

**BEFORE
DISPUTE RESOLUTION BOARD**

#785

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

In the Matter of the Arbitration

between

CITY OF CHICAGO

(“CITY”)

and

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

(“LODGE”)

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

SUPPLEMENTAL INTERIM OPINION AND AWARD

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

APPEARANCES:

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For the Lodge: Joel A. D’Alba, Esq.
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Dated: August 2, 2023

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I. BACKGROUND

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

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

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

* * *

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

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

² Interim Award at 72-74.

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

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

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

The parties’ language proposals have now been considered.

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

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

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

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

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

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

³ City Pre-Hearing Brief at 3.

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

II. THE RETENTION BONUS

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

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

⁴ Interim Award at 26-43.

⁵ Show-Cause Hearing Tr. at 21.

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

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

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

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

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

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

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

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

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

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

⁶ City Comments on Language Proposals at 10.

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

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

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

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

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

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

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

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

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

C. The Language For The Retention Bonus Benefit

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

Section 26.7 – Retention Bonus

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

⁷ Lodge Comments on Language at 2.

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

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

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

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

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

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

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

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

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

For the same reasons discussed *supra* at II(B), any further delays due to the City's ratification process to some unknown date potentially far down the road just delays implementation of the statutory right of arbitration found in Section 8 of the IPLRA (that collective bargaining agreements "... shall contain a grievance resolution procedure which shall provide for final and binding arbitration of disputes concerning the administration or interpretation of the agreement unless mutually agreed otherwise" leaves nothing to discretion) and the long line of cases deciding this issue and is also the policy of the State as specified in Section 2 of the IPLRA. Interim Award at 43-57.

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

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

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

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

Privilege to Attend Hearing

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

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

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

⁹ *Id.* at I(L),

provides to the contrary”).¹⁰ Consistent with this principle, the privacy of arbitration proceedings is also part of the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators:¹¹

2. Responsibility to the Parties

* * *

C. Privacy of Arbitration

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

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

...

The City points to no law requiring that arbitration proceedings be open to the public. The City’s pointing to rules of the Police Board¹² does not rise to a “law” requiring that these arbitration proceedings be open to the public. Section 8 of the IPLRA and the Interim Award have removed the Police Board from the discipline process should the Lodge exercise its right to progress a grievance protesting a suspension in excess of 365 days or separations to arbitration. The City cannot rely upon a provision of a process (*i.e.*, the Police Board’s procedures) which has been eliminated from the dispute resolution procedure for a case to justify its position that a “law” exists requiring the arbitration be open to the public. The City is obviously free to request an arbitrator in an individual case open the proceedings to the public. But there can be nothing in the contract that requires such a result. If there is any doubt

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

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

¹² City Comments on Language Proposals at 6-8.

about whether the Police Board's requirement must be adopted for arbitration hearings, Section 15 (Act Takes Precedence) of the IPLRA provides, in pertinent part, that "... the provisions of this Act or any collective bargaining agreement negotiated thereunder shall prevail and control."

Further, the Lodge points out that in its language proposal that "... the parties past practice" is that "arbitration proceedings under this collective bargaining agreement shall be private and not open to the public." The City has not disputed that assertion. Therefore, for discipline up to 365 days, nothing in the Agreement or the practice of the parties required having those hearings open to the public. If that is the case, why should a grievance over discipline 366 days (or more) be open to the public when the past practice of the parties has been that arbitrations for significant disciplinary actions not be open to the public? Again, the Interim Award merely extended the IPLRA's statutory right for arbitration to include grievances protesting disciplinary actions in excess of 365 days and separations to the parties' already existing arbitration process for protesting disciplinary actions – that's all. There is no reason to change the practice for hearings being open to the public for the extended right of arbitration for certain cases when it did not exist before.

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

* * *

2. have completed the same training required of members of the Police Board pursuant to Paragraphs 540-542 of the Consent Decree between the City and the Attorney General of Illinois. ..."

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

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

711. Nothing in this Consent Decree is intended to (a) alter any of the CBAs [collective bargaining agreements] between the City and the Unions; or (b) impair or conflict with the collective bargaining rights of employees in those units under the IPLRA. Nothing in this Consent Decree shall be interpreted as obligating the City or the Unions to violate (i) the terms of the CBAs, including any Successor CBAs resulting from the negotiation process (including Statutory Impasse Resolution Procedures) mandated by the IPLRA with respect to the subject of wages, hours and terms and conditions of employment unless such terms violate the U.S. Constitution, Illinois law or public policy, or (ii) any bargaining obligations under the IPLRA, and/or waive any rights or obligations thereunder. In negotiating Successor CBAs and during any Statutory Resolution Impasse Procedures, the City shall use its best efforts to secure modifications to the CBAs consistent with the terms of this Consent Decree, or to the extent necessary to provide for the effective implementation of the provisions of this Consent Decree.

