requested the ability to present further argument and perhaps testimony and wanted to further delay this matter to February 1, 2024. I denied that request.

At the December 21, 2023 meeting where discussion showed there would be no resolution of the disputed arbitration of discipline issue, I advised the parties that I

³ At the December 21, 2023 meeting of the Board and the parties, the Lodge raised a dispute concerning an increase to health care costs as provided in the City ordinance adopting the portion of the Final Award ratified by the City Council. I advised the parties that I saw that dispute as a matter to be resolved through further discussion between the parties or through arbitration or unfair labor practice proceedings. Litigation on the insurance issue has apparently begun. In this Supplemental Final Award, I express no opinion on the insurance dispute.

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viewed the videos of the December 7, 2023 Committee on Workforce Development (which included a detailed presentation by the City's negotiating team and opinion of legal counsel); and the December 13, 2023 full City Council meeting where, at both meetings, objections and supporting positions for the arbitration provisions of the Final Award were presented in great detail. Further considering that I had previously issued three awards in this case resulting from a very voluminous record addressing the right to arbitration and after considering the parties positions on how to proceed, I advised the parties that I had enough information to issue another decision – this time on the objections to the arbitration requirements of the Final Award raised during the City Council proceedings. I further advised the parties that they were free to submit anything further concerning the reasons for the City Council's rejection and that I would issue a Supplemental Final Award after the holidays towards the end of the week of January 2, 2024.

Section 14(p) of the IPLRA allows parties to "... agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution." In Section 28.3(11) of the parties' collective bargaining agreement, the parties took advantage of Section 14(p) of the IPLRA and agreed to adopt Sections 14(h), (i), (k) and (m) of the IPLRA. Those sections were also specifically listed in the agreed-upon October 31, 2022 Scheduling Order at IX(3) as governing these proceedings ("[t]hese proceedings shall be governed by the following ... Sections 14(h), (i), (k) and (m) of the Illinois Public Labor Relations Act").

Section 14(n) of the IPLRA specifically provides that after there is a rejection of an interest arbitration award by a governing body, "... the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms." However, the parties did *not* adopt Section 14(n)

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as part of their “alternative form of impasse resolution” as allowed by Section 14(p) of the IPLRA.

The governing language for what happens after a City Council rejection is found in Section 28.3(B)(9) of the parties’ Agreement:

9. If the City Council should reject the arbitrated agreement, the parties shall meet again within ten (10) days of the Council’s vote to discuss the reasons for the Council’s rejection and to determine whether any modifications can be made to deal with the problems; but either party may thereafter terminate this Agreement upon ten (10) days’ written notice to the other.

The parties met this obligation under Section 28.3(B)(9) – they met, but without success.

Thus, there is no requirement for the parties to return to this Board after the City Council rejected the Final Award. Nevertheless, from the outset, the parties agreed that if there was a City Council rejection, they would return to this Board. Following that informal agreement, I stated in the Final Award at 26-27:

... 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).

For purposes of the City’s objection and its desire to present further evidence, this is my fourth decision in this case on the arbitration issue. Actually, this is my sixth ruling in this case on the arbitration issue. Aside from the Interim Award,

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Supplemental Interim Award, Final Award and now this Supplemental Final Award, there were two previous orders in this case addressing the substance of the arbitration issue (orders dated May 5 and May 12, 2023) making six rulings by me on the arbitration dispute.⁴

There have been (to say the least) extensive arguments, briefs and negotiations on this issue. And because the parties agreed to exclude Section 14(n)'s procedures for post-rejection proceedings, there is no statutory or contractual process agreed to by the parties to govern their voluntary returning to this Board after the City Council rejected the Final Award.

⁴ The October 31, 2022 agreed-upon Scheduling Order provided for a procedure for the parties to file final offers, evidence and arguments; file briefs and reply briefs; engage in mediation; and present evidence and arguments at hearings. As of October 31, 2022 when the Scheduling Order issued, former Mayor Lori Lightfoot was in office. As provided in the Scheduling Order, the hearings were to commence March 27, 2023 and end April 10, 2023.

As reflected in a March 1, 2023 Order Pausing Proceedings, the proceedings in this matter were paused with a May 5, 2023 status date due to former Mayor Lightfoot's elimination from the mayoral election as a result of her losing the February 28, 2023 election and exclusion from a runoff election to be held April 4, 2023 – a runoff election that Mayor Johnson won.

On May 5, 2023, the City requested a further stay of the proceedings, to which the Lodge objected. Because then Mayor-Elect Johnson had not yet been installed; there was going to be a transition of power; and further because before she left office, former Mayor Lightfoot dismissed the City's Lead Counsel Jim Franczek and his firm essentially leaving a rudderless ship in the middle of a very complex proceeding, on May 5, 2023, I issued an Order Partially Granting Stay And Scheduling Show Cause Hearing. In relevant part, that May 5, 2023 Order specifically referenced the arbitration issue and cited the most recent case I decided granting a similar arbitration request and noted that there was underlying arbitration authority cited in that case. May 5, 2023 Order at 5, par. 10 (vii).

On May 12, 2023, I supplemented the May 5, 2023 Order and gave a detailed explanation of the arbitration issues with case and statutory citations. Supplemental Order To May 5, 2023 Order at 14-18. That was done because of the need to get two of the many issues decided (the other being retention bonuses); the fact that Mayor Johnson had not yet been installed and needed time to put his administration together; and further because Jim Franczek was, at the time, no longer heading the City's team in these proceedings. I wanted the attorneys taking over the case for the City to be brought up to speed on the issues involved, with the hope that Mr. Franczek would return as he and his firm had been so deeply involved in the complex proceedings that had occurred before he was relieved of his responsibilities by former Mayor Lightfoot as she was walking out the door thus leaving Mayor Johnson with a rudderless ship in these proceedings. That return to reason occurred after Mayor Johnson was installed as Mayor Johnson brought back the Jim Franczek and his firm to again represent the City in this matter.

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Given the voluminous record in this case; the number of prior decisions on the arbitration dispute that I have issued in this case; the discussions of the parties at the December 21, 2023 meeting which did not yield a negotiated resolution; and my viewing of the lengthy arguments made at the Committee on Workforce Development and the full City Council meetings, I really have enough information to issue this Supplemental Final Award (which I am not even required to issue). Moreover, at the December 21, 2023 meeting, I gave the City the opportunity to file anything further they desired to be considered before the pre-determined time frame for issuance date of this Supplemental Final Award. The City did not do so.

How to proceed procedurally in a process that is not provided for in the contract (here, Section 28.3) is governed by the rule that "... 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." *John Wiley & Sons, Inc., v. Livingston*, 376 U.S. 543, 557 (1964). Aside from having the general authority to rule on how procedural questions such as this are to be handled, in the October 31, 2022 agreed-upon Scheduling Order at II(12), it was agreed that "... the Neutral Chair reserves the right to modify this procedure at his discretion." I have exercised that authority through how the post-rejection process is to be handled.

In short, with respect to further proceedings after the City Council's rejection and the City's desire to have more proceedings including possibly testimony from witnesses, I have discretion to say "enough is enough." Given the previous rulings (again, there have now been five before this one, making this one the sixth ruling); the voluminous record with evidence, briefs and arguments developed in the interest arbitration proceedings before the City Council rejected the Final Award; my viewing of the proceedings before the December 7, 2023 Committee on Workforce Development (which included a detailed presentation by the City's negotiating team and

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opinion of legal counsel); my viewing of the December 13, 2023 full City Council meeting; and finally the discussions from the December 21, 2023 meeting, I have enough to make another ruling in this matter.

III. THE CITY COUNCIL MEMBERS VOTING TO REJECT THE ARBITRATION PROVISIONS OF THE FINAL AWARD AND MAYOR JOHNSON VIOLATED THEIR OATH OF OFFICE

On May 15, 2023, 13 new members of the City Council took their oath of office.⁵ The oath taken that day (as did the incumbent members of the City Council when they were sworn in) was [emphasis added]:⁶

I ____ do solemnly swear that I will support the Constitution of the United States and the *Constitution of the State of Illinois* and that I will faithfully discharge the duties of the Office of Alderperson of the City of Chicago according to the best of my ability.

On that same day, Mayor Johnson took that oath as it applied to his office as mayor – again with the promise to “... support ... the *Constitution of the State of Illinois*”⁷

The Final Award adopted the Lodge’s proposal for arbitration based upon the mandate for final and binding arbitration found in Sections 8, 2 and 15 of the IPLRA. The Workers’ Rights Amendment found in the Illinois Constitution solidifies and

⁵ The May 15, 2023 proceedings are posted at:
<https://vimeo.com/showcase/6277394/video/826670252>
See also, Chicago Tribune (May 15, 2023):
<https://www.chicagotribune.com/politics/elections/ct-chicago-mayor-brandon-johnson-sworn-in-20230515-h4h3flacmjgytnwf6xgbp6dtry-story.html>
Chicago Sun-Times (May 15, 2023):
<https://chicago.suntimes.com/city-hall/2023/5/15/23724686/chicago-city-council-inauguration-alderpersons>
WGN News:

<https://wgntv.com/news/13-new-chicago-city-council-members-sworn-into-office/>

⁶ The newly elected alderpersons taking of that oath of office is captured in the video of the May 15, 2023 proceedings at 1:52:45-1:54:20):
<https://vimeo.com/showcase/6277394/video/826670252>

⁷ *Id.* at 2:15:25-2:16:55.

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protects that right to arbitration found in those sections of the IPLRA. By rejecting the right to arbitration found in the IPLRA and the Workers' Rights Amendment to the Illinois Constitution, the City Council and Mayor Johnson violated their oath to "... support ... the Constitution of the State of Illinois"

On October 23, 2023 Mayor Johnson opposed the arbitration provision of the Final Award and requested that the City Council reject it ("We are disappointed in today's arbitrator ruling that would allow police disciplinary cases that resulted in a year or longer suspension or termination to forego the Chicago Police Board. ... I am asking the body to reject this measure when it comes up in the coming weeks."⁸

On December 7, 2023, the City Council's Committee on Workforce Development voted 10 to 5 to recommend that the City Council reject the arbitration provisions adopted in the Final Award.⁹ At that meeting, the City's legal counsel was asked by an alderman about the likelihood of the City succeeding in court litigation should the full City Council reject the arbitration provisions. The City's Labor Counsel, Jim Franczek, candidly responded that while the City had arguments to make (which he characterized as "pretty strong" by referencing the Federal Court Consent Decree, public policy, the long history of having the Police Board decide these cases and transparency), Mr. Franczek also stated that with respect to the Final Award, "... a challenge in the Circuit Court of Cook County to an interest arbitrator decision is a steep hill to climb and that would be a challenging legal proceeding for the City of Chicago ... the challenge in circuit court, yes, is going to be significant"¹⁰

⁸ <https://twitter.com/ChicagosMayor/status/1716652507575796092/photo/1>

⁹ The minutes of the December 7, 2023 meeting of the Committee are posted at: <https://occprodstoragev1.blob.core.usgovcloudapi.net/meetingattachmentspublic/1ade1db0-39ab-4fa7-9e3a-fa7d98b70956.pdf>

The video proceeding of the Committee is posted at: <https://vimeo.com/showcase/8928568/video/892317880>

¹⁰ *Id.* Video at 2:14:55-2:16:30.

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On December 13, 2023 and following Mayor Johnson's request to reject and the Committee on Workforce Development's similar recommendation, the full City Council voted 33-17 to reject the arbitration provisions of the Final Award and adopted the remainder of the terms for the new collective bargaining agreement.¹¹

The statements made at the City Council debate on December 13, 2023 show positions ranging from heart-felt opinions of distrust (indeed, disdain) of the police to strong opinions in support of the police. Several alderpersons spoke. I will highlight a few showing the thoughtful and powerfully-held sentiments for their respective positions.

Alderman Jason Ervin supported rejection of the Final Award's arbitration provisions:¹²

* * *

Let's keep in mind. Sometimes the law doesn't quite get it right. Slavery was the law of this land. It wasn't right. Separate but equal was the law of the land. Again, it wasn't right. Women didn't have a right to vote – hell, I didn't have a right to vote. Again, it wasn't right. While we are in this moment to deal with this matter, I think we have to in some respects recognize when this is not in the public interest.

Again, as Alderman Tabares has told us and laid out for us from what the State Act says, there is precedent – I think the Corporation Counsel has given us some same ideals and etiology – but in this moment, this just is not right. And I think that we as a body have to make a decision on what we believe on behalf of our residents and our constituents to be what is right. If we believe that what is being put before us is not right or just – and again, if our rejection leads to additional back and forth, then so be it. It's not the first fight – won't be the last fight. But again, I think that in this case – and I'm not against the FOP; I'm not against their

¹¹ The video proceeding of the December 13, 2023 meeting of the City Council is posted at:
<https://vimeo.com/893801913>

¹² <https://vimeo.com/893801913>
Video at 2:06:02- 2:09:06.

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leadership; not against the police officers – however, we have to be for what the public is calling for and it's right for us to do or not to do. So, while we may get mired in the back and forth of the conversation, I think that we have to land in a sense of what is right and what is just. And what is being put before us today is not right, it is not just for the constituents that we serve.

And so, it's in accordance with the Chairman, I would ask that we reject this and hopefully come back and get something better out of this conversation.

Alderwoman Jeanette Taylor also supported rejection:¹³

There's a saying that says "Forward ever, backwards never!" And we love throwing around the word "trust". Trust is a two-way street. Anjanette Young trusted you all. Rekia Boyd trusted you all. Miracle Boyd trusted you all. And their trust was betrayed. Our co-workers are quick to say there are nine bodies of accountability, but we're about to pay eleven million dollars in lawsuits for bad behavior. Where is the trust and the protection for us? Now I named these Black women intentionally because I'm a Black woman and I want to be able to pick up a call and 911 and not be worried if you're gonna shoot me because I'm Black. ... Patrick Jenkins whose family we're about to pay eight million dollars to – that won't bring him back. We have all these levels of accountability, but every month you ask us to pay families money because of mistakes. And sometimes I don't think they're mistakes. I think they're intentional. Why I agree that the police don't get their just due and should be at the table when decisions about their job should be made, we're not going behind closed doors. We're still paying lawsuits for John Burge victims. Why? Why? When you look at what the police looks like now, they're not a lot of Black police. Nobody wants to be the police. They don't. We are at a time where we gotta hold each other accountable. And going behind closed doors to decide fate ain't holding the people accountable. The gentleman who hit Miracle Boy to her mouth, guess what? He retired. But he's going to get his pension. I asked this body a long time ago, should they have their own insurance? I was laughed at. I was ridiculed for asking the question because we continue to pay for bad behavior. Because

¹³ <https://vimeo.com/893801913>
Video at 2:20:00-2:24:17.

