

**BEFORE
DISPUTE RESOLUTION BOARD**

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

In the Matter of the Arbitration

between

CITY OF CHICAGO

(“CITY”)

and

**FRATERNAL ORDER OF
POLICE, CHICAGO LODGE NO. 7**

(“LODGE”)

**#783
L-MA-18-016**

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

INTERIM OPINION AND AWARD

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

APPEARANCES:

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

For the Lodge: Joel A. D’Alba, Esq.
Margaret A. Angelucci, Esq.
Matthew J. Pierce, Esq.

Dated: June 26, 2023

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SYNOPSIS

Fraternal Order of Police, Chicago Lodge No. 7 represents the City of Chicago's police officers below the rank of Sergeant. This proceeding is an interest arbitration between the City and the Lodge to establish many yet unresolved terms for the parties' successor collective bargaining agreement to the contract that expired June 30, 2017. The proceedings in this case are before a three-person Dispute Resolution Board in accord with the impasse resolution procedures found in the parties' collective bargaining agreement and the Illinois Public Labor Relations Act ("IPLRA"). The undersigned arbitrator has been selected by the parties as the Neutral Chair of this Board.

On October 31, 2022 when Lori Lightfoot was still Mayor of Chicago, a procedure was established for the parties to identify the issues in dispute, make final offers, submit evidence and briefs, engage in mediation and make presentations at a hearing – a process that was to be completed by April 10, 2023. In accord with that procedure, the parties produced a voluminous record of evidence, briefs and reply briefs on the many issues in dispute and were about to begin the mediation step of the process which was scheduled for March 3, 2023.

However, these proceedings were paused for 60 days on March 1, 2023 because Lori Lightfoot did not qualify for a runoff election for mayor and was eliminated from serving a second term. On April 4, 2023, Brandon Johnson won the runoff and is now Mayor of Chicago.

On May 1, 2023, the City asked for a further 60-day stay of these proceedings to allow Mayor Johnson to form his administration and policies, which I granted, but only until May 22, 2023.

On May 5, 2023 and after the Lodge objected to any further delay as requested by the City and sought expedited resolution of the remaining disputes, I advised the parties that review of the fully developed record that existed before the proceedings were paused caused me to conclude that two issues had to be decided on an expedited basis:

1. The Lodge's proposal that officers who have served more than 20 years should receive an annual retention bonus of \$2,000 payable on September 1st of each year of service after the completion of the 20th year of service; and
2. The ability of the Lodge to have the option to have certain grievances protesting discipline given to officers in excess of 365-day suspensions and separations (dismissals) decided by an arbitrator in final and binding arbitration or by the Police Board as opposed to the current procedure of having all such disciplinary actions decided by the Police Board.

A hearing on those two issues was held on May 22, 2023. As more fully explained in the full decision below, those two issues are resolved as follows:

1. Retention bonuses

The evidence shows that since May 20, 2019 when former Mayor Lightfoot took office through June 14, 2023, the total number of Police Department officers has declined from 13,498 to 11,950 – a decrease of 1,548 personnel (approximately 11.5%). During that period, the number of police officers below the rank of Sergeant in the Lodge's bargaining unit declined from 11,899 to 10,358 – a decrease of 1,541 officers (approximately 12.9%). Those decreased numbers have caused cancelations of officers' regular days off, low morale, and, because of diminished staffing, has hampered the ability of the Police Department to adequately respond with services thereby affecting the safety of the public and the officers.

To dissuade senior officers in the Lodge's bargaining unit from leaving the Department, the Lodge has proposed that officers who have served more than 20 years should receive an annual retention bonus of \$2,000 payable on September 1st of each year of service after the completion of the 20th year of service. The evidence in this case shows that notwithstanding wage increases established for police officers by the collective bargaining agreement, high inflation has caused a substantial actual loss of buying power for the officers and has particularly adversely affected officers who are nearing, at, or over a 20-year eligibility making it attractive for those officers to take their pensions and leave the Department. A retention bonus will serve as an incentive for these senior officers who may be contemplating leaving to remain with the Department and ease the negative impact of officers leaving the Department in such high numbers. The Lodge's retention bonus proposal is therefore adopted.

2. Arbitration of discipline grievances (suspensions greater than 365 days and separations)

Under the 2012-2017 Agreement, disciplinary actions for suspensions of more than 365 days and separations (dismissals) are decided by the Police Board. The Lodge has proposed that there be an option for grievances filed on behalf of officers who are facing those specific disciplinary actions to allow for an option of having those disputes heard by the Police Board or by arbitrators in final and binding arbitration.

Section 8 of the IPLRA provides [emphasis added]:

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

Long and well-settled case law in Illinois as developed in interest arbitration decisions issued by this Neutral Chair (going back to 1990) and many other arbitrators has established that if a party requests arbitration of discipline in an interest arbitration proceeding, that party is entitled under Section 8 to have final and

binding arbitration of discipline adopted as a contract term. Therefore, whether boards of police commissioners who previously decided the propriety of disciplinary actions have long been part of collective bargaining relationships and whether those boards functioned well or did not function at all are not relevant considerations under Section 8. Moreover, that case law has also long held that providing an option for grievances protesting disciplinary actions to be decided by a police board or by an arbitrator does not change the result required by Section 8. Finally, as provided in Section 2 of the IPLRA, final and binding arbitration of disputes under collective bargaining agreements for police officers (who are prohibited from striking) is the policy of this state [emphasis added]:

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

The Lodge's proposal for an option of having disciplinary grievances for suspensions greater than 365 days and separations heard in final and binding arbitration or by the Police Board is required by Section 8 of the IPLRA and is therefore adopted.

3. Conclusions

The Lodge's retention bonus proposal that officers who have served more than 20 years should receive an annual retention bonus of \$2,000 is adopted. The Lodge's proposal for an option of having grievances protesting disciplinary suspensions greater than 365 days and separations (dismissals) heard in final and binding arbitration or by the Police Board is also adopted.

These two results are remanded to the parties for a period of 14 days from the date of this Interim Award (or to a date agreed to by the parties) to draft language consistent with those conclusions.

I. BACKGROUND AND HISTORY

This is an interest arbitration proceeding between the City of Chicago ("City") and the Fraternal Order of Police, Chicago Lodge No. 7 ("Lodge") pursuant to the

Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* (“IPLRA”) to the extent adopted by the parties’ collective bargaining agreement (“Agreement”) in Section 28.3 to complete the terms of the parties’ successor Agreement to their prior 2012-2017 Agreement which expired June 30, 2017.¹

The employees covered by the Agreement are full-time sworn police officers below the rank of Sergeant.²

By agreement signed July 23 and 26, 2021, the parties memorialized some negotiated changes to the 2012-2017 Agreement for their successor Agreement, which terms were ratified by the Chicago City Council on September 14, 2021:³

1. Term (July 1, 2017 through June 30, 2025);
2. Base salary increases (20%);
3. Duty availability allowance;
4. Uniform allowance;
5. Health care commitments;
6. Health care contributions;
7. Salary cap increases;
8. Prescription drug deductible modifications;
9. Retiree health insurance contributions; and
10. Accountability Provisions.

Those negotiated provisions are referred to as “Phase I” which covered economics and accountability. However, after completion of the Phase I negotiations,

¹ This Interim Award contains hyperlinks to various websites. If viewing this Interim Award on a computer or other device and clicking on a cited hyperlink does not bring up the specific website or provides an “error” page, copy and paste the URL into your browser.

The parties 2012-2017 Agreement can be found at Lodge Pre-Hearing Brief Exhibit 3 and posted at: [https://www.chicago.gov/content/dam/city/depts/dol/Collective Bargaining Agreement3/FOPCBA2012-2017_2.20.15.pdf](https://www.chicago.gov/content/dam/city/depts/dol/Collective_Bargaining_Agreement3/FOPCBA2012-2017_2.20.15.pdf)
See also, https://www.chicagofop.org/images/documents/resources/contracts/contract_12-17.pdf

² Agreement at Article 2.

³ <https://chicago.legistar.com/LegislationDetail.aspx?ID=5115680&GUID=F7F87AD4-A3CA-416B-859B-16B3A0B3FEC&Options=Advanced&Search=>

numerous issues remained to be negotiated for the 2017-2025 Agreement – issues and negotiations referred to as “Phase II”.

According to the City, for Phase II, the parties exchanged proposals in late 2021 which were followed by six formal bargaining sessions in February, May, June, July and November 2022.⁴ After the parties reached impasse, they engaged in seven mediation sessions in August, September and October 2022.⁵

Despite the parties’ numerous negotiating sessions and sessions with a mediator (not the undersigned), the parties were unable to resolve the multitude of remaining Phase II issues and interest arbitration was invoked. A Dispute Resolution Board (“Board”) was then established as provided in Section 28.3 of the 2012-2017 Agreement.

On September 14, 2022, I was notified by the American Arbitration Association that I was selected as the Neutral Chair of the Board.

After meetings with the parties and in my capacity as the Neutral Chair, on October 31, 2022, I issued a Scheduling Order setting a process for proceedings for finalizing the remaining disputes for the 2017-2025 Agreement (the Phase II disputes).

The October 31, 2022 Scheduling Order established the process and procedure along with dates for the parties to identify issues in dispute; make final offers on those issues; submit evidence along with pre-hearing and response briefs; mediation (if requested by the parties and if I was of the opinion that mediation would be beneficial); identification of issues I deemed necessary with input from the parties to be heard in a hearing; oral argument and rebuttal; and filing of post-hearing briefs. The

⁴ City Pre-Hearing Brief at 3.

⁵ *Id.*

entire process (exclusive of filing post-hearing briefs) was to be completed by April 10, 2023.⁶

The parties complied with the filing requirements of identifying issues in dispute, making final offers and filing evidence and detailed briefs. The voluminous record before the Board now contains:

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

The mediation step of the process was to begin on March 3, 2023. However, in an election held on February 28, 2023, former Chicago Mayor Lori Lightfoot did not qualify for a runoff election for mayor resulting in a runoff election between the top two candidates receiving the most votes (Brandon Johnson and Paul Vallas) which was held on April 4, 2023.

In light of the fact that as a result of former Mayor Lightfoot's not qualifying for the runoff election and that there was going to be a leadership change in Chicago,

⁶ On January 6, 2023, I issued a Revised Scheduling Order adjusting the briefing schedule for the parties to complete the filing of pre-hearing briefs by February 21, 2023. However, the remaining steps in the process (mediation, hearing and filing of post-hearing briefs) remained as previously established.

on March 1, 2023, the Lodge filed a request to pause these proceedings for 60 days (with the City not objecting).

On March 1, 2023, I granted the Lodge's request to pause these proceedings, with the provision that the parties were to report on the status of this matter on or before May 5, 2023 to determine how this matter would proceed.

Prior to the April 4, 2023 runoff election and before a new mayor was in office having the ability to choose who the City's labor attorney would be, outgoing Mayor Lightfoot terminated the services of the City's lead attorney in this case – James Franczek, Jr. and his law firm.

On April 4, 2023, Brandon Johnson was elected Mayor of the City of Chicago. Mayor Johnson was sworn in on May 15, 2023.

On May 1, 2023, the City's Outside Counsel who, in addition to the Franczek firm, had been participating in these proceedings, requested that the May 5, 2023 status be continued for 60 days to July 8, 2023 for the following reasons:

* * *

We do not make this request lightly. There are however exceptional circumstances. As you know, the Mayor-elect takes office on May 15th. The Mayor-elect is still very much in the process of forming a government. The many issues in play in this arbitration are weighty, complex and important. It is only right and appropriate to the citizens of Chicago that their new mayor and his team be given an opportunity to thoroughly digest the issues and ensure that the positions the City takes in this proceeding are consistent with his policy preferences.

Furthermore, as you likely know, the Franczek firm no longer represents the City in this matter. While I remain engaged for the time being, I am not a labor law specialist and have never conducted or substantially participated in an interest arbitration. Extending the stay is necessary so that the City – and more specifically the new administration – has the time to secure appropriately experienced outside labor counsel – who may or may not

be the Franczek Team – to conduct the interest arbitration or otherwise conclude negotiations.

* * *

On May 2, 2023, the Lodge objected to the requested continuance and requested expeditious resolution of the disputed issues. According to Counsel for the Lodge:

The Lodge is cognizant of the transition period for the new administration. However, the parties acknowledged and recognized that transition period when we agreed to hold the mediation/arbitration proceedings in abeyance in March. We now are faced with a request for a further delay in a process that began in October 2017 and has passed through two different mayoral administrations.

Among the open issues before the Arbitrator include vital issues such as due process protections of Officers, just cause arbitral review of Officer discipline and Officer wellness and safety. Officers are now entering a fourth year of summertime violence on the streets of Chicago and the inevitable cancellation of regular days off. The issues before the Arbitrator include proposed resolutions that will improve the protection offered to Officers, their families and the citizens of Chicago.

The City is keenly aware of how pressing these issues are as it continues to struggle to recruit and retain Officers and address the abysmal morale among Officers. These issues need to be resolved on a most expeditious basis. Waiting until July to even begin scheduling the mediation/arbitration process clearly prejudices these interests and does not respect the turmoil that these issues have caused Officers. We would hope that the new administration would give the same high priority to these issues that the Lodge has.

* * *

After meeting with the parties on May 5, 2023, on that date I issued an Order Partially Granting Stay and Scheduling Show Cause Hearing. That Order partially granted the stay requested by the City (until May 22, 2023), but ordered a hearing

directing the City to show cause why two of the Lodge's proposals should not be immediately adopted by the Board on an expedited basis. Those issues were:

1. The Lodge's proposal that officers who have served more than 20 years should receive an annual retention bonus of \$2,000 payable on September 1st of each year of service after the completion of the 20th year of service; and
2. The ability of the Lodge to have the option to have certain grievances protesting discipline given to officers in excess of 365-day suspensions and separations (dismissals) decided by an arbitrator in final and binding arbitration or by the Police Board as opposed to the current procedure of having all such disciplinary actions decided by the Police Board.

