BEFORE THE DISPUTE RESOLUTION BOARD

GEORGE T. ROUMELL, JR. (Neutral Chair)
PAUL BILOTTA (PBPA Appointee)
CICELY PORTER-ADAMS (City Appointee)

IN THE MATTER OF INTEREST ARBITRATION
BETWEEN:

The City of Chicago

-and-

The Policemen's Benevolent and Protective
Association of Illinois,
Sergeants' Unit 156A, Lieutenants' Unit 156B
and Captains' Unit 156C

BOARD'S AWARDS AS TO TERMS TO BE INCLUDED
IN THE COLLECTIVE BARGAINING AGREEMENTS

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BOARD'S AWARDS AS TO TERMS TO BE INCLUDED IN THE COLLECTIVE BARGAINING AGREEMENTS

APPEARANCES:

FOR THE CITY OF CHICAGO:

David A. Johnson, Attorney
Jennifer A. Dunn, Attorney
Melissa D. Sobota, Attorney

FOR PBPA UNITS 156A, B and C:

Thomas J. Pleines, Attorney
Donna Dowd, Attorney
Joseph Andruzzi, Attorney

Background

Pursuant to notification of the Illinois Local Labor Relations Board dated December 13, 1996, the City of Chicago recognized the Policemen's Benevolent & Protective Association of Illinois as the bargaining agent of the Sergeants Unit 156A, the Lieutenants Unit 156B and the Captains Unit 156C employed by the City's Police Department who were not exempt or confidential employees. These Units negotiated first contracts with the City in 1999. Since that time, PBPA has engaged in four rounds of contract negotiations with the City.

For each Unit, the contract now in place covered the period effective July 1, 2012 through June 30, 2016, which contracts have continued in effect by their terms as the parties sought to negotiate successor contracts.

By 2019, the parties had not been able to reach agreement on successor contracts. As a result, the Units invoked impasse procedures set forth in their respective CBAs in Article 28.3.

Twice before the Sergeants proceeded to interest arbitration in 2005 and 2013 (Ex. 12, 13). This is the third time that PBPA has elected to pursue the contractually provided impasse procedure.

After the impasse procedure was invoked, the parties reached an interim agreement that resolved most economic issues except retiree health insurance and plan designed changes for active employees.

Units 156A, B and C elected to the impasse procedure jointly so that a representative of the Units selected Sergeant, now Lieutenant Paul Bilotta as the PBPA Appointee to the Dispute Resolution Board as provided for in the CBAs. Cicely Porter Adams was named the City's Appointee to the Board. The parties jointly chose George T. Roumell, Jr. as Neutral Chair. This was in accordance with Article 28, Section 28.3, in the CBAs providing for an appointment of a Dispute Resolution Board ("Board").

With the consent of the parties, the Neutral Chair issued over the course of the proceedings various Orders setting forth the time for hearings, filing pre-hearing briefs, post-hearing briefs and final offers as well as mutually extending time limits. All time limits as mutually extended in writing or orally have been met.

There were a number of issues to be decided. As a result, for five days the parties agreed

to enter into mediation with the Neutral Chair and the Board and did resolve a number of issues. Subsequently, there were five days of hearings on the issues that had not been resolved between the parties or in mediation. Subsequent to the last day of hearings on January 21, 2020, the parties' attorneys filed post-hearing briefs.

The Unresolved Issues

The Unions' unresolved issues:

Sergeants' Unit Issues

6.4	Photo Dissemination	
6.10	Affidavits	
11.2D	Compensation for Holidays	
12.2	LMCC	
20.10	Rank Credit	
21.3	Uniform Allowance	
22	Legal Rep/Indemnify	
26.5	Payment of Time	
29A.2	Furlough Days	
32.1.B.1	District Bids	
32.1.C	Unit Bids	
32.2.B.2	Watch Bids	
MOU	Retiree Health Care	
Side Letter: Resignation while under Investigation		

Lieutenants' Unit Issues

6.4	Photo Dissemination	
6.10	Affidavits	
11.2D	Compensation for Holidays	
12.2	LMCC	
20.9	Rank Credit	
22	Legal Rep/Indemnify	
26.5	Payment of Time	
26.6	Compensatory Time Exchange	
29A.2	Furlough Days	
32	Bid into Investigative Service	Resolution is pending receipt and approval of documents regarding process
MOU	Retiree Health Care	

Captains' Unit Issues

6.4	Photo Dissemination	
6.10	Affidavit	
12.2	LMCC	
16.3	Equalization of OT opps	Resolution is pending receipt and approval of documents regarding reinstatement of WC
20.9	Rank Credit	
20.11 F.	Watch Bid	
21.3	Uniform Allowance	
22	Legal Rep/Indemnification	
26.5	Payment of Time	
29A.2	Furlough Days	
MOU	Retiree Health Care	

The Employer's unresolved issues:

6.1.E	Anonymous Complaints
6.1.F	Anonymous Complaints
6.1.G	Withholding Name of Complainant
6.1.L	Consultation with Counsel/Union Representative
6.2.E	Consultation with Counsel/Union Representation
6.4	Photo Dissemination
6.8	Media Information Restrictions
6.10	Affidavits (Amended November 22, 2019)
8.1	Disciplinary Matrix
8.4	Use and Destruction of File Material
16.1	Secondary Employment
26.4	Payment of Wages
26.6	"Green Slips"
MOU	Retiree Health Care and Plan Design

As noted, for the most part the unresolved issues as between the Sergeants, Lieutenants and Captains Units are essentially the same.

These are the issues as to which the Board will issue Awards.