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that's what this is. And trust? I want to trust. If I call 911, you're gonna come and do what I need to do and not shoot and kill me. We were just in Finance and I was more confused than anybody sitting in here on why Mr. Jenkins called the police to say he was being stabbed and within two minutes he was killed. Where's accountability for his kids? And we can throw around money all day long. You all love talkin' about we're gonna spend more money on arbitration. We spend \$167,000 a month on rent on certain spaces. Come on. Stop it. I am tired of you all acting like the sky is fallin' when it ain't. It's when it's convenient for you all. At the end of the day it is our responsibility to build trust amongst everybody. And don't get me wrong. I don't know who I'll call in when something happens. Am I callin' the boys on the block or the police? I don't know who I got a better chance with. And that's on you all. That's how we've been treated. We love, love, love talkin' about money. We've thrown away more money than any city council I've ever seen in the country. On BS. So stop it. I am not voting to have nothing behind no closed doors. This is not what the community asks us to do. And this wasn't just about Black and Brown people. You had White people are talkin' about police brutality. So let's make it real around here if we're goin' to talk about it. You're all irritating. You really are. Because at the end of the day, now you want to talk about workers' rights? We just passed Fight for 15. Stop it. We just made sure the temp workers got their fair share. Stop it. Just stop it. Enough is enough. You all wonder why the people come here on the City Council and act a fool? Cause we actin' a fool. I tell people every time when I come here, I'm going to the universal soul soakin'. This is clowning.

While recognizing that there should be collaboration with the Lodge on some transparency of arbitration proceedings, which the Lodge was open to, Alderwoman Silvana Tabares stated the opposition to rejection of the arbitration provisions of the Final Award:¹⁴

I'd like to lay out three important facts that we learned in Workforce ... Development Committee last week – three important

¹⁴ <https://vimeo.com/893801913>
Video at 1:20:00-1:26:56.

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facts. Number one: the Illinois Public Relations Act of 1984 guarantees, guarantees Chicago Police the right to arbitration in exchange for the right to strike. Number 2: that same state law states any local ordinance that attempts to infringe on that right shall be considered illegal. And number 3: the City's attorney admitted – they admitted that they are likely to be unsuccessful in court defending the blatant disregard the City has shown to the State law when it comes to how it treats Chicago police officers. Let me repeat, the State law already gives Chicago police officers the right to arbitration. ...

The arbitration award makes it clear as day and even our City attorneys know it's an open and shut case if this goes to court. My fellow colleagues, we therefore have two options. Option 1: we as a counsel could vote to reject the ruling and defy the Illinois Public Labor Relations Act and be just like the right-wing activists that push right to work laws to infringe on the rights of public sector employees. We thereby kick off a chain of events which will lead to a court ruling in favor of arbitration anyway and open the floodgates to further litigation. These cases will last years and could cost the City hundreds of millions of dollars. Those are dollars that will go into the pockets of police officers who were rightfully suspended or terminated. None of us – I'm sure none of us want public dollars to be awarded in court to bad cops as opposed to being used to fund mental health clinics or homeless services. Further, this option will also send a strong message to all other labor unions that we do not respect their legal rights. We do not respect their due process and we are willing to break the law when it comes to infringing on the rights of members when it is politically expedient. All the unions are watching today because they know it starts with one and will lead to more. ...

We must acknowledge what the law says about police arbitration rights and pass this contract and continue to use the momentum to forge a path forward of collaboration between officers and the City, worker and employer. ...

If those who make the law decide to break the law to punish those who enforce the law, we do not deserve the right to make decisions running a government. Transparency and accountability will only be achieved through collaboration. We can achieve great things when everybody is at the table. That is the central belief. That is the foundation of collective bargaining. Let's pass this contract and show that we still believe that in Chicago.

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Alderwoman Nicole Lee illustrated the difficulty in making her decision, but also gave the side of the argument against rejection and ultimately took the position not to reject and gave guidance for the correct course to be followed:¹⁵

You know, I've gotten up here a lot of times to talk about my own personal struggles with what weighs on each of us as alderpeople. This by far has been the hardest. I thought long and hard – I'm still thinking as I stand here about what's been put before us.

And I've got concerns. I had concerns about what we just said yes to and the fact that we didn't get that contract to review until the day of the Committee hearing. I think we need to be able as a body to have as much information as possible to consider when we're looking at something as significant as a police contract.

I've had conversations with constituents as well as members on both sides of the bargaining table. And I still have questions, right? Look, let me be clear. I do not want there to be a lack of transparency, because I agree we need that for trust. And the transition from a public process from the Police Board to arbitration does threaten to erode that trust between the community and the police.

But trust is built one-on-one too. It's built by the officers that are in our community patrolling our streets, attending CAPS events, talking to our seniors, responding where they are at night. Look, I've heard lots of things in this room today about them not showing up or there's not trust there. The fact is I live in a community where we feel like we need police, very desperately. In the year 2022, Beat 914 in the City of Chicago in Chinatown – we had the highest level of robberies in the entire City of Chicago. And when people call the police, they want them to be there to respond. And we need to support them on that, which is why I was happy to vote yes on the contract – on the other piece of the contract. And we know how big an issue public safety is in this City and that there's a lot more that we need to do.

And when I look at misconduct by some police officers and not having that be as representative of everybody, I know that we have a lot of work to do all around. This is not something that's

¹⁵ <https://vimeo.com/893801913>
Video at 2:09:10-2:13:34.

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going to be solved by this contract alone, either. That we even had to resort to arbitration in the first place for the very first time to settle our contract is pretty symbolic. And I think that everything we've done today around this contract has been precedent setting. And that's not lost on me and the weight of it, absolutely, kind of makes me want to throw up right now. Because this is the decision that we have to make here.

What I've gotten from all of the work I've done in this process to make the determination on where I stand on the arbitration piece is that we are a labor city. The State statute is clear that there is the right to arbitration. That is not in question. And it also is true that I don't believe that arbitration as it exists today leads to any real public trust in the police officers, with the police, excuse me, and with this process. And I think the place that we should be focusing on changing the State statute, changing the State laws that govern this. Laws are meant to be amended, folks. We can't look at everything that we're doing, set a law – it's not a set it and forget it. This is not like a [Ron Popeil] grill. We have to keep going back and looking at where we need to make changes and tweaks. And for that reason, I'm going to be in support of the contract as it is today with the arbitration. And I will work fervently with my colleagues to make the changes that are necessary at the State level and throughout and continue to build trust. But we need to get this done.

Following the rejection vote by the City Council, Mayor Johnson held a press conference. When asked about legal advice given by Mr. Franczek that a court action would be a steep hill to climb to get a judge to rule in the City's favor, Mayor Johnson responded:¹⁶

There are a lot of policies over the course of time that have been in place. It doesn't make them right. So if you're asking this body to just simply accept something because it's law, that would be the antithesis to how this stage even exists. Could you imagine if

¹⁶ Video at 21:53-22:55.

<https://www.facebook.com/ChicagoMayorsOffice/videos/update-from-city-hall/325578323583296>

WBEZ covered the news conference reporting the same with the reporting that "The 33-to-17 vote extends a stalemate with the union for most Chicago cops and could lead to a Cook County Circuit Court battle that city attorneys acknowledge would be an uphill climb":

<https://www.wbez.org/stories/chicago-city-council-rejects-arbitration-for-police-firings/c26a50be-70b5-48db-836f-1060f4ea8005>

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women just accepted the law and did not continue to pursue justice or Black folks or brown folks or Asian folks or poor people, working people?

The reasons for rejection were based upon the belief that the mandate for arbitration in Sections 8, 2 and 15 of the IPLRA and the Workers' Rights Amendment of the Illinois Constitution "... doesn't quite get it right ... what is being put before us today is not right" (Alderman Ervin); "I am not voting to have nothing behind no closed doors ... [t]his is not what the community asks us to do" (Alderdwoman Taylor) and "... a lot of policies over the course of time that have been in place ... doesn't make them right ... if you're asking this body to just simply accept something because it's law, that would be the antithesis to how this stage even exists" (Mayor Johnson).

The legal requirements to provide for arbitration of disputes as specified in the IPLRA and protected by the Workers' Rights Amendment to the Illinois Constitution is "the Rule of Law."

Adherence to the Rule of Law is not a request or a cafeteria selection process for the City to choose which State of Illinois laws should apply and which should not. Adherence to the Rule of Law is an obligation and that obligation applies equally to everyone – individuals and governing bodies, be they large or small in stature or size, powerful or not.

The reasons offered for rejection of the arbitration provisions of the Final Award are a belief by the City that the Rule of Law mandating arbitration as found in the IPLRA is not "just" or "right" and the most troubling statement that came from Mayor Johnson that with respect to the Rule of Law, "if you're asking this body to just simply accept something because it's law, that would be the antithesis to how this stage even exists." The laws of Illinois are not merely "*asking* this body to just simply accept something because it's law" – the laws of Illinois are *telling* the City

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that it *must* accept “something because it’s law”. The City does not get to choose which laws apply to it. The City is not above the law – here, the requirement for arbitration as imposed by the Final Award which is based on the IPLRA and the Workers’ Rights Amendment in the Illinois Constitution.

For those alderpersons who voted to reject (as well as Mayor Johnson for supporting that rejection), you took an oath to support the Illinois Constitution – no matter how you personally feel. You violated that oath.

The obvious and strikingly sad parallel to the City Council’s action is former President Trump’s belief that he is above the law and not bound by the Rule of Law. That belief has been slapped down by the courts. *See e.g., Donald J. Trump v. United States of America*, 54 F.4th 689, 701 (11th Cir. 2022) (“To create a special exception here would defy our Nation’s fundamental principle that our law applies ‘to all, without regard to numbers, wealth, or rank’” [citation omitted]);¹⁷ *United States of America v. Donald J. Trump*, No. 23-3190 (D.C. Cir. December 8, 2023), slip op. at 68 (“... Mr. Trump is also an indicted criminal defendant, and he must stand trial in a courtroom under the same procedures that govern all other criminal defendants ... [t]hat is what the rule of law means”).¹⁸ *See also, United States of America v. Donald J. Trump*, No. 23-257 (D.D.C. December 1, 2023) where, in response to the former President’s assertion that because he is a former president he is immune from the criminal charges brought against him, the court observed in rejecting that contention, upholding such a theory (slip op. at 25-26):¹⁹

... would undermine the foundation of the rule of law that our first former President described: “Respect for its authority, compliance

¹⁷ https://scholar.google.com/scholar_case?case=10915598169263830153&q=donald+j.+trump+v.+United+states+of+America&hl=en&as_sdt=4,121

¹⁸ [https://www.cadc.uscourts.gov/internet/opinions.nsf/062EE6E27AEF48AC85258A7F0069B15F/\\$file/23-3190-2030689.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/062EE6E27AEF48AC85258A7F0069B15F/$file/23-3190-2030689.pdf)

¹⁹ <https://storage.courtlistener.com/recap/gov.uscourts.dcd.258149/gov.uscourts.dcd.258149.171.0.pdf>

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with its laws, [and] acquiescence in its measures” – “duties enjoined by the fundamental maxim of true liberty.” [George] Washington’s Farewell Address at 13.

The City Council’s reasons for rejection of the arbitration requirement in the Final Award that the City is not bound by the IPLRA and the Illinois Constitution are really no different from Trump’s belief that the Rule of Law does not apply to him.

Taking the City’s reasons for rejection to their logical extent, if laws such as the IPLRA could be ignored or defied because it is felt by the City Council that those laws are not “just” or “right”, then the City could ignore all State of Illinois or federal laws applicable to the City and, going further, individuals could opt to not pay taxes, fees, fines, comply with City ordinances, state and federal laws, etc. which they similarly believe are not “just” or “right”.

In a democracy, that is not how it works.

Alderwomen Taberas and Lee are correct. The Rule of Law mandates arbitration as required by the Final Award; the parties should work in collaboration to overcome the remaining differences and in the end, because the law requires arbitration, if issues remain that can’t be resolved, then the proper avenue for attempting to correct differences is to make efforts to change the law.

The Final Award is the culmination of what is now an over six and one-half year labor dispute between the City and the Lodge to establish the terms of the successor collective bargaining agreement to the parties’ prior contract which expired June 30, 2017. Through the mediation-arbitration process (“med-arb”), with my serving as the mediator and arbitrator, the parties came to agreement on terms of their new contract – with the exception of the option for arbitration of grievances for disciplinary actions in excess of 365 days and dismissals.

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For the above reasons, the arbitration requirement in the Final Award therefore stands unchanged and should be finalized.

IV. THE COMING COURT CHALLENGE

The City Council now has a choice. It can reconsider its rejection (take another vote) and not reject or, if rejection remains, face the coming court challenge by the Lodge to enforce the Final Award.

A. The Likelihood Of The City's Prevailing In A Court Challenge To Overturn The Final Award's Requirement For Arbitration

Unless modified by agreement of the parties (which has not happened), if the City Council does not adopt the provisions of the Final Award, there will no doubt be a court challenge instituted by the Lodge.

I closely watched the video of the December 7, 2023 meeting of City Council's Committee on Workforce Development proceedings²⁰ as well as the December 13, 2023 meeting of the full City Council.²¹ An objective conclusion that can be reached (which is consistent with counsel for the City's assessment that although the City may make what it can refer to as "pretty strong" arguments as stated by counsel for the City at the Committee on Workforce Development), a court challenge to the Final Award as an interest arbitrator's decision will be a *very* "steep hill to climb" that will be a *very* "challenging legal proceeding for the City."

As I view the arguments referenced by the City (and taking the arguments raised by the City Member's Dissent to the Final Award discussed below), such a challenge will be an impossible task for the City to successfully achieve and the City's

²⁰ <https://vimeo.com/showcase/8928568/video/892317880>

²¹ <https://vimeo.com/893801913>

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arguments to overturn the arbitration requirement of the Final Award will not prevail.

This is why:

1. Deference Of The Courts To Interpretations Made By Arbitrators

Section 14(k) of the IPLRA substantially limits the review of any challenge to an interest arbitration award as follows:

(k) Orders of the arbitration panel shall be reviewable, upon appropriate petition by either the public employer or the exclusive bargaining representative, by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or other similar and unlawful means.

In Section 28.3(B)(11) of the parties' Agreement, the parties specifically adopted the provisions of Section 14(k) of the IPLRA as the standard of court review of interest arbitration awards such as the Final Award.

