
**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

APPELLEES' REPLY IN SUPPORT OF REQUEST FOR CROSS-RELIEF

MARY B. RICHARDSON-LOWRY
Corporation Counsel
of the City of Chicago
2 N. LaSalle St., Suite 580
Chicago, Illinois 60602
(312) 744-5129
aya.barnea@cityofchicago.org
appeals@cityofchicago.org

MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
SUZANNE M. LOOSE
Chief Assistant Corporation Counsel
AYA R. BARNEA
Assistant Corporation Counsel

ORAL ARGUMENT REQUESTED

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ARGUMENT

Under the terms of the Board Chair's award, the City, for the first time in the parties' 40-year bargaining history, would be required to pay officers accused of the most serious misconduct after charges are filed seeking their discharge or suspension of more than a year. The parties' settled practice is that, when the most serious misconduct is at stake, an officer is typically paid during the investigation, but may be placed on unpaid status once an investigation has yielded sufficient evidence for the Superintendent to conclude that the officer has engaged in misconduct so serious that the officer should no longer be entrusted with police duties. The award is a radical departure from the status quo, runs counter to the evidence presented, and relies on a legal presumption that does not apply in this context. The award cannot stand.

The Award's Requirement that CPD Pay Officers Throughout Their Discipline Proceedings Should Be Vacated.

An interest arbitration award may be vacated if it is arbitrary or 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 the board to consider; (2) entirely failed to consider an important aspect of the problem; or (3) offered an explanation for its decision that runs counter to the evidence presented, or which is so implausible that it could not be ascribed to a different in view or the product of the board's expertise. *Town*

of *Cicero v. Illinois Association of Firefighters*, 338 Ill. App. 3d 364, 372 (1st Dist. 2003). As we explain in our opening brief, all three of these problems plague the Board Chair’s decision. The Lodge tries to portray this aspect of the award as “mere disagreement” with the City’s position, or by stating that the City is “simply unhappy” with the Board Chair’s decision. Lodge Reply Br. 39, 43. That approach unavailing and fails to grapple with the serious flaws in the Board Chair’s decision.

A. The Board Chair failed to consider the status quo for the most serious discipline cases within CPD.

The IPLRA directs dispute resolution boards to consider “factors . . . normally or traditionally taken into consideration” in deciding conditions of employment, 5 ILCS 315/14(h)(8), and those include the parties’ status quo, see *City of Countryside v. City of Countryside Police Pension Board of Trustees*, 2018 IL App (1st) 171029, ¶ 19 (arbitrator considered whether proposal was a change to status quo). Interest arbitration, moreover, “is a very conservative process,” as the Board Chair acknowledged in the initial final award. C. 32, V1 (emphasis in original). But the Board Chair disregarded that principle and ignored the overwhelming evidence presented about the parties’ status quo for handling the most serious cases of police misconduct, especially conduct warranting discharge.

The Board Chair concluded that the status quo consists of officers remaining in pay status while they grieve their discipline in arbitration, because officers who have historically challenged their discipline in

arbitration (officers who face lesser discipline) have been paid during that challenge. C. 46-47, V1.¹ As we explain in our opening brief, however, City Br. 50-51, it is undisputed that for the parties' entire bargaining history, that has never been the practice when the Superintendent *seeks discharge or suspension of more than a year*. The Lodge asserts that the Board's status quo determination is entitled to deference, *see* Lodge Reply Br. 40, but that is wrong. To begin, none of the cases the Lodge cites supports the sort of reflexive deference to the Board Chair's status quo determination that the Lodge urges. Two of the cases involved grievance arbitration – not interest arbitration – and do not even mention a status quo. *American Federation of State, County & Municipal Employees v. State of Illinois*, 124 Ill. 2d 246 (1988); *Village of Posen v. Illinois Fraternal Order of Police Labor Council*, 2014 IL App (1st) 133329. As we have explained, review of interest arbitration decisions is more probing in general than review of grievance arbitration, because in interest arbitration, the arbitrator is not merely interpreting an existing contract, but formulating contract terms that best reflect what the parties would agree to, had an impasse not occurred. City Br. 18. And determining the status quo is a multifaceted inquiry that requires the Board Chair to review the terms of the existing CBA, the parties' past history and past bargaining practices, and assess the reasonable

¹ The right to remain in paid status is contingent on the Lodge meeting certain scheduling requirements. C. 1062, V1.

expectations of the employees. *American Federation of State, County & Municipal Employees v. Illinois Labor Relations Board*, 2017 IL App (5th) 160229, ¶ 41. In an interest arbitration, a court assesses whether the dispute resolution board “reached the correct conclusion” in considering statutory factors, evidence, and arguments. *Town of Cicero*, 338 Ill. App. 3d at 376. This court is thus tasked with evaluating the Board Chair’s reasoning and the result, which compels a close review of whether the Board Chair correctly identified and applied the parties’ status quo.

