

No. 132241

**IN THE
SUPREME COURT OF ILLINOIS**

CHICAGO JOHN DINEEN LODGE No. 7,

Plaintiff-Appellant,

v.

CITY OF CHICAGO, DEPARTMENT OF
POLICE, BRANDON JOHNSON, in his official
capacity as Mayor, LARRY SNELLING, in his
official capacity as Superintendent of the Chicago
Police Department, and the CHICAGO CITY
COUNCIL,

Defendants-Appellees.

On Petition for Leave to Appeal from the Illinois Appellate Court, First Judicial District
No. 1-24-0875

There Heard On Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
No. 24 CH 00093

The Honorable Michael T. Mullen, Judge Presiding

BRIEF OF DEFENDANTS-APPELLEES. CROSS-RELIEF REQUESTED

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NATURE OF THE CASE

Plaintiff, John Dineen Lodge No. 7 (“Lodge”), and defendant, City of Chicago (“City”), are parties to a collective bargaining agreement (“CBA”) that covers full-time sworn Chicago Police Department (“CPD”) officers below the rank of sergeant. The parties’ previous CBA covered the period from July 1, 2012, to June 30, 2017. When the parties reached an impasse on certain issues while negotiating a successor CBA, those issues were referred to a three-person Dispute Resolution Board for interest arbitration proceedings under the CBA and the Illinois Public Labor Relations Act (“IPLRA”), 5 ILCS 315/1 *et seq.* The Chair of the Dispute Resolution Board (“Board Chair”) issued an award that, among other things, provided Lodge members with the option to have discipline proceedings heard in arbitration, rather than exclusively at the Chicago Police Board, for officers facing discharge or suspension of more than a year. The Board Chair ordered that such arbitration proceedings must be closed to the public. The Board Chair also required CPD to pay officers facing discharge or suspension of more than a year throughout their discipline proceedings.

The Lodge filed an action in the circuit court to confirm the award, and the City challenged the award under section 14(k) of the IPLRA, 5 ILCS 315/14(k). The circuit court confirmed the award in part, but vacated the requirements that arbitration for the most serious discipline be closed to the

public and that the City continue to pay officers facing discharge or suspension of more than a year throughout their discipline proceedings.

The Lodge appealed. The appellate court, with one justice dissenting, affirmed the portion of the judgment that vacated the requirement that arbitration for the most serious discipline be closed to the public. The appellate court reversed the circuit court's judgment on the requirement that CPD pay officers facing discharge or suspension of more than a year throughout their discipline proceedings. No questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether the award's requirement that the most serious CPD discipline proceedings be closed to the public violates public policy, or in the alternative, is arbitrary and capricious.
2. Whether it is arbitrary and capricious to require CPD to pay officers after charges have been filed seeking their discharge or suspension of more than a year.
3. Whether the City's challenge to the arbitration award was timely filed.

JURISDICTION

The Dispute Resolution Board issued a Final Opinion and Award on October 19, 2023. C. 23, V1, and a Supplemental Final Opinion and Award on

January 4, 2024, C. 87, V1.¹ The parties had 90 days to file a circuit court action seeking to review the award. 5 ILCS 315/14(k). On January 4, 2024, the Lodge filed a complaint in the circuit court to confirm the award. C. 16, V1. The City filed a petition for review under section 14(k) of the IPLRA on February 23, 2024. C. 887, 916, V1. On March 21, 2024, the circuit court vacated the award in part and confirmed the remainder of the award. C. 1824-49, V1.

The Lodge filed a notice of appeal on April 19, 2024. C. 1975-76, V2. On August 8, 2025, the appellate court issued an opinion affirming in part and reversing in part the circuit court's judgment. *Chicago John Dineen Lodge No. 7 v. City of Chicago*, 2025 IL App (1st) 240875. The Lodge filed a petition for leave to appeal on September 12, 2025, which this court allowed on November 26, 2025. This court has jurisdiction over the Lodge's appeal pursuant to Ill. Sup. Ct. R. 315. This court has jurisdiction over the City's request for cross relief pursuant to Ill. Sup. Ct. R. 318(a).

STATUTES INVOLVED

Section 8 of the IPLRA, 5 ILCS 315/8:

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. Any agreement

¹ We cite the two-volume common law record as "C. __, V. __."

containing a final and binding arbitration provision shall also contain a provision prohibiting strikes for the duration of the agreement. The grievance and arbitration provisions of any collective bargaining agreement shall be subject to the Illinois "Uniform Arbitration Act". The costs of such arbitration shall be borne equally by the employer and the employee organization.

Section 14(h) of the IPLRA, 5 ILCS 315/14(h), in relevant part:

[T]he arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations 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 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, and 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

through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 14(k) of the IPLRA, 5 ILCS 315/14(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. Such petitions for review must be filed with the appropriate circuit court within 90 days following the issuance of the arbitration order. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel. The 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. If said court's decision affirms the award of money, such award, if retroactive, shall bear interest at the rate of 12 percent per annum from the effective retroactive date.

STATEMENT OF FACTS

Prior Collective Bargaining Agreement Provisions

The parties' previous CBA provided that officers facing suspensions of up to one year – but not officers facing more serious discipline – could elect to challenge their discipline in arbitration or, in some cases, at the Police Board, and were generally paid throughout their discipline proceedings. C. 1056-57, 1062, V1. For the most serious misconduct – where the Superintendent sought discharge or suspension of more than a year – officers could have their discipline reviewed exclusively by the Police Board. C. 797-98, 1051, V1. The

Police Board is an independent civilian body. C. 798, V1. After an investigation, if the Superintendent recommends that an officer should be discharged or suspended for more than a year, the Superintendent files charges against the officer at the Police Board. Chicago Police Board, *Allegations of Police Misconduct: A Guide to the Complaint & Disciplinary Process*, at 3 (“Police Board Guide”).² The Police Board assigns the case to a hearing officer for an evidentiary hearing. C. 1066, 1072, V1. This hearing is open to the public. C. 1072, V1. After the hearing, the hearing officer prepares a written report, which the Police Board reviews, along with a video recording of the hearing and other materials. C. 1073-74, V1; Police Board Guide at 3. The Police Board deliberates in a closed session and takes final action on the case at a public meeting. Police Board Guide at 3-4.

Officers facing discharge or suspension of more than a year are typically paid during the investigation, but are generally suspended without pay once the Superintendent files charges. C. 1221, V1; Police Board Guide at 3. A suspension without pay is reviewed by a hearing officer within seven days after a notice of suspension. C. 1076-77, V1.

Negotiations for a Successor CBA

In October 2017, the parties started negotiating for a successor CBA.

² The Police Board Guide is publicly available at <https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/AllegMiscond20250206.pdf> and permanently available at <https://perma.cc/MDU3-GNFU>.

C. 1827, V1. The parties agreed on several terms in July 2021. C. 1827, V1. After the parties reached an impasse on the remaining terms, the matter was referred to a three-member Dispute Resolution Board for interest arbitration proceedings, pursuant to the parties' CBA and incorporated provisions of the IPLRA. C. 1059-61, 1827, V1. The parties' CBA provided that the Dispute Resolution Board would be composed of a City appointee, a Lodge appointee, and one "impartial member" to be mutually selected by the City and the Lodge. C. 1059, V1.³ The City's appointee was its Chief Labor Negotiator, Cicely Porter Adams. C. 1370, V1. The Lodge's appointee was its president, John Catanzara, Jr. C. 1370, V1. The parties selected Arbitrator Edwin Benn to serve as impartial member and Board Chair. C. 1370, V1.

During the proceedings, the Lodge proposed, among other things, that officers be able to contest charges seeking their discharge or suspension of more than a year in arbitration, instead of only before the Police Board. C. 1129, V1. The Lodge also proposed that officers facing discharge or suspension of more than a year continue to be paid throughout their discipline proceedings. C. 1131, V1. In response, the City proposed an arbitration option, to occur after Police Board proceedings, as a review of the Police Board's decision to discharge or suspend an officer for more than a

³ The CBA provides for the formation of a "Dispute Resolution Board," C. 1059, V1, while the IPLRA provides for an "arbitration panel," 5 ILCS 315/14. For consistency with the proceedings below, we refer to the "Dispute Resolution Board," rather than an "arbitration panel."

year. C. 1174, V1. The City stated that the public interest and the historical role of the Police Board in Chicago warrants special consideration, C. 1200, V1, and that discharge cases present issues of grave importance that demand transparency, C. 1202, V1. The City also explained that based on population, complexity, and a host of other metrics, Chicago is not comparable to other municipalities where discipline is arbitrated. C. 1356, V1. The City's proposal would not change the practice of allowing the Superintendent to suspend without pay officers facing discharge or suspension of more than a year.

In a June 2023 interim award, the Board Chair adopted the Lodge's proposal for officers facing discharge or suspension of more than a year to have the option for their cases to be heard in arbitration, rather than exclusively at the Police Board. C. 1374, V1. The interim award did not address whether such arbitration would be public or private, and directed the parties to draft language to fit the adopted proposal. C. 1442-43, V1. The Lodge subsequently proposed that the arbitration be private. C. 452, V1. The City, meanwhile, proposed that arbitration be open to the public in the same manner as Police Board hearings have always been. C. 464, V1. The City further proposed continuing the practice of allowing the Superintendent to suspend an officer without pay once written charges are filed, subject to review by a hearing officer. C. 462, V1. The City explained that none of the City's 43 CBAs with other bargaining units allow an employee who has been discharged to remain in pay status while that discharge is reviewed. C. 1464,

V1.

The Board Chair issued a Final Opinion and Award (“award”) on October 19, 2023. C. 23, V1. The award stated that under section 8 of the IPLRA, 5 ILCS 315/8, unless the parties agree otherwise, a CBA must provide for final and binding arbitration of disputes. C. 37, V1. Although the Lodge had agreed to Police Board proceedings in lieu of arbitration in the past, the Lodge would no longer do so. C. 37, V1. The award stated that officers must have the option to challenge discharge or suspension of more than a year in arbitration, rather than only before the Police Board. C. 37-38, V1. The award further stated that the “Rule of Law” is that arbitrations are private, citing an arbitration treatise, the rules of the American Arbitration Association, and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes. C. 43-44, V1. The award rejected the City’s reliance on the public nature of Police Board hearings, since the Police Board would no longer be part of the discipline process. C. 45, V1. The award asserted there was no reason for an arbitration for discipline of 366 days or more to be open to the public when the past practice has been for arbitrations for significant disciplinary actions to be conducted in private. C. 46, V1.