In a court challenge brought by the Lodge to the City Council's rejection of the arbitration provisions in the Final Award, the City will not be able to successfully argue that the majority of this Board in the Final Award "was without or exceeded its statutory authority". The mandate and policy to provide for final and binding arbitration found in Sections 8 and 2 of the IPLRA; the supremacy of that mandate found in Section 15 of the IPLRA; the 17 published decisions going back to 1988 following the mandate for final and binding arbitration; and the guaranteed protection of that right to have final and binding arbitration as protected by the Workers' Rights provisions of the Illinois Constitution will prevent any assertion that in issuing the

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Final Award a majority of this Board “was without or exceeded its statutory authority”.

Thus, as a matter of statute in Section 14(k) of the IPLRA governing challenges to the Final Award, the only basis for the City to argue will be that the Final Award “is arbitrary, or capricious.”²²

What does “arbitrary, or capricious” mean? The parties’ have answered that question by following the traditional definition of those terms.

In the new Agreement, the parties addressed how disputes over the ability of resigning or retiring police officers to receive retirement credentials should be decided by arbitrators [emphasis added]:²³

In the event that the Lodge disagrees with the Superintendent’s decision, the Lodge may submit the grievance to arbitration. The Arbitrator may set aside the Superintendent’s decision only if the Arbitrator determines that the Superintendent’s decision *was arbitrary - or capricious i.e., without a rational basis or justification* - at the time of retirement.

The parties’ definition of “arbitrary” or “capricious” is the long-accepted standard limiting how arbitrators review challenges to managerial decisions. To succeed on a challenge under an “arbitrary or capricious” standard of review requires a showing that the decision was made “without a rational basis or justification.”²⁴ Therefore, the City’s successful challenging of the Final Award’s arbitration requirement as being “arbitrary” or “capricious” requires the City to hurdle a very high bar. Whether

²² No one can assert that the Final Award “was procured by fraud, collusion or other similar and unlawful means”.

²³ Final Award Appendix at page 20, paragraph 19.

²⁴ *South Central Bell Telephone Co.*, 52 LA 1104, 1109 (Platt, 1969):

In general, ... action is arbitrary when it is without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse.

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the Final Award was “correct” is not the standard for court review. As required by Section 14(k) of the IPLRA adopted into the parties’ contract at Section 28.3(B)(11), there must be a showing by the City that the decision of this Board adopting the IPLRA’s statutory mandate for arbitration was without a rational basis or justification.²⁵

The City’s high hurdle is clearly established by the courts because the courts give great deference to interpretations made by arbitrators. *See 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. ...

See also, 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)]:

²⁵ See e.g., my award in *City of Chicago and FOP Lodge 7, (Security Specialists)*, Grv. Nos. 045-11-001, etc. (2014) at 20 where the Lodge unsuccessfully challenged former Mayor Rahm Emanuel’s managerial decision to change personnel on his security detail and where I discussed the burden in making a demonstration of arbitrary decision making [footnotes omitted]:

... [D]ecision making “... is arbitrary when it is without consideration and in disregard of facts and circumstances of a case, without rational basis, justification or excuse.”

Stated differently, because this is a management rights case, the City has the “right” to be “wrong” – it just cannot be arbitrary in its decision making. As long as the City can show a “rational basis, justification or excuse” for its managerial decisions, arbitrators have no authority to second-guess those decisions.

In the *Security Specialists* case, because the Lodge challenged the City’s decision concerning the assignments to former Mayor Emanuel’s security detail, the burden was on the Lodge to show that the City’s decision was arbitrary because the decision was without rational basis or justification. In this case, the burden to set aside the Final Award will be on the City to make that showing because the City will be challenging the Final Award as arbitrary as lacking a rational basis or justification.

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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.

Given the great deference courts give to arbitrators' interpretations, the discussion in this Supplemental Final Award and the Final Award (as well as the Interim and Supplemental Interim Awards) and the above-quoted authority, validates the assessment of the City's counsel that "... a challenge in the Circuit Court of Cook County to an interest arbitrator decision is a steep hill to climb and that would be a challenging legal proceeding for the City of Chicago ... the challenge in circuit court, yes, is going to be significant"

As I see it, that will be a *very* steep hill and a *very* significant challenge — indeed, given the circumstances of this case, it will be an impossible task.

2. The Consent Decree Argument

The City's reliance upon the Federal Court Consent Decree (*State of Illinois v. City of Chicago* (17-cv-6260 (N.D. Ill.))²⁶ will also not be a basis for overturning the arbitration requirement in the Final Award.

The Consent Decree 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

²⁶ City Exhibit 5, posted at:
https://www.chicago.gov/content/dam/city/depts/cpb/supp_info/ConsentDecreeComplete.pdf

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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 CBAs, including any Successor CBAs 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 CBAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAs 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.

In this proceeding, the City used its “best efforts to secure modifications to the CBA ...” as required by the Consent Decree. However, paragraph 711 of the Consent Decree provides that “[n]othing in this Consent Decree shall be interpreted as obligating the City or the Unions to violate (i) the terms of the CBAs, including any Successor CBAs 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 ...” [emphasis added].

The requirement of arbitration as adopted by the Final Award is “*mandated by the IPLRA*” and because that requirement results from a literal reading of Sections 8, 2 and 15 of the IPLRA and the Workers’ Rights provisions of the Illinois Constitution, such terms cannot “... violate ... Illinois law or public policy ...” as stated in paragraph 711 of the Consent Decree. Indeed, under Section 2 of the IPLRA, the mandate for arbitration is stated as the public policy in Illinois. And this proceeding, as

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contemplated by paragraph 711 of the Consent Decree, is a “Statutory Resolution Impasse Procedure” removed from coverage by the Consent Decree.

Moreover, aside from the carve out for these proceedings in paragraph 711 of the Consent Decree, the Federal Court would be hard pressed to deny the statutory and constitutionally protected right for arbitration due to a consent decree to which the Lodge was not a party and was even denied the ability to become a party when the Lodge was denied intervention by the Federal Court. *See State of Illinois v. City of Chicago*, 912 F.3d 979, 987-988 (7th Cir. 2019):

But, as the district court recognized, existing law already provides protections for the Lodge. “Before entering a consent decree the judge must satisfy himself that the decree is consistent with the Constitution and laws, does not undermine the rightful interests of third parties, and is an appropriate commitment of the court’s limited resources.” *Kasper v. Bd. of Election Comm’rs of the City of Chicago*, 814 F.2d 332, 338 (7th Cir. 1987). Similarly, consent decrees “may not alter collective bargaining agreements without the union’s assent.” *People Who Care v. Rockford Bd. of Educ. Sch. Dist. No. 205*, 961 F.2d 1335, 1337 (7th Cir. 1992). “Neither may litigants agree to disregard valid state laws.” *Id.* In other words, because “[c]onsent decrees are fundamentally contracts,” the parties to those decrees “may not impose duties or obligations on a third party, without that party’s agreement.” *Id.* (quoting *Firefighters Local 93 v. Cleveland*, 478 U.S. 501, 529, 106 S.Ct. 3063, 92 L.Ed.2d 405 (1986)).

The parties negotiate and the district court considers the consent decree against this background law, which protects the Lodge even if ¶ 687 contains ambiguities. Simply put, a consent decree cannot accidentally eliminate the rights of third parties. And if the parties interpret the consent decree in a way which violates CBA rights, the Lodge can avail itself of normal remedies for CBA violations. *See W.R. Grace & Co. v. Local Union 759, Int’l Union of United Rubber, Cork, Linoleum & Plastic Workers of Am.*, 461 U.S. 757, 770, 103 S.Ct. 2177, 76 L.Ed.2d 298 (1983) (affirming the enforcement of an arbitration award for violating the CBA, even though a settlement agreement required the company’s violation).

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The State of Illinois and the City of Chicago therefore cannot agree through the Consent Decree to negate the Lodge's statutory and constitutional right to have in their collective bargaining agreement final and binding arbitration for disputes over the class of cases involved in this matter.

Thus, to me, there is no basis for an argument that the Federal Court's Consent Decree will provide a different result than the one adopted in this case.²⁷

3. The City's Public Policy Argument

Any reliance upon "public policy" by the City will not be a basis for overturning the arbitration requirement in the Final Award.

²⁷

In the Interim Award at 49-50, I discussed the role of arbitrators interpreting external law as it applied to the paragraph 711 of the Consent Decree [emphasis added]:

While Sections 8 and 2 of the IPLRA are clear, whether the terms set by this Interim Award relying upon the statutory mandate in the IPLRA actually "violate the U.S. Constitution, Illinois law or public policy" *under Paragraph 711 of the Consent Decree* is a question that is really not for this Board to decide. That question *under the Consent Decree* is ultimately for the courts [citing *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 43 (1987); *W.R. Grace & Co v. Rubber Workers*, 461 U.S. 757, 766 (1983)]; *Alexander v. Gardner-Denver, Co.*, 415 U.S. 36, 57 (1974); *AFSCME v. Department of Central Management Services*, *supra*, 671 N.E.2d at 678].

Throughout the Final Award and here, I have referenced Sections 8, 2 and 15 of the IPLRA as well as the Workers' Rights Amendment of the Illinois Constitution. My use of those statutory and constitutional provisions is required because those are the sections governing this dispute and the mandate for arbitration under the IPLRA. And because Section 14(h) of the IPLRA (which the parties have adopted in Section 28.3(B)(11) of their Agreement for resolving new contract terms as permitted by Section 14(p) of the IPLRA) allows interest arbitrators to look to factors listed in Section 14(h) "as applicable", Section 14(h)(1) of the IPLRA permits consideration of "[t]he lawful authority of the employer". Therefore, consideration of Sections 8, 2 and 15 of the IPLRA and the Workers' Rights Amendment can be considered *in this proceeding*. Stated differently, this Board considered whether the City has the lawful authority to ignore the cited sections of the IPLRA – and a majority of this Board concluded that the City did not have the authority to defy Illinois law and 17 published arbitration awards mandating arbitration of protests over the class of disciplinary actions involved in this dispute as a term to be placed in the parties' collective bargaining agreement.

In an effort to stop what truly looks like a legal train wreck should the City continue with its rejection of the arbitration provisions of the Final Award, I have expressed my opinion on how a challenge using the Consent Decree will result. In the end, how the Federal Court views matters under paragraph 711 of the Consent Decree is for the Federal Court to decide should it be called upon to do so. However, for purposes of discussion, the conclusion appears inevitable that the Consent Decree cannot block the Lodge's statutory and constitutional right under Illinois law to have arbitration of these disputes in their collective bargaining agreement.

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The Illinois Supreme Court states that “... Illinois public policy is shaped by our statutes, through which the General Assembly speaks.” *State of Illinois v. AF-SCME*, 51 N.E.3d 738, 747 (2016). Through Sections 8, 2 and 15 of the IPLRA requiring arbitration of disputes for the police officers in this case, the General Assembly has clearly spoken.

The requirement for arbitration of disputes (which includes review of discipline) for employees involved in this dispute as found in Section 8 of the IPLRA is clear. And Section 2 of the IPLRA is similarly clear that “... 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.” Under Section 2 of the IPLRA, that requirement “... *is the public policy of the State of Illinois* ... necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act” [emphasis added]. If there is any doubt about the Lodge’s ability to have in the Agreement the ability to have arbitrators issue awards in disputes concerning discipline of the type at issue, Section 2’s requirement “... for such awards shall be liberally construed” removes that doubt. Section 15 of the IPLRA makes the mandates of Sections 8 and 2 supreme to all other legislative actions in all levels of government in Illinois.

Arbitration of disputes as public policy in Illinois as stated in Section 2 of the IPLRA follows the long-held similar federal policy. *See 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

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achieving industrial peace is the inclusion of a provision for arbitration of grievances in the collective bargaining agreement.

Consistent with its Dissent to the Final Award at 2, the City's assertion to a court that the imposition of arbitration of protests over these types of disciplinary actions is "inconsistent with the 'interests and welfare of the public' as required by Section 14(h)(3) of the [IPLRA]" also cannot prevail.

Section 14(h)(3)'s provision for consideration of the "interests and welfare of the public" is one of the factors that interest arbitrators can weigh "as applicable" for deciding whether a provision should be placed into a collective bargaining agreement. Section 8's statutory *mandate* for arbitration overrides any argument that the factors for weighing in Section 14(h) govern. *See Village of Lansing and Illinois FOP Labor Council*, S-MA-04-240 (2007) at 17 where, like here, under authority of Section 8, an option for appealing discipline to arbitration or to the employer's board of fire and commissioners was imposed by reason of Section 8 and not the balancing of applicable factors allowed by Section 14(h) of the IPLRA [footnote omitted]:²⁸

The Village argues that the *status quo* must be maintained because the Union has not shown that the current system is broken and comparability considerations [Section 14(h)(4)(A) of the IPLRA] require that no change be imposed. However, this issue is not an issue ... which is subject to the traditional examination of burdens requiring the party seeking the change to demonstrate that the existing condition is broken and in need of repair. Nor is this issue subject to comparability considerations. The resolution of this issue is required by the Act [Section 8 of the IPLRA].

However, if the "interests and welfare of the public" could be considered, the "interests and welfare of the public" that the Rule of Law be followed must prevail – *i.e.*, those provisions requiring arbitration (Sections 8, 2 and 15 of the IPLRA and the

²⁸ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-04-240.pdf>

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Workers' Rights provisions of the Illinois Constitution) and not to have the City Council pick and choose which laws of the State of Illinois are to apply to the City on the basis of what the City Council believes are not "just" or "right".

Moreover, if examined under Section 14(h) of the IPLRA, the first factor in Section 14(h)(1) certainly ends the discussion. Section 14(h)(1) provides that this Board can consider "[t]he lawful authority of the employer." The City has no "lawful authority" to act in direct contradiction of the Rule of Law from Sections 8, 2 and 15 the IPLRA and the Illinois Constitution requiring final and binding arbitration.

With respect to whether arbitrations should be open to the public, that is a procedural question concerning the procedures for holding of an arbitration hearing. The U. S. Supreme Court has made it clear that "[o]nce it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator." *John Wiley & Sons, Inc., v. Livingston, supra*, 376 U.S. at 557. A majority of this Board has decided that procedural question and determined that consistent with the holding of arbitration hearings for grievances protesting disciplinary actions ranging from 11 to 365 days where the parties have agreed to hold those hearings in private, the hearings for discipline in excess of 365 days to dismissals shall also be private.