The Lodge also cites two interest arbitration decisions on this point, *Town of Cicero*, 338 Ill. App. 3d 364, and *City of Calumet City v. Illinois Fraternal Order of Police Labor Council*, 344 Ill. App. 3d 1000 (1st Dist. 2003), but contrary to the Lodge’s position, neither treats a Board’s status quo determination as a finding owed near complete deference. Indeed, in *Calumet City*, there had been no bargaining history at all on the residency requirement at issue because it had only recently been made a mandatory subject of bargaining, so the status quo was simply not relevant. *Id.* at 1007.

Here, the relevant facts that make up the parties’ status quo concerning pay status while discipline hearings proceed are undisputed, and they lead to only one reasonable inference about the status quo: the line between suspension with or without pay has been, “[f]rom time immemorial,” whether charges are filed seeking discharge or suspension of more than a year. C. 462, 1844, V1. In particular, historically, officers challenging lower

levels of discipline have remained in pay status pending discipline proceedings, whether those proceedings take place in arbitration or before the Police Board. C. 1056, 1062, V1. In turn, historically, the Superintendent has had the authority to place officers in no-pay status once he has filed charges seeking discharge or a suspension of more than a year. C. 462, 1844, V1. Plainly, the status quo is that pay versus no-pay status depends on the seriousness of the offense. There is no reason why that historical discretion should be curtailed simply because the most serious offenses may be litigated in arbitration. Indeed, the most serious offenses may not even be litigated in arbitration, because an officer may still choose to proceed at the Police Board. The availability of this choice makes any forum-based status quo determination even weaker.

The Lodge, for its part, ignores the vast differences in how the most serious cases and lower-level suspensions have been treated. Instead of offering any cogent arguments for treating both categories of cases the same – which has never been the practice – the Lodge asserts, as the Board Chair did, that it is irrational to pay an officer who has been suspended for 365 days but not pay an officer who has been suspended for 366 days. Lodge Reply Br. 39. That approach ignores the reality that officers are placed in unpaid status pending final discipline almost exclusively when officers are facing discharge, not when they are facing suspensions greater than a year. City Br. 47, 52 (noting that since 2019, there have been 115 discharge cases

filed and just 1 case filed seeking final discipline of suspension of more than a year). Discharge cases involve the most serious misconduct that can have far-reaching effects on the public, such as unjustified shootings, *In re Barona*, No. 23 PB 3017, or vehicle collisions that kill or injure others, *In re Brown*, No. 22 PB 3007.² As the City explained to the Dispute Resolution Board, the parties have consistently treated discharge “as a category unto itself.”

C. 1464, V1. The City further explained to the Dispute Resolution Board that discharge “presents issues of much graver importance,” C. 1202, V1, and stated that “countless arbitration awards” have described discharge as “industrial capital punishment,” C. 1464, V1. The Lodge’s continued focus on the difference between a 365- and 366-day suspension therefore makes no sense.

As the Board Chair has himself observed, to change the status quo, “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-142 (Benn 2018), at 18.³ There is nothing “broken” about the process of placing officers in no-pay status pending discharge proceedings. Indeed, this practice more fairly balances the relative burdens. Taxpayers should not be

² Discharge decisions issued by the Police Board are publicly available at https://www.chicago.gov/city/en/depts/cpb/auto_generated/police_discipline_archives.html.

³ The arbitration award is publicly available at <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-142arbaward.pdf>.

required to pay police officers who are not working and from whom payment could not be recovered if they are discharged. On the other side, such officers can work elsewhere in the interim and may receive backpay if they prevail.