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

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

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

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

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

Discharge Cases

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

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

As discussed, the extension of the statutory right of arbitration for grievances protesting discipline for suspensions in excess of 365 days and separations is merely an extension of the right to arbitrate those classes of discipline between 11 and 365 days as provided in the Agreement. Focusing particularly on Appendix Q as currently written which explicitly provides that disciplinary actions falling under those provisions do not require the Officer be put in non-pay status prior to decision by an arbitrator on the grievance, there is no reason to deviate from the practice agreed to by

¹⁴ <https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/AllegMiscond20210401.pdf>

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

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

the parties for the lesser disciplinary actions. The line drawn by the City at 365 days as to whether an Officer is suspended without pay and kept on the payroll is not reasonable. Why should an Officer who is suspended for 365 days remain on the payroll until the arbitration is decided and the Officer who is suspended for 366 days be put in non-pay status until that Officer's arbitration is decided? There is no rational basis for such a line drawing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For purposes of retroactivity, on September 14, 2022, I was notified by the American Arbitration Association that I was selected as the Neutral Chair of the Board. It was at that time that the Board was composed and had authority to act. Given the Lodge's demand for interest arbitration which was then held in abeyance

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

by the Lodge, it cannot be found that the City was solely responsible for the delays justifying the retroactive date sought by the Lodge. Under the circumstances, the retroactivity date for the arbitration provision shall therefore be concurrent with the date that this Board had authority to act – September 14, 2022.

C. The Language For The Arbitration Provision

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

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

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

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

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

[footnote continued on next page]

ARTICLE 9 — GRIEVANCE PROCEDURE

Section 9.1 — Definition and Scope

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

* * * [no changes]

Section 9.6 — Suspension and Separation Grievances

* * * [no changes]

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

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

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

[continuation of footnote]

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

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

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

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

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

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

* * *

APPENDIX Q

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

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

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

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

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

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

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

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

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

IV. THE CITY’S MAINTAINED JURISDICTIONAL ARGUMENT

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

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

The City’s position is noted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As we have said too many times to want to repeat again, the question for decision by a federal court asked to set aside an arbitration award — whether the award is made under the Railway

Labor Act, the Taft-Hartley Act, or the United States Arbitration Act — is not whether the arbitrator or arbitrators erred in interpreting the contract; it is not whether they clearly erred in interpreting the contract; it is not whether they grossly erred in interpreting the contract; it is whether they interpreted the contract.

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

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

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

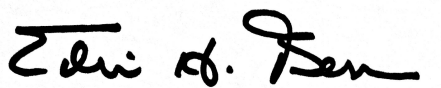
V. CONCLUSION

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

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

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



Edwin H. Benn
Neutral Chair

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

Dated: August 2, 2023

APPENDICES

APPENDIX A - LODGE'S PROPOSED LANGUAGE

**BEFORE
DISPUTE RESOLUTION BOARD**

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

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

Lodge's Final Offers Pursuant to the Arbitrator's Interim Opinion and Award Lodge

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

Respectfully submitted,


Joel A. D'Alba


Margaret A. Angelucci

Of Counsel:
Asher, Gittler and Angelucci
200 W. Jackson Blvd. St. 720
Chicago, Illinois 60606
312-263 1500
Date: July 13, 2023

ARBITRATION OF DISCIPLINE

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

PROPOSAL NO. 1

Section 9.1 – Definition and Scope

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

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

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

Amend Section 8.8 as follows:

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

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

Section 9.6 – Suspension Grievances.

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

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

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

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

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

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

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

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

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

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

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

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

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

Amended Appendix Q as follows:

AMENDED APPENDIX Q

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

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

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

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

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

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

PROPOSAL NO. 2

Section 9.12 – Lodge Rights

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

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

Section 26.7 - Retention Bonus

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

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

APPENDIX B - CITY'S PROPOSED LANGUAGE

**BEFORE
DISPUTE RESOLUTION BOARD**

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

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

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

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

RETENTION BONUS

New Section in Article 26:

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

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

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

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

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

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

ARBITRATION OF DISCIPLINE

Amended Section 9.1:

Section 9.1 – Definition and Scope

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

New contract Section 9.13³:

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

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

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

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

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

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

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

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

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

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

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

- 1) be an actual resident of Illinois⁹;
- 2) have completed the same training required of members of the Police Board pursuant to Paragraphs 540-542 of the Consent Decree between the City and the Attorney General of Illinois. The arbitrator may satisfy this requirement by certifying to the parties that he has read the materials comprising the required training, which shall be provided to the arbitrator by the City;

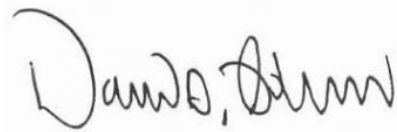
⁷ This is the same timeline set forth in §§9.6.B and 9.6.C.

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

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Johnson". The signature is written in a cursive style with a large initial "D".

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Special Assistant Corporation Counsel

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Date: _____

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

Section 26.7 – Retention Bonus

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

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

ARTICLE 9 — GRIEVANCE PROCEDURE

Section 9.1 — Definition and Scope

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

* * * [no changes]

Section 9.6 — Suspension and Separation Grievances

* * * [no changes]

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

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

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

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

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

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

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

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

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

* * *

APPENDIX Q

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

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

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

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

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

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

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

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