4. The City's Long History Of Having The Police Board Decide These Disciplinary Actions Argument

As the City argues, there is a long history of the Police Board deciding appeals of disciplinary actions in excess of 365 days and dismissals of police officers. However, that history developed because in the prior contracts between the parties the Lodge agreed that the Police Board could do so. Section 8 of the IPLRA is clear that collective bargaining agreements for police officers "... *shall provide* for final and binding

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arbitration of disputes concerning the administration or interpretation of the agreement *unless mutually agreed otherwise*” [emphasis added]. Because the Lodge now seeks an option for arbitration for protests of disciplinary actions in excess of 365 days and dismissals, the Lodge no longer “mutually agree[s] otherwise.” The long history of the Police Board having exclusive authority to decide protests of disciplinary actions in excess of 365 days and dismissals is therefore not relevant. As a matter of statute, arbitration of protests over these disciplinary actions is now required. *See Village of River Forest and Illinois Fraternal Order of Police Labor Council*, S-MA-19-132 (2021) at 11-12 [footnote references to the record in that case omitted]:²⁹

... [T]herefore, because of the mandate in Section 8 to include arbitration if requested, the Village’s argument that there is no evidence that the BFPC [Board of Fire and Police Commissioners] has been biased against the Union and that there has been no showing by the Union that the BFPC has acted with cronyism, patronage, favoritism, corruption or not being trustworthy cannot change the result. *See City of Springfield* [S-MA-89-74], *supra* at 4 (in light of the statutory mandate “... the fact that the Union could point to no specific problems with the present system is immaterial.”).^[30] *See also, the 2014 Lansing Award* [S-MA-12-214], *supra* at 40 (“Even if a fire and police commission has been functioning well for years with no problems for anyone involved, a party’s request to have arbitration of grievances – made for whatever reason – must, as a matter of statute, be granted and placed into a contract through interest arbitration.”).^[31] The Village represents that “... in the last 10 years not a single discipline case has come in front of the commission.” Even so, the mandate in Section 8 requires adopting the Union’s position.

²⁹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-19-132-arb-award.pdf>

³⁰ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-074.pdf>

³¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-12-214.pdf>

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The Lodge no longer “mutually agree[s] otherwise” to have the Police Board decide these cases. The statutory requirement for arbitration now applies.

5. The City’s Transparency Argument

The City’s position that arbitration proceedings are not open to the public to the extent that Police Board hearings are open and that difference requires defeat of the imposition of arbitration of these discipline cases, even though as has been discussed, arbitration of these disciplinary appeals is a mandated right found in the IPLRA and protected by the Illinois Constitution’s Workers’ Rights provisions cannot prevail.

The Lodge is correct that arbitration is a private proceeding. As discussed in the Supplemental Interim Award at 14-16, the courts have held that “[a]rbitration is, however, a private proceeding which is generally closed to the public.” *Hoteles Conrado Beach etc. v. Union De Tronquistas Local 901*, 763 F.2d 34, 39 (1st Cir. 1985); the main treatise on arbitration discusses the privacy of arbitration (“[a]rbitration is a private proceeding and the hearing is not, as a rule, open to the public” (*How Arbitration Works*, (BNA, 5th ed.) at 338-339); the American Arbitration Association Rules at Rule 21 provides that “[t]he arbitrator and the AAA shall maintain the privacy of the hearing unless the law provides to the contrary”;³² and Section 2(C) of the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators similarly provides that “[a]ll 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 ... [a]ttendance at hearings by persons not representing the parties or invited by

³² [https://www.adr.org/sites/default/files/Labor Arbitration Rules 3.pdf](https://www.adr.org/sites/default/files/Labor_Arbitration_Rules_3.pdf)

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either or both of them should be permitted only when the parties agree or when an applicable law requires or permits.”).³³ Aside from the Police Board’s rules (which are superseded by the provisions of Section 8, 2, and 15 of the IPLRA and the Workers’ Rights provisions of the Illinois Constitution), there is no relevant “law” requiring that arbitration proceedings be open to the public.

This is the “Rule of Law” governing arbitration – arbitration is a private proceeding. A party is always free to request from the arbitrator hearing a specific case that the proceedings be open to the public. But there is nothing that requires that the proceedings be open. Indeed, the parties have adhered to that privacy of arbitration for grievances protesting disciplinary actions between 11 and 365 days (which also encompass allegations of very serious misconduct in that any suspension that falls within the higher range of those actions must be for allegations of very serious misconduct).

6. Conclusion On The City’s Court Challenge Arguments

Thus, in sum, a court challenge to the Final Award because it provides for the option of the Lodge to pursue protests of disciplinary actions greater than 365 days and dismissals to arbitration which are held in private will not overturn the Final Award which is premised on the guaranteed right to arbitration found in the IPLRA and the Workers’ Rights provisions of the Illinois Constitution.

B. How Did This Happen?

I am still puzzled (but, given the publicity and volatility of this dispute, not really surprised) how the dispute resolution process of final and binding arbitration – which is embedded in the IPLRA as a mandate and a public policy and made supreme to all other statutes and ordinances and protected by the Workers’ Rights

³³ <https://naarb.org/code-of-professional-responsibility/>

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provision of the Illinois Constitution and follows the similar federal policy – became so demeaned and disparaged as it has become since the Lodge sought to implement what the IPLRA and the Illinois Constitution gives police officers the right to have.

As discussed in the Final Award at 10-14, the view that arbitration as a dispute resolution process is somehow corrupt tracks to the use of the phrase “behind closed doors” and that phrase’s “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.” *Id.* at 13.

The repeated and extensive use of the phrase “behind closed doors” in the media and during the City Council proceedings to portray final and binding arbitration in a negative light is now a destructive genie that cannot be put back in the bottle. The phrase “behind closed doors” is not only “a slogan – a catch phrase (perhaps, even the creation of a public relations effort) designed to defeat arbitration as a dispute resolution process” (Final Award at 12), “behind closed doors” is now a talking point in the campaign to defeat the arbitration process. When final and binding arbitration is discussed by those opposing the process, it is now clear that the phrase “behind closed doors” with attached negative connotations seems always to be present.

History shows us that through repetition, myths, half-truths, and false, fictitious and misleading information can be transformed into accurate and truthful facts in the eyes of significant portions of the public. This is known as “the illusory truth effect”. *See* Hassan and Barber, “The effects of repetition frequency on the illusory truth effect” (2021):³⁴

³⁴ Published by the National Library of Medicine, National Center for Biotechnology Information, National Institute of Health (NIH):
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8116821/>

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... [R]esearch has shown that repeated information is perceived as more truthful than new information. This finding is known as the illusory truth effect

... the illusory truth effect even occurs when the repeated statements are highly implausible ... or when the repeated statements directly contradict participants' prior knowledge.

See also, Vellaini, et al., “The illusory truth effect leads to the spread of misinformation” (“... repetition of misinformation biased people’s judgement of accuracy and as a result fueled the spread of misinformation”).³⁵

But slogans and catch phrases such as “behind closed doors” “... are undoubtedly foes of sober reasoning; they implant the comfortable but illusory feeling that the user is thinking when only mouthing ... [they] are almost invariably one-sided, with little or no room for qualifiers or argument ... [t]hey often contain untruths or half truths” Final Award at 12-13 [quoting Bailey “Voices of America The Nation’s Story In Slogans, Sayings, and Songs” (Macmillan Publishing Co., The Free Press, 1976) at 501-502].

To see the illusory truth effect at work in high gear, just look at the news. A good example is how in his effort to convince the public that he won the 2020 election, former President Trump told his White House press secretary Stephanie Grisham that to make lies into truth, “[a]s long as you keep repeating something, it doesn’t matter what you say.”³⁶

That is what happened here. The constant repeating of the phrase “behind closed doors” in a negative description of arbitration just turned misinformation, untruths and half-truths into fact and reality. The disheartening aspect of this is that many on the City Council fell for it – as did many members of the public.

³⁵ Elsevier, Cognition Volume 236 (July 2023) 105421
https://www.sciencedirect.com/science/article/pii/S0010027723000550?ref=pdf_download&fr=RR-2&rr=83c9dcc26d21e1d3

³⁶ <https://www.youtube.com/watch?v=glzZ1j2uUFM>

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For police officers to have – as the law requires – final and binding arbitration for protests of discipline in excess of 365 days and dismissals, misinformation, untruths and half-truths about the arbitration process abound and have been so often repeated that they have become fact in the eyes of the public.

The best example of this occurred at the December 7, 2023 City Council’s Committee on Workforce Development when the Committee was addressed by Clinical Law Professor Craig Futterman who stated the following to the Committee [emphasis added]³⁷

This is a defining moment for City Council. City Council’s ratification of the arbitrator’s award to the FOP would all but guarantee another decade of impunity – of police impunity in Chicago. *The few arbitrators who would decide police discipline would do so behind closed doors, handpicked by the FOP. They have a powerful financial incentive to keep the FOP happy and they have a long history of exercising those powers to protect police from accountability. ...*

In an interview with the Chicago Sun-Times (December 6, 2023), the following quote is attributed to the same individual about the arbitrators deciding police discipline cases and the arbitrator selection process.³⁸

University of Chicago law professor Craig Futterman argues that the arbitrator selection process sets up financial incentives for arbitrators to issue split decisions on charges and soften the punishment.

“It’s a cash cow for them,” said Futterman, who heads a civil rights and police accountability project for the school. “They’re not going to get business unless they keep the unions happy.”

³⁷ <https://vimeo.com/showcase/8928568/video/892317880>

Video at 50:35-51:24.

³⁸ <https://chicago.suntimes.com/2023/12/6/23990544/who-should-decide-the-fate-of-chicagos-most-serious-police-misconduct-cases>

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In a commentary written by the same individual as a co-author appearing in the Chicago Tribune (October 27, 2023), Futterman also referred to “FOP-friendly arbitrators”.³⁹

Statements about arbitrators being “handpicked by the FOP” and therefore making decisions favoring the Lodge to “keep the FOP happy” in order to create a “cash cow” to “get business ... [and] keep the unions happy” who are “FOP-friendly” are precisely the “untruths or half truths” Bailey writes of in “Voices of America”, *supra*, that make the slogan and catch phrase “behind closed doors” mantra so dangerously untrue and destructive. As was done here, these kinds of statements get reported to the media; from the media the statements are dispersed to the public; and “the illusory truth effect” is then cranking in high gear with the clear message that arbitration is corrupt.

Contrary to Professor Futterman’s statements to the Committee on Workforce Development, arbitrators are *not* “handpicked by the FOP.” Arbitrators are *mutually* selected by the Lodge *and the City* and can be removed from the arbitration panel – even at times without agreement and for any reason.

The process for selecting and removing arbitrators from panels is found in Appendix Q of the parties’ current Agreement [emphasis added]:

A. The Lodge and the Employer have agreed to a panel of five (5) Arbitrators ... After 2023, *the parties agree to consult with their counsel responsible for scheduling to obtain any updated list of five (5) arbitrators. Each December the Lodge and the City shall each be permitted to strike one (1) Arbitrator from the panel for any reason.* In the event an Arbitrator is removed from the panel, the parties shall attempt to agree upon a replacement Arbitrator. If the parties are unable to agree upon a replacement, they shall request a list of seven (7) Arbitrators from the Federal Mediation and Conciliation Service (“FMCS”), each of whom must be a

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<https://www.chicagotribune.com/opinion/commentary/ct-opinion-chicago-reject-police-contract-accountability-20231027-bzy2a4voi5cp5aza6ftzmv27lu-story.html>

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member of the National Academy of Arbitrators. Within ten (10) days after receipt of the list, *the parties shall select an Arbitrator*. Both the Employer and the Lodge shall alternately strike names from the list. The remaining person shall be added to the panel. In the event the Lodge and the City each strike an Arbitrator from the panel as part of the December process, and if the parties are unable to agree upon replacement Arbitrators, the parties shall request two lists from the FMCS to be used to select the two replacement Arbitrators.

Arbitrators issuing compromised decisions in the Lodge's favor because "[i]t's a cash cow for them ...[t]hey're not going to get business unless they keep the unions happy", as asserted by Futterman will merely get themselves stricken by the City from the panel of arbitrators.

This misinformation, untruths and half-truths is spread by Professor Futterman and others who proclaim themselves to be experts on arbitration (even though it is not clear what extent of actual experience of being involved in arbitrations, if any, is possessed). These "experts" make their claims although they have examined a limited number of arbitration decisions and performed a "won-lost" statistical analysis to publish papers on those results.

There are so many disciplinary actions and arbitrations occurring in quasi-military police settings that go unreported that it is virtually impossible to get a statistically relevant number of arbitration decisions – so many of the decisions are unpublished or just unobtainable. As the results of articles and published papers making their way into the media, the public's perception of the arbitration process is therefore molded to believe that the privacy of arbitration proceedings conducted "behind closed doors" is somehow corrupt and a potential hinderance to a desire for intentions for police reform.

The "split the baby" or in order to create a "cash cow" criticism is not new. *See* Rushin, "Police Disciplinary Appeals", 167 University of Pennsylvania Law Review,

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No. 3 (2019) 545, 576 where the author compared selection procedures for arbitrators to that of selecting jurors [footnotes omitted, emphasis added]:⁴⁰

The potential problem with using such a procedure in internal disciplinary appeals is that *it may incentivize arbitrators to consistently compromise on punishment to increase their probability of being selected in future cases*. Unlike a juror in the American justice system, arbitrators are often repeat players. Arbitrators must frequently survive these selection procedures *in order to obtain work in the future*. An arbitrator that frequently sides with either police management or officers during appellate procedures may be unlikely to survive future selection proceedings. *From an accountability perspective, this mindset can be highly problematic if it results in arbitrators feeling compelled to frequently reduce the termination of unfit officers to mere suspensions*.

See also, Iris, “Police Discipline in Chicago: Arbitration or Arbitrary”, 89 J. Cim. L. & Criminology (1998) 215, 235 (“In the aggregate, the arbitrators ‘split the baby’...”);⁴¹ Rushin, “Police Arbitration”, 74 Vanderbilt Law Review 1023, 1029 (2021) at footnote 38, (citing Iris, “explaining that the ‘selection of who will serve as an arbitrator depends upon the willingness of both parties to a dispute . . . to accept that individual as an arbitrator’ and how the selection method may result in arbitrators frequently choosing to ‘split the baby’”).⁴²

To be kind, that is just pure nonsense. However, repeating that nonsense as was done in the campaign to defeat the arbitration provisions of the Final Award made that nonsense into fact.

From the experience of a 50-year labor lawyer and now going on 38-year arbitrator who is a member of the National Academy of Arbitrators and a member the

⁴⁰ <https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1651&context=facpubs>

⁴¹ <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6990&context=jclc>

⁴² <https://cdn.vanderbilt.edu/vu-wordpress-0/wp-content/uploads/sites/278/2021/05/19115804/Police-Arbitration.pdf>

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College of Labor and Employment Lawyers; who litigated arbitrations as an attorney before becoming an arbitrator; and as an arbitrator has issued over 6,500 decisions and well over 100 interest arbitration awards (far more than any other interest arbitrator in this state), the arbitration process is quite the opposite than what is being portrayed to the public – especially in this dispute.