The Lodge criticizes the City for explaining why it is rational to treat discharge cases differently than lesser discipline, calling these points “irrelevant.” Lodge Reply Br. 40-41 n.13. That is strange, since the Lodge itself attacked the rationality of the City’s position at the Dispute Resolution Board, C. 1476, V1, and the Board Chair included in his opinion a discussion about whether the parties’ longstanding practice concerning pay status is rational, C. 47, V1 (“[t]here is no rational basis for such a line drawing” between officers suspended for 365 days, who remain in pay status throughout their discipline proceedings, and officers that the Superintendent seeks to suspend for 366 days, who are placed in no-pay status pending final discipline). The City is entitled to challenge this line of reasoning. And, more fundamentally, as we explain above, the award cannot stand if it is arbitrary and capricious. The standard for whether a decision is arbitrary “is one of rationality.” *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 506 (1988). Accordingly, it matters that the Board Chair irrationally focused almost exclusively on suspensions lying close to the 365-day line for pay status. As we explain, almost all cases where officers are placed in unpaid status pending final discipline involve discharge. The Board Chair should have focused, instead, on the rationality of forcing the City and its taxpayers

to pay officers who, after a full investigation, the Superintendent has determined should not be entrusted with any responsibility.

B. The Board Chair did not consider the conditions of employment for other City employees.

The Board Chair's decision also completely failed to take into account the evidence presented on another statutory factor – the conditions of employment of other public employees in comparable communities, 5 ILCS 315/14(h)(4). The Lodge claims that the Board Chair correctly disregarded this factor because, unlike any other group of City employees, it *alone* had a contract provision providing pay status protection for some levels of discipline. Lodge Reply Br. 41. The Lodge is misinformed. As the City explained to the Dispute Resolution Board, the CBAs for the three bargaining units representing CPD captains, lieutenants, and sergeants provide the same rules for pay status as the parties' prior CBAs here. C. 1463, V1. In other words, captains, lieutenants, and sergeants remain in pay status pending lesser discipline – suspension up to one year – and may be suspended without pay after charges seeking discharge are filed. *See Agreement Between the City of Chicago & The Policemen's Benevolent & Protective Association, Unit 156-Captains*, at 16; *Agreement Between the City of Chicago & The Policemen's Benevolent & Protective Association, Unit 156-Lieutenants*, at 15; *Agreement Between the City of Chicago & The Policemen's Benevolent & Protective Association, Unit 156-Sergeants*, at 19; *City of Chicago Office of Inspector General, Disciplinary Process: Sworn*

Supervisors, Separation.⁴

Indeed, none of the City's 43 CBAs allow employees to remain in pay status pending discharge proceedings. C. 1464, V1. Some employees, including those in the bargaining units representing the City's firefighters and civilian public safety employees, may arbitrate discharge – as Lodge members now can – but even those employees are not in pay status during that proceeding. C. 1463-64, V1.⁵ Thus, the Board Chair's award was a radical departure from the status quo, not just between the parties in this case, but for all City employment across the board.

The Board Chair did not consider the relative employment conditions of other City employees at all. The Board Chair was required to consider all the applicable statutory factors. *See International Association of Firefighters*

⁴ The CBAs are publicly available at https://www.chicago.gov/city/en/depts/dol/supp_info/city_of_chicago_collective_bargainingagreements.html. The Inspector General document is available at: <https://igchicago.org/wp-content/uploads/2023/07/Sworn-Unionized-Supervisor-Separation.pdf>. In addition, the new CBA between the City and the union representing Chicago firefighters now provides that firefighters may remain in pay status pending lesser discipline, but are not in pay status pending discharge proceedings. *See Term Sheet & CBA Between the Chicago Fire Fighters Union, Local No. 2 & City of Chicago*, at 5, available at <https://chicityclerkelms.chicago.gov/Matter/?matterId=180FB8E9-529A-F011-B4CB-001DD80B08EF>. As publicly available documents, these items are subject to judicial notice. *Village of Riverwoods v. BG Limited Partnership*, 276 Ill. App. 3d 720, 724 (1st Dist. 1995) (court may take judicial notice of public documents that will aid in the efficient disposition of the case).

⁵ There is one narrow exception. Some CBAs allow for a 30-day notice period before the effective date of the discharge, during which the employee is still paid. C. 1464, V1. But that notice period may not be extended and is only available when the discharge is for a non-egregious offense. C. 1464, V1.

v. City of Bloomington, 2016 IL App (4th) 150573, ¶ 32 (arbitrator had duty to consider statutory factor under section 14(h) of IPLRA). And in failing to even consider the employment conditions of comparable employees, the Board Chair breached that obligation and reached a decision that runs counter to all the evidence presented on this point.