As explained in the May 5, 2023 Order and as demonstrated by the record before this Board, the need for an expedited show-cause hearing on the retention bonus issue was [record citations omitted]:

... [B]ecause of a substantial number of officers leaving employment with the Department. As shown by record, during a recent two-year period the Bureau of Patrol has lost 1,400 Officers (and the number may be higher). That kind of loss of staffing has resulted in cancelation of many regular days off and has adversely impacted morale and Officer safety. ... As argued by the Lodge, action must be taken to lessen the attrition of Officers, which caused it to offer retention bonuses in this case. Given the need for expeditious resolution of that issue, the City will need to show cause why the Lodge's offer should not be adopted.

With respect to the arbitration of discipline issue and as also explained in the May 5, 2023 Order, the need for an expedited show-cause hearing was necessary because [record citations omitted]:

In numerous awards going back to 1990, the undersigned arbitrator has awarded requests for binding arbitration. ... Other arbitrators have routinely come to the same conclusion. ... Given the statutory mandate on of this issue [Section 8 of the IPLRA], the

City will need to show cause why the Lodge's offer should not be adopted.

On May 12, 2023, I supplemented the May 5, 2023 Order with a detailed explanation of the evidence in the record and reasons for the need of the show-cause hearing on the retention bonuses and arbitration of discipline issues. My concern was that as of May 12, 2023 and because former Mayor Lightfoot terminated the services of the Franczek firm, I did not know who would be representing the City in the show-cause hearing; there was a need for Mayor Johnson to get his administration in place and determine his policies; but yet there was an urgency to have these two issues decided. I wanted counsel who would eventually be representing the City as well as the parties to be fully apprised about the two issues to be heard and I gave detailed explanations of the issues. I also explained:

I recognize these are hectic times for the newly-elected Mayor Johnson's administration. However, just because there is a new administration does not mean that the dispute resolution process and most importantly, the formulation of the terms of a successor collective bargaining agreement to the one that expired in June 2017 must come to a screeching halt.

The two issues involved in the present matter – retention bonuses and arbitration of discipline – are, in my opinion, crucial and further delays on deciding whether these issues should be part of the parties' Agreement will harm the operations of the Department, further degrade the morale of the officers and impact the overall safety and well-being of the public and the officers. These two issues need to be decided now.

With the above, I have set out in detail the reasons supporting adoption offers in dispute on these two issues so that the new administration will be fully informed of what has been demonstrated thus far in this case and further what needs to be shown at the upcoming show-cause hearing.

On May 18, 2023, I was informed that the Franczek firm had been “re-retained to represent the City in these proceedings.” After the Board Members and the parties indicated their availability, the show-cause hearing was held on May 22, 2023.⁷ The Franczek firm representing the City participated in the May 22, 2023 show-cause hearing before this Board along with other counsel for the City and City representatives along with counsel for the Lodge and Lodge representatives. On May 22, 2023, the Franczek firm, on behalf of the City, also filed a Response to Show Cause Order prior to the commencement of the show-cause hearing along with exhibits which have been considered.

II. THE CONSENT DECREE

There is a federal court consent decree (“Consent Decree”) stemming from allegations that the Chicago Police Department’s use-of-force policies and practices violate the U.S. Constitution and Illinois law. *State of Illinois v. City of Chicago* (17-cv-6260 (N.D. Ill.)).⁸

For reasons not material for this dispute, the Lodge’s efforts to intervene in the federal court proceeding were denied. *See State of Illinois v. City of Chicago*, 912 F.3d 979 (7th Cir. 2019).

The Consent Decree carves out collective bargaining agreements and interest arbitrations such as this proceeding from coverage by the Consent Decree as follows:

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

⁷ References in this Interim Award to the May 22, 2023 show-cause hearing record shall be “Show-Cause Hearing Tr. at ____.”

⁸ City Exhibit 5, posted at: <https://chicagopoliceconsentdecree.org/wp-content/uploads/2019/02/FINAL-CONSENT-DECREE-SIGNED-BY-JUDGE-DOW.pdf>

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

In upholding the District Court's denial of the Lodge's efforts to intervene in the proceedings for the Consent Decree, the Seventh Circuit noted the provisions of the then yet to be finalized Consent Decree and reiterated the long-held principle that parties cannot negotiate a consent decree that alters the terms of a collective bargaining agreement where a party to that collective bargaining agreement (here, the Lodge) is not a party to the consent decree (912 F.3d at 987-988):

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

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

Admittedly, “[c]onsent decrees can alter the state law rights of third parties.” *Application of Cty. Collector of Cty. of Winnebago, Ill.*, 96 F.3d 890, 901 (7th Cir. 1996). But that’s true “only where the change is necessary to remedy a violation of federal law.” *Id.* (emphasis added); *see also People Who Care*, 961 F.2d at 1339 (“[B]efore altering the contractual (or state-law) entitlements of third parties, the court must find the change necessary to an appropriate remedy for a legal wrong.”). The district court has made no finding of necessity. To the contrary, the court emphasized that it “is obligated to uphold the applicable law in resolving any real conflicts between the proposed decree and any existing or future contracts.” *Illinois v. City of Chicago*, No. 17-CV-6260, 2018 WL 3920816, at *8 (N.D. Ill. Aug. 16, 2018). The district court noted that consent decrees typically cannot subvert CBA rights, but reminded the parties that “a CBA also must comply with federal law.” *Id.* at *9.

Given the disputes in this matter resolved by this Interim Award through the contractual and statutory impasse procedures under the IPLRA and the evidence presented, the Consent Decree therefore does not prevent this interest arbitration proceeding from going forward to establish the terms at issue in this Interim Award because, as stated in the Consent Decree at Paragraph 711, “[n]othing in this Consent Decree shall be interpreted as obligating the City or the Unions to violate (i) the terms of the CBAs, including any Successor CBAs resulting from the negotiation process

(including Statutory Impasse Resolution Procedures) mandated by the IPLRA with respect to the subject of wages, hours and terms and conditions of employment”

III. THE INTEREST ARBITRATION PROCESS

Section 14(h) of the IPLRA provides that an interest arbitrator/arbitration panel “base its findings, opinions and order upon the following factors, as applicable.”⁹

Interest arbitration is a *very* conservative process. The ultimate goal in the run-up to an interest arbitration and the interest arbitration proceeding itself is for parties to know ahead of time that the process is very conservative which, as a practical matter, forces parties to negotiate their own terms and conditions for their contract and obtain results they are likely not to get in interest arbitration rather than having an outsider like me determine the terms of their contractual relationship and then just walk away.

⁹ Section 14(h) of the IPLRA provides:

(h) Where there is no agreement between the parties ... the 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 and with other employees generally:
 - (A) In public employment in comparable communities.
 - (B) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of
- (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 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.

To achieve that goal of forcing the parties to chart their own destinies, with respect to changes to existing *status quo* conditions in a typical interest arbitration, this conservative process frowns upon breakthroughs. Therefore, when only one party seeks to change a *status quo* condition, that party is required to demonstrate that the existing condition is broken. Thus, when one party seeks to change an existing condition, “good ideas” are not good enough to change the *status quo*. See *City of Streator and FOP*, S-MA-17-142 (2018) at 18-19 (“In this conservative interest arbitration process, in order to change a *status quo* condition, there must be a showing by the party seeking the change that the existing *status quo* is broken” [citing *Village of Barrington and Illinois FOP Labor Council*, S-MA-167 (2015) at 5 and cases cited]).¹⁰ See also, *City of Highland Park and Teamsters Local 700 (Sergeants Unit)* S-MA-09-273 (2013) at 5 [and award cited, emphasis in original]:¹¹

In simple terms, the interest arbitration process is *very* conservative; frowns upon breakthroughs; and imposes a burden on the party seeking a change to show that the existing system is broken and therefore in need of change (which means that “good ideas” alone to make something work better are not good enough to meet this burden to show that an existing term or condition is broken). The rationale for this approach is that the parties should negotiate their own terms and conditions and the process of interest arbitration — where an outsider imposes terms and conditions of employment on the parties — must be the *absolute* last resort.

However, where both parties seek to change an existing *status quo* condition, the analysis of the parties’ offers is different and the burden is on each party to show

¹⁰ *Streator* is posted at:
<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-142arbaward.pdf>

Barrington is posted at:
<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-13-167.pdf>

¹¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-273.pdf>

that its offer is the more reasonable. *Village of Oak Lawn and Oak Lawn Firefighters Local 3405*, S-MA-13-033 (2014) at 66:¹²

... When both parties seek to change the *status quo*, the standards are far different from circumstances where one party seeks to make that change but the other party seeks to maintain the *status quo*. Where both parties seek to change the *status quo*, the arbitrator has to sort out which is the more reasonable position in accord with the applicable statutory factors. Where one party seeks to change the *status quo*, the burden is on that party seeking to make the change to show that the existing system is broken and in need of repair. ...

See also, City of Rockford and City Fire Fighters Local 413, IAFF, S-MA-12-108 (Goldstein, 2013) at 60-63 [emphasis in original]:¹³

What jumps out to be is that as I see the parties' offers, each of the parties has proposed to change the language of Section 4.1, each pulling in the opposite direction of the other. ...

* * *

... In any case, preserving the status quo is not a possibility here
....

* * *

... In this case, neither party should bear a clear distinct burden to prove the change is necessary or the status quo is to be maintained. Rather, each party here shall be to bear the same burden to show me that its proposal is the more reasonable in the context of the Section 14(h) factors

In a typical interest arbitration, Section 14(g) of the IPLRA requires final offers for economic proposals (“As to each economic issue, the arbitration panel shall adopt the last offer of settlement ...”). For non-economic proposals, Section 14(g) of the IPLRA is silent, therefore allowing an interest arbitrator to accept proposals offered

¹² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-13-033.pdf>

¹³ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-12-108.pdf>

by a party, but also to potentially formulate non-economic contract provisions different from those proposed by the parties.

Section 14(p) of IPLRA allows parties to collective bargaining agreements falling under Section 14's impasse resolution procedures to agree to alternative methods of resolving disputed issues in interest arbitration ("Notwithstanding the provisions of this Section [14] the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution."). In Section 28.3(B)(11) of the Agreement, the parties have chosen to resolve their disputes through such an alternative method:

Section 28.3 – Impasse Resolution, Ratification and Enactment

* * *

- B. If complete agreement is not reached between the parties as to the items for negotiation at the end of any negotiating period, the following procedure shall apply.

* * *

11. As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein above shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply; Subsections (h), (i), (k) and (m).

Conspicuously missing from Section 28.3(B)(11) of the Agreement is any reference to the final offer for economic issues requirement (and similar silence with respect to non-economic offers) found in Section 14(g) of the IPLRA. Therefore, as the Lodge correctly points out, under the parties' Agreement:¹⁴

... Section 11 of this impasse procedure is an alternative to the statutory interest arbitration procedure of Section 14 of the

¹⁴ Lodge Pre-Hearing Brief at 4.

IPLRA, 5 ILCS 315/14. The parties have specifically agreed not to create a last best offer of settlement based on Section 14(g).

However, while final offers (last best offers of settlement) are not required under the Section 28.3(B)(11) of the Agreement, there is nothing in that alternative impasse resolution method that prevents an interest arbitrator to provide in the Scheduling Order as I have in this case given the substantial number of issues in dispute (to say the least) that the parties initially submit final offers and positions and briefs on those offers so that the parties and this Board are fully apprised of positions taken before this Board. *See* October 31, 2022 Scheduling Order at II(2)-(5). Thus, while the parties have agreed upon an impasse resolution procedure in their Agreement that does not *require* adoption of a final offer on any issue, there is nothing in the Agreement that *prevents* adoption of a final offer through use of the traditional standards utilized in typical interest arbitrations. Nor is there anything in the parties' alternative impasse resolution procedure that prevents this Board from adopting a concept found in a party's final offer on any topic, but not adopting precise language proposed by that party.

IV. AUTHORITY TO HOLD A SHOW CAUSE HEARING AND ISSUANCE OF THIS INTERIM AWARD

At the May 22, 2023 show-cause hearing, the City raised issues concerning whether I had authority to hold a show-cause hearing and to issue this Interim Award.¹⁵ As the Neutral Chair of the Board, I have the authority to do so.

First, as noted *supra* at I, the need for a show-cause hearing and issuance of an interim award was explained in my May 12, 2023 Order:

The two issues involved in the present matter – retention bonuses and arbitration of discipline – are, in my opinion, crucial and

¹⁵ Show-Cause Hearing Tr. at 6-12.

further delays on deciding whether these issues should be part of the parties' Agreement will harm the operations of the Department, further degrade the morale of the officers and impact the overall safety and well-being of the public and the officers. These two issues need to be decided now.

My decision to hold a show-cause hearing and issue an interim award was not made *sua sponte* (without prompting or suggestion by either party). After the City asked for a second 60-day pause on the proceedings, the Lodge objected, stating, in relevant part [emphasis added]:

... We now are faced with a request for a further delay in a process that began in October 2017 and has passed through two different mayoral administrations.

Among the open issues before the Arbitrator include vital issues such as due process protections of Officers, just cause arbitral review of Officer discipline and Officer wellness and safety. Officers are now entering a fourth year of summertime violence on the streets of Chicago and the inevitable cancellation of regular days off. The issues before the Arbitrator include proposed resolutions that will improve the protection offered to Officers, their families and the citizens of Chicago.

The City is keenly aware of how pressing these issues are as it continues to struggle to recruit and retain Officers and address the abysmal morale among Officers. *These issues need to be resolved on a most expeditious basis.* Waiting until July to even begin scheduling the mediation/arbitration process clearly prejudices these interests and does not respect the turmoil that these issues have caused Officers. ...