The award also required the City to pay officers during the entire pendency of discipline proceedings in cases involving discharge or suspension of more than a year. C. 28, V1. The award stated that this was consistent with the practice for suspensions of a year or less, as well as “the

presumption that a defendant is innocent until proven guilty.” C. 46-47, V1. According to the award, the line the City drew at 365 days to determine whether an officer is paid throughout his discipline proceedings was “not reasonable.” C. 47, V1. The award added that if there was a concern that an officer should not be compensated while the alleged misconduct is investigated because the misconduct was sufficiently serious, the City should “timely investigate the matter and get the case in front of an arbitrator for decision.” C. 47-48, V1. The Board Chair explained that the next step, as required by the CBA, would be for its award to be presented to the Chicago City Council for ratification, and if the award was not ratified, the dispute would return to the Board, which was “obligated to consider the City Council’s objections.” C. 29, V1.

The City’s appointee to the Dispute Resolution Board dissented. C. 54, V1. The dissent recalled that every Police Board hearing “in living memory” had been open to the public. C. 58, V1. The dissent explained that substantial portions of the population were deeply suspicious of the process by which CPD holds its officers accountable for misconduct. C. 59, V1. Accordingly, the public must perceive the CBA’s accountability provisions as fostering and advancing the legitimacy of policing in Chicago, or CPD would be impeded in fulfilling its mission. C. 57, V1. The dissent stated that no other municipality in the state was “in the same ballpark” as Chicago based on the complexity of the issues faced, the diversity of the communities served, or the intensity of

public focus on how CPD operates. C. 57, V1. The dissent further stated that it was a radical departure from the status quo to require Chicago police officers to remain on the payroll after charges are filed seeking discharge. C. 59, V1. The dissent explained that CPD cannot make use of those officers, stating that “it would be preposterous” to send them on emergency calls once the Superintendent has determined they should not hold the job at all. C. 59-60, V1.

The terms of the award were submitted to City Council for a vote. C. 89, V1. On December 13, 2023, City Council rejected the arbitration provisions of the award. C. 89, V1. On December 21, 2023, the parties met with the Dispute Resolution Board. C. 99, V1. The City asked to present further argument and testimony. C. 99, V1. The Board Chair denied that request because he had viewed the videos of City Council meetings where objections and supporting positions for the arbitration provisions were presented, C. 99-100, V1, but allowed the parties to file additional written materials, C. 100, V1.

On January 4, 2024, the Board Chair issued a Supplemental Final Opinion and Award (“supplemental award”). C. 150, V1. The supplemental award noted that the parties had agreed, from the outset, that if there was a City Council rejection, the parties would return to the Dispute Resolution Board. C. 101, V1. The supplemental award affirmed the arbitration provisions of the previous award, C. 150, V1, stating, in part, that “Chicago is

no different from any other public employer covered by the IPLRA's mandate for final and binding arbitration," C. 138, V1. The Lodge's appointee to the Dispute Resolution Board concurred, and the City's appointee dissented. C. 150, V1.

Circuit Court Proceedings

On January 4, 2024, the Lodge filed a complaint in the circuit court seeking to confirm the award. C. 16, V1. The Lodge filed a first amended complaint on February 1, 2024. C. 578, V1. The Lodge claimed that the City could not contest the award because it had not filed a challenge within 90 days of the award issued on October 19, 2023. C. 583-84, V1. The City disagreed, C. 781, V1, and on the same day that City Council voted to reject the terms of the supplemental award on February 15, 2024, the City filed a motion for leave to file a counterclaim, including a petition for review under section 14(k) of the IPLRA. C. 827-29, V1. After the circuit court granted the City's motion, C. 885, V1, the City filed its petition on February 23, 2024, which stated that the award should be vacated because it violates public policy and is arbitrary and capricious. C. 918-20, V1.

Both parties moved for summary judgment. C. 835, 992, V1. In its summary judgment motion, the Lodge argued that no Illinois law requires arbitration hearings to be open to the public. C. 1799-1800, V1. The Lodge also defended the Board Chair's reliance, for the pay status issue, on the "presumption of innocence," stating that the Board Chair was following

principles of workplace fairness. C. 1808, V1. The Lodge further argued that the status quo for arbitrations challenging discipline is to continue to pay officers until the arbitrator decides the case. C. 1807, V1.

The City, in its summary judgment motion, first explained that its petition was timely because it was filed within 90 days of the January 4, 2024, supplemental award. C. 1013, V1. The City explained that, although the Board Chair's October 19, 2023, order was labeled a "final award," the parties understood that, pursuant to the CBA, the award would be submitted to City Council and the rejected provisions would return to the Dispute Resolution Board for further proceedings and consideration. C. 1014-15, V1. The Board's decision was not, therefore, final until the supplemental award was entered. C. 1014-15, V1.

In its challenge to the merits of the award, the City argued that requiring arbitration for the most serious discipline to be private violates the strong public policy in favor of transparency in cases of serious alleged misconduct by CPD officers. C. 1018, V1. The City stated that the award ignored the 60-year practice of discipline hearings for the most serious misconduct being open to the public. C. 1016, V1. The City also explained that it is required to increase and promote transparency in police accountability as part of a consent decree that arose from an investigation by the United States Department of Justice and a lawsuit by the State of Illinois. C. 1019, V1. The City further argued that the requirement to hear

the most serious discipline in private is arbitrary and capricious in light of the parties' long history of having two different practices for lower-level suspensions and more serious discipline. C. 1018, V1. In addition, the City challenged the pay status portion of the award. The City argued that requiring officers accused of the most serious misconduct to be paid throughout their discipline proceedings is arbitrary and capricious. C. 1024, V1. The City explained that this, too, disrupted the parties' settled practice of allowing officers facing discharge or suspension of more than a year to be suspended without pay. C. 1024-25, V1. The City further argued that paying employees after a discharge decision was unprecedented across all City employment, as none of the City's 43 CBAs allow an employee who has been discharged to remain on the payroll while the appeal process is pending. C. 1026, V1.

The circuit court issued a memorandum opinion and order on March 21, 2024, that found, as an initial matter, that the City's challenge to the award was timely. C. 1833-35, V1. The court explained that the 90-day limit to challenge the award began to run from the date the supplemental award was issued, on January 4, 2024, and that the City timely filed its challenge within 90 days of that award. C. 1835, V1. On the merits, the circuit court upheld the portion of the award that allows officers to elect arbitration for the most serious discipline, C. 1837-38, V1, but vacated, on public policy grounds, the requirement that the arbitration be private, C. 1838-43, V1. The court

explained that accountability and transparency as it relates to CPD is a well-defined and dominant public policy. C. 1840, V1. The court further explained that nothing in the IPLRA or any other law requires reversing the practice of holding public hearings for the most serious discipline cases. C. 1842-43, V1.

The court also vacated the portion of the award requiring the City to pay officers facing discharge or suspension of more than a year throughout their disciplinary proceedings. C. 1844-45, V1. The court found that this requirement is arbitrary and capricious. C. 1844-45, V1. The court stated that the current practice of suspending such officers without pay, which includes a right to challenge the suspension at a pre-suspension hearing, strikes the right balance between protecting such officers from unfair suspension and the City's interest in not having to pay officers who cannot be sent on emergency calls. C. 1844, V1. According to the circuit court, the Board Chair "upend[ed] the balance that the City and Lodge have maintained for the past 40 years." C. 1845, V1.

Appellate Court Proceedings

The Lodge appealed, C. 1975-76, V2, and the appellate court affirmed in part and reversed in part, *Chicago John Dineen Lodge No. 7 v. City of Chicago*, 2025 IL App (1st) 240875. The appellate court found that requiring arbitration hearings for the most serious discipline to be private violates the public policies of effective law enforcement, exposure of crime, and police accountability and transparency. *Id.* ¶¶ 78-81. The appellate court also relied

on the “decades-old policy of having hearings for serious misconduct open to the public,” and stated that to “suddenly shut the door after 60 years of open hearings” severely undermines public policy. *Id.* ¶ 82. One justice dissented from this portion of the decision. *Id.* ¶¶ 102-110.

On the pay status issue, the appellate court reversed the circuit court’s judgment. *Id.* ¶ 91. The court found that it is not arbitrary and capricious to require the City to pay officers throughout the most serious discipline proceedings. *Id.* The appellate court stated, however, that the arbitrator’s reliance on criminal law was misplaced and the award did not provide a basis to overturn the decades-long practice of treating the most serious discipline differently from lesser discipline. *Id.* ¶ 90. The court also found that the City timely filed its challenge to the award in the circuit court. *Id.* ¶ 99.

ARGUMENT

For six decades, the most serious CPD discipline hearings have been open to the public. Transparency, when the most serious police misconduct is on the line, has been crucial in Chicago, where the policing landscape is extraordinarily complex and many residents harbor mistrust towards police. Public hearings build trust and cooperation between CPD and the people it serves. The courts below correctly refused to suddenly close these hearings to public view.

At the same time, the courts below improperly departed from the status quo by requiring the City to pay officers facing discharge or suspension

of more than a year while their discipline proceedings are pending – even though at that point, an investigation has led the Superintendent to determine there is enough evidence that they have engaged in misconduct so serious that they can no longer be entrusted with police duties.

This court reviews interest arbitration awards pursuant to section 14(k) of the IPLRA, 5 ILCS 315/14(k). Under that section, orders of a dispute resolution board may be reviewed by a court on the grounds that the board did not have 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). Separately, a court may vacate any arbitration award that violates a well-defined and dominant public policy. *American Federation of State, County & Municipal Employees v. Department of Central Management Services*, 173 Ill. 2d 299, 307 (1996) (“*AFSCME II*”).