C. The Board Chair ignored other important aspects of the problem.

The Board Chair also failed to consider the financial and operational problems the award creates. This, too, is grounds for vacating the award. An award is arbitrary and capricious if the arbitrator entirely fails to consider an important aspect of the problem. *Town of Cicero*, 338 Ill. App. 3d at 372. As we explained in our opening brief, City Br. 54, continuing to pay an officer, despite evidence of serious misconduct, “foster[s] disharmony” and “impair[s] . . . efficiency.” *Haverly v. Boys*, 77 Ill. App. 3d 312, 317 (1st Dist. 1979). And it forces the City to spend taxpayer dollars to pay a police officer who the Superintendent believes is unfit to perform his job – a financial outlay the City would not be able to recover. City Br. 55. These are important aspects of the problem that was before the Dispute Resolution Board. Yet, the award fails to address them.

The Lodge tries to dismiss these problems as “entirely speculative,” Lodge Reply Br. 43, and suggests that the operational consequences of the award could be mitigated by placing an officer on paid administrative leave, Lodge Reply Br. 44, n.14. Thus, under the Lodge’s proposal, the officer facing

discharge would be paid without performing any work at all. Since the City would still need to pay someone else to do the police work, that approach would only exacerbate the serious financial and operational problems created by the Board Chair's award.

The Lodge also tries to obfuscate, suggesting that the Board Chair *did*, in fact, consider the City's "arguments about financial strains and the make-whole relief in arbitration." Lodge Reply Br. 42. As purported proof of this, the Lodge cites two paragraphs in which the Board Chair notes the availability of "broad remedial" powers to give backpay and other remedies to *an officer*, and makes no mention of the strain on the City's resources. Lodge Reply Br. 42. The Board Chair then framed the City's concern to be about having to pay an officer while "misconduct is investigated," and declared the "simple answer for that concern" to be "to timely investigate the matter and get the case in front of an arbitrator for decision." C. 47-48, V1. None of this shows that the Board Chair considered the financial and operational problems the City identified. Instead, it shows that the Board Chair addressed an argument the City was not making, about the length of time it takes to complete an investigation and paying an officer during that time. As we explain in our opening brief, City Br. 55, that was not the issue. In general, the City already pays officers during the investigation stage. C. 1221, V1 (an "accused officer typically remains in pay status while the investigation is proceeding"). That stage was not at issue in these

proceedings; the problem the City raised concerned payment *after charges are filed*. The Board Chair focused on the wrong time period and thus ignored the real problem.

This was no small misunderstanding. The Lodge offered no evidence, nor did the Board Chair make any findings, about the duration of the arbitration process. Once the investigation is complete, and the evidence fully gathered and reviewed, the City should not be required to continue paying an officer whose misconduct is so serious that the Superintendent believes he should no longer be a police officer.

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

In the award, the Board Chair relied on the “bedrock ‘Rule of Law’” that a “defendant is innocent until proven guilty.” C. 47, V1. The Lodge asserts that the presumption of innocence is “clearly relevant” and “a well-established tenet of the ‘just cause’ analysis.” Lodge Reply Br. 45. The Board Chair went outside the bounds of the IPLRA when he relied on an inapplicable legal principle.

Among the statutory factors that the Dispute Resolution Board was required to consider were “[s]uch other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.” 5 ILCS 315/14(h)(8). Although this provision is broadly worded, *Town of Cicero*, 338 Ill. App. 3d at 374, the statutory

language imposes a limit on what may be considered: any factor must be “normally or traditionally” considered in determining employment conditions, 5 ILCS 315/14(h)(8).

The Board Chair ran afoul of the statutory guideline. The presumption of innocence, as we explained in our response brief, City Br. 56, is a basic component of a fair trial in a criminal case, *In re Winship*, 397 U.S. 358, 363 (1970). It does not normally or traditionally bear on the question of whether an employee may be suspended without pay. *Foster v. City of St. Paul*, 837 F. Supp. 2d 1024, 1030 (D. Minn. 2011) (placing employee on unpaid administrative leave does not constitute deprivation of a right to be presumed innocent); *Matter of Atkinson*, 456 S.E.2d 202, 205 (W.Va. 1995) (rejecting argument that suspension should be with pay because respondent was presumed innocent until convicted); *In re Shenberg*, 632 So. 2d 42, 47 (Fla. 1992) (suspension without pay “does not reflect on the question” of guilt or innocence); *Matter of Brennan*, 483 N.E.2d 484, 484 (N.Y. 1985) (in deciding whether to suspend judge without pay, “issue . . . is not of [the judge’s] innocence . . . or guilt”).