That is a request by the Lodge for an expedited handling of issues, including the two involved in this matter. A full record (identification of issues, final offers on those issues, voluminous evidence and two rounds of extensive briefing) had been developed when the proceedings came to a halt due to former Mayor Lightfoot's elimination from the mayoral runoff election and Mayor Johnson's subsequent election. Considering the arguments that were made and extensive record that was developed

as of the date these proceedings were paused and the merit of the Lodge's arguments on these two issues, it was apparent to me that the Lodge had made out a very strong case on the retention bonus and arbitration of discipline issues. Given the position taken by the Lodge opposing a further extension as requested by the City; the importance of these two issues; and the need to get these two issues decided as soon as possible, I had no intention of allowing these two issues to languish when, for all purposes, the ship of state was still being built (and without a captain because, after losing the election for mayor when it would have appeared who represented the City during the transition period would not be relevant to a former mayor holding office in a lame-duck capacity, Lightfoot dismissed the Franczek firm, effectively hindering the incoming Johnson administration for this proceeding or at least giving Mayor Johnson the ability to decide whether the Franczek firm would continue to represent the City). The "show-cause" hearing and interim award format for deciding these issues and removing them from the table was therefore chosen in response to the Lodge's valid request for expeditious handling and the strength of the Lodge's showing in the record and briefing up to that point.

Second, Section 28.3(B)(5) of the Agreement (Impasse Resolution, Ratification and Enactment) provides "[t]he Chairman [of the Dispute Resolution Board] shall have the authority to convene and adjourn proceedings ... compel testimony ... as in his or her judgment and discretion are deemed warranted." Section 28.3(B)(6) of the Agreement provides that "[d]uring the course of proceedings, the Chairman of the Board shall have the authority as necessary to ... direct, (absent mutual agreement) the order of procedure" The Agreement therefore gives me as the Neutral Chair of the Board broad discretion and authority to conduct these proceedings. In the exercise of that discretion and authority, I deemed it necessary that further delay had to be avoided and that these two issues needed to be resolved in an expeditious

fashion through a show-cause hearing and an interim award. That determination was made with further consideration that I was of the opinion that the parties were not going to mutually agree upon resolution of these two issues in any mediation that might occur and the issues had to be removed from the table so that the parties could attempt to resolve the many other remaining issues that remain. The parties had been through six formal bargaining sessions in February, May, June, July and November 2022 and seven mediation sessions in August, September and October 2022 and, for all purposes, were going nowhere with the numerous issues in dispute – particularly the two issues involved in the show-cause hearing. Indeed, at the show-cause hearing (and although disputed by the City), with respect to the arbitration of discipline issue, the Lodge stated “[o]ur proposal has been on the table since October of 2017.”¹⁶ The fact that these two important issues in this matter have been unresolved for over five and one-half years after the expiration of prior Agreement says everything. The parties were going nowhere on these issues and, in my opinion, the importance of these issues required that they be removed from the table and decided so that the parties could move on to attempt to resolve other matters and, if they could not do so, have them decided by this Board.

Third, aside from the Agreement and looking to the IPLRA for guidance, the IPLRA gives me the authority to hold the show-cause hearing and issue an interim award. *See* Section 14(d) of the IPLRA which provides that “[t]he chairman shall preside over the hearing and shall take testimony.” “[P]resid[ing] over the hearing” carries with it the authority to act as I have in breaking out these two issues into a show-cause hearing from a very complete and voluminous record that has been thus far established and expeditiously resolving those issues through an interim award.

¹⁶ Show-Cause Hearing Tr. at 30.

Further, that section of the IPLRA provides that “[m]ajority actions and rulings shall constitute the actions and rulings of the arbitration panel.” The Lodge Member of the Board is in agreement with holding the show-cause hearing in the fashion ordered and issuance of this Interim Award, thereby constituting a majority action of the Board.¹⁷

Fourth and similarly, Section 4 of the Illinois Uniform Arbitration Act, 710 ILCS 5/4, provides that “[t]he powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or this Act.” A majority of this Board has acted in holding the show-cause hearing as ordered and issuance of an interim award.

Fifth, additionally, I have issued interim awards in previous cases to immediately remove or resolve various issues between parties in those cases which were followed by full awards resolving the remaining issues which awards issued at a later date. *See State of Illinois and AFSCME Council 31 (Vaccine Mandate Interest Arbitration Interim Opinion and Award)*, S-MA-22-121 (2021)¹⁸ and *Village of Skokie and Skokie Firefighters Local 3033 (IAFF) Interim Award (Promotions)*, Arb. Ref. 12.250 (2013).¹⁹ Therefore, there is precedent for issuance of interim awards and there is no authority that prevents issuance of interim awards – a matter which is in the

¹⁷ *Id.* at 6. *See also*, Lodge Response dated June 21, 2023 at 2 (“An interim order to resolve issues that are of an emergency nature is appropriate as contemplated by the majority of the Dispute Resolution Board.”).

¹⁸ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-22-121.pdf>
The subsequent final award following the interim award (*State of Illinois and AFSCME Council 31* (2022)) is posted at:
<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-22-121-final-after-remand.pdf>

¹⁹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-197-02.pdf>
The subsequent final award following the interim award (*Village of Skokie and Skokie Firefighters Local 3033 (IAFF)* (2014)) is posted at:
<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-197.pdf>

discretion of the arbitrator or Board majority (depending upon whether a single arbitrator or similar board decides the interest arbitration).²⁰

Sixth, issuance of interim awards – especially in complex and important cases such as this – is not unusual. Aside from the fact that I have done so in the past (*see above*), it is well-established that “... the arbitrator generally controls the conduct of the arbitration proceedings.” Schoonhoven, *Fairweather’s Practice and Procedure in Labor Arbitration* (BNA, 3d. ed.), 156. *See also*, Elkouri and Elkouri, *How Arbitration Works* (BNA, 5th ed.), 354:

Use of Interim Award

Where the case is divided into phases ... the arbitrator may use what is called an “Interim Award” in disposing of the first phase and a “Supplemental Award” or “Final Award” in disposing of the later phase.

Because of the delays in this case, inability of the parties to reach agreement after numerous sessions for negotiations and mediation for these Phase II issues with lack of prospect that the parties would reach agreement and absolutely crucial importance to the parties, the public and the officers that these issues be resolved in an expeditious fashion, just as the parties separated Phase I from this Phase II proceeding, I deemed it necessary to control these proceedings to further separate Phase II to resolve these two issues and move the process along.

Seventh, holding a show-cause hearing in the fashion ordered and issuance of an interim award are procedural issues for ultimate resolution of the disputes before this Board in this interest arbitration. In arbitration, procedural issues are for the arbitrator to decide. *See John Wiley & Sons, Inc., v. Livingston*, 376 U.S. 543, 557

²⁰ The City recognized that I have previously issued interim awards in the above cited cases. Show-Cause Hearing Tr. at 11.

(1964) (“[o]nce it is determined, as we have, that the parties are obligated to submit the subject matter of a dispute to arbitration, ‘procedural’ questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator.”).

I therefore could order a show-cause hearing and issue this Interim Award.

V. RESOLUTION OF THE PRESENT ISSUES IN DISPUTE

A. Retention Bonuses

The Lodge proposed that the Board award retention bonuses (officers who have served more than 20 years shall receive an annual retention bonus of \$2,000 payable on September 1 of each year of service after the completion of the 20th year of service).²¹

Initially, the City opposed the Lodge’s proposal for this Board to adopt the retention bonus offer. In response to the Lodge’s request for awarding a retention bonus, the City argued that as of the date of the filing of its Pre-Hearing Brief (February 7, 2023):²²

The [Lodge] proposes an annual “retention bonus” of \$2,500 for officers with 20 or more years of service. As of the date of this brief’s submission [February 7, 2023], there are 10,124 police officers below the rank of Sergeant, 2,699 of whom have 20 or more years on the job. The cost of awarding this proposal would amount to \$6,747,500. As matters stand, once an officer reaches the 20-year step she receives a step increase of approximately 3.7%. She receives another 3% increase at the 25-year step. The collectively bargained salary schedule already rewards longevity, to say nothing of the advantages seniority provides in bidding for assignments and watches. Any further modification should be part of bargaining, not interest arbitration.

²¹ Lodge Final Offer Proposal No. 9 at 26-27; Lodge Pre-Hearing Brief at 174.

²² City Pre-Hearing Brief at 61-62.

After evidence and argument at the May 22, 2023 show-cause hearing and a following Order on the same date, I granted the Lodge's request for a retention bonus, but did not specify an amount:²³

2. The Lodge's request for adoption of a retention bonus is granted. However, the amount and details of implementation of the bonus are yet to be determined.

The May 22, 2023 Order directed further reporting from the parties and on June 13, 2023, I requested the City to state its current on the record position on this issue.

In a June 16, 2023 filing, the City responded:

We do not believe that a retention bonus targeting the universe of officers with twenty (20) or more years of service will have a measurable impact on the City's ability to retain officers. Perhaps more crucially, we continue to assert that a bonus, or other cash incentive, targeting that population is misdirected. We believe that the evidence demonstrates that an economic incentive to "remain on the job" is better spent, and more likely to have a broader and more beneficial impact, if it focuses on the universe of officers with less than ten (10) years on the job. To put a finer point on it, we believe that any such bonus/incentive should be tied to concrete, objective criteria, such as attaining and maintaining various certifications (LEMART, CIT, etc.).

But if the Neutral Chair's focus is on the retention bonus as proposed by the Lodge, applicable to those with twenty (20) or more years of service, then to make the best of an unfortunate situation our on the record position is:

- i) a lump sum (non-pensionable) payment of \$2,000 payable each September 1 following the date of ratification of the award;
- ii) payable to officers who are in duty status as of that date, and who have, as of that date,

²³ Show-Cause Hearing Tr. at 47; May 22, 2023 Order at par. 2.

- iii) twenty or more years of service, and
- iv) are between the ages of 50 and 54 years of age.

* * *

Thus, while the parties may differ in detail on how the bonus is to be implemented, the parties are now in agreement with the concept that officers with 20 or more years of service should receive a lump sum payment of \$2,000 each September.

Ordinarily, that agreement in principle would end the discussion in an award and the details would just be remanded to the parties for drafting of language consistent with that agreement. *See infra* at VII. However, given how this process has arrived at this point and that many eyes may be looking at this Interim Award for rationale for my underlying determination that a retention bonus must be adopted, it is still necessary for me to explain the rationale behind adoption of a retention bonus as proposed by the Lodge, which rationale I have been sharing with the parties as we have moved to this point.

The loss of officers in recent years was pointed out by the Lodge's submission in this case.²⁴ The Lodge also pointed to Chief of Patrol Brian McDermott's testimony in an arbitration hearing conducted on March 18, 2022 concerning cancellation of regular days off ("RDOs") and the impact that had on operations of the Department and morale of the officers:²⁵

Q. Are you currently running the Bureau of Patrol with all budgeted positions filled?

A. I'm not.

Q. Approximately -- so are you down officers?

A. The Bureau of Patrol -- over the last two years, the department is down approximately 1,200 people. The Bureau of Patrol is down approximately 1,400 people.

²⁴ See Lodge Pre-Hearing Brief at 175.

²⁵ *Id.* at 45 and 216, footnote 69. See also, Lodge Exhibit 19 at Tr. 514, 546-547.

* * *

- Q. Do you know how – – do you know if and how officer safety was a factor in these decisions to cancel RDOs?
- A. Yeah. So, you know, from an officer-safety standpoint, we’re down 1,400 officers right now on patrol. I mean, that’s all I think about every day personally. I hear complaints all the time from, you know, commanders, from the officers on the street that there’s just not enough people out there. You know, you have a violent weekend where you put a couple of cars down on a shooting scene and there’s nobody left to answer calls, so from an officer-safety standpoint is it safer or less safer to have more officers out there. In my opinion, its more safe to have more officers out there. You know, I know these guys don’t want to have their days off canceled, but I’m sure the guys that are working are happy to see them out there on some of these violent weekends.

Chief McDermott’s 2022 testimony about difficulties the Department was having due to loss of personnel is premised on the Department of Patrol “being down approximately 1,400 people.” Since Chief McDermott testified, the loss of members in the Department has increased making the situation worse.

In response to my inquiry, the City’s June 16, 2023 filing shows that since former Mayor Lightfoot took office on May 20, 2019 and through June 14, 2023 the number of active Department employees in the various ranks are as follows:

Date	All FOP	Sergeants	Lieutenants	Captains	Total
5/20/2019	11,899	1,305	262	32	13,498
6/14/2023	10,358	1,300	264	28	11,950
Total	-1,541	-5	+2	-4	-1,548

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Chief McDermott’s problem with staffing (approximately 1,400 down in 2022 and now 1,548 down as of June 14, 2023) is therefore significantly increasing.²⁶ Overall, the evidence shows that there has been an approximate 11.5% drop in officers in all ranks, with an approximate 12.9% drop in the Lodge’s bargaining unit (officers below the rank of Sergeant).

In Phase I, the parties negotiated a 20% wage increase for the period July 1, 2017 through June 30, 2025 to be effective as follows:

WAGE INCREASES	
Effective	% Increase
7/1/17	1.00%
1/1/18	2.25%
1/1/19	2.25%
1/1/20	2.50%
1/1/21	2.50%
1/1/22	2.50%
1/1/23	2.50%
1/1/24	2.50%
1/1/25	2.00%
Total	20.00%
Compounded	21.86%

Those increases produce a D-1 Salary Schedule as follows (which the parties previously verified for accuracy, with any discrepancies noted attributed to rounding of numbers by spreadsheets):

²⁶ The Lodge’s proposal is not considered to be a minimum manning proposal under Section 14(i) of the IPLRA. The Lodge’s proposal merely points out that the number of officers is shrinking which can be considered as a justification for its retention bonus proposal as an attempt to decrease that outflow.