Review of an arbitration award to determine whether it violates public policy is de novo. *City of Chicago v. Fraternal Order of Police*, 2020 IL 124831, ¶ 26. The Lodge acknowledges this, Lodge Br. 9, but at the same time asserts that review of an arbitration award should be deferential, Lodge Br. 10, 13-14. That approach is at odds with the very concept of de novo review. No authority supports a standard other than de novo review for the public policy exception. A question of public policy “is ultimately one for resolution by the courts.” *Board of Education v. Illinois Educational Labor Relations Board*, 216 Ill. App. 3d 990, 998 (4th Dist. 1991).

The Lodge invokes the principle that an arbitrator's interpretation of a contract is entitled to deference. Lodge Br. 12-15. That principle could not possibly support the Lodge's idea of deferential de novo review. The award in this case was rendered in interest arbitration. In interest arbitration, the arbitrator does not interpret a contract. Interest arbitration is used to settle differences that led to an impasse in bargaining over the terms or provisions that will be included in a new contract. *Thornton v. Illinois Department of Corrections*, 2022 IL App (5th) 220269-U, ¶ 4 n.4. Interest arbitration is reserved for public employees in sensitive positions, such as police officers, who are prohibited from striking. *Board of Education v. Peoria Federation of Support Staff*, 2012 IL App (4th) 110875, ¶ 16. The task of the dispute resolution board in an interest arbitration is to formulate contractual language that would best reflect what the parties would agree to, had an impasse not occurred. *Town of Cicero v. Illinois Association of Firefighters*, 338 Ill. App. 3d 364, 373 n.2 (1st Cir. 2003). The principles the Lodge invokes come from grievance arbitration, where a court gives great deference to the arbitrator's interpretation of a contract. *E.g., County of Tazewell v. Illinois Fraternal Order of Police Labor Council*, 2015 IL App (3d) 140369, ¶ 15.⁴

⁴ The Lodge cites *Town of Cicero* to support a "highly deferential" review of *interest* arbitration, Lodge Br. 13, but in that case the court did not review a claim that an arbitration award violates public policy. Further, *Town of Cicero*, to support its "highly deferential" statement, cited decisions arising in the context of grievance arbitration and commercial arbitration – not interest arbitration. *Town of Cicero*, 338 Ill. App. 3d at 371-72.

In addition, even leaving aside the public policy exception, review of a dispute resolution board's decision in interest arbitration is less deferential than review of a grievance arbitration award. A court must assess whether the board relied on inappropriate factors, entirely failed to consider an important aspect of the problem, or offered an explanation that ran counter to the evidence or was so implausible that it cannot be ascribed to a difference in view or the product of agency expertise. *International Association of Firefighters v. City of Bloomington*, 2016 IL App (4th) 150573, ¶ 27. This requires a different and more probing analysis than is required of a grievance arbitration award, where a court must uphold the award so long as the arbitrator has interpreted the contract, even if the court disagrees with the interpretation. *See County of Tazewell*, 2015 IL App (3d) 140369, ¶ 15.⁵

Applying those standards here, as we now explain, this court should affirm the appellate court's judgment that excluding members of the public from arbitrations involving the most serious charges of police misconduct violates public policy. In the alternative, this court may affirm that portion of

⁵ The Lodge's reliance on the standards courts have used to review arbitration awards in the commercial context is misplaced for similar reasons. Lodge Br. 13-14 (*Garver v. Ferguson*, 76 Ill.2d 1 (1979) (contract for construction of house); *George Watts & Son, Inc. v. Tiffany & Co.*, 248 F.3d 577 (7th Cir. 2001) (contract to sell products). It makes no sense to compare interest arbitration to such cases, where the only "question for decision by a federal court" is "whether they *interpreted* the contract." Lodge Br. 14 (emphasis removed and added). Nor do those cases involve consideration of the statutory factors in the IPLRA or a similar statute.

the decision on the basis that excluding the public from such arbitrations is arbitrary and capricious. In addition, this court should hold that requiring the City to pay officers throughout the most serious discipline proceedings is arbitrary and capricious.

I. The Decision to Close Arbitrations Over Discipline for the Most Serious Police Misconduct Should Be Vacated.

The award's requirement that the most serious CPD discipline proceedings be closed to the public cannot stand. There is a well-defined and dominant public policy of maintaining transparency by granting public access to government-sponsored adjudicatory proceedings, like the discipline cases at issue here, that have historically been open to the public. The award's requirement of private arbitration violates that policy. Requiring the most serious discipline proceedings to be private is also arbitrary and capricious. The award failed to consider both the status quo and the urgent need for continued public access to the most serious discipline proceedings, which is an important component of the City's efforts to garner and maintain the trust of the Chicago community through transparency and accountability.

A. Requiring the most serious CPD discipline proceedings to be private violates public policy.

A court will vacate an arbitration award if it violates a well-defined and dominant public policy. *AFSCME II*, 173 Ill. 2d at 307. A two-step analysis applies to determine whether an award should be vacated based on public policy. *City of Aurora v. Association of Professional Police Officers*,

2019 IL App (2d) 180375, ¶ 54. A court first determines whether a well-defined and dominant public policy can be identified. *Id.* In the second step, the court determines whether the award violates that public policy. *Id.*

Public policy is determined by a state or nation’s constitution and statutes. *American Federation of State, County & Municipal Employees v. State of Illinois*, 124 Ill. 2d 246, 260 (1988) (“*AFSCME I*”); *Ziegler v. Illinois Trust & Savings Bank*, 245 Ill. 180, 193 (1910). When constitutions and statutes are silent on a particular issue, public policy is also determined by judicial decisions and “the constant practice of the government officials.” *AFSCME II*, 173 Ill. 2d at 307. These sources work in concert to establish a public policy. *See, e.g., City of Aurora*, 2019 IL App (2d) 180375, ¶¶ 67-68 (public policy in favor of holding police officers accountable for off-duty conduct derived from Illinois Constitution, criminal statutes, case law, and local police department rule); *Chicago Transit Authority v. Amalgamated Transit Union*, 399 Ill. App. 3d 689, 696-98 (1st Dist. 2010) (public policies in favor of safe and secure transportation of public and protection of public from sex offenders derived from Illinois Constitution, state statutes, and judicial decisions).

The Lodge assumes that the only public policy that counts is the public policy of the State of Illinois. Lodge Br. 19-20.⁶ Not so. As we explain above,

⁶ In the appellate court, the Lodge also argued that all “communities across the state” had to be “equally bound” by the same rule for the public policy exception to apply. Lodge App. Br. 31. The Lodge does not make this

public policy may derive from the state *or nation*. *AFSCME I*, 124 Ill. 2d at 260; *Ziegler*, 245 Ill. at 193. Indeed, courts regularly draw on federal law to identify public policy. *See, e.g., Wheeler v. Caterpillar Tractor Co.*, 108 Ill. 2d 502, 506 (1985) (Atomic Energy Act and congressional findings “clearly enunciate a public policy which is national in scope”); *Sherman v. Kraft General Foods, Inc.*, 272 Ill. App. 3d 833, 839 (4th Dist. 1995) (identifying public policy in Occupational Safety and Health Act of 1970 and Illinois Constitution); *Matter of Bukowski*, 148 A.D.3d 1386, 1389-90 (N.Y. App. Div. 2017) (drawing on United States Constitution, state constitution, and state law to identify public policy); *Philadelphia Housing Authority v. American Federation of State, County & Municipal Employees*, 52 A.3d 1117, 1123 (Pa. 2012) (identifying public policy “grounded in both federal and state law”); *City of Brooklyn Center v. Law Enforcement Labor Services, Inc.*, 635 N.W.2d 236, 242 (Minn. Ct. App. 2001) (identifying public policy based on federal laws, state administrative rules, and state statutes).

argument in its opening brief and has, therefore, forfeited it. One of its *amici*, however, maintains that “public policy” must “be demonstrated through a cohesive, statewide practice,” Br. Amicus Curiae Coalition of Frontline Police Officers 31, and requires “statewide standards,” Br. Amicus Curiae Coalition of Frontline Police Officers 32. This court has never held that public policies must involve only statewide practices. And the appellate court has relied on reports of the Department of Justice and a police task force *concerning only CPD* practices to support a finding that public policy favored retention of certain records regarding policy misconduct. *City of Chicago v. Fraternal Order of Police*, 2019 IL App (1st) 172907, ¶¶ 33-34. State statutes, too, frequently single out the City of Chicago for different treatment. *See* C. 1364-65 (listing 20 such statutory provisions). It is thus clear that state and national policies do not always translate to uniform rules at every location.

As we now explain, under these standards, the lower courts correctly ruled that barring public access to the most serious CPD disciplinary proceedings violates public policy.

1. There is a well-defined and dominant public policy that requires public access to CPD disciplinary hearings for the most serious misconduct.

There is well-defined and dominant public policy of maintaining transparency by granting public access to government-sponsored adjudicatory proceedings, like the disciplinary cases at issue here, that have historically been open to the public. Closing CPD disciplinary cases to the public for the most serious discipline violates that policy.

Whether the public policy exception ultimately applies depends on the particular circumstances of each case. *See AFSCME II*, 173 Ill. 2d at 311. And here, the circumstances are undisputed. For 60 years, at the Police Board, cases seeking the highest level of discipline have been open to the public. Public policy requires continued access to these proceedings, even though the format of the hearing has changed from a Police Board hearing to arbitration.

This public policy is derived from several sources working in concert, including “the constant practice of the government officials,” *AFSCME II*, 173 Ill. 2d at 307, and settled First Amendment principles. The consent decree between the State of Illinois and the City, as well as other state laws, further support the policy.

Beginning with the constant practice of government officials, in the many decades since the Police Board was created, discipline proceedings before the Police Board have been open to the public. C. 1020, V1. The appellate court recognized the significance of this “decades-old policy of having hearings for serious misconduct open to the public.” *Chicago John Dineen Lodge No. 7*, 2025 IL App (1st) 240875, ¶ 82. Even after the enactment of the IPLRA in 1983, the “the Superintendent’s current and past practice” of seeking discharge of police officers through Police Board proceedings has endured. C. 1051, V1. And the public has been able to attend every Police Board hearing “in living memory.” C. 58, V1. This historical practice is fully aligned with the State’s declared policy in the Freedom of Information Act of transparency in governmental conduct. *See* 5 ILCS 140/1 (“it 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”); *see Chicago John Dineen Lodge No. 7*, 2025 IL App (1st) 240875, ¶ 81 (“The public policy favoring police accountability and transparency . . . has its roots in FOIA.”).