Compromising a decision for a party for the sake of appeasement in order to be selected for future work makes an arbitrator untrustworthy and unacceptable for future cases because “if the arbitrator will do it *for* me today when I didn’t deserve to win, the arbitrator will do it *to* me tomorrow when I did deserve to win.” And don’t forget, *the parties* select the arbitrators – unions do not unilaterally make the selections. A timid arbitrator who doesn’t want to offend and therefore compromises decisions in order to get future work should not be selected to hear future cases and should be removed from arbitration panels by the parties. The rule that arbitrators must follow is:

Good cases win. Bad cases lose. Split no babies. Throw no bones.

A well-functioning arbitration panel is one comprised of arbitrators who follow that rule without exception. The strength of the arbitration process is to have arbitrators on the parties’ panels who adhere to that rule. Arbitrators who do not follow that rule should be fired by the parties as untrustworthy. The decisions the arbitrators make must be based on the facts of the individual cases.

Aside from the fact that it is impossible to get a sufficient number of arbitration awards to make relevant statistically reliable conclusions, the real weak point of all of these “won-lost” statistically based studies is the underlying premise of those studies – and that is that in *every* case where discipline is issued, an employer’s assessment of discipline is always “right.” That is not a universal truth.

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And for the portrayal of arbitrators as making decisions based upon the “split the baby” in order to create a “cash cow” and ...[t]hey’re not going to get business unless they keep the unions happy” misrepresentation, for this arbitrator and irrespective of whether the parties desire that I function as an arbitrator for the cases that are being sent to arbitration as a result of the Final Award, that was addressed by me in the Interim Award at 70 – I will not accept those cases:

I imagine that there will be some out there who will look at all of this and say that by my requiring the option of arbitration of discipline as ordered in this matter and my efforts to dispel misplaced perceptions of the arbitration process, “Well, that’s all just a lot of legal mumbo-jumbo just so he can get more work.” So let me put that perception to rest. I don’t want the work that will be coming from the added arbitration requirement adopted in this case. I am a very busy arbitrator and I have more than enough to do.

Does that sound like a timid arbitrator who makes decisions based upon the “split the baby” in order to create a “cash cow” and ...[t]hey’re not going to get business unless they keep the unions happy” approach to deciding cases? My arbitrator colleagues function in the same way knowing that their job is limited to “calling balls and strikes” and if they purposely widen or narrow the strike zone to curry favor in order to get future work, they should not (and will not) be used in the future.

As discussed, for all purposes with those alderpersons supporting rejection of the Final Award’s requirement for arbitration by repeating the “behind closed doors” mantra, the City Council’s rejection of the arbitration provisions in the Final Award is really a statement that “the Rule of Law must be followed – unless you don’t like the result.” Therefore, the City Council sees itself as “above the law”. However, following the Rule of Law is not an option – it is a requirement.

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The Rule of Law *requires* that the arbitration provisions of the Final Award not be rejected. Understandably, given the reasons explained by those speaking against arbitration at the City Council Workforce Committee and full City Council meeting, voting not to reject may necessitate the effective holding of one's nose as votes on rejection are cast. Nevertheless, if it comes to that, holding one's nose is required because adoption of arbitration for the class of cases in this matter to be part of the Agreement is required by law and the oath the alderpersons took to "support ... the Constitution of the State of Illinois"

While disagreeing with the arbitration portion of the Final Award in her Dissent, the City's Board Member nevertheless captured the final product and the efforts that went into resolution of the entire dispute with its many issues that kept the parties apart for over six and one-half years:

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.

I truly appreciate the comments made by the City's Board Member. However, although the City dissented to the arbitration provisions of the Final Award, it should not escape anyone that what the City has viewed in its Dissent from the remainder of the Final Award exclusive of the arbitration dispute as producing "agreements [that] 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

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embedding principles of constitutional policing”, that result *came from this interest arbitration proceeding that was conducted “behind closed doors.”*

I don’t know how to get that through to the public now that “behind closed doors” illusion cast upon arbitration makes arbitration a corrupt process – nor should I be required to do so. Actually, congratulations should go to those who pulled off that misconception of arbitration and successfully fed it to the public and the City Council – so far, they have accomplished their goal.

Arbitrators work alone. We don’t have public relations machines (at least effective ones) to hold press conferences, to generate slogans, catch phrases and talking points. We just decide cases (and mediate them when we can). Arbitrators just call balls and strikes. And if a party doesn’t like the result, that party can go elsewhere for the next case. A letter to the editor can be written after a misleading article or editorial is published about an arbitration decision – but by then, the public doesn’t care (even assuming the correcting letter is read). The damage has been done.

I have no choice in this case. My function as the Neutral Chair of this Board is to follow the Rule of Law. My personal opinions are irrelevant. Chicago is no different from any other public employer covered by the IPLRA’s mandate for final and binding arbitration for police officers. Therefore, the requirement in the Final Award (which incorporates the Interim Award and the Supplemental Interim Award) providing for an option for the Lodge and the police officers to have final and binding arbitration for protests over disciplinary actions in excess of 365 days including dismissals against police officers must remain. That is the Rule of Law. Sections 8, 2 and 15 of the IPLRA mandating arbitration as they are protected by the Workers’ Rights provisions of the Illinois Constitution make no distinctions excusing the City from application of that rule.

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Where the IPLRA seeks to distinguish rights and obligations appropriate for different communities, it specifically does so. *See e.g.*, IPLRA Sections 5(a-5), 5(b), 14(i) where population sizes are determinative of applicability of those sections of the Act. Sections 8, 2 and 15 of the IPLRA and the Workers' Rights Amendment in the Illinois Constitution make no distinctions which are urged by the City to avoid applications of those provisions of the Rule of Law. Therefore, even though the statute is clear in the Lodge's favor, but giving the City the benefit of the doubt that there is some ambiguity to allow it to claim the exemptions it seeks (which there are not), it follows that no exceptions that could exempt the City from the statutory and constitutional mandate for arbitration are intended by the IPLRA.⁴³

V. WHAT HAPPENS NEXT?

This matter can now go back to the City Council for further consideration and perhaps a second vote. If the City Council does not correct its rejection of the Final

⁴³ For purposes of statutory construction, clear language governs in this case. As stated by the Illinois Supreme Court in *Lee v. John Deere Insurance Company*, 802 N.E.2d 774, 777 (2003) ("When the statute's language is clear it will be given effect without resort to other aids of statutory construction.") However, where statutory language is ambiguous, the Illinois Supreme Court states when a statute provides exceptions, no other exceptions apply. *Metzger v. DaRosa*, 805 N.E.2d 1165, 1172 (2004) [citations omitted]:

The familiar maxim *expressio unius est exclusio alterius* is an aid of statutory interpretation meaning "the expression of one thing is the exclusion of another." ... "Where a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions * * *." ... This rule of statutory construction is based on logic and common sense. It expresses the learning of common experience that when people say one thing they do not mean something else. The maxim is closely related to the plain language rule in that it emphasizes the statutory language as it is written.

The language in these laws giving police officers the right to final and binding arbitration is stunningly clear. But even if it could be argued that there is some ambiguity (there is not), the fact that the IPLRA provides for exceptions for some provisions, but does not relevantly do so in Sections 8, 2 and 15, requires a finding that the construction must be that there are no exceptions for Chicago from the mandate that police officers are entitled to final and binding arbitration of grievances protesting these disciplinary actions. For purposes of the right to arbitration, Sections 8, 2 and 15 of the IPLRA and the Workers' Rights provisions of the Illinois Constitution mean that the City stands in the same shoes as all other public employers governed by the IPLRA – and the requirement for final and binding arbitration.

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Award's provisions for arbitration of discipline, a court fight will no doubt follow with the Lodge seeking to enforce this Board's awarding of arbitration in the Final Award as it incorporates the previous Awards. Hopefully, after a second vote is held and the arbitration provisions of the Final Award are not rejected, that court fight will be avoided and the arbitration provisions from the Final Award will be included in the parties' collective bargaining agreement, which means a final end to a labor dispute that is now over six and one-half years old.

Potentially, the City has much to lose in a protracted court fight in which it cannot prevail.

The arbitration provisions were made retroactive to September 14, 2022 – which is the date I was notified by the American Arbitration Association that I was selected as the Neutral Chair of this Dispute Resolution Board. It was at that time that the Board was composed and had authority to act. Supplemental Interim Award at 23.⁴⁴

The June 26, 2023 Interim Award adopted the arbitration of discipline option and remanded the issue to the parties to draft language consistent with that Award which included a direction to the parties to propose a retroactive date. Interim Award at 72-74.⁴⁵ The remand to the parties from the Interim Award for the parties to draft language was clear – “[i]f the parties are unable to agree upon the language needed to implement the adopted proposals ... this Board shall formulate that language based upon the *final positions* submitted by the parties” [emphasis added]. *Id.* at 74. In interest arbitration, requiring the parties to submit final offers of issues in dispute forces the parties to be reasonable in their proposals, because an unreasonable offer will not be selected.

⁴⁴ https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016_Supp_award.pdf

⁴⁵ https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/L-MA-18-016_Interim_Award.pdf

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The parties could not agree upon language for the arbitration provisions and their final offers on language were so far apart and *unreasonable* that I was forced to formulate the provisions. The parties' unreasonable final offers on remand "... puts this Board in the position of having to choose a lesser unreasonable offer as opposed to a more reasonable offer." Supplemental Interim Award at 5. As was found, the unreasonable final offers on the retroactive date "are so unreasonable that the selection of the more reasonable offer is not possible thus ... forcing a formulation of the language by this Board." *Id.* at 12.

When the parties filed their positions on language, the City proposed an effective date of "on or after the date of ratification". Supplemental Interim Award at 13. The City's proposed effective date was rejected by me, in relevant part, because potential delays in the ratification process amounted to a delay of implementation of a statutory and constitutional right for arbitration (*id.*) – a delayed scenario that is playing out here. Under the City's proposed effective date for the arbitration process to begin after the City Council rejected the provisions requiring the Lodge to institute litigation to force the City to ratify the Final Award, the "on or after the date of ratification" is being dragged out and will not begin until after the years of litigation are over.

The Lodge's proposed retroactive date was August 1, 2021. *Id.* at 20. That date was also rejected by me because the Lodge contributed to delay in the proceedings by holding the interest arbitration process in abeyance as the parties continued to negotiate. *Id.* at 22.

The parties' unreasonable final offers on the retroactivity date forced me as the Neutral Chair to reject both language proposals ("As the Neutral Chair ... I cannot go that route and this Board is therefore forced to formulate the language."). *Id.* The reasonable date chosen for retroactivity therefore was September 14, 2022 when the

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interest arbitration process began moving forward in earnest after I was appointed as the Neutral Chair thereby giving this Board the power to act. *Id.* at 22-23.

A substantial number of disciplinary actions are now pending before the Police Board and are affected by that September 14, 2022 retroactive date for arbitration. After the arbitration option was imposed by the June 26, 2023 Interim Award and by Order dated September 26, 2023, the Police Board denied the Lodge's motion to transfer 22 cases from the Police Board to the arbitration process or stay proceedings before the Police Board.⁴⁶ If a court challenge fails to reverse the Final Award and enforces its requirements, the retroactivity date of September 14, 2022 may well require that the proceedings for cases which should have been transferred from the Police Board to arbitration begin anew before arbitrators. The Lodge will no doubt seek make-whole relief for the affected officers back to the September 14, 2022 retroactive date. And the longer the court challenge drags on and should the City not prevail, the larger the potential make-whole relief will be – even for those officers who ultimately do not prevail and are disciplined or dismissed through the arbitration process. That is because those officers who are ultimately given discipline in excess of 365 days or dismissed through the arbitration process were deprived from remaining on the payroll until their cases were decided as required by the Final Award at 23-25. The requirement in the Final Award that officers who are disciplined in excess of 365 days or dismissed remain on the payroll merely extended that same requirement existing in the parties' Agreement for officers who are disciplined between 11 and 365 days. Final Award at 23-24:

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

⁴⁶ https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/PB_Order_FOP_Motion20230926.pdf

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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 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.

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Further, as future disciplinary actions in excess of 365 days and dismissals are imposed and the City does not agree to proceed to arbitration as required by the Final Award while the court proceedings continue, potential relief will exist for those officers charged with misconduct whether or not they ultimately prevail in an arbitration after the court proceedings are over.

Make-whole relief is not just backpay for lost wages. Not only are lost earnings part of make-whole relief, but so are costs that are a direct or indirect but foreseeable consequence of a deprivation of a right including out-of-pocket medical expenses; credit card debt incurred due to lost wages; and other costs simply to make ends meet. Make-whole relief can also include those costs resulting from loss of a car or a home. Those elements of make-whole relief are consistent with the broad authority to formulate remedies possessed by arbitrators as remedies are designed to restore the *status quo ante* – *i.e.*, to put the parties back to where they were before a contract violation occurred and to make whole those who have been harmed by a breach of the contract.⁴⁷

⁴⁷ *Wicker v. Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867) (“The general rule is, that when a wrong has been done and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed”); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960) (“When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.”). *Local 369 Bakery and Confectionery Workers International Union of America v. Cotton Baking Company, Inc.*, 514 F.2d 1235, 1237, *reh. denied*, 520 F.2d 943 (5th Cir. 1975), *cert. denied*, 423 U.S. 1055 and cases cited therein (“In view of the variety and novelty of many labor-management disputes, reviewing courts must not unduly restrain an arbitrator’s flexibility”); *Eastern Associated Coal Corp. v. United Mine Workers of America*, 531 U.S. 57, 62, 67 (2000) (“... courts will set aside the arbitrator’s interpretation of what their agreement means only in rare instances. ... [w]e recognize that reasonable people can differ as to whether reinstatement or discharge is the more appropriate remedy here ... [b]ut both employer and union have agreed to entrust this remedial decision to an arbitrator.”).

[footnote continued on next page]

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The City therefore has much to lose by pursuing a case it cannot win.

VI. CONCLUSION

Much has been said. However, all of this really comes down to a few simple propositions:

1. The Lodge's ability to have an option for final and binding arbitration of protests for discipline in excess of 365 days and separations (dismissals) issued to police officers is the Rule of Law as codified in Sections 8, 2 and 15 of the Illinois Public Labor Relations Act and that right is protected by the Workers' Rights provisions of the Illinois Constitution.
2. By extending the right to arbitration to disciplinary actions in excess of 365 days and dismissals issued to police officers, these officers will be treated the same as officers who have disciplinary actions pending against them for periods of 11 through 365 days.
3. The Rule of Law applies equally to everyone, including individuals and governing bodies such as the City of Chicago – without regard to their size or stature.
4. We live in a democracy that does not follow a principle that the Rule of Law applies to everyone, unless that person or entity doesn't agree with the result.