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	1ST 12 MOS	> 12 MOS	>18 MOS	> 30 MOS	> 42 MOS.	>54 MOS	> 10 YRS	> 15 YRS	> 20 YRS	> 25 YRS	>30 YRS
Effective	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11
Last Contract	48,078	68,616	72,510	76,266	80,016	84,054	87,006	90,024	93,354	96,060	99,414
7/1/17	48,559	69,302	73,235	77,029	80,816	84,895	87,876	90,924	94,288	97,021	100,408
1/1/18	49,651	70,861	74,883	78,762	82,635	86,805	89,853	92,970	96,409	99,204	102,667
1/1/19	50,769	72,456	76,568	80,534	84,494	88,758	91,875	95,062	98,578	101,436	104,977
1/1/20	52,038	74,267	78,482	82,547	86,606	90,977	94,172	97,438	101,043	103,972	107,602
1/1/21	53,339	76,124	80,444	84,611	88,771	93,251	96,526	99,874	103,569	106,571	110,292
1/1/22	54,672	78,027	82,455	86,726	90,991	95,582	98,939	102,371	106,158	109,235	113,049
1/1/23	56,039	79,978	84,516	88,894	93,265	97,972	101,413	104,931	108,812	111,966	115,875
1/1/24	57,440	81,977	86,629	91,117	95,597	100,421	103,948	107,554	111,532	114,765	118,772
1/1/25	58,589	83,617	88,362	92,939	97,509	102,430	106,027	109,705	113,763	117,060	121,148
Difference	10,511	15,001	15,852	16,673	17,493	18,376	19,021	19,681	20,409	21,000	21,734
Compounded	21.86%	21.86%	21.86%	21.86%	21.86%	21.86%	21.86%	21.86%	21.86%	21.86%	21.86%

Over the years, as I have been examining wage offers in interest arbitrations, in order to determine the “real money” resulting from wage increases on salary schedules that contain step increases for years of service, the compounding effect of a simple percentage wage increase and step movements employees make along the salary schedule during the term of a contract must be considered. The simple question is where does an employee begin (*i.e.*, the employee’s wage rate prior to the first wage increase of the new collective bargaining agreement) and where does the employee end after making step movements allowed by the salary schedule, if any, when the contract expires?²⁷

To determine the actual impact of a wage increase (simple percentage, compounding and step movements), the final percentage result must also be compared to inflation. Section 14(h)(5) of the IPLRA refers to “[t]he average consumer prices for goods and services, commonly known as the cost of living” as a factor available for consideration. The simple question in this case now becomes how does an officer’s

²⁷ See *e.g.*, *Village of Flossmoor and FOP*, S-MA-17-193 (2019) at 34-38.
<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-17-193arbaward.pdf>

“real money” wage increase compare to increases in inflation (as measured by the Consumer Price Index – the “CPI”)?

For the impact of inflation, the period July 1, 2017 through December 31, 2022 should be examined because the Bureau of Labor Statistics (“BLS”) has published hard data for increases in the CPI for the July 2017 through December 2022 period and December 31, 2022 was the last day of a full year when a percentage wage increase was in effect under the parties’ Agreement (the 2.5% wage increase effective January 1, 2022). The BLS also has now published hard data going through May 2023, but that data is not for a full year of the 2.5% wage increase which took effect January 1, 2023. Therefore, only the period July 2017 through December 2022 is really relevant.

The retention bonus issue properly falls under the umbrella of Phase II because that issue squarely addresses operational questions – here, the ability of the Department to respond to requests for services and safety of the public and the officers at a time when the Department is experiencing substantially decreasing staffing as a result of officers leaving employment with the Department.

As negotiated by the parties, as of December 31, 2022, the employees received 13% of the 20% wage increase for the Agreement (compounding to 13.715%):

WAGE INCREASES	
Effective	% Increase
7/1/17	1.00%
1/1/18	2.25%
1/1/19	2.25%
1/1/20	2.50%
1/1/21	2.50%
1/1/22	2.50%
Total	13.0%
Compounded	13.715%

Using examples of hypothetical officers at the D-1 level who started working September 1, 2017 and going back each year for those officers with a September 1st anniversary date, I have compared the actual step movements for those hypothetical officers, their step placements and actual wage increases to the BLS data for the CPI and through use of published data for Chicago.

The CPI data for Chicago (Chicago-Naperville-Elgin) for the period July 2017 through December 2022 shows an inflation increase of 17.58% for that period:²⁸

CPI	7/17-12/22
Actual	Chicago (BLS)
7/17	233.514
12/22	274.577
Difference	41.063
CPI Increase	17.58% ²⁹

The D-1 Salary Schedule for the period July 1, 2017 through December 31, 2022 looks like this:³⁰

²⁸ <https://data.bls.gov/cgi-bin/surveymost?cu>

Select “Chicago, All Items” and then “Retrieve data”.

²⁹ $274.577 - 233.514 = 41.063$. $41.063 / 233.514 = 0.17584$ (17.58%).

³⁰ The wage rate in effect as of December 31, 2022 was the rate that was implemented January 1, 2022. To compute the difference caused by the wage increases through December 31, 2022 simply subtract the “Effective Last Contract” wage rate from the January 1, 2022 wage rate. For example, at Step 3, the January 1, 2022 wage rate is \$82,455. The Step 3 wage rate prior to the July 1, 2017 increase was \$72,510 (the number above the red line). $\$82,455 - \$72,510 = \$9,945$. That is a compounded increase of 13.72% ($9,945 / 72,510 = 0.13715$ (which because of numbers beyond the two displayed decimal points the spreadsheet calculation rounded to 13.72%).

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	1ST 12 MOS	> 12 MOS	>18 MOS	> 30 MOS	> 42 MOS.	>54 MOS	> 10 YRS	> 15 YRS	> 20 YRS	> 25 YRS	>30 YRS
Effective	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11
Last Contract	48,078	68,616	72,510	76,266	80,016	84,054	87,006	90,024	93,354	96,060	99,414
7/1/17	48,559	69,302	73,235	77,029	80,816	84,895	87,876	90,924	94,288	97,021	100,408
1/1/18	49,651	70,861	74,883	78,762	82,635	86,805	89,853	92,970	96,409	99,204	102,667
1/1/19	50,769	72,456	76,568	80,534	84,494	88,758	91,875	95,062	98,578	101,436	104,977
1/1/20	52,038	74,267	78,482	82,547	86,606	90,977	94,172	97,438	101,043	103,972	107,602
1/1/21	53,339	76,124	80,444	84,611	88,771	93,251	96,526	99,874	103,569	106,571	110,292
1/1/22	54,672	78,027	82,455	86,726	90,991	95,582	98,939	102,371	106,158	109,235	113,049
Difference	6,594	9,411	9,945	10,460	10,975	11,528	11,933	12,347	12,804	13,175	13,635
Compounded	13.72%	13.72%	13.72%	13.72%	13.72%	13.72%	13.72%	13.72%	13.72%	13.72%	13.72%

The final step putting this all together is to take the wage rates corresponding to actual step movements officers made from July 1, 2017 through December 31, 2022 and compare those wage increases to CPI increases for the period July 1, 2017 through December 31, 2022. Those comparisons show the following (“% Diff” shaded in red are officers who are “under water” (“Under”) as the negotiated wage increases including step movements are below the inflationary increases as shown by the CPI and the “% Diff” shaded in blue are for officers “treading water” (“Treading”) as the negotiated wage increases including step movements are above the inflationary increases as shown by the CPI, but barely so):

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			Step	Movement	Examples			
			7/1/17-	12/31/22	(Full Year CPI Data)			
Start Date	Step Moves before 1/1/23	Start	End	Difference	Real % Increase	CPI Inc.	% Diff	Status
9/1/17	1-6	48,559	95,582	47,024	96.84%	17.58%	79.26%	
9/1/16	1-6	48,078	95,582	47,504	98.81%	17.58%	81.23%	
9/1/15	3-6	72,510	95,582	23,072	31.82%	17.58%	14.24%	
9/1/14	4-6	76,266	95,582	19,316	25.33%	17.58%	7.75%	
9/1/13	5-6	80,016	95,582	15,566	19.45%	17.58%	1.87%	
9/1/12	6-7	84,054	98,939	14,885	17.71%	17.58%	0.13%	Treading
9/1/11	6-7	84,054	98,939	14,885	17.71%	17.58%	0.13%	Treading
9/1/10	6-7	84,054	98,939	14,885	17.71%	17.58%	0.13%	Treading
9/1/09	6-7	84,054	98,939	14,885	17.71%	17.58%	0.13%	Treading
9/1/08	6-7	84,054	98,939	14,885	17.71%	17.58%	0.13%	Treading
9/1/07	6-8	84,054	102,371	18,317	21.79%	17.58%	4.21%	
9/1/06	7-8	87,006	102,371	15,365	17.66%	17.58%	0.08%	Treading
9/1/05	7-8	87,006	102,371	15,365	17.66%	17.58%	0.08%	Treading
9/1/04	7-8	87,006	102,371	15,365	17.66%	17.58%	0.08%	Treading
9/1/03	7-8	87,006	102,371	15,365	17.66%	17.58%	0.08%	Treading
9/1/02	7-9	87,006	106,158	19,152	22.01%	17.58%	4.43%	
9/1/01	8-9	90,024	106,158	16,134	17.92%	17.58%	0.34%	Treading
9/1/00	8-9	90,024	106,158	16,134	17.92%	17.58%	0.34%	Treading
9/1/99	8-9	90,024	106,158	16,134	17.92%	17.58%	0.34%	Treading
9/1/98	8-9	90,024	106,158	16,134	17.92%	17.58%	0.34%	Treading
9/1/97	8-10	90,024	109,235	19,211	21.34%	17.58%	3.76%	
9/1/96	9-10	93,354	109,235	15,881	17.01%	17.58%	-0.57%	Under
9/1/95	9-10	93,354	109,235	15,881	17.01%	17.58%	-0.57%	Under
9/1/94	9-10	93,354	109,235	15,881	17.01%	17.58%	-0.57%	Under
9/1/93	9-10	93,354	109,235	15,881	17.01%	17.58%	-0.57%	Under
9/1/92	9-10	93,354	109,235	15,881	17.01%	17.58%	-0.57%	Under
9/1/91	10-10	96,060	109,235	13,175	13.72%	17.58%	-3.86%	Under
RED CIRCLE	11-11	99,414	113,049	13,635	13.72%	17.58%	-3.86%	Under

The analysis used above will be applicable to all of the wage schedules (D-1, D-2, D-2A and D-3) as the percentages are applied, but to different starting wage rates (with insignificant differences in actual numbers).

What jumps out from this analysis of the actual wage rates is the adverse effect inflation has had on those officers who are nearing, at, or over a 20-year eligibility to

take their pensions and leave the Department. If employment can be obtained elsewhere while drawing a pension from their employment with the City, given the above tables, there is no monetary incentive for the senior officers to stay with the Department.

And while we do not yet have a full year’s data for 2023, those wage impact numbers become aggravated by recent partial-year data released by the BLS.

On June 13, 2023, the BLS released CPI increase data for Chicago updated through May 2023:³¹

Year	Dec	Jan	Feb	Mar	Apr	May
2022	274.577					
2023		276.982	277.978	280.279	282.423	283.415

Those increased numbers mean that since December 2022 and through May 2023, inflation has already increased by 3.22%.³² The negotiated wage increase for all of 2023 is 2.50%. Therefore, in the first five months of 2023 and since December 2022, the CPI increase has already far *exceeded* the 2.50% negotiated increase for *all* of 2023. That just makes the numbers worse for those officers who are not making significant step movements (or who are making no movements) along the salary schedule – *i.e.*, the more senior officers nearing, at, or past the 20-year mark who are the focus of Lodge’s retention bonus offer.

If only the period from January through May 2023 is examined, then inflation has already increased by 2.32% for that period.³³ Even if that measuring period is

³¹ <https://data.bls.gov/cgi-bin/surveymost?cu>

Again, select “Chicago, All Items” and then “Retrieve data”.

³² $283.415 - 274.577 = 8.838$. $8.838 / 274.577 = 0.03218$ (3.22%).

³³ $283.415 - 276.982 = 6.433$. $6.433 / 276.982 = 0.02322$ (2.32%).

used, it is a very reasonable conclusion that increased inflation will exceed the negotiated 2.50% wage increase for 2023 in the very near future (*i.e.*, most likely in June 2023) and far before the next year's wage increase scheduled for January 1, 2024.

Recent economic forecasts indicate that inflation probably will not be significantly controlled in the near future to alleviate the damage done in the first five months of 2023.

The target inflation rate sought by the Federal Reserve is 2.0% per year.³⁴ On May 12, 2023, the Federal Reserve Bank of Philadelphia released its Second Quarter 2023 Survey of Professional Forecasters.³⁵ According to the Survey of Professional Forecasters, for 2023 (Q4/Q4 Annual Averages), the CPI is projected to show an increase of 3.4% over 2022.³⁶ That 3.4% projected increase is an overly optimistic low number given that the current CPI data for December 2022 through May 2023 is already 3.22%. Further, that 3.4% projected increase is also 0.9% above the 2.50% wage increase negotiated by the parties for 2023.

³⁴ According to the Board of Governors of the Federal Reserve System:

Why does the Federal Reserve aim for inflation of 2 percent over the longer run?

The Federal Open Market Committee (FOMC) judges that inflation of 2 percent over the longer run, as measured by the annual change in the price index for personal consumption expenditures, is most consistent with the Federal Reserve's mandate for maximum employment and price stability. ...

https://www.federalreserve.gov/faqs/economy_14400.htm

³⁵ <https://www.philadelphiafed.org/surveys-and-data/real-time-data-research/spf-q2-2023>

This survey of professional forecasters is "... is the oldest quarterly survey of macroeconomic forecasts in the United States." *Id.*

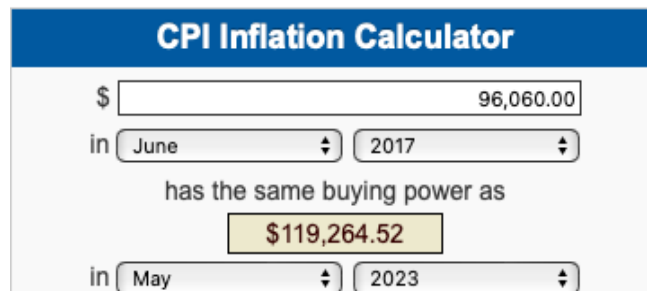
³⁶ *Id.* "Headline CPI" as opposed to "Core CPI" data are used for this analysis. *See Cook County Sheriff/County of Cook and AFSCME Council 31, L-MA-09-003, etc. (2010) at 25:*

... With respect to the CPI, the Survey [of Professional Forecasters] distinguishes between "Headline CPI" and "Core CPI" – the difference being that "Headline CPI" includes forecasts concerning prices in more volatile areas such as energy and food, while "Core CPI" does not. Because employees have to pay for energy and food, it appears that Headline CPI is more relevant for this discussion. ...