The public policy is also derived from the First Amendment of the federal constitution. The parties’ constant, unwavering practice for so many decades has given rise to a presumptive First Amendment right of access to the most serious discipline proceedings. To assess whether the public has acquired such a right, a court makes two inquiries: (1) “whether the place and

process have historically been open” to the public, and (2) “whether public access plays a significant positive role in the functioning of the particular process in question.” *Press-Enterprise Co. v. Superior Court of California for the County of Riverside*, 478 U.S. 1, 8 (1986). This test has been applied to Illinois adjudicatory proceedings. See *In re NextLevel Health Partners*, 2025 IL App (1st) 230803, ¶¶ 16-17 (applying two-part test to determine whether a right of access attaches to insurance conservation proceedings). Both prongs of the test are satisfied here.

First, as we explain above, discipline hearings for the most serious misconduct have been open to the public for 60 years – ample time to establish a right of access. *Application of National Broadcasting Co.*, 828 F.2d 340, 344 (6th Cir. 1987) (proceedings that were open for 60 years evinced “clear[] . . . tradition of accessibility”). Courts have enforced a right of access in the context of local administrative adjudicatory proceedings in similar circumstances. In *New York Civil Liberties Union v. New York Transit Authority*, 684 F.3d 286 (2d Cir. 2012), the court found a presumptive constitutional right of access to transit board proceedings concerning violations of the transit agency’s rules where the board “acts as an adjudicatory body, operates under procedures modeled on those of the courts, and imposes official and practical consequences upon members of society.” *Id.* at 300. The process that was adjudicated at the transit board had been open to the public for more than 40 years. *Id.* at 302. And in *Barrett v. Volz*, No.

2:16-cv-209, 2016 WL 4082640 (D. Vt. Aug. 1, 2016), the court found a presumptive right of access to public utilities board proceedings where the board “render[s] judgments,” makes enforceable orders and decrees, and had “the powers of a court of record in the determination and adjudication of all matters over which it is given jurisdiction.” *Id.* at 1.

All of this is equally true of the discipline hearings that have been historically conducted at the Police Board. Those hearings have been open for a similarly long time and serve the same adjudicatory function as “as an autonomous, impartial public body.” *Lesner v. Police Board*, 2016 IL App (1st) 150545, ¶ 3. A discipline hearing conducted at the Police Board is an “exceptionally formal affair,” C. 1251, V1, that “resembles a trial in court,” Police Board Guide at 3.⁷ Parties engage in discovery. Police Board Guide at 3. The accused officer may appear with counsel to defend himself, confront his accusers, cross-examine witnesses, and present witnesses and evidence on his behalf. 65 ILCS 5/10-1-18.1. The hearing officer rules on objections, receives evidence, and “decides other legal issues.” Police Board Guide at 3. The Police Board may issue subpoenas, 65 ILCS 5/10-1-18.1, and its decisions are final and subject to administrative review, *Lesner*, 2016 IL App (1st) 150545, ¶¶ 3, 19. Discipline hearings for the most serious misconduct thus share all the characteristics of proceedings in cases where the courts have

⁷ The Police Board Guide is permanently available at <https://perma.cc/MDU3-GNFU>.

found a right of public access.

Turning to the second part of the test, public access to the most serious police discipline proceedings plays a significant positive role in the functioning of the discipline process. As the court explained in *New York Civil Liberties Union*, public access played a significant role in the functioning of the transit board by enhancing the appearance of fairness and informing “the populace of the workings of government.” 684 F.3d at 303. And in *Barrett*, the court relied on the “compelling public interest in access to adjudicative proceedings to ‘foster an appearance of fairness’” and “‘boost community trust in the administration of justice.’” 2016 WL 4082640, at *6 (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982), and *Brown v. Artuz*, 283 F.3d 492, 498-99 (2d Cir. 2002)).

Public access is just as crucial to the functioning of CPD’s discipline process. The job of a police officer is quintessentially public. See *Gardner v. Broderick*, 392 U.S. 273, 277 (1968) (police officer is “entirely responsible to the city or State which is his employer”). Police officers occupy “peculiar and unusual position[s] of public trust and responsibility.” *Sindermann v. Civil Service Commission*, 275 Ill. App. 3d 917, 928 (2d Dist. 1995). Police officers constantly interact with members of the public and have immense power over them – officers carry firearms, have the power to search and arrest, and may be witnesses in criminal prosecutions. It is consistent with the nature of an officer’s job to have the most serious discipline arbitrations take place in

public. That public access promotes “the public perception of fairness” and provides the “community therapeutic value as an outlet for community concern, hostility, and emotion,” and “enhance[s] . . . the performance of all involved.” *PG Publishing Co. v. Aichele*, 705 F.3d 91, 111 (3d Cir. 2013). And the offenses that prompt charges of discharge or suspension of more than a year have far-reaching impact on both the people directly affected and members of the public at large. They involve allegations of unjustified police-involved shootings, excessive force, illegal searches, and sexual misconduct, just to name a few examples. C. 1687, V1. Transparency of the discipline process builds public confidence that justice will be done in the most serious cases. *See Globe Newspaper Co. v. Superior Court*, 457 U.S. at 606 (public access heightens respect for process at issue). Indeed, as the circuit court noted, “there are . . . many members of the community that are deeply and, unfortunately, suspicious of police and the processes by which [CPD] seeks to hold officers accountable for serious misconduct.” C. 1842, V1. “Concerns about transparency” and “the ‘Code of Silence’ are real.” C. 1466, V1. The remedy cannot possibly be termination of such access.⁸

The investigation by the United States Department of Justice and the

⁸ In the appellate court, amicus briefs were filed on behalf of the Illinois Attorney General, Academic and Policy Groups for Police Accountability, and Organizations and Community Leaders That Represent Victims and Survivors of Chicago Police Misconduct. We are informed that these parties intend to submit briefs in this court. The amicus briefs demonstrate the existence of the concerns the circuit court identified.

consent decree with the State of Illinois, C. 1840, V1, further support the positive role of public access in the functioning of CPD's discipline process. The consent decree requires CPD to "provide opportunities for meaningful community engagement." C. 1106, V1. The consent decree further states that "[m]eaningful community involvement is imperative to CPD accountability and transparency," and that a "robust and well-functioning accountability system . . . is critical to CPD's legitimacy." C. 1104, V1. And it recognizes that "[h]olding public servants accountable when they violate law or policy is essential to ensuring legitimacy and community confidence." C. 1104, V1. Thus, the consent decree is formal support by the State for transparency in matters of CPD accountability.⁹ Indeed, the appellate court found that the consent decree is evidence of a policy of police accountability and transparency. *Chicago John Dineen Lodge No. 7*, 2025 IL App (1st) 240875, ¶ 81.

The Lodge attempts to downplay the relevance of the consent decree by arguing that the appellate court used it to interfere with the Lodge's contractual rights. Lodge Br. 28-29. The Lodge relies on a "carve-out" paragraph in the consent decree that states:

Nothing in this Consent Decree is intended to (a) alter

⁹ The Lodge observes that the consent decree does not specifically refer to public attendance at discipline hearings. Lodge Br. 30. There was no reason for the consent decree to do so, given that when it was entered, in 2019, the hearings were, as they had been for decades, already open to the public. The consent decree nevertheless fully embraces community involvement in CPD's accountability system, which necessarily includes those hearings.

any of the CBAs 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 . . . 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.

Consent Decree, *State of Illinois v. City of Chicago*, No. 1:17-cv-06260 (N.D.

Ill. Jan. 31, 2019), ¶ 711 (emphasis added). This argument should be rejected.

The very excerpt of the consent decree that the Lodge relies on recognizes that the carve-out does not apply to CBA provisions that violate public policy. And here, the lower courts relied on the consent decree only to support its holding that the CBA provision created by the Dispute Resolution Board during interest arbitration violates public policy.

For all these reasons, secreting the hearings at issue after decades of public access would plainly violate the public policy of maintaining transparency through public access to government-sponsored adjudicatory proceedings that have historically been open to the public, like the discipline proceedings at issue here. Secreting the hearings would deeply impact public confidence in CPD, which will lead to additional problems. As the appellate court's decision makes clear, public confidence in law enforcement is closely intertwined with other important policies, such as providing effective law enforcement, *City of Springfield v. Police Protective & Benevolent Association*

Unit No. 5, 2023 IL App (4th) 220321-U, ¶ 46; *Illinois State Police v. Fraternal Order of Police Troopers Lodge No. 41*, 323 Ill. App. 3d 322, 328 (4th Dist. 2001), and enforcing the criminal code and exposing crime, *Palmateer v. International Harvester Co.*, 85 Ill. 2d 124, 132 (1981). These core CPD functions depend on the public’s cooperation with police officers. *See Leweling v. Schnadig Corp.*, 276 Ill. App. 3d 890, 896-97 (1st Dist. 1995) (cooperation of people possessing knowledge of criminal activity “is essential to effective implementation” of policy favoring exposure of crime).

For all these reasons, the courts below correctly determined that the award’s mandate of private discipline proceedings for the most serious misconduct violates a well-defined and dominant public policy and cannot stand.

2. The right of public access is not displaced by arbitration rules or any other value the Lodge advances.

The Board Chair focused on what he regarded as a required feature of arbitration – namely, that arbitrations are private. C. 43-46, 127-28, V1. So, according to the Board Chair, the change from a Police Board hearing to arbitration necessarily meant that the proceedings must now be private. But once a presumptive right of access exists, that right cannot be taken away by simply changing the format of the proceedings: whether a presumptive right of access exists depends “not on formalistic descriptions of the government proceeding but on the kind of work the proceeding actually does and on the

First Amendment principles at stake.” *New York Civil Liberties Union*, 684 F.3d at 299. A government entity cannot “easily avoid constitutional structures by moving an old governmental function to a new institutional location.” *Id.* Yet, that is precisely what the award does here. Whether the forum is arbitration or a hearing at the Police Board, the work is the same: the Superintendent is seeking the highest level of discipline against a police officer accused of serious misconduct, and the parties will be bound by the decision. No matter the forum, there remains a compelling need to maintain transparency to support the legitimacy of CPD discipline and effective policing. That need is served by continuing to grant access to the most serious discipline hearings and severely undermined by closing the doors to a process that has long been open.