[continuation of footnote]

With respect to relief beyond just lost wages extending to costs that are a direct or indirect but foreseeable consequence of a deprivation of a right, *see* the National Labor Relations Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (December 16, 2022) (decision found in pdf reference "decision issued today" downloadable in pdf format):

<https://www.nlr.gov/news-outreach/news-story/board-rules-remedies-must-compensate-employees-for-all-direct-or>

See also, this Neutral Chair's award in *State of Illinois and AFSCME Council 31*, Arb. Ref. 10.251 (2011), where an agreement between the State and AFSCME required that in light of concessions given by AFSCME to the State due to the 2008 Great Recession, there would be no closures of facilities or layoffs prior to June 30, 2012. When former Governor Pat Quinn sought to close seven mental health and correctional facilities prior to the agreed-upon June 30, 2012 date in violation of that agreement, the remedy included reinstatement of all employees and make-whole relief in all respects, which included lost wages and benefits; payment of medical expenses which would otherwise have been paid for or covered by insurance (for the employees and others covered by the employees' insurance); and payments to employees who lost their homes or cars or were forced to move from their residences. *Id.* at 15-26. That award is posted at:

<https://www.civiced.org/sites/default/files/State-AFSCME-2011-12-Layoffs-and-Closures.pdf>

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5. By rejecting the portion of the Final Award adopting the Lodge's right to have an option for final and binding arbitration of the class of discipline involved in this matter, the City Council violated the Rule of Law.
6. Those alderpersons of the City Council who voted to reject the Final Award's adopting final and binding arbitration guaranteed to police officers by the IPLRA and the Workers' Rights provisions of the Illinois Constitution (as well as Mayor Johnson) violated their oath of office that "I _____ do solemnly swear that I will support ... the Constitution of the State of Illinois"
7. An interest arbitration proceeding conducted under the Illinois Public Labor Relations Act is not the forum to change the Rule of Law – that is for the State Legislature. The function of interest arbitrators under the IPLRA is to apply the Rule of Law – which the Final Award did.

The City Council now has the opportunity to rectify a wrong and avoid a court fight in which it has no chance of prevailing. For those alderpersons who voted to reject, your voices of displeasure over the existing Rule of Law and with the police have been heard – loud and *very* clear – and your voiced displeasure with the existing laws are available for your constituents and the rest of the world to see and hear from the video of the City Council proceedings.⁴⁸ If you voted to reject to make a protest, your point has been made. Now please don't throw away potentially large sums of taxpayer money that could be used better elsewhere than on a legal fight you cannot win which you are undertaking to make a point that you have already made. The law is clear – and you took an oath to support that law. If you don't like the results coming from the Rule of Law, then seek to change the law.

However, for this proceeding – an interest arbitration – the “rule” is that the Rule of Law is to be followed and the “rule” is *not* that the Rule of Law is to be followed

⁴⁸ <https://vimeo.com/893801913>

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only if you agree with the result. This Board's function is to apply the law – not make the law. If there are changes to be made, those changes to the law must be sought from the elected officials of Illinois who have authority to make those changes.

Writing for a majority of this Board, I cannot undo the damage that has been done to the arbitration process by those who seek its destruction – a process that is the law and policy of this state guaranteed by the IPLRA and protected by the Workers' Rights provisions of the Illinois Constitution. That damage has been done by repeatedly linking the phrase “behind closed doors” to the word “arbitration” and doing so in a demeaning and destructive manner. Given how often “behind closed doors” is linked to “arbitration” to cast arbitration in a negative light in order to make the arbitration process look corrupt and given how that phrase so influenced the City Council to reject the Final Award's adoption of arbitration, the detractors of the arbitration process have succeeded in spreading that misconception and misrepresentation. To me, the ability of those opposing arbitration as a dispute resolution process with the repeated use of the “behind closed doors” mantra is really Chicago's equivalent of “the Big Lie” (*i.e.*, that Donald Trump actually won the 2020 election and that election was “rigged” and so many continue to believe that because of the publicity generating machine which spread that repeated lie). If you keep repeating it, myths, fictions, half-truths and misrepresentations become fact and reality. That is what happened here with the repeated negative connotations linked to the phrase “behind closed doors.”

However, I can state a fact – a truth. The arbitration process is the “Rule of Law” by virtue of the IPLRA and the Illinois Constitution. To those alderpersons of the City Council who voted to reject the Rule of Law requiring arbitration of discipline in collective bargaining agreements (and to Mayor Johnson who supported that position), you did so even though you took an oath – “I _____ do solemnly swear that I will

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support ... the Constitution of the State of Illinois” You therefore violated that oath.

So, if there is a phrase that should influence the public’s perception of this dispute, it is not “behind closed doors.” The phrase that governs is a simple one directed to those alderpersons on the City Council who voted to reject the arbitration provisions of the Final Award. And that phrase states a real fact and a simple truth directed to the City Council – “You took an oath.”

Now the City Council has an opportunity to do the right thing and vote not to reject the Final Award.

I end this with a personal plea – an unusual action, no doubt, but an action I believe is required in this most unusual and highly-charged case.

The City Council now places the City at a precipice. Do you adhere to the Rule of Law or defy it? And if you choose to ignore the Rule of Law, you do so after being told by one of the most highly regarded, respected and experienced management-side attorneys in the country – Jim Franczek – that although arguments can be made, by failing to follow the laws of this state mandating arbitration as decided by an interest arbitrator in the Final Award that your chances of prevailing in court are, in the words of counsel, “... a challenge in the Circuit Court of Cook County to an interest arbitrator decision is a steep hill to climb and that would be a challenging legal proceeding for the City of Chicago ... the challenge in circuit court, yes, is going to be significant”⁴⁹

Years of litigation over a case that has no chance of prevailing brings the discussion back to a point made by Alderwoman Tabares at the December 13, 2023 City Council meeting where she spoke that, if litigated, “[t]hese cases will last years” and

⁴⁹ <https://vimeo.com/showcase/8928568/video/892317880>
Video at 2:14:55-2:16:30.

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will result in damage awards to police officers who should have been maintained on the payroll until their cases were decided by an arbitrator (as is the parties' treatment of all officers who are disciplined for suspensions between 11 and 365 days), but whose cases were delayed being heard by an arbitrator because of fruitless years of litigation only to have the final result of the case being heard by an arbitrator after the litigation is over with the arbitrator agreeing that the discipline was proper:⁵⁰

These cases will last years and could cost the City hundreds of millions of dollars. Those are dollars that will go into the pockets of police officers who were rightfully suspended or terminated. None of us – I'm sure none of us want public dollars to be awarded in court to bad cops as opposed to being used to fund mental health clinics or homeless services.

With years of litigation coming, in terms of receiving damages awards from the City, it really will not matter whether the officers prevail in arbitration. The delay caused by the City's refusal to implement the arbitration requirements of the Final Award retroactive to September 14, 2022 will result in damage awards for those officers who do not prevail as a result of being kept off the payroll until the arbitration is decided (up to the point where the discipline is found appropriate) and further, for those officers who do prevail (until they receive a full remedy from reduced or rescinded discipline). And those damages will be significant because make-whole relief includes not only lost earnings, but also includes costs that are a direct or indirect but foreseeable consequence of a contract violation which include out-of-pocket medical expenses; credit card debt; other costs simply to make ends meet; and damages which could include those costs resulting from loss of a car or a home. That liability will be on the City to pay – and it will be large and potentially staggering. Although

⁵⁰ <https://vimeo.com/893801913>
Video at 1:22:47-1:23:36.

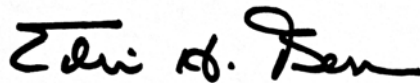
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Alderwoman Taylor supported rejection of the Final Award, to fight this dispute further in court may well prove her complaint about needless spending to be correct – “We’ve thrown away more money than any city council I’ve ever seen in the country.”

To fight this case to lose solely to make a point of disagreement (which has already been resoundingly made through votes and positions stated before the City Council) just makes no sense. If you do not like the Rule of Law, then seek to change it. But the City Council does not have the right to simply ignore the requirements of the IPLRA and the constitutional protection in the Workers’ Rights Amendment mandating police officers’ right to arbitration of discipline.

Therefore, to the alderpersons who voted to reject the arbitration provisions of the Final Award, please, don’t do this and go down a path of years of fruitless, expensive litigation and resulting discord. Your protests and dislike of the result of the Final Award have been heard and preserved by this Supplemental Final Award. However, the law is clear – and you took an oath to support that law.

In final conclusion, the arbitration provisions of the Final Award stand unchanged.



Edwin H. Benn
Neutral Chair

The Lodge’s Board Member concurs.

The City’s Board Member dissents (reserving the right to file a written dissent).

Dated: January 4, 2024

AGREEMENT BETWEEN
THE CITY OF CHICAGO
DEPARTMENT OF POLICE
AND THE
FRATERNAL ORDER OF POLICE
CHICAGO LODGE NO. 7

EFFECTIVE JULY 1, 2012
THROUGH JUNE 30, 2017

Rahm Emanuel
Mayor

Garry F. McCarthy
Superintendent

Section 7.2 — Challenge of Summary Punishment

After Summary Punishment has been administered three (3) times within a twelve (12) month period, an **Officer** who wishes to contest the application of Summary Punishment on a fourth occasion within the last twelve (12) months may contest the fourth and/or succeeding applications of Summary Punishment by timely challenge through the Complaint Register process or the grievance procedure.

ARTICLE 8 — EMPLOYEE SECURITY

Section 8.1 — Just Cause Standard

No **Officer** covered by this Agreement shall be suspended, relieved from duty or otherwise disciplined in any manner without just cause.

Section 8.2 — File Inspection

The Employer's personnel files, disciplinary history files and completed inactive investigative files, except for information which the Employer deems to be confidential, shall be open and available for inspection by the affected **Officer** during regular business hours.

Section 8.3 — Limitation on Use of File Material

It is agreed that any material and/or matter not available for inspection, such as provided in Section 8.2 above, shall not be used in any manner or any forum adverse to the **Officer's** interests.

Section 8.4 — Use and Destruction of File Material

All disciplinary investigation files, disciplinary history card entries, IPRA and IAD disciplinary records, and any other disciplinary record or summary of such record other than records related to Police Board cases, will be destroyed five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, except that not sustained files alleging criminal conduct or excessive force shall be retained for a period of seven (7) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, and thereafter, cannot be used against the **Officer** in any future proceedings in any other forum, except as specified below, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five- (5-) year period. In such instances, the Complaint Register case files normally will be destroyed immediately after the date of the final arbitration award or the final court adjudication, unless a pattern of sustained infractions exists.

Any information of an adverse employment nature which may be contained in any unfounded, exonerated, or otherwise not sustained file, shall not be used against the **Officer** in any future proceedings. Information contained in files alleging excessive force or criminal conduct which are not sustained may be used in future disciplinary proceedings to determine credibility and notice.

A finding of "Sustained — Violation Noted, No Disciplinary Action" entered upon a member's disciplinary record or any record of Summary Punishment may be used for a period of time not to exceed one (1) year and shall thereafter be removed from the **Officer's** disciplinary record and not used to support or as evidence of adverse employment action. The Department's finding of "Sustained — Violation Noted, No Disciplinary Action" is not subject to the grievance procedure.

Reprimands and suspensions of one (1) to five (5) days will stay on the Officer's disciplinary history for a period of three (3) years from the last date of suspension or date of reprimand, or five (5) years from the date of the incident, whichever is earlier.

Information relating to a preventable traffic accident involving a Department Vehicle may be used and/or considered in determining future discipline for a period of time not to exceed two (2) years from the date of such preventable traffic accident and shall thereafter not be used and/or considered in any employment action provided there is no intervening preventable traffic accident involving a Department Vehicle and if there is, the two-year period shall continue to run from the date of the most recent preventable traffic accident and any prior incidents may be used and/or considered in employment actions. In no event shall any prior incident five (5) or more years old be used and/or considered.

Section 8.5 — Notification

In the event the Employer receives subpoena or other legal process requiring the inspection, tender or submission of personnel, disciplinary or investigative records and/or files (other than Grand Jury subpoena or other subpoena or process which would preclude disclosure), the Employer will promptly send a copy of such subpoena or process to the Officer whose records have been requested and to the Lodge. However, failure to furnish such notice shall not in any way affect the validity of any disciplinary action or personnel action taken by the Employer, provided that the Lodge will not be barred from asserting and does not waive any right(s) an Officer may have to inspect or to otherwise challenge the use of files under applicable rules, statutes or this Agreement including Article 8.

Section 8.6 — Detectives, Evidence Technicians, Police Laboratory Technicians, Forensic Investigators and Field Training Officers

The Employer agrees not to remove Officers in the position of Detective except for just cause.

During this Agreement, the Employer agrees that the ranks of Detective, Evidence Technician, Police Laboratory Technician, Forensic Investigator and Field Training Officer will not be eliminated from the budget.

Section 8.7 — Tactical Response Reports (TRR)

The number of Tactical Response Reports (TRR), in and of itself, will not be used for disciplinary purposes.

Section 8.8 — Superintendent's Authority

The Superintendent's authority to suspend an Officer, as set forth in section 2-84030 of the Municipal Code of Chicago, shall be increased from the current limit not to exceed thirty (30) days, to a limit not to exceed three hundred and sixty-five (365) days.

In cases where the Superintendent seeks an Officer's separation from the Department, the Superintendent's current and past practice of suspending Officers for thirty (30) days and filing charges with the Police Board seeking the Officer's separation will not change.

ARTICLE 9 — GRIEVANCE PROCEDURE

Section 9.1 — Definition and Scope

A grievance is defined as a dispute or difference between the parties to this Agreement concerning interpretation and/or application of this Agreement or its provisions. Summary Punishment shall be excluded from this procedure, except as provided in Article 7.2. The separation of an Officer from service is cognizable only before the Police Board and shall not be cognizable under this procedure, provided, however, that the provisions of Article 17 shall be applicable to separations.

Section 9.2 — Procedures, Steps and Time Limits for Standard Grievances

A grievance may be initiated by the Lodge or an aggrieved **Officer**. Any **Officer** shall have the right to present a grievance at any time, although it is understood that the **Officer** should attempt to satisfy his or her concerns on an informal basis before invoking the procedure. In the event an informal resolution proves to be unsatisfactory, a grievance may be filed in a form to be agreed upon between the Lodge and Employer and shall be processed in accordance with this Agreement. Upon request, the grievant shall be represented by an appropriate Lodge representative, provided, however, the grievant **Officer** may have the grievance adjusted without a Lodge representative, so long as such adjustment is not inconsistent with the provisions of this Agreement.