<https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/l-ma-09-003etal.pdf>

For this dispute, the lower than inflation wage increase of 2.50% for 2023 will just further drive down the negative real money impact of the negotiated wage increases thereby further adversely affecting officers nearing, at, or over a 20-year eligibility and becoming a stronger reason for those officers to take their pensions and leave the Department. Simply stated, if those economic forecasts are correct, the economic incentive for officers to leave will just be *growing* for the senior officers targeted by the Lodge’s retention bonus proposal.

There is yet another economic indicator showing that officers’ wages are declining. The BLS has a tool referred to as the “CPI Inflation Calculator”.³⁷ An example of how the calculator works is as follows for a D-1 officer who was topped out at Step 10 (\$96,060) (over 25 years) just prior to the July 1, 2017 increase under the current Agreement:



According to D-1 Salary Schedule, as of May 2023 that officer is now earning \$111,966, which is \$7,298 less than the CPI increase since the wages in this Agreement took effect July 1, 2017. Again, it is for this similar category of officers that the

³⁷ https://www.bls.gov/data/inflation_calculator.htm

Lodge’s retention bonus is focused.³⁸ Indeed, as demonstrated by the evidence from the show-cause hearing, since 2017 in the 20 years and over categories of officers, there has been an overall dramatic increasing outflow of those officers during the years of the Agreement beginning in 2017:³⁹

Count of Sworn Separations	Year of Retirement						Grand Total
	2017	2018	2019	2020	2021	2022	
Years of Service							
20-24	165	112	145	145	214	228	1009
25-29	237	113	191	264	338	277	1420
30-34	107	90	108	130	99	123	657
35-39	12	10	7	7	8	17	61
40-44	1						1
Grand Total	522	325	451	546	659	645	3148

There have been several delays in this proceeding and the overall finalizing of all terms for a new collective bargaining agreement to the one expired June 30, 2017. The most recent delay was due to the change of the administration of outgoing Mayor Lightfoot to the new administration of Mayor Johnson (who took office May 15, 2023). It is understandable that Mayor Johnson must have the opportunity to put his administration in place and to begin to implement his policies and the most-recent delay was required. However, for the above reasons and showings made by the Lodge in the proceedings thus far – and particularly in an effort to diminish the rate of the exodus of officers from the Department – notwithstanding the transition, I deemed it

³⁸ “The CPI inflation calculator uses the Consumer Price Index for All Urban Consumers (CPI-U) U.S. city average series for all items, not seasonally adjusted” and not the similar data for Chicago-Naperville-Elgin.
https://www.bls.gov/data/inflation_calculator.htm

Although the data sets are different (one local, the other national), the Inflation Calculator still gives a valid look at how inflation is affecting buying power in different years.

³⁹ City Exhibit 11 from the show-cause hearing extrapolated starting in 2017.

necessary to hold a show-cause hearing for the City to demonstrate why the Lodge's proposal for adoption of a retention bonus (officers who have served more than 20 years shall receive an annual retention bonus of \$2,000 payable on September 1 of each year of service after the completion of the 20th year of service) should not be expeditiously granted. As the number of officers in the Department is significantly decreasing and there is a demonstrated adverse impact on morale, those officers nearing or at retirement qualification will be needed in the upcoming months and years and they must be persuaded to stay.⁴⁰ How the Department chooses to use its personnel is up to the managerial prerogatives of the Department (consistent with the terms of the Agreement) as it implements Mayor Johnson's policies.

By itself, the retention bonus is a potentially costly proposal as stated by the City. And it may be that even this incentive will not prevent sufficient numbers of senior officers from leaving to have any significant impact. However, given the very substantial loss of officers over the past several years (11,548 overall (11.5%) and 1,541 (12.9%) in the bargaining unit); the impact that loss has had on officer morale and safety given the canceled RDOs and fewer available officers; the lessened ability of the Department to adequately provide services (*see* Chief McDermott's testimony quoted above and the updated increased numbers as of June 14, 2023) and most significantly, the adverse impact the outflow of officers has had on the safety of the public, it is fair to conclude that with respect to staffing at the current time, the system is broken and therefore in need of help to persuade senior officers not to leave when they make the 20-year mark. Putting aside that the City has saved money through

⁴⁰ The analysis obviously does not take into account overtime, officers who are promoted or assigned to higher-rated positions mid-contract, acting up, etc. This is not intended as a specific officer-by-officer analysis. The analysis is only a general look at how the wages and step movements are keeping pace with inflationary pressures and what, if anything, might be done to help persuade those contemplating taking their pensions and leaving from doing so.

the diminishing number of officers in terms of not having to pay of salaries and benefits to those who have left (or will leave) and have not been replaced on a one-for-one basis, the cost figure is really secondary to the safety issues for the public and the officers.

Hiring new officers to increase staffing on the front end is the City's obligation through its recruitment efforts and is not controlled by this process. But efforts to dissuade existing officers from leaving is proper for this process. A retention bonus for the senior officers as sought by the Lodge is therefore reasonable.

With respect to the City's original position that "[a]ny further modification should be part of bargaining, not interest arbitration", the simple answer is that until a few days ago and after I ruled that there would be a retention bonus, the parties were not able to come to terms on something along the lines of the Lodge's retention bonus proposal. Again, according to the City, for the Phase II issues in dispute, the parties exchanged proposals in late 2021 and had six formal bargaining sessions February, May, June, July and November 2022 and after reaching impasse, the parties engaged in seven mediation sessions in August, September and October 2022.⁴¹ If the parties could not come to agreement after all of those efforts until a few days ago (a partial agreement, really, as the City's current proposal places more restrictions on receipt of the bonus than does the Lodge's proposal) and until I ruled at the show-cause hearing, there was no reason to believe that further negotiations would have changed the result. Therefore, there is no need for further delay on this important issue. If the parties have not been able to completely resolve the issue through negotiations and mediation thus far and on their own, then interest arbitration is the only way to resolve this disputed issue.

⁴¹ City Pre-Hearing Brief at 3.

There is no requirement that “all” of the Section 14(h) factors be considered by an interest arbitrator – only those factors “as applicable” are relevant. *See State of Illinois and AFSCME Council 31 (Vaccine Mandate Interest Arbitration Interim Opinion and Award, S-MA-22-121)*, *supra* at 18-19:⁴²

All of the factors in Section 14(h) do not have to be applied. Only those factors “as applicable” are to be applied. If it were intended that all Section 14(h) factors be considered in every case, the words “as applicable” would not appear in Section 14(h).

See also, City of Decatur and International Association of Firefighters, Local 505, S-MA-86-029 (Eglit, 1986) at 3-4 [footnote omitted]:⁴³

The statute does not require that all factors be addressed, but only those which are “applicable.” Moreover, the statute makes no effort to rank these factors in terms of their significance, and so it is for the panel to make the determination as to which factors bear most heavily in this particular dispute.

The above discussion shows that the IPLRA’s “factors, as applicable” provided in Sections 14(h)(3) (“[t]he interests and welfare of the public”) and 14(h)(5) (“[t]he average consumer prices for goods and services, commonly known as the cost of living”) drive the result on this issue in the Lodge’s favor.

The Lodge’s proposal for the \$2,000 retention bonus (now agreed to in amount by the City) is therefore justified and has been adopted.

⁴² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-22-121.pdf>

⁴³ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-86-029.pdf>

B. Arbitration Of Grievances Protesting Disciplinary Actions In Excess Of 365 Days And Separations (Dismissals)

1. The Merits Of The Lodge's Position

Presently, certain grievances protesting discipline of officers are decided by arbitrators.⁴⁴ However, discipline for suspensions greater than 365 days and separations (dismissals) are decided by the Chicago Police Board based on charges filed by the Superintendent of Police with the Police Board.⁴⁵

“The Chicago Police Board is an independent civilian body that decides disciplinary cases involving Chicago police officers ... when the Superintendent of Police files charges to discharge a sworn officer from the Chicago Police Department.”⁴⁶

“The members of the Police Board are Chicago residents appointed by the Mayor with the advice and consent of the City Council.”⁴⁷

The Lodge seeks the ability to have the option to have grievances protesting discipline given to officers greater than 365-day suspensions and separations (dismissals) decided by an arbitrator selected by the parties in final and binding arbitration *or* to allow those disciplinary actions to be decided by the Police Board – a board appointed by the Mayor.⁴⁸

⁴⁴ 2012-2017 Agreement at Sections 9.6 through 9.8.

⁴⁵ Under Section 8.8 of the Agreement, the Superintendent's has the authority to suspend officers up to 365 days. *See also*, City Reply Brief at 4-6 outlining the current process for suspensions greater than 365 days and separations.

Further, Section 9.1 of the Agreement (Grievance Procedure – Definition and Scope) provides that “[t]he separation of an Officer from service is cognizable only before the Police Board and shall not be cognizable under this procedure” Appendix Q of the Agreement provides for procedures for “... arbitrations of grievances challenging suspensions of eleven (11) to three hundred sixty-five (365) days.” *See also*, The Chicago Police Board's “Overview Of The Process For Deciding Police Disciplinary Cases”:

<https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/OverviewDiscipline20210401.pdf>

⁴⁶ <https://www.chicago.gov/city/en/depts/cpb.html>

⁴⁷ https://www.chicago.gov/city/en/depts/cpb/auto_generated/cpb_leadership.html

⁴⁸ Lodge Final Offers at p. 15-19; Lodge Pre-Hearing Brief at 48.

The initial portion of the City's proposal was to keep the Police Board in place to hear and decide all suspensions in excess of 365 days and separations.⁴⁹ However, the City offered that after that process is concluded and an officer is separated or subject to a suspension for greater than one year, then the Lodge may take the officer's case to an arbitrator; the arbitrator must be a resident of Cook County and undergo training required by Police Board members; the arbitrator would be provided with the record compiled before the Police Board whose factual findings are to be accepted as *prima facie* correct; the arbitrator for good cause can take additional testimony or evidence (but not a *de novo* hearing); the arbitrator must give deference to the Police Board's determination; and the Police Board's determination can be rejected provided that the arbitrator gives a detailed explanation for that rejection.⁵⁰

Section 8 of the IPLRA provides the following [emphasis added]:

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

Because of Section 8 of the IPLRA, for this arbitrator, the issue is long-settled going back to 1990 as I have repeatedly held that if a party requests arbitration of discipline in an interest arbitration, as a matter of plain statutory language in Section 8 of the IPLRA, that request *must* be adopted and that adoption is required even if boards of police commissioners deciding disciplinary matters have long been part of the parties' collective bargaining agreements or relationships. Further, whether

⁴⁹ City Final Offer No. 18 and at Appendix B.

⁵⁰ *Id.*; City Pre-Hearing Brief at 20-22, 50-51; City Reply Brief at 4-9.

those boards functioned well or did not function at all are just not relevant considerations under Section 8's statutory mandate requiring final and binding arbitration. That is because the language in Section 8 that collective bargaining agreements "... shall contain a grievance resolution procedure which shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" leaves nothing to discretion. *See Village of Bartlett and Metropolitan Alliance of Police*, S-MA-21-145 (Benn, 2023) at 6-10;⁵¹ *Village of River Forest and FOP*, S-MA-19-132 (Benn, 2021) at 4-8;⁵² *Village of Maywood and Illinois Council of Police*, S-MA-16-119 (Benn, 2017) at 2;⁵³ *Village of Lansing and FOP*, S-MA-04-240 (Benn, 2007) at 16-21;⁵⁴ *City of Highland Park and Teamsters Local 714*, S-MA-219 (Benn, 1999) at 9-12;⁵⁵ *City of Springfield and PBPA, Unit 5*, S-MA-89-74 (Benn, 1990) at 1-5.⁵⁶

Other arbitrators have reached similar results. *See Will County Board and AFSCME*, S-MA-009 (Nathan, 1988) at 56, 64-65;⁵⁷ *City of Markham and Teamsters Local 726*, S-MA-89-39 (Larney, 1989);⁵⁸ *Calumet City and FOP*, S-MA-99-128 (Briggs, 2000) at 13-16 (2000);⁵⁹ *City of Elgin and PBPA*, S-MA-00-102 (Goldstein, 2001) at 66-72;⁶⁰ *City of Markham and Teamsters Local 726*, S-MA-01-232 (Meyers,

⁵¹ https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/S-MA-21-145_arb_award.pdf

⁵² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-19-132-arb-award.pdf>

⁵³ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-16-119-02arbaward.pdf>

⁵⁴ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-04-240.pdf>

⁵⁵ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-98-219.pdf>

⁵⁶ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-074.pdf>

⁵⁷ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-88-009.pdf>

⁵⁸ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-39.pdf>

⁵⁹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-99-128.pdf>

⁶⁰ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-00-102.pdf>

2003) at 14-15;⁶¹ *Village of Shorewood and FOP*, S-MA-07-199 (Wolff, 2008);⁶² *Village of Western Springs and MAP*, S-MA-09-99 (Meyers, 2010) at 63-66;⁶³ *Village of Montgomery and MAP*, S-MA-10-156 (Camden, 2011) at 26;⁶⁴ *Village of Maryville and FOP*, S-MA-10-228 (Hill, 2011) at 10-12;⁶⁵ *Village of Oakbrook and FOP*, S-MA-09-017 (McAlpin, 2011) at 13-19;⁶⁶ *Village of Bolingbrook and MAP*, FMCS No. 101222-01003-A (Newman, 2011) at 9-10.⁶⁷

The fact that the Lodge is seeking an option for arbitration or continuing to have the Police Board decide these specific disciplinary actions as opposed to having only arbitration does not change the requirement that if a party seeks arbitration of discipline grievances, that party is entitled to have that method of dispute resolution placed into its collective bargaining agreement including the option because by making the request for arbitration when it did not exist before means, under Section 8 of the IPLRA, that the parties no longer “mutually agreed otherwise” to not have arbitration of disputes. The following cases imposed arbitration where similar options (arbitration or police board decision) were requested. *See e.g., River Forest, supra* at 3-4; *Village of Maywood, supra* at 2; *Village of Lansing, supra* at 17-18; *City of Highland Park, supra* at 9-10; *City of Springfield, supra* at 1-2; *Will County Board, supra* at 15, 44, 65-66; *City of Markham (Larney award), supra* at 5, 19; *Calumet City, supra* at 18; *City of Markham (Meyers award), supra*; *Village of Shorewood, supra*; *Village*

⁶¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-01-232.pdf>

⁶² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-07-199.pdf>

⁶³ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-019.pdf>

⁶⁴ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-156.pdf>

⁶⁵ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-228.pdf>

⁶⁶ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-017.pdf>

⁶⁷ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/101222-01003-a.pdf>

of Western Springs, supra at 63; *Village of Maryville, supra* at 10-12; *Village of Bolingbrook, supra* at 10, footnote 2.