Once a presumptive right of access is established, it may be overcome only by “an overriding interest based on findings that closure is essential to preserve higher values.” *Press Enterprise Co.*, 478 U.S. at 9. No such interest justifies the blanket closure the award required here. The Board Chair relied on portions of the American Arbitration Association Rules and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators, C. 43-45, 127-28. V1. But nothing in those rules even remotely suggests that the interest in privacy of an arbitration is a value ranked more highly than a First Amendment right of public access to a forum built to engender trust and accountability for serious

police misconduct. To the contrary, these arbitration rules provide that the proceedings should not be private when the law requires them to be open. American Arbitration Association, Labor Arbitration Rules, at 13 (arbitrator shall maintain privacy of hearing “unless the law provides to the contrary”); C. 44, V1 (arbitration proceeding must be treated as confidential unless “disclosure is required or permitted by law”).¹⁰ Beyond that, the arbitration rules the Board Chair relied on govern only the *arbitrator’s* obligations of confidentiality. C. 44-45, V1. The American Arbitration Association expressly “takes no position” on whether the parties must keep the proceedings confidential. C. 44, V1.

Further, privacy in arbitrations is not standard where governmental arbitrations are concerned. “History teaches us not that all arbitrations must be closed, but that arbitrations *with non-state action in private venues* tend to be closed to the public.” *Delaware Coalition for Open Government, Inc. v. Strine*, 733 F.3d 510, 518 (3d Cir. 2013) (emphasis added). In Illinois and elsewhere, government-sponsored arbitrations are open to the public. Arbitration hearings in the Cook County mandatory arbitration program are one such example. *See* Circuit Court of Cook County Mandatory Arbitration

¹⁰ The AAA rules are publicly available at https://adr.org/media/wgvdxucs/2026_laborrules_web.pdf. The Code of Professional Responsibility is publicly available at <https://naarb.org/code-of-professional-responsibility/>.

Program, Frequently Asked Questions.¹¹ As another example, arbitration proceedings for the Workers' Compensation Commission "are required to be open to the news media and the public." *In re Jennifer L. Teague*, Report and Recommendation of the Hearing Board of the Illinois Attorney Registration & Disciplinary Commission, No. 2011PR00076, at 42 (Nov. 26, 2012) (recommending discipline for arbitrator who tried to prevent the news media and public from attending a hearing).¹² And outside Illinois, there are public arbitrations for police discipline. In San Antonio, for example, the public may attend disciplinary arbitration hearings for officers covered by the City of San Antonio's CBA with its police union, *see* C. 58, V1; The City of San Antonio, Texas & The San Antonio Police Officers' Association Collective Bargaining Agreement, Article 28, section 10(c).¹³ So the Board Chair was simply wrong to conclude that excluding the public is an inherent feature of arbitrations.

And regardless, even if it were more common for arbitrations to be closed to the public as a general matter, that would not defeat the right of public access here. As we explain, because First Amendment rights are at

¹¹ See <https://www.cookcountycourt.il.gov/departments/mandatory-arbitration-program/frequently-asked-questions> ("Can I watch an arbitration hearing so I know what to expect? Arbitration hearings are open to the public . . .").

¹² The hearing board report is publicly available at <https://iadc.org/DisciplinarySearch>.

¹³ The City of San Antonio CBA is publicly available at <https://www.sa.gov/files/assets/main/v/1/cao/collective-bargaining-agreement-2022-2026.pdf>.

stake, the Lodge must show that privacy in arbitration is a “higher value[],” *Press Enterprise Co.*, 478 U.S. at 9, than the public access to the discipline hearings at issue here. And it cannot do so. The ability of the public to witness discipline hearings for the most serious misconduct increases confidence in CPD, which in turn promotes the policies of effective law enforcement and the exposure of crime. *See Globe Newspaper Co.*, 457 U.S. at 606 (public access fosters appearance of fairness and heightens public respect for process at issue). In contrast, removing the public’s longstanding ability to witness the discipline process would cause public confidence in CPD to plummet. After all, “it is difficult for [people] to accept what they are prohibited from observing.” *Press-Enterprise Co.*, 478 U.S. at 13. A sharp decrease in confidence will make it harder for CPD to enforce the law and solve crimes.

None of the other values discussed by the Lodge and its *amici* come close to outweighing the value of public access, either. They point to supposed practical problems with public discipline proceedings, including that public proceedings undermine the goal of “fast, informal, and inexpensive hearings,” Lodge Br. 18-19, cause “fear of intimidation, retaliation from the public, or distortion through media coverage,” Br. Amicus Curiae Illinois AFL-CIO, *et al.* 5, and “[make] witnesses or, in some cases victims, less likely to cooperate,” Br. Amicus Curiae Coalition of Frontline Police Officers 22. But they never explain how simply allowing members of the public into the room

during an arbitration prevents it from being meaningfully “less formal, cheaper, and faster,” Lodge Br. 16. And the purported fears about what would happen with the public present are unfounded. The press and public have routinely attended high-profile hearings involving very serious allegations and, as the City’s appointee to the Dispute Resolution Board recalled, no “horrible (or even mildly uncomfortable) consequence” came to pass throughout 60 years of public hearings. C. 58, V1. Not surprisingly, then, the Lodge and *amici* identify absolutely no circumstance where these fears came to pass. Instead, the Lodge and its *amici* merely speculate about the harms that could arise from granting public access. But speculation may not “form the basis for . . . a drastic restriction of the public’s First Amendment rights.” *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 709 (6th Cir. 2002).

The Lodge’s *amici* assert that numerous other municipalities conduct private arbitration for police discipline, and that if this court maintains public discipline proceedings here, all discipline allegations, involving any profession, would have to be heard in public. Br. Amicus Curiae of Coalition of Frontline Police Officers 19-22. The Lodge’s *amici* relatedly state that affirming the appellate court would subject all arbitration awards to vacatur on the ground that they should have been heard in public. Br. Amicus Curiae of Illinois AFL-CIO, *et al.* 4-5. This will not happen. The Lodge’s *amici* fail to grasp that the public policy exception depends on the particular circumstances at hand. *AFSCME II*, 173 Ill. 2d at 311. In this case, Chicago’s

long history of providing public access to the most serious police discipline proceedings is the key circumstance that implicates a well-defined and dominant public policy. Affirming the appellate court's decision on this issue would leave undisturbed the practices of other municipalities or professions that do not share Chicago's long practice of formal, public proceedings.

The Lodge further states that private arbitration is required so the City can "proceed without unnecessary exposure for parallel criminal matters," pointing to a case where a Police Board hearing was stayed pending a criminal investigation. Lodge Br. 24-25 (citing *Policemen's Benevolent & Protective Association v. City of Chicago*, No. 17 C 8469, 2020 WL 291371 (N.D. Ill. Jan. 21, 2020)). That case does not support cutting off public access to the most serious discipline proceedings. On the contrary, the parties in *Policemen's Benevolent* crafted a solution that took into account the public's right to attend the hearing: a public discipline hearing was held once the criminal proceedings were over. *Id.* at *4. Indeed, the court rejected the suggestion that the hearing could have been private to avoid the need for a stay, explaining that the Police Board could not "instill public confidence in its ability to ensure that justice is done . . . if it holds disciplinary proceedings out of public view." *Id.* at *9.

3. The Lodge's other arguments against the public policy of public access are meritless.

The Lodge, for its part, seems to acknowledge that the First Amendment protects a right of public access "to proceedings that have

historically been open to the press and general public,” but asserts that the discipline proceedings here would not qualify, citing a single case, *Oszust v. Town of St. John*, 212 F. Supp. 3d 770 (N.D. Ill. 2016), for the proposition that “courts have found no First Amendment right of access to police disciplinary hearings,” *id.* at 779; Lodge Br. 32 n.11. As we explain above, however, the existence of a public policy necessarily depends on the particular circumstances of the case. *AFSCME II*, 173 Ill. 2d at 311. Neither *Oszust* nor any of the police discipline cases it cites had a clear historical record of public access to discipline proceedings, as we have here. In *Oszust*, the plaintiff failed even to allege that the meetings satisfied the criteria for a First Amendment right of access. *Id.* at 778; *see also Smith v. City of Cleveland*, 641 N.E.2d 828, 832-33 (Ohio Ct. App. 1994) (no First Amendment right of access to police discipline hearing because such hearings had not been historically open to the public).

The Lodge also asserts that the City has waived reliance on the right to public access under the First Amendment because it did not raise it until this matter was in the appellate court. Lodge Br. 32 n.11. The Lodge is incorrect. The First Amendment right of access raises the same core policy concerns we, and the courts below, have emphasized all along. The City has always emphasized the trial-like nature of the most serious discipline hearings held at the Police Board, C. 900, V1, and the entrenched historical practice of opening police discipline proceedings for the most serious offenses,

C. 1016, 1019-20, 1593, V1. The City has consistently pressed the importance of open proceedings to maintain public trust. C. 918, 1018-19, V1.

Moreover, when the City framed the argument in First Amendment terms in the appellate court, it did so as the appellee. City App. Br. 28-34. Forfeiture rules are largely directed at appellants. *Harrell v. City of Chicago*, 2025 IL App (1st) 240119, ¶ 33. An appellee may raise any argument or basis supported by the record to show the correctness of the judgment below, even if the appellee did not previously advance such an argument. *In re Veronica C.*, 239 Ill. 2d 134, 151 (2010), and a reviewing court may affirm on those grounds even if those grounds were not argued by the parties, *In re Detention of Stanbridge*, 2012 IL 112337, ¶ 74. Thus, as appellee, the City properly raised the argument in the appellate court, and properly does so again here, where it is once again the appellee on this issue.¹⁴ And regardless, the policy and values at stake are so significant here that even on the Lodge’s view of forfeiture, this court should consider the argument in the interests of justice. *See Halpin v. Schultz*, 234 Ill. 2d 381, 390 (2009) (court may overlook considerations of waiver to maintain a uniform body of precedent or where interests of justice require).