This only makes sense, because unpaid status pending final discipline is justified by considerations beyond an employee’s culpability – it preserves “public confidence in the police force” when officers are accused of serious misconduct, “given that they occupy positions of great public trust and high public visibility.” *Policemen’s Benevolent & Protective Association v. City of*

Chicago, No. 17 C 8469, 2020 WL 291371, at *8 (N.D. Ill. Jan. 21, 2020); *see also Haverly*, 77 Ill. App. 3d at 317 (“substantial public interest in effective and efficient government” implicated in unpaid suspensions pending final disposition of charges); *Matter of Coruzzi*, 472 A.2d 546, 577 (N.J. 1984) (interests served by unpaid suspension of judge include protecting the public and assuring “the public that the judiciary is worthy of its trust”). Unpaid suspension “is not punishment for a crime.” *Matter of Coruzzi*, 472 A.2d at 577. Misconduct that warrants the filing of charges seeking discharge can include conduct as serious and harmful as soliciting sexual favors from a minor, making false statements on a police report, or an unjustified shooting. This degree of misconduct places the public at risk and calls the officer’s credibility into serious question. Unpaid suspensions help preserve CPD’s integrity after there is sufficient evidence that serious misconduct has occurred.

The Lodge cites arbitration awards that refer to the presumption of innocence, Lodge Reply Br. 45, but none involved unpaid suspensions pending a final disposition of discipline. Those awards discuss the presumption of innocence in the context of an employer’s burden of proof at a final discipline proceeding or involve scenarios that are totally unrelated to the circumstances here. *See Sultan General Construction*, 2021 BNA LA 590 at *6 (Suardi 2021) (in grievance arbitration, “the Employer bears the burden of proof and the Grievant enters arbitration presumed innocent”); *Anchorage*

School District, 119 BNA LA 1313, 1319 (DiFalco 2004) (presumption of innocence at grievance arbitration “mandates that . . . the employer[] has the burden of proving the allegations upon which the discipline or discharge sanction is based”); *Colomer USA*, 2002 BNA LA Supp. 109770 (Nicholas 2002) (in grievance arbitration, stating that “[a]s in most just cause cases, the aggrieved is to be seen with a presumption of innocence”); *Times Mirror Cable Television*, 87 BNA LA 543 (Berns 1986) (indefinite suspension imposed without any prior investigation by the employer); *Wheatland Farms*, 96 BNA LA 596 (Nelson 1991) (determining whether drug testing policy violated CBA); *Ohio Star Forge Co.*, 110 BNA LA 705 (Gibson 1998) (determining whether drug testing policy violated CBA).

Thus, none of these awards stands for the proposition that the presumption of innocence applies to suspensions without pay pending further discipline proceedings. Further, as we have explained, City Br. 57, there was no showing that the parties’ longstanding process – providing a hearing within seven days after the charges are filed, followed by a hearing on the discharge itself – fails to safeguard officers’ rights or runs afoul of the governing standards for public employee discipline.

CONCLUSION

For the foregoing reasons, 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,

MARY B. RICHARDSON-LOWRY
Corporation Counsel
of the City of Chicago

By: /s/ Aya R. Barnea
AYA R. BARNEA
Assistant Corporation Counsel
2 North LaSalle Street
Suite 580
Chicago, Illinois 60602
(312) 744-5129
aya.barnea@cityofchicago.org
appeals@cityofchicago.org

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 16 pages.

/s/ Aya R. Barnea
AYA R. BARNEA, Attorney

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 Odyssey eFile Illinois system and served via email, to the persons named below at the email addresses listed, on July 22, 2026.

Persons served:

Joel A. D'Alba
Matt Pierce
ASHER, GITTLER & D'ALBA LTD.
200 W. Jackson Blvd., Suite 720
Chicago, Illinois 60606
jad@ulaw.com
mjp@ulaw.com

/s/ Aya R. Barnea
AYA R. BARNEA, Attorney