The Lodge's request to have review of disciplinary actions submitted to arbitration is the policy of this state. Section 2 of the IPLRA (of which I can take note) clearly states:

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

The requirement for arbitration of disputes (which includes review of discipline) for employees involved in this dispute as found in Section 8 of the IPLRA is clear. And Section 2 of the IPLRA is similarly clear that "... all collective bargaining disputes involving persons designated by the Board as performing essential services and those persons defined herein as security employees shall be submitted to impartial arbitrators, who shall be authorized to issue awards in order to resolve such disputes." Under Section 2 of the IPLRA, that requirement "... is the public policy of the State of Illinois ... necessary to afford an alternate, expeditious, equitable and effective procedure for the resolution of labor disputes subject to approval procedures mandated by this Act." If there is any doubt about the Lodge's proposal to have in the Agreement the ability to have arbitrators issue awards in disputes concerning

discipline of the type at issue, Section 2's requirement "... for such awards shall be liberally construed" removes any doubt.

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

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

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

Therefore, Section 8 of the IPLRA and the long-developed case authority cited above clearly mandates adoption of the Lodge's proposal for an option for arbitration of discipline for suspensions greater than 365 days and separations. Section 2 of the IPLRA making final and binding arbitration the public policy of the state further underscores that finding.

The City argues that "[t]he public policy, as far as we would urge, is the public policy of the consent decree in favor of the incorporation of the police board into our agreement."⁶⁸ I disagree. As discussed *supra* at II, paragraph 711 of the Consent Decree carves out collective bargaining agreements and interest arbitrations such as

⁶⁸ Show-Cause Tr. at 15; City Show-Cause Hearing Submission at 2.

this proceeding formulating such agreements from coverage by the Consent Decree. And Section 2 the IPLRA of which I can take note along with Section 8 of the IPLRA could not be more clearer making final and binding arbitration the public policy of the state. Moreover, the IPLRA states the further public policy in Section 15(b) – the Supremacy Clause – of which I can take note which also serves to defeat the City’s public policy arguments:

Sec. 15. Act Takes Precedence.

* * *

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

With respect to the City’s arguments that “... the public policy of the consent decree in favor of the incorporation of the police board into our agreement”, the carve-out in Paragraph 711 of the Consent Decree for collective bargaining agreements and interest arbitrations such as this does provide exceptions, specifically, “unless such terms violate the U.S. Constitution, Illinois law or public policy ...” This Board’s function is to establish terms of the parties’ collective bargaining agreement pursuant to the IPLRA as modified by parties’ Agreement in Section 28.3(B)(11). For the issues discussed in this Interim Award, a majority of this Board has done that. While Sections 8 and 2 of the IPLRA are clear, whether the terms set by this Interim Award relying upon the statutory mandate in the IPLRA actually “violate the U.S. Constitution, Illinois law or public policy” under Paragraph 711 of the Consent Decree is a question that is really not for this Board to decide. That question under the Consent

Decree is ultimately for the courts. *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29, 43 (1987) (“... ‘the question of public policy is ultimately one for resolution by the courts’” [citing *W.R. Grace & Co v. Rubber Workers*, 461 U.S. 757, 766 (1983)]); *Alexander v. Gardner-Denver, Co.*, 415 U.S. 36, 57 (1974) (“... the resolution of statutory or constitutional issues is a primary responsibility of courts ...”); *AFSCME v. Department of Central Management Services*, 671 N.E.2d 668, 678 (1996) (“Questions of public policy, of course, are ultimately left for resolution by the courts.”)⁶⁹.

Putting aside that the policy of the State of Illinois is for final and binding arbitration and is the same as the federal policy (*Warrior & Gulf Navigation Co.*, *supra*, 363 U.S. at 578), given what this Board can consider, the City’s arguments simply fall short and the Lodge’s proposal for the option for arbitration for grievances protesting suspensions of greater than 365 days and separations must be adopted. Ultimately, the federal court has the final say – but the answer appears obvious that the federal court must defer to the State of Illinois policy requiring final and binding arbitration as required by Sections 8 and 2 of the IPLRA and the very long line of arbitral authority applying that requirement to disputes like this.

The City’s proposal to maintain cases currently as heard by the Police Board, but to add a step allowing the Lodge to take an officer’s case to an arbitrator who reviews the Police Board’s factual findings (which findings must be accepted as *prima facie* correct) with arbitrator being allowed to take additional testimony or evidence (which is not a *de novo* hearing) and then requiring that the arbitrator must give

⁶⁹ At the show-cause hearing, I made that clear to the parties (Show-Cause Hearing Tr. at 22):
ARBITRATOR BENN: ... Now, there are other issues that are tucked away in Paragraph 711 of the consent decree that say, of course, it [the collective bargaining agreement] can't violate federal law, public policy, the Constitution, et cetera. That's not for me to decide, that's for the courts. And you know how it's drawn the line of where arbitrators -- as far as arbitrators can go.

deference to the Police Board’s determination which can be rejected only if the arbitrator can give a detailed explanation why is simply not “final and binding arbitration of disputes concerning the administration or interpretation of the agreement” as *required* by Section 8 of the IPLRA. The City proposes what can best be characterized as a very limited review of Police Board decisions by arbitrators. The Lodge proposes the statutory requirement in Section 8 of the IPLRA for final and binding arbitration. The Lodge’s proposal must therefore be adopted.

Because Section 8 of the IPLRA mandates selection of arbitration of the kind of discipline involved in this case, there is no need to look at whether this issue should be analyzed under the more typical methods of whether a *status quo* is being changed by one or both parties along with the associated burdens placed on parties when such changes are sought (showing that a system is broken if one party seeks to change a *status quo* or choosing the more reasonable offer if both parties seek to do so – see discussion *supra* at III. See also, *Village of River Forest, supra* at 10-11 [quoting *City of Springfield, supra*]:⁷⁰

However, with Section 8’s mandate for inclusion of arbitration in the Agreement driving this dispute, there is no need for the Union to show that the existing condition is broken. See *City of Springfield, supra* at 4:⁷¹

... While ordinarily the inability of a party seeking to make the change to demonstrate need for the proposed change carries great weight ... the statutory requirement for inclusion of arbitration supersedes that kind of consideration. ...

* * *

If the IPLRA dictated ... what must be included (here, arbitration, if requested), then there is no need for a party to “show me it’s

⁷⁰ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-19-132-arb-award.pdf>

⁷¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-89-074.pdf>

broken” to obtain the change sought. The statute leaves me no choice.

Further *see*, *Village of Lansing, supra* at 17-18 (an option for arbitration when the *status quo* was to have a board of fire and police commissioners decide disciplinary actions “... is not an issue ... which is subject to the traditional examination of burdens requiring the party seeking the change to demonstrate that the existing condition is broken and in need of repair ... [t]he resolution [adopting arbitration] is required by the [IPLRA]”).⁷²

Section 8 of the IPLRA therefore requires granting the Lodge’s proposal for extending arbitration as an option for grievances over more severe disciplinary actions such as suspensions greater than 365 days and separations. However, to give the City the benefit of the doubt, I will also look at the issue using the analysis associated with changes to a *status quo* condition as in a typical interest arbitration.

If that analysis is used, here, both parties in this case are seeking to change the *status quo* concerning cases that now can only be heard by the Police Board – the Lodge seeking final and binding arbitration by an arbitrator with the option of advancing a case to arbitration or the Police Board and the City offering what can at most be characterized as a very limited review procedure by an arbitrator of a Police Board decision. Under the analysis used for typical changes to a *status quo*, where both parties seek to change the *status quo*, the more reasonable offer is selected. *See* discussion *supra* at III.

Using that mutual changing of the *status quo* analysis, final and binding arbitration as offered by the Lodge as an option – the requirement in Section 8 of the IPLRA and the policy of this state – is more reasonable than the limited review procedure of Police Board decisions by arbitrators offered by the City – a review

⁷² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-04-240.pdf>

procedure that the City proposes that “... the Arbitrator to give deference to the Police Board’s determination and to the traditional standards as articulated by the Police Board in its previous written (and published) decisions.”⁷³ The City’s proposal for very limited review by an arbitrator with a requirement that great deference must be given to a Police Board’s decision is, in no manner, “final and binding arbitration” to be decided *by an arbitrator*.

Further, the City’s proposal for limited review by an arbitrator of a Police Board’s decision turns the burden of proof in discipline cases on its head and shifts that traditional burden from the City to the Lodge. In this regard, the City’s proposal states that after a Police Board decision is rendered on a suspension in excess of 365 days or a separation and the City’s version of arbitration is invoked [emphasis added]:⁷⁴

- e. the issue before the arbitrator shall be *whether the Lodge has demonstrated*, by clear and convincing evidence, that the Board’s decision was erroneous with respect to an issue of fact or the existence of cause for separation. ...

In arbitration, the burden of proof in a discipline case is on the employer and *not* on the union. *See The Common Law of the Workplace* (BNA, 2nd ed., 2005), 54-55, 190:

In a discipline case the employer best knows why it penalized an employee, often with grave repercussions for the individual. For these reasons the burden of proof in such cases traditionally has been placed on the employer.

* * *

⁷³ City Reply Brief at 8.

⁷⁴ City Final Offer at Appendix B, Paragraph 2e).

The employer bears the burden of proving just cause for discipline. That includes proof that the level of discipline imposed was appropriate. ...

See also, How Arbitration Works, supra at 905 [footnotes omitted]:

There are two areas of proof in the arbitration of discharge and discipline cases. The first involves proof of wrongdoing; the second, assuming the guilt of wrongdoing is established and the arbitrator is empowered to modify penalties, concerns the question of whether the punishment assessed by management should be upheld or modified. ...

... [T]he burden generally is held to be on the employer to prove guilt of wrongdoing

The City's proposal to shift the burden in discipline cases away from the City and to place that burden on the Lodge and then to limit the arbitrator's review authority as set forth above, is unreasonable. For arbitration of discipline, the Lodge seeks that application of the long-held and traditional burdens be applied.

Because of I am not bound by either party's final offer (*see* discussion *supra* at III), I have also given consideration to an alternative proposition for *full* final and binding arbitration but only *after* a Police Board determination (which can be characterized as "Police Board 'and' arbitration" as opposed to "Police Board 'or' arbitration") rather than the review procedure as formally proposed by the City. If the analysis used is whether that offer is more reasonable than the Lodge's proposal as opposed to the statutory Section 8 analysis with both parties therefore seeking a change to the *status quo*, the Lodge's offer for the option of final and binding arbitration without Police Board participation in the process is the more reasonable. To have this "Police Board 'and' arbitration" process is not as reasonable as the Lodge's proposal for an option. Adopting such a proposal would amount to a second *de novo* proceeding (a full arbitration) after a Police Board proceeding and would add substantial time

(perhaps years) for the ultimate resolution of a discipline matter. That type of cumbersome and duplicative result runs contrary to the stated policy in Section 2 of the IPLRA that “[i]t is the public policy of the State of Illinois ... to afford ... *expeditious* ... procedure for the resolution of labor disputes ...” [emphasis added].

Therefore, even if the analysis for changes to a *status quo* condition where both parties seek to make that change is used, the Lodge’s proposal is the more reasonable and must be adopted. However, in the end, it is the statutory mandate in Section 8 of the IPLRA requiring final and binding arbitration that drives resolution of this issue.⁷⁵

In an effort to distinguish Chicago from the many municipalities and units of government who have had similar disputes ruled upon with the requirement of arbitration of discipline, the City makes another argument [footnotes omitted]:⁷⁶

We are cognizant of the fact that one could assemble a string cite of interest arbitration awards mandating an arbitration option with respect to discipline. But those municipalities all have one thing in common: they are not even remotely comparable to the

⁷⁵ The City reliance on *Nolan et al. v. City of Chicago, et al.*, Case No. 1-00-1196 (1st Dist. 2001) (City Reply Brief at 7; City Reply Brief Exhibit 48) does not change the result.

In *Nolan* after evidentiary hearings were held before the Police Board and the Police Board imposed suspensions on two officers, the Lodge filed a grievance under the then-existing collective bargaining agreement and the Lodge “demanded that the grievance be arbitrated as provided in the collective bargaining agreement.” *Id.* at 3. After the City refused to arbitrate the dispute, the Lodge filed suit to compel arbitration under the collective bargaining agreement. The appellate court upheld the circuit court’s dismissal of the Lodge’s complaint to compel arbitration on *res judicata* grounds that the Police Board’s action was final.

Nolan was a case involving whether the Lodge’s right to arbitrate after a Police Board decision existed under the terms of the parties’ collective bargaining agreement – *i.e.*, a “grievance” arbitration. This matter is an “interest” arbitration – *i.e.*, a proceeding to determine whether that right for arbitration for the type of disciplinary actions involved is to be placed into the Agreement as a term of the Agreement. Therefore, *Nolan* involved a dispute over whether the terms of the Agreement were violated. This proceeding deals with the formulation of the Agreement and whether that claimed right should explicitly be put into the Agreement. Because *Nolan* involved a question over whether the Agreement was violated as opposed to formulation of the Agreement which is the dispute here, *Nolan* is not applicable to this case.