The Lodge also tries to flip the script, arguing that “Illinois public policy favors *private* labor arbitrations.” Lodge Br. 15. This is unsupportable.

¹⁴ Indeed, even an appellant may enhance its *arguments* on appeal so long as it has preserved the issues or claims. *See Brunton v. Kruger*, 2015 IL 117663, ¶ 76.

While the Lodge points out that the IPLRA requires arbitration when the parties do not otherwise agree to another process, Lodge Br. 16 (citing 5 ILCS 315/8), neither that provision, nor any other, express an Illinois public policy in favor of closed arbitrations, much less a policy in favor of closing proceedings involving charges of the most serious kinds of police misconduct.

The Lodge also relies on the Illinois Uniform Arbitration Act, 710 ILCS 5/1, *et seq.*, (“UAA”), arguing that this statute “strictly limit[s] the basis for reviewing or vacating arbitration awards” and favors a “public policy which requires finality in arbitration awards.” Lodge Br. 16 (citing *AFSCME I*, 124 Ill. 2d at 262). But neither of these features addresses whether arbitrations over discipline should be public or private or evinces an Illinois policy in favor of private arbitrations.

Nor do FOIA or the Open Meetings Act (“OMA”) support a policy of keeping arbitrations private. Lodge Br. 17-18. As a general matter, these statutes promote public access and transparency in governmental operations. They focus on materials and meetings that must be accessible to the public, and make exemptions for records and meetings pertaining to, among other things, employee discipline. But even when those exemptions apply, the statutes do not themselves restrict public access. For example, FOIA exempts from disclosure “[r]ecords relating to a public body’s adjudication of employee grievances or disciplinary cases,” though the final outcome must be disclosed where discipline is imposed. 5 ILCS 140/7(1)(n). The mere fact that FOIA

itself does not require disclosure of such records does not mean it requires their secrecy. Similarly, the OMA provides that a public body “may hold closed meetings” to consider employee discipline. 5 ILCS 120/2(c)(1). This language does not require such meetings to be held in private; if anything, it leaves that decision to the public body. Moreover, the OMA does not apply to grievance arbitrations conducted under the IPLRA at all, 5 ILCS 315/24, so it provides no guidance here. FOIA and the OMA do not take a position on whether discipline proceedings must be private or public.

Beyond that, neither FOIA nor the OMA should be read to require private arbitration for another significant reason: where possible, statutes must be construed in “such a manner as to avoid raising serious constitutional questions.” *Villegas v. Board of Fire & Police Commissioners*, 167 Ill. 2d 108, 124 (1995). As we have explained, closing the discipline proceedings at issue here to the public runs afoul of the First Amendment. The Constitution is “the supreme law of the land,” U.S. Const., art. VI, cl. 2, and state courts “have an obligation to enforce and protect every right granted by the Constitution of the United States whenever those rights are involved in a suit or proceeding before them.” *People v. Mata*, 217 Ill. 2d 535, 546 (2005). Thus, once established, a First Amendment right of access is independently enforceable, *even when a meeting could have been closed under the OMA*, but had not been. *See Wagner v. Evans*, No. 15-cv-6165, 2016 WL 397444, at *3 (N.D. Ill. Feb. 2, 2016) (plaintiff adequately alleged First

Amendment right to attend disciplinary hearing where those hearings were open to the public even though they could have been closed). The Lodge's attempt to use FOIA and the OMA to somehow implicitly show a policy in favor of private discipline, therefore, runs headlong into First Amendment principles compelling the opposite result.

Elsewhere, the Lodge makes a smattering of unconvincing arguments attempting to generally diminish the value of public access. For instance, it argues such access is unnecessary because the arbitrator's written decision will provide sufficient "transparency and accountability." Lodge Br. 24. The Lodge's position grossly understates the importance of real-time access to proceedings. Where, as here, a presumptive right of access exists, that access "should be immediate and contemporaneous." *Grove Fresh Distributors, Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994); *see also United States v. Antar*, 38 F.3d 1348, 1360 n.13 (3d Cir. 1994) (where right of access exists, court may not deny access to live proceeding on grounds that transcript may later be made available). Written documents, read after the fact, are no substitute for a person's ability to view the proceedings in real time – especially for family and community members affected. The full flavor of a proceeding cannot be gleaned from a written summary of what occurred. Moreover, things often happen during hearings that are immediately newsworthy, and which may not ever be noted in an arbitrator's decision. *See, e.g., WGN News, Police Board Hearings Begin for Chicago Cop Tied to*

Special Operations Section, June 27, 2022 (reporting on officer's testimony and opening statements in hearing against Special Operations Section officer charged with falsifying reports of a search); WGN News, *At Police Board Hearing, FOP President John Catanzara Announces Impending Resignation From Chicago Police Department*, Nov. 16, 2021 (reporting on Lodge president's testimony and announcement of resignation made at hearing seeking his discharge); ABC7 News, *Police Board Hearings Begin to Determine Fate of CPD Officer Involved in 2015 Double Fatal Shooting*, July 8, 2019 (reporting on opening statements in hearing seeking discharge of officer who shot and killed Quintonio LeGrier and Bettie Jones).¹⁵

Importantly, the Lodge does not even accept that the public should have access to the transcripts and other evidence *after* the arbitration; rather, as the appellate court observed, the Lodge conceded at oral argument that "records of what occurred at a private grievance arbitration for serious disciplinary matters *would never* be available to the public, even after the fact." *Chicago John Dineen Lodge No. 7*, 2025 IL App (1st) 240875, ¶ 82 (emphasis added). It borders on the absurd to suggest that the secondhand

¹⁵ Media articles are subject to judicial notice. *People v. Peterson*, 2022 IL App (3d) 220206, ¶ 14 n.2; *People v. Ayala*, 2022 IL App (1st) 192484, ¶ 84 n.6. The articles are available at <https://wgntv.com/news/wgn-investigates/police-board-hearings-begin-for-chicago-cop-tied-to-special-operations-section/>; <https://wgntv.com/news/chicago-news/fop-president-john-catanzara-questioned-over-social-media-posts-reports-filed-against-superior-officers>; and <https://abc7chicago.com/post/police-board-hearings-begin-to-determine-fate-of-cpd-officer-involved-in-double-fatal-shooting/5384539/>.

account and decision of a single arbitrator could provide even close to the same sort of transparency and accountability that public access to the hearing provides. Members of the press and the public would never hear the details or justifications from the officers themselves, or from other eyewitnesses and experts who testify. Indeed, a single person would be in charge of deciding what the public would learn about a particular matter. That is not meaningful transparency and accountability.

B. Requiring the most serious CPD discipline hearings to be closed to the public is arbitrary and capricious.

Section 14(k) of the IPLRA provides that an arbitration award may be vacated if it is arbitrary and capricious. 5 ILCS 315/14(k). An award is arbitrary and capricious if the dispute resolution board: 1) relied on factors that the legislature did not intend for it to consider, 2) entirely failed to consider important aspects of the problem, or 3) offered an explanation that runs counter to the evidence or that is so implausible that it could not be ascribed to a difference in view or the product of the expertise of the dispute resolution board. *City of Calumet City v. Illinois Fraternal Order of Police Labor Council*, 344 Ill. App. 3d 1000, 1007 (1st Dist. 2003). Under these standards, the award is arbitrary and capricious, and the lower courts' judgment may be affirmed on this alternative ground.¹⁶

¹⁶ Neither the circuit court nor the appellate court relied on this ground. This court is not bound by the reasoning of those courts and may affirm on any

Here, the award was arbitrary and capricious because the Dispute Resolution Board failed to consider important aspects of the problem, and offered an explanation that ran counter to the evidence. During interest arbitration proceedings, the dispute resolution board is directed to consider, among other factors, the “interests and welfare of the public.” 5 ILCS 315/14(h). The Board Chair entirely failed to consider the evidence related to this factor. Closing the most serious discipline proceedings to the public, after decades of public access, will make it harder for CPD to operate effectively. At the Dispute Resolution Board, the City emphasized the “extraordinary degree of public interest in the discipline of police officers,” C. 1201, V1, and explained that sweeping the most serious discipline cases “under a cloak of invisibility will do actual harm” to CPD, the discipline process, and the public’s perception of the integrity and credibility of the arbitration process. C. 1466, V1. As we explain above, police officers depend on the public’s cooperation and trust to carry out law enforcement functions. Police officers regularly testify in court, before juries composed of Chicago residents. Transparency when the most serious misconduct is on the line – the kind of misconduct that raises particular mistrust among the public – builds trust and confidence. Suddenly closing hearings that the public has long been able to attend will only exacerbate the existing problems. This is because

basis presented in the record. *People ex rel. Alvarez v. \$59,914 United States Currency*, 2022 IL 126927, ¶ 24.

“[s]ecrecy breeds suspicion.” *Doe v. Massachusetts Institute of Technology*, 46 F.4th 61, 69 (1st Cir. 2022).

The Board Chair considered none of this. Instead, the award was grounded in various sources observing that, for arbitrations in the private sector, the proceedings are generally closed to the public, C. 43, V1, and that private proceedings had been the parties’ past practice for arbitrations involving lower levels of discipline, C. 46, V1. But the parties had no past practice of arbitrating the offenses warranting the highest levels of discipline for police officers, and the award failed to recognize the significance of that. The status quo of a condition is a typical consideration during interest arbitration proceedings. *City of Calumet City*, 344 Ill. App. 3d at 1007 (panel considered whether there was a status quo on disputed issue). All of the evidence of the status quo here indicated that for 60 years, the dispositive factor for whether a hearing is private or public is the severity of the alleged conduct, not the forum where the hearing is held. The most serious cases against police officers have been heard in public; less serious conduct is heard in a private forum.