Step One: Initiating a Grievance. The grievant will first submit his or her grievance in writing to his or her immediate supervisor in his or her unit of assignment within seven (7) of the **Officer's** working days following the events or circumstances giving rise to the grievance or where first known by the grievant, or thirty-five (35) days, whichever period is shorter. The grievance will be reduced to writing on a pre-printed, standard grievance form set agreed upon between the Lodge and Employer.

Step Two: Supervisory Responses. Within seven (7) days of receipt of the member's grievance, the supervisor will respond to the grievance on the grievance form set and then immediately present the grievance form set to the Commanding Officer of the unit of assignment. Following the submission of the written grievance, the Commanding Officer shall render a decision in writing within fourteen (14) days of receiving the grievance. The response shall be written on the bottom portion of the pre-printed, standard grievance form set. The Commanding Officer must forward one (1) copy of his or her decision to the grievant, one (1) copy to the Lodge's unit representative, and three (3) copies to Management and Labor Affairs Section (MLAS). MLAS will then forward to the Lodge a copy of the Commanding Officer's decision within fourteen (14) days of its receipt. If the grievant is directed by the Employer to meet concerning his or her grievance at a time when the **Officer** is not scheduled to work, he or she shall be compensated for such time at the applicable rate provided for in this Agreement, including the provisions of Article 20.

Step Three: Mediation. If the response at Step Two is not satisfactory to the grievant and the Lodge, the Lodge and MLAS will meet for the purpose of mediation of the grievance. Either party may request the presence of a Mediator at such meeting, the selection of whom shall be mutually agreed upon. The mediation meeting shall be conducted no less than once each month between the Lodge Grievance Chairman, Lodge President or his or her designee and a Department representative having authority to resolve the grievance. The parties shall split evenly the cost of the Mediator's expenses and fees.

Step Four: Arbitration. If the parties cannot resolve the grievance at Step Three, either party may at any time demand arbitration.

Section 9.3 — Arbitration of Standard Grievances

If either party proceeds to arbitration, the following procedure shall apply:

- A. Within ten (10) days, the Employer and the Lodge shall attempt to mutually agree upon an Arbitrator. If they fail to agree, a list of seven (7) qualified neutrals shall be requested from the American Arbitration Association. Within five (5) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and Lodge each shall alternately strike names from the list. The remaining person shall be the Arbitrator.
- B. The Employer or the Lodge, by mutual agreement, may submit **a grievance involving an issue not otherwise covered under Section 9.6 of this Agreement** to expedited arbitration

pursuant to the rules set forth in Appendix M or under rules to be determined by the parties by mutual agreement.

- C. The parties shall avoid continuances. Requests for continuances are disfavored and shall be granted only upon showing good cause.

Section 9.4 — Psychological Review

Grievances concerning involuntary removal from active duty due to psychological or psychiatric reasons will comply with the following procedures:

Step One: An **Officer** who wants to challenge the Employer's decision to place him **or her** involuntarily on the medical roll will file a grievance with the Medical Services Section within ten (10) calendar days of being placed on the medical roll, or if the member was on full authorized furlough during his or her involuntary placement, within thirty-five (35) calendar days of being placed on the medical roll.

If the Employer's psychiatrist/psychologist recommends that the **Officer** is fit for full duty and also was fit when he or she was involuntarily placed on the medical roll due to psychological or psychiatric reasons, the **Officer** shall have any paid medical time used during such period of being involuntarily placed on the medical roll restored and will be made whole for lost pay and other benefits to which he or she is entitled.

Step Two: For a member who has filed a timely grievance at Step One, and/or when the Employer's psychiatrist/psychologist recommends that the **Officer** is unfit for full duty and was also unfit when he or she was involuntarily placed on the medical roll due to psychological or psychiatric reasons, then upon written request made by the Lodge within ten (10) calendar days of notice to the member that he or she is unfit for duty, the Lodge may file a grievance at Step Two and may request review of that decision by a three-member psychological review panel ("**Panel**"). The **Officer** shall, as promptly as feasible, be evaluated by a panel of three psychiatrists or psychologists, one appointed by the Lodge, one appointed by the Employer and a third appointed by mutual agreement of the Employer's and the Lodge's psychiatrist or psychologist knowledgeable about police duties. This **Panel** shall have the authority to examine and evaluate the **Officer**, and recommend whether or not the **Officer** is fit for duty. In making its recommendations, the primary considerations of the **Panel** shall be the protection and safety of, and need for effective service to, the public. These considerations shall prevail over all others in any case of conflict of interests between the **Officer** and the Employer.

If the **Panel** recommends that the **Officer** is fit for duty, and was also fit when he or she was placed involuntarily on the medical roll due to psychological or psychiatric reasons, then the **Officer** shall have any paid medical time used during such involuntary period on the medical roll restored, and will be made whole for lost pay and other benefits to which he or she is entitled.

If the **Panel** determines that the member was unfit for duty at the time he or she was involuntarily placed on the medical roll, but became fit for duty sometime thereafter, the **Panel** shall identify the point at which the member was fit for duty and the member will be made whole for lost pay and benefits from the date that the panel determined he or she was fit for duty.

Each party shall bear the full cost of the **Panel** member appointed by it, with the cost of the mutually-appointed **Panel** member to be split equally between the parties. The recommendations of the **Panel** shall be binding upon the Employer, the Lodge and the **Officer**.

The Lodge and the Employer acknowledge that procedural disputes which prevent the **Panel** from going forward with the review process set forth above may arise. The Lodge and the Employer acknowledge that it is in the best interests of all persons involved in the Psychological Review

process to have these procedural disputes resolved as promptly and as fairly as possible. Once such a procedural dispute arises, the parties will have seven (7) working days to resolve the dispute. If they cannot resolve the dispute, either party may initiate the Summary Arbitration Process if the dispute involves the timeliness of the grievance or the period of time which the Panel is to consider when determining when the Officer became fit. Any other procedural dispute may be submitted to the Summary Arbitration process only by mutual agreement of the parties. The Lodge and the Employer will maintain a group of three (3) arbitrators for the Summary Arbitration Process. One arbitrator will be selected from this group to decide the dispute. The parties will share equally the cost of the arbitrator. At the earliest possible time, representatives of the Lodge and the Employer will appear before the arbitrator. Either party may call witnesses, provided notice is given to the other party before the hearing date is selected. No written briefs will be permitted. No court reporter will be allowed. The arbitrator will issue a decision within ten (10) working days following the hearing. The decision of the arbitrator will be binding on the Lodge, the Employer, and the members of the review Panel. The decision will not set a binding precedent on subsequent procedural disputes.

Section 9.5 — Medical Grievances

Grievances concerning medical issues (excluding issues covered under Section 9.4) shall follow the procedure below. Medical issues are defined as grievances involving medical issues, including but not limited to the nonpayment of I.O.D. bills; removal of an Officer from duty for medical reasons; refusal to return an Officer to duty from medical roll; classification of an injury as non-I.O.D. and the Benefits Management Office's denial of payment of medical and hospital bills of an Officer or his or her covered dependent under the Employer's self-funded health care plan.

Step One: Initiating a Medical Grievance. Grievances concerning the Benefits Management Office's denial of payment of medical and hospital bills will be filed with the Management and Labor Affairs Section within ten (10) working days following the events or circumstances giving rise to the grievance or where first known by the grievant, but in no event later than thirty-five (35) calendar days following the events or circumstances giving rise to the grievance.

All other grievances concerning medical issues will be filed with the Medical Services Section within ten (10) working days following the events or circumstances giving rise to the grievance or where first known by the grievant, but in no event later than thirty-five (35) calendar days following the events or circumstances giving rise to the grievance. If the determination at Step One is not satisfactory, the Lodge may by written request made within fifteen (15) days of the Step One response, or the expiration of the period for said response submit the matter for mediation.

Step Two: Mediation of Medical Grievances. At mediation, representatives of the Lodge, the Police Department, the Benefits Management Office and the Finance Committee of the City Council, shall participate, as needed. Any settlements reached in the mediation proceedings shall be binding upon the parties. Medical mediation sessions shall occur each thirty (30) days. The parties shall split evenly the cost of the Mediator's fees and expenses.

The grievant shall be provided with the relevant medical records within the possession of the Medical Section, the Committee on Finance, Benefits Management Office and Management & Labor Affairs Section. A release shall be required for production of medical records. The relevant medical records shall include the Medical Services Section's determination of the grievant's status and the response to the grievance. The above records shall be submitted to the Lodge by the Department within forty-five (45) days of the Department's receipt of the Lodge's releases and mediation agenda, setting forth the grievants' names. Relevant records from the Medical Section,

the Committee on Finance, the Benefits Management Office and Management and Labor Affairs Section shall be provided as stated above and throughout the grievance process until the grievance is fully resolved.

Relevant documents to be produced by the Benefits Management Office in mediation are limited to medical records, claim forms, medical bills, explanation of benefits, and recommendation to and decision of the Benefits Committee regarding the claim. This definition of relevant records to be produced by the Benefits Management Office does not preclude the Lodge from subpoenaing additional relevant documentation in response to the scheduling of an arbitration of a grievance.

Step Three: Arbitration. If the grievance is not resolved at Step Two, the Lodge upon written request within thirty (30) days of the date of mediation, may demand arbitration. The Mediator shall not be selected as the Arbitrator for the same case. The arbitration hearing shall be scheduled to commence within thirty (30) days of the selection of the Arbitrator unless the parties agree otherwise. Within ten (10) days of the Lodge's demand for arbitration, the Employer and Lodge shall attempt to mutually agree upon an Arbitrator. If they fail to agree, a list of seven qualified neutrals shall be requested from the American Arbitration Association. Within five (5) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and the Lodge shall alternately strike names from the list. The remaining person shall be the Arbitrator.

Section 9.6 — Suspension Grievances

Grievances challenging **reprimands and** recommendations for suspension (excluding Summary Punishment except as specified in Section 7.2 and suspensions accompanied by a recommendation for separation) will comply with the following procedures:

A. Reprimands and Suspensions from One (1) to Ten (10) Days

Officers who receive a reprimand or a recommendation for suspension from one (1) to ten (10) days as a result of a sustained Complaint Register investigation (CR#) shall have one of two (2) options. Within ten (10) working days of receiving the reprimand or recommendation for discipline, the Officer shall elect one of the following options:

- 1. Submission of a grievance to the Summary Opinion process challenging the reprimand or recommendation for discipline. An Arbitrator designated by the parties shall issue a Summary Opinion, in accordance with the standard procedures employed by the parties and their mutual past practices, which shall be final and binding on the parties and there shall be no further review of the reprimand or suspension under this Agreement. The Officer will not be required to serve the recommended suspension, nor will the reprimand or suspension be entered on the Officer's disciplinary record, until the Summary Opinion Arbitrator rules on the merits of the grievance. At least ten (10) days prior to the Summary Opinion hearing, the Officer, or the Lodge acting on his or her behalf, may submit a written statement of no more than three (3) pages in length, setting forth the position of the Officer and the reasons why the Officer believes the reprimand should be set aside or the suspension should be set aside or reduced, to which the Department may submit a rebuttal of not more than two (2) pages. In addition, the Officer, provided he or she previously submitted the written statement referenced in the preceding paragraph, may appear in person before the Summary Opinion Arbitrator and make an oral**

presentation, of no more than fifteen (15) minutes in length, setting forth the reasons why the suspension should be set aside or reduced. The Department representative, in turn, shall have the option of presenting an oral rebuttal. For good cause shown, either party may be granted leave by the Summary Opinion Arbitrator to submit a written rebuttal within ten (10) days.

2. Accept the recommendation.

In the event the Officer does not make an election within ten (10) working days, the recommendation for suspension will be deemed accepted, absent a written agreement between the Lodge and the Department to extend the election period.

B. Suspensions from Eleven (11) to Thirty (30) Days

Officers who receive a recommendation for discipline from **eleven (11)** to thirty (30) days as a result of a sustained Complaint Register investigation (CR#) shall have one of **three** options, **the selection of which shall preclude the Officer, or the Lodge acting on his or her behalf, from selecting any of the other options listed below, except that the Officer is permitted to accept the recommendation at any time.** Within ten (10) working days of receiving the recommendation for discipline the **Officer** shall elect one of the following options:

1. The filing of a grievance challenging the recommendation for discipline; or
2. **Submission of a grievance to, and in accordance with the provisions of, the Summary Opinion process set forth in Paragraph A(1) above; or**
3. Accept the recommendation.

In the event an Officer does not make an election within ten (10) working days, the recommendation for suspension will be deemed accepted, absent a written agreement between the Lodge and the Department to extend the election period.

When an **Officer** elects to file a grievance, the Lodge will have **sixty (60)** days from receipt of the investigative file to inform the Department whether the Lodge will advance the grievance to arbitration, and if so, whether the grievance will be advanced to arbitration, **unless the parties mutually agree otherwise.**

In the event the Lodge decides not to advance the grievance to arbitration, the **Officer** will have ten (10) working days to elect review of the recommendation for suspension **by the Police Board** as set forth in **the Police Board's Rules of Procedure, Article IV, Section B, paragraphs 3 through 9 (published November 1, 1975).** In the event the **Officer** elects review of the recommendation for suspension by the Police Board, the **Officer** will not be required to serve the recommended suspension, nor will the suspension be entered on the **Officer's** disciplinary record, until the Police Board rules on the merits of the recommended suspension.

Arbitration of suspension grievances pursuant to this Paragraph B shall be conducted in accordance with the provisions of Appendix Q.

C. Suspensions from Thirty-One (31) to Three Hundred Sixty-Five (365) Days

Officers who receive a recommendation for discipline from thirty-one (31) to three hundred sixty-five (365) days as a result of a sustained CR# shall have one of **three** options, **the selection of which shall preclude the Officer, or the Lodge acting on his or her behalf, from selecting any of the other options listed below, except that the Officer is permitted**

to accept the recommendation at any time. Within ten (10) working days of receiving the recommendation for discipline the **Officer(s)** shall elect one of the following options:

1. A review by the Police Board as set forth in the Police Board's Rules of Procedure, Article I, II and III (published November 1, 1975); or
2. The filing of a grievance challenging the recommendation for discipline; or
3. Accept the recommended discipline.

In the event an **Officer** does not make an election within ten (10) working days, the recommendation for suspension will be reviewed by the Police Board.

When an **Officer** files a grievance, the Lodge will have **sixty (60)** days from the receipt of the investigative file to inform the Department whether the Lodge will advance the grievance to arbitration. **Arbitration of suspension grievances pursuant to this Paragraph C shall be conducted in accordance with the provisions of Appendix Q.** The parties will cooperate in the scheduling of all arbitration hearings.