⁷⁶ City’s Response to Show Cause Order at 7.

City of Chicago in terms of population, complexity, or any other relevant metric. We read the Neutral Chair's recent (March 16, 2023) award in Village of Bartlett and Metropolitan Alliance of Police, S-MA-21-145 (cited at page 5 of the May 5 Order). According to the Village's website, Bartlett consisted of 41,105 souls as of April 2020. That is less than half the size of one of the City's 22 Police Districts. In response to the anticipated objection that Section 8 of the IPLRA does not differentiate Chicago from other public employers, we suggest that an Illinois court reviewing a challenge to an interest arbitration award on public policy grounds absolutely would take into consideration the appropriateness of the Lodge's proposal given the gaping differences between Chicago and other Illinois municipalities. Candidly, any argument along the lines of "if it's good enough for Bartlett, it's good enough for Chicago" is not likely to be well-received by a reviewing court. It is commonplace to recognize the obvious fact that Chicago is different from the rest of the state, and with respect to a broad range of matters. Attached as Exhibit 2 is an abbreviated list of Illinois statutes distinguishing Chicago from other municipalities in employment-related subjects. We came up with this list after a cursory review of Illinois statutes. A complete list of statutes would be substantially longer, but this document suffices to make the point. ...

This argument effectively that "Chicago is different because we are bigger" cannot be persuasive to avoid application of the clear provisions found in the IPLRA. Section 8 mandating final and binding arbitration and Section 2 of the IPLRA stating that final and binding arbitration is the public policy of the state do not differentiate between the state's one very big City and rest of the municipalities and units of government in the state that have had final and binding arbitration imposed through interest arbitration. There are no exceptions based on size to the mandate and policy statements found in those IPLRA sections.

This argument made by the City really brings to mind former President Trump's arguments to the 11th Circuit Court of Appeals that the law should not be applied to him because of who he once was. That argument was (to be kind) rejected.

See *Donald J. Trump v. United States of America*, No. 22-13005 (11th Cir. December 1, 2022), slip op. at 20 [emphasis added]:⁷⁷

To create a special exception here would defy our Nation’s fundamental principle that *our law applies “to all, without regard to numbers, wealth, or rank.”* *State of Georgia v. Brailsford*, 3 U.S. (3 Dall.) 1, 4 (1794).

The City is big, but Sections 8 and 2 of the IPLRA apply to the City to the same extent those sections apply to the rest of the smaller entities in this state. These days, much is said about the “rule of law.” This determination in this case follows that rule.

The Lodge’s position is therefore adopted.

2. The Arbitration Process

I recognize that by imposing arbitration as an option and thus limiting the Police Board’s ability to determine suspensions in excess of 365 days and separations (dismissals) to only those cases that are brought to the Police Board after exercise of that option may be a sea change. However, for reasons I have just explained, imposition of that option is required in this case – by statute and long-existing precedent.

But that “sea change” is limited to only those cases where the option is exercised to have grievances protesting disciplinary matters covered by this Interim Award (discipline in excess of suspensions for 365 days and separations) heard by an arbitrator as opposed to having the charges of misconduct being decided by the Police Board. Cases where the option to have grievances protesting charged disciplinary actions heard in arbitration is not exercised will allow the Police Board to continue to make disciplinary determinations as it has in the past. And the Police Board will

⁷⁷ <https://media.ca11.uscourts.gov/opinions/pub/files/202213005.pdf>

continue to perform its other functions not inconsistent with the determinations made in this case including ruling on disagreements between the Chief Administrator of the Civilian Office of Police Accountability and the Superintendent of Police; holding of public meetings to provide members of the public an opportunity to present questions and comments; deciding appeals by applicants for police officer positions who have been disqualified due to results of background checks and adopting rules and regulations for governance of the Police Department.⁷⁸

Nevertheless, there may well be criticism in the public arena from the statutorily required result as I have applied Section 8 of the IPLRA and taken away certain authority from the Police Board and placed that authority in the arbitration process as the law requires. I also recognize that in the past, arbitration of police discipline cases has come under rather intense public criticism.

For example, this is an opinion piece from the New York Times (October 3, 2020):⁷⁹

To Hold Police Accountable, Ax the Arbitrators

Communities should have the power to fire abusive officers. But the power often rests with an obscure group of unelected labor arbitrators.

* * *

This practice should end. ...

And there are others. See e.g., “Fired/Rehired”, from The Washington Post (August 3, 2017):⁸⁰

⁷⁸ <https://www.chicago.gov/city/en/depts/cpb.html>

⁷⁹ <https://www.nytimes.com/2020/10/03/opinion/sunday/police-arbitration-reform-unions.html>

⁸⁰ https://www.washingtonpost.com/graphics/2017/investigations/police-fired-rehired/?tid=lk_inline_manual_25

Police chiefs are often forced to put officers fired for misconduct back on the streets.

* * *

Most of the officers regained their jobs when police chiefs were overruled by arbitrators, typically lawyers hired to review the process. In many cases, the underlying misconduct was undisputed, but arbitrators often concluded that the firings were unjustified because departments had been too harsh, missed deadlines, lacked sufficient evidence or failed to interview witnesses.

An underlying foundation for these types articles is academic research concluding that arbitrators make their decisions “in order to obtain work in the future ... [and f]rom an accountability perspective, this mindset can be highly problematic if it results in arbitrators feeling compelled to frequently reduce the termination of unfit officers to mere suspension.”⁸¹ Similarly, there is the perception that “... arbitrators ‘split the baby’”⁸² And this “split the baby” mindset of arbitrators is what the public is fed through certain academic research which makes leaps to conclusions that because a disciplinary action is reduced by an arbitrator, it must be because the arbitrator is timid and fearful of not being selected for future cases and therefore will “split the baby” to assure future employment opportunities. This is the kind of conclusion from some academic “research” that is used to condemn arbitration as a dispute resolution process in police discipline cases.

⁸¹ Rushin, “Police Disciplinary Appeals”, 167 University of Pennsylvania Law Review, No. 3 (2019) 545, 576

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

⁸² Iris, “Police Discipline in Chicago: Arbitration or Arbitrary”, 89 J. Cim. L. & Criminology (1998) 215, 235

<https://scholarlycommons.law.northwestern.edu/jclc/vol89/iss1/4/>

Iris’ work is also cited in, Rushin, “Police Arbitration”, 74 Vanderbilt Law Review 1023, 1029 (2021) at footnote 38, “explaining that the ‘selection of who will serve as an arbitrator depends upon the willingness of both parties to a dispute . . . to accept that individual as an arbitrator’ and how the selection method may result in arbitrators frequently choosing to ‘split the baby’”.

<https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=4747&context=vlr>

Like judges, arbitrators do not discuss their decisions in the public arena (except perhaps, at professional conferences). And I have no intention to debate the merits of news reports criticizing police unions in the context of police reform. The researchers write based on what their research finds and the reporters report in a similar fashion.

Arbitrators do not have a megaphone to inform the public how the arbitration process really works. We work by ourselves with our obligations to the parties who engage our services; the evidence that is presented; the language of the parties' negotiated contracts; precedent developed by the parties under their respective contracts; and the principles of arbitration. As I have done in this case, arbitrators' rationales for their conclusions are explained in their written decisions.

My problem after reading these kinds of articles and research is that the actual arbitration process is, in my opinion, not really understood by the public (and, to significant degree by the statistically-oriented academics) and therefore, from the perspective of one who has long been in the trenches, the process is often not accurately reported.

Because the determination on this issue may cause public scrutiny (no doubt, from some, potentially quite adverse), I need to step away from my desire for anonymity and take the time to explain why criticism of arbitration is simply not warranted to the extent now found in the public arena. There are a number of reasons for me to do so.

The first reason will be my experience in the arbitration process. And please understand, the following is not done out of an inflated sense of ego (those who have worked with me will attest to that), but is done to show that I have long been deeply involved in the arbitration process which allows me to discuss the basis for my conclusion that the criticism of arbitration now being used as a perceived impediment

for efforts to achieve police reform are simply not warranted to the extent now found in the public arena.

I have been a labor lawyer going on 50 years (since 1973) – some 37 years of which (since 1986) have been spent serving as an arbitrator. During those years as an arbitrator, I have issued over 6,500 decisions in the public and private sectors as well as in the railroad industry and professional sports. I am a member of the National Academy of Arbitrators and a Fellow in the College of Labor and Employment Lawyers.

My experience with police discipline cases is extensive as well as in interest arbitrations (having written well over 100 interest arbitration awards – far more than any other arbitrator on the Illinois Public Labor Relations Board’s panel of arbitrators). Those interest arbitration awards involving police officers, firefighters and correctional officers go back to 1989 and are collected at the State of Illinois Labor Relations Board’s website.⁸³

I have been involved as the arbitrator (and fact-finder) in quite a few very high-profile cases involving City and State of Illinois and their employees. A simple Google search will reveal some of those and I need not dwell on all of them. And my decisions have received varying critical reviews.

As an example, former Mayor Rahm Emanuel declared that my recommendation as a fact-finder for averting a teacher’s strike in 2012 was “not tethered to reality”⁸⁴ with the Chicago Tribune editorial board joining in with “Edwin Benn ... isn’t living on the same planet as the rest of us.”⁸⁵ However, after there was a seven-day strike and the smoke cleared, the result was that the contract that was agreed to on

⁸³ <https://ilrb.illinois.gov/arbitration.html>

⁸⁴ <https://abc7chicago.com/archive/8739612/>

⁸⁵ <https://www.chicagotribune.com/opinion/ct-xpm-2012-07-17-ct-edit-schools-0717-jm-20120717-story.html>

items over which I had jurisdiction to rule as a fact-finder almost precisely mirrored the contract that I had recommended before the strike – the main difference being that the contract that was agreed to was more costly to the public than the one I had recommended.⁸⁶

And there are others, such as the more serious and threatening piece from the Chicago Tribune Editorial Board which apparently did not agree with one of my decisions causing this “opinion” – “As for the arbitrator: Would it be too draconian to shout, “Off with his head”?”⁸⁷ That was a new low in journalism – a fatwah by a newspaper against an arbitrator. Apparently, the Tribune forgot that there are some very unstable people out there who take what they read as literal encouragement to act. And again, there are more. These kinds of criticisms have gone on for a long time.

Contrast that with academic research not driven by statistics looking at outcomes in arbitrations (*i.e.*, the percentages of time a party prevails in a police discipline arbitration) with work of academics focused on how the process *actually* works. See *e.g.*, Ashby and Bruno, “A Fight for the Soul of Public Education, The Story of the Chicago Teachers Strike” (Cornell University Press, 2016), where, in great detail, the authors dove into the history, dynamics and reasons for the labor dispute. With respect to my part in that labor dispute as the fact-finder selected by the parties, at page 155 the authors discussed my reputation as being “... a highly respected arbitrator who had resolved many public-sector contractual disputes over decades ...

⁸⁶ As noted by one very distinguished observer of my involvement in the fact-finding process before the teachers strike, “[i]n retrospect this process would have been considerably easier if we had just done what Ed said to do and we wouldn’t have had a strike.” “Lessons Learned: A Look At The 2012 Chicago Teachers Strike”, Proceedings of the Sixty-Seventh Annual Meeting National Academy of Arbitrators (BNA, 2015) at 186. The Fact-Finder’s Report from that dispute is posted at: <https://elrb.illinois.gov/content/dam/soi/en/web/elrb/documents/Chicago-Public-Schools-CTU-Fact-Finding-Report.pdf>

⁸⁷ <https://www.chicagotribune.com/opinion/ct-xpm-2012-06-07-ct-edit-fire-0607-jm-20120607-story.html>

[t]here was no arbitrator in the state who had written more rulings than Benn, and he had gained a degree of public recognition unusual for the profession ... [a]s arbitrators go, he was the industry's equivalent of a rock star ... fearless and scrupulous in applying the principles of arbitration to the cases he was selected to hear.”⁸⁸ Further, see *Murray v. Little, et al.*, No. 13 C 2496 (N.D.Ill. 2015) discussing my “... carefully reasoned opinion .. denying plaintiff's grievance ... [t]he arbitrator thoroughly reviewed the conflicting testimony ... [and] made a well-reasoned credibility determination regarding who was telling the truth ... [with a] careful credibility assessment ...”⁸⁹ That is not “splitting the baby”, but is reflective of an arbitrator “calling balls and strikes”.

But after all of those remarkably critical excoriations, here I am – again. These kinds of attacks against me and the arbitration process have gone on for decades. But this is my third go-round with these parties as the Neutral Chair of their Dispute Resolution Board tasked with setting the terms of their collective bargaining agreement. I previously performed that task for the parties' 2003-2007 Agreement – *City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7* (2005)⁹⁰ as well as the parties' 2007-2012 Agreement – *City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7*, Arb. Ref. 09.281 (2010).⁹¹

Based on the attacks on my work and increased vitriol against arbitration in general, one could reasonably ask why would the parties choose me – an individual who is “not tethered to reality” and “... isn't living on the same planet as the rest of us” but instead should be treated with “Off with his head” – to perform this task

⁸⁸ <https://www.amazon.com/Fight-Soul-Public-Education-Teachers/dp/1501704915>

⁸⁹ https://scholar.google.com/scholar_case?case=5404072070005540094&q=Murray+v.+Little&hl=en&as_sdt=400006

⁹⁰ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/l-ma-03-005.pdf>

⁹¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/chicagofoplodgeno7-2010.pdf>

again (for the third time) and do so in a case that is packed with repercussions at a time where there are calls for police reform? And with respect to other high-profile cases over the many years not always involving these parties, why would those parties repeatedly request that I serve as their arbitrator?

Something must be wrong with this picture.

The simple answer is that either the parties in this case (and others who continually select me to decide cases in the face of such intense criticism) are stupid for choosing me – especially in high profile cases – or that the researchers and public do not fully understand what arbitrators do. And the real answer is that these sophisticated parties and others who select me are obviously not stupid, but the research that is performed by academics that is reflected in media reports which then frames public opinion on how arbitration works also does not fully understand how the arbitration process *really* works.