The Board Chair ignored the big picture and instead focused on the precise dividing line between public and private proceedings under the City’s proposal, finding no meaningful difference between discipline up to 365 days and “a grievance over discipline of 366 days (or more).” C. 46, V1. But as a practical matter, this case is not about discipline that hovers at this dividing

line; it is clear that the difference between a public and private forum has almost always been whether the Superintendent believes the misconduct is severe enough to warrant discharge. There have been 115 discharge cases filed at the Police Board since 2019, and just one case filed seeking suspension of more than a year. *See* Chicago Police Board, 2020 Annual Report, at 8; Chicago Police Board, 2025 Annual Report, at 6; Police Board Guide at 4 (“Suspension cases rarely come before the Police Board – only one has been filed since 2019.”).¹⁷ The City made this distinction clear in its submissions to the Dispute Resolution Board. C. 1202, V1 (“a separation case presents issues of much graver importance”); C. 1466, V1 (“[t]o treat separations as indistinguishable from garden variety grievances is to ignore the real world”). It only makes sense that these separation cases, along with the rare case of a suspension of more than a year, have been dealt with in a public forum. Those cases have the most far-reaching consequences for the officers, the victims, and the public.

Further, the Board’s complaint about line drawing ignores that government line-drawing need only be rational. *See Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012) (rational basis does not require government “to draw the perfect line . . . [i]t requires only that the line

¹⁷ The annual reports are publicly available at https://www.chicago.gov/city/en/depts/cpb/supp_info/annual_reports.html. The Police Board Guide is permanently available at <https://perma.cc/MDU3-GNFU>.

actually drawn be a rational line”); *Jamaica Inn, Inc. v. Daley*, 29 Ill. App. 3d 770, 781 (1st Dist. 1975) (line drawn must be rational). And here, it is rational that hearings for discipline lasting more than a year take place in public. An offense that warrants time away from work for more than a calendar year indicates a higher level of seriousness and impact on the officer. Because the Board Chair ignored all the evidence of the status quo and the interest and welfare of the public, the award should be vacated as arbitrary and capricious.

II. The Award’s Requirement That CPD Pay Officers Throughout Their Discipline Proceedings Should Be Vacated.

The appellate court erred in upholding the portion of the award that requires the City to pay officers facing discharge or suspension of more than a year throughout their discipline proceedings. That requirement is arbitrary and capricious. As we explain above, an award is arbitrary and capricious if the dispute resolution board relied on factors the legislature did not intend for the board to consider, entirely failed to consider important aspects of the problem or offered an explanation that runs counter to the evidence or that is so implausible that it could not ascribed to a difference in view or the product of the board’s expertise. *City of Calumet City*, 344 Ill. App. 3d at 1007. That is what happened here. In reaching its decision on the pay-status issue, the Board Chair again ignored evidence of the status quo. In addition, he created an exception to a citywide practice only for Lodge members. The Board Chair also failed to consider evidence of the financial and practical problems that

the award creates for CPD and the City’s taxpayers. Further, the Board Chair relied on a principle – the presumption of innocence – that does not apply in this context.

The appellate court recognized all of these serious problems with the award. The court stated that the award was an unexplained aberration from the City’s other 43 CBAs and the “decades-long practice” regarding unpaid status for the most serious offenses, that the reliance on criminal law was “misplaced,” and that the award failed to grapple with its financial consequences for the City. *Chicago John Dineen Lodge No. 7 v. City of Chicago*, 2025 IL App (1st) 240875, ¶ 90. The appellate court, however, then incorrectly characterized its observations as mere “disagree[ment]” and ways it “would have decided the issue differently.” *Id.* ¶ 91. That conclusion is untenable. The flaws in the award reflect much more than a difference of opinion – they reveal precisely how the Board Chair relied on factors not intended by the legislature, entirely failed to consider important aspects of the problem, and reached a decision that was implausible or counter to the evidence. *City of Calumet City*, 344 Ill. App. 3d at 1007.

A. The Board Chair ignored the status quo, important aspects of the problem, and highly relevant evidence bearing on that problem.

As the Board Chair recognized in previous awards, interest arbitration is “very conservative” and “frowns upon breakthroughs.” *Village of Bartlett &*

Metropolitan Alliance of Police, Chapter #114, S-MA-21-145 (2015) at 4.¹⁸ To change a status quo condition, “there must be a showing by the party seeking the change that the existing status quo is broken.” *City of Streator & Illinois FOP Labor Council*, S-MA-17-142 (2018) at 18.¹⁹ “While an agency is not required to adhere to a certain policy or practice forever, sudden and unexplained changes have often been considered arbitrary.” *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 506 (1988). In this case, however, the Board Chair ignored that the change in pay status was just such a sudden change.

Here, the Board Chair ignored the evidence of the parties’ decades-long practice concerning pay status while the most serious discipline proceedings are pending. As the circuit court recognized, for the parties’ entire 40-year collective bargaining history, the City has had the authority to suspend an officer without pay pending discharge or suspension of more than a year. C. 1844, V1. Thus, while officers are paid during the investigation into the misconduct, C. 1221, V1, pay status after the Superintendent files charges has depended on the level of discipline sought. When the Superintendent

¹⁸ The full award is publicly available at https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/S-MA-21-145_arb_award.pdf.

¹⁹ The full award is publicly available at <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-142arbaward.pdf>.

seeks discharge or a suspension of more than a year, the officer could be suspended without pay while the discipline process proceeded. *See City of Chicago Office of Inspector General, Disciplinary Process: Police Officers, Separation.*²⁰ If an officer wanted to contest the suspension without pay, he could request a hearing to be held within seven days of the notice of the suspension. C. 462, 1076-77, V1.

The Board Chair ignored that this payment practice was the status quo. Instead, the Board Chair reasoned that because officers receiving lesser discipline are typically paid while they challenge that discipline in arbitration, the same practice should apply to more serious misconduct, now that it, too, will be challenged in arbitration. In short, the Board Chair believed that whether an officer remains in pay status should be based on the forum for challenging the discipline. C. 46-47, V1. This approach ignored the status quo: pay status depends on the severity of the level of discipline being sought.

The Board Chair once again criticized “the line drawn by the City at 365 days,” C. 47, V1, questioning why “an officer who is suspended for 365 days [should] remain on the payroll until the arbitration is decided” while “the officer who is suspended for 366 days [is] put in non-pay status,” and stating that “[t]here is no rational basis for such a line drawing,” C. 47, V1.

²⁰ The Inspector General document is publicly available at <https://igchicago.org/wp-content/uploads/2023/07/Police-Officer-Separation.pdf> and permanently available at <https://perma.cc/BP4D-XA3U>.

Here again, it was irrational for the Board Chair to focus on suspensions that fall immediately under or above the dividing line. As we explain above, the reality is that almost all cases where officers are suspended without pay involve discharge. Moreover, the fact that there might occasionally be a case near the 365-day line does not make the line irrational. *See Armour*, 566 U.S. at 685 (rational basis does not require government “to draw the perfect line . . . [i]t requires only that the line actually drawn be a rational line”); *Jamaica Inn, Inc.*, 29 Ill. App. 3d at 781 (line drawn must be rational). And it is wholly rational to separate pay and no-pay status in the manner that the City always has; that way, the City is not forced to pay officers even after the Superintendent determines there is enough evidence that they have engaged in misconduct so serious that the Superintendent believes they can no longer be entrusted with police duties. As the City explained to the Dispute Resolution Board, discharge is reserved for the extraordinary instance when the Superintendent believes that the officer should not continue to perform the essential functions of his job, under any circumstances. C. 1464, V1 (referring to discharge as “industrial capital punishment”).

Further, the Board Chair also ignored the overwhelming evidence on another statutory factor – a comparison of the conditions of other comparable public employees. *See* 5 ILCS 315/14(h)(4). The City presented evidence of other City employees who were also governed by CBAs. C. 1463-64, V1. The City is a party to 43 CBAs, and none allows employees to be paid while their

discharge proceedings are pending, even where employees (such as Chicago firefighters and paramedics) have a right to submit discharge grievances to arbitration under a CBA. C. 1464, V1. The award created an exception for Lodge members that marks a radical departure from the status quo, not just for police officers, but in the context of City employment across the board.

The award also ignores the problems this new rule about pay status creates for CPD and the City. The City should not be required to continue paying officers whom the Superintendent could not, in good conscience and without serious risk, trust to perform their law enforcement functions. That result is irrational and a poor use of taxpayer dollars. Indeed, since the Superintendent has, at that point, reached the conclusion that the officer cannot be trusted to perform his job, CPD cannot make use of that officer. The Superintendent is responsible for the integrity and performance of CPD. It is unreasonable to require the City to pay, after charges are filed, an officer charged with soliciting sexual favors from a minor, *e.g.*, *In re Alexander*, 18 PB 2948 (May 16, 2019), or an officer who has made false statements on a police report, *e.g.* *Sherry v. Police Board*, 2025 IL App (1st) 231738-U, for example.²¹ These and other serious offenses indicate a degree of misconduct that places the public at risk or calls the officer's credibility into serious

²¹ The Police Board decision is publicly available at <https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/18PB2948.pdf>.

question. *See Hoban v. Rochford*, 73 Ill. App. 3d 671, 680 (1st Dist. 1979) (unreasonable to require police department to “maintain on the force [an officer] suspected of violating rules which it was his duty to enforce”).²²

Continuing to pay an officer, despite evidence of serious misconduct, also negatively impacts CPD because it “foster[s] disharmony” and “impair[s] . . . efficiency.” *Haverly v. Boys*, 77 Ill. App. 3d 312, 317 (1st Dist. 1979) (“Prolonged retention of a[n] . . . unsatisfactory employee can adversely affect discipline and morale in the workplace, foster disharmony, and ultimately impair the efficiency of an office or agency.”). For all these reasons, “[t]here is a strong governmental interest in preserving public confidence in the police force by taking appropriately swift and severe disciplinary action – including unpaid suspension – when police officers are accused of serious misconduct.” *Policemen’s Benevolent & Protective Association*, 2020 WL 291371, at *8.