In the event the Lodge decides not to advance the grievance to arbitration, the **Officer** will have ten (10) working days to elect review of the recommendation for suspension **by the Police Board** as set forth in paragraphs 9.6.C.1 above. **In the event the Officer elects review of the recommendation for suspension by the Police Board, the Officer will not be required to serve the recommended suspension, nor will the suspension be entered on the Officer's disciplinary record, until the Police Board rules on the merits of the recommended suspension.**

In the event an **Officer** does not make an election within ten (10) working days, the recommendation for suspension will be **deemed accepted, absent a written agreement between the Lodge and the Department to extend the election period.**

D. When an Officer exercises his or her right to contest a disciplinary recommendation, whether by filing a grievance or electing review by the Police Board, Complaint Register files shall be provided to the Lodge promptly upon written request.

Section 9.7 — Authority of the Arbitrator

- A. Except as specified in Subsection C below, the Arbitrator shall have no right to amend, modify, nullify, disregard, add to, or subtract from the provisions of this Agreement. The Arbitrator shall only consider and make a decision with respect to the specific issue or issues presented to the Arbitrator and shall have no authority to make a decision on any other issues not so submitted. The Arbitrator shall submit in writing his or her decision to the Employer and to the Lodge within thirty (30) days following the close of hearing unless the parties agree to an extension thereof. The decision shall be based upon the Arbitrator's interpretation of the meaning or application of the terms of this Agreement to the facts of the grievance presented, and shall be final and binding upon the parties.
- B. In the case of a sustained finding that is subject to the parties' grievance procedure, the Arbitrator has the authority to review whether IPRA or IAD made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of IPRA or IAD was based upon objective evidence of the type specified in Appendix L, in addition to the issues of just cause and the appropriateness of the penalty in determining whether to grant the grievance.
- C. Any **Officer** who is a member of and adheres to the established and traditional tenets or teachings of a bona fide religion, body or sect which has historically held conscientious objections to financially supporting organizations such as the Lodge, upon proof

thereof, may be excused from the obligations set forth in Section 3.1 Article 3; and the Arbitrator may require, in lieu of such obligations, the payment by such **Officer** of a sum equal to the fair share agency fee to a non-religious charitable fund exempt from taxation under Section 501(c)(3) of Title 26 chosen by such **Officer** from a list of at least three such funds to be submitted by the Lodge. The Employer shall not participate in but shall be bound by such an arbitration.

If an **Officer** who holds conscientious objections pursuant to this section requests the Lodge to use the grievance-arbitration procedure on the **Officer's** behalf, the Lodge may charge the **Officer** the reasonable costs of using the procedure.

Section 9.8 — Expense of the Arbitrator

The fee and expenses of the Arbitrator shall be borne by the party whose position is not sustained by the Arbitrator. The Arbitrator in the event of a decision not wholly sustaining the position of either party, shall determine the appropriate allocation of his or her fees and expenses. Each party shall be responsible for compensating its own representative(s) and witness(es). The cost of a transcript, where requested by either party, shall be paid by the party so requesting it.

The party requesting a cancellation, rescheduling or other postponement of a set hearing date shall pay the Arbitrator's cancellation fee.

Section 9.9 — Processing and Time Limits

The resolution of a grievance satisfactory to the Lodge at any step shall be deemed a final settlement, and any grievance not initiated or taken to the next step within the time limit specified herein will be considered settled on the basis of the last answer by management. The time limits specified in this Article may be extended or waived by mutual agreement. Grievances may be initiated at any appropriate step corresponding with the nature of the grievance and the manner in which it arose.

Section 9.10 — Normal Operation

Grievance meetings shall be scheduled at reasonable times and in a manner which does not unreasonably interfere with the Employer's operations. Reasonable duty time shall be allowed the grievant **Officer(s)** and the watch representative or unit representative under this Article, for the pre-arbitral steps under Section 9.2.

Section 9.11 — Exhaustion

It is the intent of the parties to this Agreement that the procedures set forth in this Article shall be mandatory as to any grievance unless expressly and specifically excluded by the terms of this Agreement.

Section 9.12 – Lodge Rights

This Agreement does not create or convey to any member of the bargaining unit a right to determine whether any grievance shall be advanced to arbitration. The right to evaluate any grievance and determine whether that grievance is withdrawn, settled or advanced to any form of arbitration remains solely the right of the Lodge. In the event the Lodge determines it will not advance any grievance(s) to arbitration, the Officer(s) who filed the grievance(s) will be afforded the existing procedures for the review and/or challenge of reprimands or recommendations of discipline, to the extent provided for herein.

ARTICLE 27 — RESIDENCY

All Officers covered by this Agreement shall be actual residents of the City of Chicago.

ARTICLE 28 — DURATION, ENFORCEMENT AND DISPUTE RESOLUTION

Section 28.1 — Term of Agreement

This Agreement shall be effective from **July 1, 2012** and shall remain in full force and effect until **June 30, 2017**. It shall continue in effect from year to year thereafter unless notice of termination is given, in writing, by certified mail, by either party no earlier than February 1, **2017** and no later than March 1, **2017**. The notices referred to shall be considered to have been given as of the date shown on the postmark. Written notice may be tendered in person, in which case the date of notice shall be the written date of receipt. It is mutually agreed that the Articles and Sections shall constitute the Agreement between the parties for the period defined in this Section.

Section 28.2 — Continuing Effect

Notwithstanding any provision of this Article or Agreement to the contrary, this Agreement shall remain in full force and effect after any expiration date while negotiations or Resolution of Impasse Procedure are continuing for a new Agreement or part thereof between the Parties.

Section 28.3 — Impasse Resolution, Ratification and Enactment

- A. If the parties reach a complete agreement as to the items for negotiation at the end of any negotiating period, the following procedure shall apply:
 1. The agreement will first be presented to the Lodge membership with the recommendation of the Executive Board for ratification.
 2. Within ten (10) days after such ratification by the Lodge membership, the agreement will be submitted to the City Council of the City of Chicago, with the Superintendent of Police and the Mayor's recommendation for ratification and concurrent adoption in ordinance form pursuant to the City's Home Rule authority. The Employer and Lodge shall cooperate to secure this legislative approval.
 3. In the event the City Council should reject the recommended agreement, the parties shall meet again within ten (10) days of the Council's vote to discuss the reasons for the Council's rejection and to determine whether any modifications can be made to deal with the problems; but either party may thereafter invoke arbitration in accordance with Section 28.3(B) of this Article upon ten (10) days' written notice to the other party.

For purposes of this Article, rejection by the City Council means affirmative rejection by a three-fifths (3/5) vote of the members of the City Council within thirty (30) days of the date the contract is submitted to it.
- B. If complete agreement is not reached between the parties as to the items for negotiation at the end of any negotiating period, the following procedure shall apply:
 1. In the event that disputed items cannot be resolved during the negotiation period, all disputed items shall be referred to a three person Arbitration Board, one member to be selected by each of the parties and the third member to be jointly agreed upon by the parties.
 2. A Dispute Resolution Board shall be convened and shall be composed of three (3) persons: one appointed by the Employer, one appointed by the Lodge and one impartial member to be mutually selected and agreed upon by the Employer and the Lodge. If, after

a period of five (5) days from the date of the appointment of the two representatives of the parties, the remaining Board member has not been selected or otherwise agreed upon, then either representative may request the American Arbitration Association, or its successor in function, to furnish a list of seven members of said service from which the remaining Board member shall be selected. The Association shall be advised that the eligibility for names to be placed upon the list shall include the following: membership in the National Academy of Arbitrators; at least five (5) years' experience in labor relations dispute resolutions in either the private or public sector; United States citizenship; and a commitment by any such individual that, if appointed or selected, said individual agrees to comply with the time limits set forth in subsection 28.3(B)5, below. Upon mutual written agreement of the Employer and the Lodge, the parties' right to appoint any Board members other than the impartial member may be mutually waived.

3. The list shall be immediately published and the representative appointed by the Employer shall within five (5) days after publication of said list eliminate three (3) names from the list. Within two (2) days after such elimination, the representative appointed by the Lodge shall eliminate three (3) names from the list. The remaining individual, plus the individual appointed by the Employer and the individual appointed by the Lodge, shall compose the Dispute Resolution Board.
4. The member of the Dispute Resolution Board selected, pursuant to subsection 28.3(B)3, above, shall act as Chairman. He or she shall be an impartial, competent and reputable individual and shall be administered and subscribe to the constitutional oath or affirmation of office. The Employer and the Lodge shall each pay half of the fees and expenses of the impartial member.
5. The Chairman shall have the authority to convene and adjourn proceedings, administer oaths, compel testimony and/or documents, and employ such clerical or research assistance as in his or her judgment and discretion are deemed warranted. He or she shall convene proceedings on the issues presented to the Dispute Resolution Board within ten (10) days after his or her appointment and/or selection; and the Board shall make its determination within thirty (30) days after it has convened. The time limits set forth herein may be extended only upon written mutual agreement of both the Board member appointed by the Lodge and the Board member appointed by the Employer.
6. The Employer and the Lodge shall attempt to agree upon a written statement of the issue or issues to be presented to the Board. In lieu of, or in addition to, such mutual statement of issues, each party may also present its own list or statement of issues, provided only that any such issue not mutually agreed upon shall have been an issue previously the subject of negotiations or presentation at negotiations. During the course of proceedings, the Chairman of the Board shall have the authority as necessary to maintain decorum and order and may direct, (absent mutual agreement) the order of procedure; the rules of evidence or procedure in any court shall not apply or be binding. The actual proceedings shall not be open to the public and the parties understand and agree that the provisions of 5 ILCS 120/1 et seq. are not applicable. If, in the opinion of the impartial member of the Board, it would be appropriate in his or her discretion to meet with either the Employer or Lodge for mediation or conciliation functions, the Board may do so, provided only that notice of such meetings shall be communicated to the other party.
7. The compensation, if any, of the representatives appointed by the Lodge shall be paid by the Lodge. The compensation of the representative appointed by the Employer shall be paid by the Employer.

8. The terms decided upon by the Board shall be included in an agreement to be submitted to the City Council for adoption. The terms of this Agreement shall continue to bind both parties hereto during all negotiations and impasse resolution procedures.
9. If the City Council should reject the arbitrated agreement, the parties shall meet again within ten (10) days of the Council's vote to discuss the reasons for the Council's rejection and to determine whether any modifications can be made to deal with the problems; but either party may thereafter terminate this Agreement upon ten (10) days' written notice to the other.
10. There shall be no implementation of any provisions of a successor agreement without Council ratification and adoption in ordinance form of the agreement; except, however, that the terms of this Agreement shall remain in full force and effective until a successor agreement is adopted in ordinance form or this Agreement is terminated pursuant to subparagraph 28.3(B)9.
11. As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein above shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply; Subsections (h),(i), (k) and (m).

ARTICLE 29 — BABY FURLOUGH DAYS

Section 29.1

Officers with the following years of service as determined by the Officer's seniority date shall receive the following number of Baby Furlough Days (BFD) (eight (8) hours for each BFD) for each calendar year:

<u>Years of Service</u>	<u>Baby Furlough Days</u>
15 or more	6
10 but less than 15	5
5 but less than 10	4
1 but less than 5	3

Section 29.2

An Officer's BFD shall be granted pursuant to and in accordance with the Department's policy of granting compensatory time off, except if an Officer elects not to use or is denied all his or her BFD in a calendar year, he or she may, at his or her option, carry over for use as days off in the next year four (4) of his or her BFD to the next succeeding calendar year.

Section 29.3

Any BFD not used in a calendar year shall be paid to the eligible Officer in the following calendar year, except as provided for in Section 29.2 above. Payment shall be based upon the salary schedule in effect at the time of payment. Payment shall be made by April 1 for BFD not used in the preceding calendar year.

ARTICLE 29A — FURLOUGHS

Section 29A.1

Furlough shall be granted to Officers for each calendar year of this Agreement.

APPENDIX Q

GROUND RULES FOR ARBITRATION OF SUSPENSION GRIEVANCES PURSUANT TO SECTION 9.6.B AND 9.6.C

The following procedures shall apply to arbitrations of grievances challenging suspensions of eleven (11) to three hundred sixty-five (365) days.

A. The Lodge and the Employer have agreed to a panel of five (5) Arbitrators who shall comprise the exclusive list of Arbitrators to preside over the suspension grievances. The five (5) Arbitrators are: . Each December the Lodge and the City shall each be permitted to strike one (1) Arbitrator from the panel for any reason. In the event an Arbitrator is removed from the panel, the parties shall attempt to agree upon a replacement Arbitrator. If the parties are unable to agree upon a replacement, they shall request a list of seven (7) Arbitrators from the American Arbitration Association, each of whom must be a member of the National Academy of Arbitrators. Within ten (10) days after receipt of the list, the parties shall select an Arbitrator. Both the Employer and the Lodge shall alternately strike names from the list. The remaining person shall be added to the panel. In the event the Lodge and the City each strike an Arbitrator from the panel as part of the December process, and if the parties are unable to agree upon replacement Arbitrators, the parties shall request two lists from the American Arbitration Association to be used to select the two replacement Arbitrators.

B. Within ten (10) days of the Lodge electing to forward the suspension grievance to arbitration, the parties shall meet and select an Arbitrator from the panel. The parties shall inform the Arbitrator of the Arbitrator's appointment and request a hearing date within sixty (60) days. If the Arbitrator is unable to provide a hearing date within sixty (60) days from the date of being contacted, the parties shall select another Arbitrator from the panel who is able to provide a hearing date within sixty (60) days. Upon appointment of the Arbitrator, but prior to the date on which a cancellation fee would be incurred, and unless they have already done so, the parties shall schedule a date to conduct a settlement conference to attempt to resolve the grievance. More than one suspension grievance may be discussed at the settlement conference. If the parties are unable to resolve the suspension grievance, they shall proceed with the Arbitration Process outlined in this Memorandum of Understanding.

C. Provided the Lodge accepts a hearing date within sixty (60) days of appointment of the Arbitrator, 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. In the event additional day(s) of hearing may be required to resolve the grievance, such additional day(s) shall be scheduled within thirty (30) days of the first day of hearing. If the Lodge is not ready to proceed on a scheduled hearing date,

the Officer shall be required to serve the suspension prior to the Arbitrator ruling on the merits of the grievance.

D. The authority and expenses of the Arbitrator shall be governed by the provisions of Sections 9.7 and 9.8 of the Agreement.

E. The provisions of this Appendix Q supersede Appendix S of the predecessor collective bargaining agreement. However, nothing shall prohibit or require the parties agreeing upon an expedited or “fast track” arbitration procedure for a specific grievance or category of grievances.