Second, woven throughout the academic research which has been picked up by the media to excoriate arbitrators and the arbitration process is the conclusion, in major part, that arbitrators are fearful of making correct decisions in police discipline cases because arbitrators worry that they will not be selected by the parties to hear cases in the future – the result being the “split the baby” syndrome. Thus, according to the researchers and the media attacking the arbitration process, arbitrators timidly rule that police officers who should have been disciplined up to discharge should receive lesser discipline.

Arbitrators cannot be timid – and my arbitrator colleagues know that. If an arbitrator is timid and chooses to give a “split the baby” result, then that person is in the wrong profession. And if an arbitrator issues a “split the baby” decision, the parties will quickly see that hesitation to do the right thing and such a decision will assist

the timid one's quick exit from the profession through *not* being selected for future cases.

From a practical standpoint, whatever data sets the researchers use to draw their "split the baby" conclusions cannot be valid samples to show that arbitrators are fearful of making the correct decisions and thus compromise their decisions. Arbitrations are private proceedings between parties to a collective bargaining agreement. And while access to results from arbitrations may perhaps be obtained through public information requests (*e.g.*, Freedom of Information Acts which may exist in various jurisdictions or anecdotal interviews), the researchers could never have a statistically relevant and trustworthy samples of the thousands upon thousands of decisions from arbitrators in police and other public sector employee discipline cases. These cases are just not fully reported.

Third – and while I have no doubt there may be some arbitrators who worry about their future acceptability and therefore may have pause to wonder if they should "split the baby" – to do so is a ticket to professional death as an arbitrator. For those who have heard me often speak on the topic and have read my awards, one mantra comes through:

Good cases win, bad cases lose. Split no babies. Throw no bones.

"Grievance sustained" by an arbitrator in police discipline cases may often get reported in the media. However, "grievance denied" in those cases most often go unreported and unnoticed except by those directly involved in the cases.

This arbitrator has had no problems upholding disciplinary actions against police officers (including discharges) where the facts warranted such actions. Similarly, this arbitrator has had no problems reducing disciplinary actions where the facts did not support the charged penalty for alleged misconduct. I am hired by parties to

interpret their contracts (in discipline cases, the “just cause” requirement for discipline). I am not hired by parties to tell them what I personally feel and rule on those personal feelings or to show them that I am afraid of making the correct decision.

Like judges should be, arbitrators are professionally schizophrenic. In our decisions as arbitrators we must separate our personal feelings from our professional obligations to rule in accordance with the facts. I have often written in awards words to the effect that “I don’t like this result”, but I have no choice.”

Fourth, advocates expect the “good cases win, bad cases lose” rule to be strictly applied by arbitrators. Advocates make assessments of cases and advise their principals or clients accordingly about what to expect from a particular arbitrator. For an advocate who believes that a case is not strong and gives that professional assessment, only to find that the arbitrator blinked and “split the baby” and threw a bone to that advocate’s party that was not expected, the client’s reliance upon that advocate’s advice in the future will rightfully be questioned and the advocate will look foolish, or worse. And for purposes of this discussion, the arbitrator who did not do what should have been done will immediately become untrustworthy for future cases out of a suspicion that if a “split the baby” decision was rendered and a bone was thrown to a party who did not deserve it, in the future when an advocate has a strong case and deserves to win, the arbitrator might do the same for the other party – again, the ticket to professional death as an arbitrator.

Fifth, what is not completely understood by the public and the researchers about the arbitration process is that there often is a mediation component in these disputes as the arbitrator serves as the moving force to assist the parties in amicably resolving a dispute or to bring one of the parties to its senses. An objective set of eyes (especially those of the person who will make the final decision) often brings an element of harsh reality into the process. As in the courts, arbitrations often settle at

or near the hearing. That is because the arbitrator serving as a mediator will tell a party that “your case is not strong” or even “I am going to rule against you.” That doesn’t get reported to public.

And there is always the situation where political factions on one side of the table require that a case be moved to arbitration, with those in another faction on same side of the table having the expectation of losing. Unions and employers routinely deal with political and conflicting factions on the same side of the table (interests of junior versus senior employees; competing interests of those with political ambitions against elected incumbents; operational personnel who want to get things done against labor relations personnel who are looking at whether that desire might violate the collective bargaining agreement, etc.). Often the disputes on the same side of the table are greater than the disputes across the table. The advocates look to the arbitrators to validate their advice and provide stability. “Splitting the baby” by an arbitrator does not permit the advocate to say after receiving an award inconsistent with that advocate’s expressed assessment of the case, “Look, next time, listen to me.”

Sixth, there are guardrails on arbitrators. Aside from an arbitrator becoming *persona non grata* as a result of being afraid to issue the appropriate decision, in Illinois, public employers have the ability to seek to set aside adverse arbitration decisions on the basis that the award or remedy in the award violates public policy. The Illinois Supreme Court made it clear *AFSCME v. Department of Central Management Services, supra*, 671 N.E.2d at 673 that although the public policy exception to enforcing arbitration awards is “a narrow one”:

As with any contract, a court will not enforce a collective-bargaining agreement that is repugnant to established norms of public policy. Likewise, we may not ignore the same public policy

concerns when they are undermined through the process of arbitration.

Therefore, if an arbitrator makes a decision concerning discipline of a police officer that is inconsistent with public policy, potential relief exists in the courts to vacate the arbitrator's award.

Seventh, returning to the *AFSCME* decision quoted above – and again what many do not realize – is a narrow holding in that decision that (671 N.E.2d at 680):

... [A]s long as the arbitrator makes a rational finding that the employee can be trusted to refrain from the offending conduct, the arbitrator may reinstate the employee to his or her former job, and we would be obliged to affirm the award.

What the Court did with that holding is to require that before an arbitrator can reinstate a public employee (*e.g.*, a police officer) who has engaged in misconduct, the arbitrator must first “make ... a rational finding that the employee can be trusted to refrain from the offending conduct ...” Putting aside that with that holding the Court made arbitrators conjecturers of future human behavior (a difficult task as we do not have crystal balls), it is that holding that has *prevented* this arbitrator from reinstating discharged public employees including police officers who I believed may have been excessively disciplined, only to have those employees at the arbitration hearing demonstrate an unwillingness to accept responsibility for the demonstrated misconduct and show that it is understood by them that similar misconduct cannot occur in the future. Thus, grievances in discharge cases of public employees, including police officers, that would otherwise have resulted in reinstatement awards have ended up being denied by me on the basis of the requirement from the *AFSCME* decision that there was no basis for me to make a rational finding that the disciplined employee will not engage in the offending conduct in the future.

Eighth, as discussed *supra* at V(B)(1) – and most importantly – it cannot be forgotten that as expressed Sections 8 and 2 of the IPLRA, as it has been in the federal arena, final and binding arbitration is the *long-standing* policy of this state and is required when requested, which dictates adopting the Lodge’s arbitration proposal in this case.

Ninth, arbitration is not like court in the sense that judges are assigned to hear court cases, but in arbitration, the parties mutually select the arbitrator. If an arbitrator is not deciding cases as the cases should be decided (again, good cases win, bad cases lose), the parties can control that by not agreeing to use that particular arbitrator(s) in the future. *See e.g., City of Highland Park v. Teamster Local Union No. 714*, 828 N.E.2d 311 (2nd Dist. 2005) where the appellate court enforced one of my awards in a police officer dismissal case where I ruled against the city in that case and the city raised results from prior decisions I issued as a basis for vacating that award (*id.* at 322-323):

The City fails to explain how the arbitrator's previous decisions are relevant to this case. We note that the CBA provides a process allowing both the Union and the City input in the selection and rejection of neutral arbitrators. If the City is so against this particular arbitrator, the process allowed the City to reject him.

Nevertheless, according to my records, *after* issuance of that decision which the City of Highland Park lost before me and although not having to do so as the court stated, the City of Highland Park and its unions have selected me as the arbitrator in six cases, including three interest arbitrations. *City of Highland Park and Highland Park Fire Fighters Assoc. Local 822*, S-MA-10-282 (2010);⁹² *City of Highland*

⁹² <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-10-282.pdf>

Park and Teamsters Local 700, S-MA-09-273 (2013);⁹³ *City of Highland Park and Illinois Council of Police*, Arb. Ref. 13.340 (2014).⁹⁴ Good cases win. Bad cases lose. And the parties control the selection of the arbitrators to hear and decide these cases.

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

VI. WHAT HAPPENS NEXT?

Aside from drafting of language on remand discussed *infra* at VII, what happens next concerning the two issues resolved in this Interim Award is out of my control.

The City asserts that it must now bring the results from this Interim Award for ratification by the Chicago City Council. Because of the manner in which these two issues have been resolved through this Interim Award, the City argues that “[b]y taking only two issues to the City Council, the obvious dynamic, practically and politically, is to have the City Council focus on those two issues as opposed to the entirety of a collective bargaining agreement.”⁹⁵ However, taking these two resolved issues to the City Council for ratification without having “the entirety of a collective bargaining agreement” is *precisely* what the parties did when the issues resolved in

⁹³ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-09-273.pdf>

⁹⁴ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/highlandpark.pdf>

⁹⁵ Show-Cause Hearing Tr. at 10.

Phase I were brought to the City Council for ratification. As noted *supra* at I, by agreement signed July 23 and 26, 2021, the parties memorialized some negotiated changes to the 2012-2017 Agreement for their successor Agreement, which terms were ratified by the City Council on September 14, 2021.⁹⁶ The parties therefore did not present “the entirety of a collective bargaining agreement” to the City Council for ratification in 2021. Presenting these two extremely important issues decided in this matter for ratification by the City Council is no different than what was done for Phase I’s partial resolution of issues for the new Agreement.

However, what is in my control is that with these two issues off the table, the remaining disputes between the parties can now move on to be resolved to put an end to this over five and one-half year labor dispute for a new contract – a discussion to be had with the parties at the currently scheduled June 30, 2023 status conference.

And fair notice and reminder to the parties is appropriate. With the City’s team now in place under Mayor Johnson and as we again begin to move on in this process, the rules of interest arbitration will be followed on the myriad of remaining issues between the parties. This is a very conservative process which frowns upon breakthroughs; requires a party seeking to change a *status quo* to demonstrate the condition in dispute is broken, meaning that “good ideas” are not good enough to meet that burden; where both parties seek to change a *status quo*, the more reasonable offer is chosen; and the real result is that if the parties want change, they most likely are going to have to negotiate that change and not look to me to give that to them.

Good cases win, bad cases lose.

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<https://chicago.legistar.com/LegislationDetail.aspx?ID=5115680&GUID=F7F87AD4-A3CA-416B-859B-16B3A0B3FEC&Options=Advanced&Search=>

VII. CONCLUSION AND REMAND FOR DRAFTING LANGUAGE

Notwithstanding the City's best efforts as required by Paragraph 711 of the Consent Decree, the Lodge's positions prevail in this part of the proceedings.

The following proposals proposed by the Lodge are adopted by this Interim Award:

1. The Lodge's proposal that officers who have served more than 20 years should receive an annual retention bonus of \$2,000 payable on September 1st of each year of service after the completion of the 20th year of service; and
2. The ability of the Lodge to have the option to have certain grievances protesting discipline given to officers in excess of 365-day suspensions and separations (dismissals) decided by an arbitrator in final and binding arbitration or by the Police Board as opposed to the current procedure of having all such disciplinary actions decided by the Police Board.

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

At the show-cause hearing, there was a question about my remanding adopted proposals for drafting of language.⁹⁷ A standard practice for an arbitrator in an interest arbitration when a proposal is adopted (here, retention bonuses and an option for arbitration of grievances protesting disciplinary suspensions in excess of 365 days and separations) is through a remand to the parties, to allow the parties to draft the language to fit adopted proposals from an interest arbitration procedure. That was the process in my interest arbitration award between the parties for the 2007 Agreement – *City of Chicago and Fraternal Order of Police, Chicago Lodge No. 7, supra* at 87 (“The dispute is now remanded to the parties for the drafting of language

⁹⁷ Show-Cause Hearing Tr. at Tr. 22-31.

consistent with this award ... [t]he undersigned will retain jurisdiction for dispute, if any, which may arise in that language drafting process.”).⁹⁸ That process was also followed in other interest awards as well. See e.g., my awards in *Village of Bartlett and Metropolitan Alliance of Police, supra* at 51 (“... the remainder of this matter is now remanded to the parties for drafting of language consistent with the terms of this award ... I will retain jurisdiction for disputes concerning drafting of that language ...”);⁹⁹ *City of Country Club Hills and Illinois Council of Police, Arb. Ref. 21.074 (2022)* at 10 (“This matter is now remanded to the parties for drafting language consistent with the terms of this award”);¹⁰⁰ *Village of River Forest, supra* at 21 (“This matter is now remanded to the parties for drafting of language consistent with the terms of this award ... [w]ith consent of the parties, I will retain jurisdiction to resolve disputes, if any, concerning drafting of such language”);¹⁰¹ and others. And that is the procedure that will be followed here.

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

⁹⁸ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/chicagofoplodgeno7-2010.pdf>

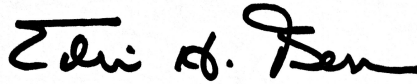
⁹⁹ https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/S-MA-21-145_arb_award.pdf

¹⁰⁰ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/countryclubhills.pdf>

¹⁰¹ <https://ilrb.illinois.gov/content/dam/soi/en/web/ilrb/arbitration/documents/s-ma-19-132-arb-award.pdf>

must have the opportunity in the first instance to modify or add to current contract terms language that covers the awarded proposals.

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



Edwin H. Benn
Neutral Chair

The City’s Board Member concurs with respect to the retention bonus issue, but only to the extent specified in the City’s June 16, 2023 response to the Neutral Chair’s inquiry on the City’s position (limited to the parameters of the retention bonus now agreed to by the City) and dissents to the remainder of this Interim Award.

The Lodge’s Board Member concurs with the entirety of this Interim Award.

Dated: June 26, 2023