Further, the award failed to consider the financial consequences of requiring the City to keep officers in pay status during the most serious discipline proceedings. When an officer facing discharge has been suspended without pay and prevails at the discipline proceeding, he can be made whole through back pay. Back pay “fully reme[dies] any harm that might be caused”

²² In the appellate court, the Lodge suggested that, under CPD guidelines, officers facing discipline can be placed in non-street jobs and assigned to the Alternative Response Unit. Lodge App. Br. 42-43. While such an assignment might be appropriate pending the outcome of an investigation, it has not been required after the Superintendent reviews the evidence and finds the evidence strong enough for charges so serious that the officer cannot be entrusted with any responsibility.

by a suspension that is later determined to be unwarranted. *Haverly*, 77 Ill. App. 3d at 320. On the other hand, if the officer facing discharge is suspended with pay during the discipline proceeding, and he is indeed discharged, there is no mechanism for the City to recover the money it spent paying him. And the money spent can be significant: there were 115 discharge or long-term suspension cases filed between 2019 and 2025, as we state above.

The Board Chair was dismissive of these concerns and suggested that the City “timely investigate the matter” to avoid added cost. C. 48, V1. That comment was apparently based on the misimpression that the City does not pay officers during an investigation. That is a key misunderstanding. The City typically does pay officers during the investigation. C. 1221, V1. But once the evidence has been fully gathered and reviewed, and charges have been filed, the equation is very different. As we explain, the decision to suspend without pay comes only after the Superintendent has reviewed the evidence and determined that he no longer believes an officer can ever be entrusted with the power and authority of a police officer. The Board Chair’s decision to require continued pay after that point was arbitrary and capricious.

B. The award relied on a legal principle that does not apply to the decision to suspend a public employee without pay.

Among the statutory factors that a dispute resolution board must consider are “[s]uch other factors . . . which are normally or traditionally

taken into consideration” in determining conditions of employment. 5 ILCS 315/14(h)(8). The Board Chair ran afoul of this directive because it relied on a factor that is irrelevant to suspensions without pay: the “bedrock ‘Rule of Law’” “that a defendant is innocent until proven guilty.” C. 47, V1. According to the Board Chair, unpaid suspensions for officers facing the most serious discipline “throws that presumption of innocence out the window.” C. 47, V1.

The presumption of innocence does not apply here. It is a basic component of a fair trial in a criminal case. *In re Winship*, 397 U.S. 358, 363 (1970) (presumption of innocence is an “axiomatic and elementary” principle whose “enforcement lies at the foundation of the administration of our criminal law”). Public employees facing discipline are not criminal defendants. Suspensions without pay do “not reflect on the question” of an employee’s criminal guilt or innocence. *In re Shenberg*, 632 So.2d 42, 47 (Fla. 1992); *see also Foster v. City of St. Paul*, 837 F. Supp. 2d 1024, 1030 (D. Minn. 2011) (unpaid administrative leave does not constitute deprivation of a right to be presumed innocent).

The rule here, instead, is that an officer cannot be discharged or placed on long-term suspension without just cause. C. 1050, V1. A public employee may have a protected property interest in continued employment, *Cole v. Milwaukee Area Technical College District*, 634 F.3d 901, 904 (7th Cir. 2011), and may be entitled to a “very limited hearing” before discharge (which the City provides on request within seven days), and a more comprehensive post-

discharge hearing, *Gilbert v. Homar*, 520 U.S. 924, 929 (1997). Due process does not require, in addition, that a public employee be paid while discharge proceedings are pending for serious misconduct. *See, e.g., Jones v. City of Gary*, 57 F.3d 1435, 1443 (7th Cir. 1995) (suspension without pay did not violate due process); *DeVito v. Chicago Park District*, 972 F.2d 851, 858 (7th Cir. 1992) (same). If the employee's services to the government "are no longer useful" because there is sufficient evidence of misconduct, "the Constitution does not require the government" to still pay that employee while discipline proceeds. *Gilbert*, 520 U.S. at 932.

In addition, as noted, CPD officers have always been entitled to a hearing on the suspension without pay within seven days after charges are filed. C. 1076-77, V1. That satisfies the "very limited" review, *Gilbert*, 520 U.S. at 929, that the Due Process Clause requires. There was no showing at the Dispute Resolution Board that placing officers in no-pay status following this hearing failed to safeguard officers' due process rights. The requirement to pay officers facing the most serious discipline after charges are filed did not take into account this procedural protection and, for that additional reason, was arbitrary and capricious.

III. The City's Challenge to the Award Was Timely.

Last, the Lodge's argument that the City's challenge to the award was untimely is meritless. The City timely filed its challenge within 90 days after the supplemental award; until then, the proceedings had not yet concluded.

That course of action complied with the CBA, the pertinent statute, and basic understandings of finality.

The Board issued an award on October 19, 2023. C. 23, V1. In that award, the Board Chair stated that, pursuant to the CBA, if City Council did not ratify the award, the matter would return to the Board to consider the City's objections. C. 29, V1. Section 28.3(B)(10) of the CBA instructs that City Council has final authority to bind the City to a new CBA. C. 1061, V1 ("[t]here shall be no implementation of any provisions of a successor agreement without Council ratification and adoption in ordinance form of the agreement"). The CBA states, as the Board's decision noted, that if City Council rejects the award, the parties will meet "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, V1. And that is what the parties did. After City Council rejected the initial award, the parties returned to the Board, where the City sought to introduce further argument and testimony. C. 99, V1. The Board Chair declined the City's request, but viewed videos of the City Council meeting where the City's objections and supporting positions were "presented in great detail." C. 100, V1. The parties were also free to submit additional materials. C. 100, V1. The supplemental award was then issued on January 4, 2024. C. 87, V1. The Board Chair recounted the procedure in the supplemental award. C. 101, V1 ("from the outset, the parties agreed that if there was a City Council rejection, they would return to

this Board”). The City filed its challenge within 90 days of the supplemental award. C. 827, 887, V1.

That was timely. The CBA incorporated section 14(k) of the IPLRA, C. 1061, V1, which states that orders of a dispute resolution board are reviewable within 90 days after the award is issued, 5 ILCS 315/14(k). Because the plain terms of the CBA make clear that the initial award was not final but subject to further discussion and modification after City Council rejected it, that 90-day deadline could run only from the date of the supplemental award – January 4, 2024.

Between the initial award and supplemental award, then, the terms were subject to change. It does not matter that, as events unfolded, the substance of the award was not changed; during that time, the award was not final. The Board Chair was considering the substance of the City’s objections. It would have been counterproductive and contrary to the parties’ intent for the City to challenge the award before the supplemental award was issued. The Lodge’s own actions, moreover, confirm that it understood that further action could not be taken until the supplemental award was issued. The Lodge did not file its petition until January 4, 2024 – the date of the supplemental award. C. 16, V1.

Cases interpreting section 14(n) of the IPLRA, 5 ILCS 315/14(n), are instructive. It provides for the same procedure for challenging an award as the parties’ CBA does here. Under that section, an arbitration award is

submitted to the public employer's governing body for ratification and adoption. 5 ILCS 315/14(n). If the governing body rejects any terms, the parties return to the Dispute Resolution Board for further proceedings and "a supplemental decision with respect to the rejected terms." 5 ILCS 315/14(n). The supplemental decision is submitted to the governing body for ratification and adoption. 5 ILCS 315/14(n). Under the IPLRA, the 90-day deadline to challenge the award begins to run from the date of the supplemental decision that is issued after a rejection of an arbitration award. *See County of Cook v. Illinois Fraternal Order of Police Labor Council*, 358 Ill. App. 3d 667, 669 (1st Dist. 2005) (supplemental award issued after rejection was final decision subject to review under section 14(k)); *Peoria County v. American Federation of State, County & Municipal Employees, Council 31*, 167 Ill. App. 3d 247, 248-49 (3d Dist. 1988) (90-day deadline under section 14(k) started to run from date that arbitration award was affirmed after a rejection).²³

As further support for its incorrect position, the Lodge relies on section 12(b) of the UAA, which states that a petition to vacate an arbitration

²³ The Lodge suggests that the City's interpretation of the CBA creates the possibility of a third final award, which the Lodge calls "absurd[]." Lodge Br. 45. Section 14(n) of the IPLRA provides for the same procedure as the parties' CBA, and the 90-day deadline under that section runs from the date of a supplemental decision or affirmation of an initial award, even if the governing body later rejects it. *Peoria County*, 167 Ill. App. 3d at 248. Further, there is no danger of an endless cycle of rejections and supplemental awards under the CBA. Once a supplemental award is issued, the Lodge and the City may each file petitions under section 14(k) to seek enforcement or a challenge of the award in court.

award must be filed “within 90 days after delivery of a copy of the award.” 710 ILCS 5/12(b). According to the Lodge, the UAA governs here and the 90-day deadline ran from the date of the initial award. Lodge Br. 42-43. The Lodge is wrong on both counts. The parties’ CBA and section 14(k) apply here, not the UAA. Even if the UAA applied, it would have been premature for the City to file its challenge before the Board Chair issued the supplemental award. Under the UAA, an arbitrator may entertain a motion to reconsider if doing so is consistent with the parties’ agreement. *Smola v. Greenleaf Orthopedic Associates, S.C.*, 2012 IL App (2d) 111277, ¶ 22. While a motion to reconsider is pending before the arbitrator, the circuit court may not take action on the award. *Id.* ¶ 28. Here, as we explain above, the parties agreed in the CBA that after the City Council rejects an award, the Dispute Resolution Board considers whether the award can be modified. The circuit court could not properly consider the award until the process that the parties agreed to was complete.

CONCLUSION

For the foregoing reasons, this court should affirm the appellate court’s judgment that requiring the most serious discipline proceedings to be private violates public policy. This court should reverse the appellate court’s judgment on the pay status issue, and vacate the requirement that CPD pay officers throughout their discipline proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) & (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 62 pages.

/s/ Aya R. Barnea
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CERTIFICATE OF FILING/SERVICE

I certify under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing brief was electronically filed with the office of the Clerk of the Court using the File and Serve Illinois system and served via email, to the persons named below at the email addresses listed, on May 20, 2026.

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