Authorship

This Opinion is being written by the Neutral Chair of the Board. Representatives of the City and the PBPA Units, by their lack of written comments, are not representing that they agree with the statements that may be made herein by the Neutral Chair. In executive session, the respective representatives have registered vigorous exceptions or objections on various issues, or

as to statements made herein because of practicalities. The Neutral Chair makes this statement to acknowledge that all statements made herein may not necessarily reflect the views of one or the other Appointee of the respective parties as to given issues discussed by the Neutral Chair.

The Applicable Contractual Factors

Article 28.3(6) and (11) in the PBPA's CBAs addresses the factors to be considered by a Dispute Resolution Board in formulating directions as to resolving unresolved issues and read as follows:

> 6. The Employer and Unit 156-Lieutenants shall attempt to agree upon a written statement of the issue or issues to be presented to the Board. In lieu of, or in addition to, such mutual statement of issues, each party may also present its own list or statement of issues, provided only that any such issue not mutually agreed upon shall have been an issue previously the subject of negotiations or presentation at negotiations. During the course of proceedings, the Chairman shall have the authority as necessary to maintain decorum and order and may direct (absent mutual agreement) the order of procedure; the rules of evidence or procedure in any court shall not apply or be binding. The actual proceedings shall not be open to the public, and the parties understand and agree that the provisions of 5 ILCS 120/1 *et seq.* are not applicable. If, in the opinion of the impartial member of the Board, it would be appropriate to meet with either the Employer or Unit 156-Lieutenants for mediation or conciliation functions, the Board may do so, provided only that notice of such meetings shall be communicated to the other party.
>
> * * *
>
> 11. As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply: subsections (h), (i), (k) and (m).

(Emphasis by Neutral Chair.)

The reference is to Article 14 of the Illinois Public Labor Relations Act providing for interest arbitration against a legislative background of a statute prohibiting sworn officers from

striking and, therefore, providing for interest arbitration and the factors to be considered.

As emphasized by the Neutral Chair, the contractual impasse procedures are not governed by the applicable Illinois impasse procedures except as to certain subsections of the Illinois Act, including Section 14(h) which sets forth the following factors a Dispute Resolution Board is to consider in resolving a contract impasse:

> (1) The lawful authority of the employer.
> (2) Stipulations of the parties.
> (3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
> (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
> (A) In public employment in comparable communities.
> (B) In private employment in comparable communities.
> (5) The average consumer prices for goods and services, commonly known as the cost of living.
> (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
> (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
> (8) Such other facts, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

Section 14(h)(4) specifically provides that a factor can be a comparison of wages, hours and conditions of employment in public and private employment in comparable communities. Section 14(h)(8) is a general statement as to other factors that can be considered.

In the Unions' pre-hearing and post-hearing briefs, there was cited at least 13 interest arbitrations under the Illinois statute, including two previous interest arbitrations involving the

City of Chicago and FOP Lodge No. 7, namely, Benn April 2010 and Briggs 2002. Each of the opinions and awards cited contained some general language. For instance, Arbitrator Briggs in *City of Chicago and FOP Lodge No. 7* did write, "The outcome of these interest arbitration proceedings must approximate what the parties themselves would have negotiated if they had reached agreement". Arbitrator Benn, citing his opinion in *City of Highland Park and Teamsters Local 700 Sergeants* (Benn, 2013), referenced, "The interest arbitration process is very conservative; frowns on break throughs; and imposes a burden on the party seeking a change ...". Arbitrator Malin, in *Village of Fox Lake and Illinois FOP Labor Council* (1999), noted: "The arbitrator's function is to determine what contract terms the parties would most likely have agreed to if the collective bargaining process had not broken down".

Arbitrator Perkovich, in *Village of Franklin Park and FOP Lodge 47* (1993), noted, "The arbitrator should regard the inquiry as one to determine what the parties would have agreed to if they had done so".

This Neutral Chair could continue to cite the remainder of the cases cited in the Unions' briefs. The fact is the arbitrators were struggling with putting into language their thought processes in a particular circumstance and tended to use generalized language which this Neutral Chair does not take issue with.

However, there is more to the analysis of the Section 14(h)(8) factor than the citations would suggest. The core motivation in the Illinois statute providing for impasse resolution is the recognition that under Illinois law sworn Officers cannot strike, whereas private employees can if there is an impasse.

This recognition caused this Neutral Chair, when serving as chairman of the Dispute

Resolution Board between the City and FOP Lodge No. 7 in 1993, to discuss the Section 14(h) factors and did so as follows:

II. THE SECTION 14(h) FACTORS

As set forth at pages 6-8 of this Opinion, the parties in the 1989 Agreement, in Section 28.3B.11., incorporated as a factor to be considered by the impasse resolution panel in arriving at an Award, the provisions of Section 14(h) of the Illinois Public Labor Relations Act. Section14(h) is set forth in full at pages 7-8 of this Opinion. Among the specifically listed factors to be considered are the welfare of the public and the City's financial ability to meet the costs of the resulting awards, comparables, the cost of living, and the overall compensation of the police officers. These factors are self-explanatory.

What is not self-explanatory is Section 14(h)(8), which, to repeat, reads:

> (8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

The Illinois Legislature, in adopting the aforequoted Section 14(h)(8) language, did not define "such other factors", but instead was content to recognize that "such other factors" have evolved over a course of time as mediators, fact-finders and arbitrators are called upon to resolve public and private sector interest disputes. See, Stern, Fact Finding Under Wisconsin Law, (3rd Ed. 1966); McAvoy, Binding Arbitration of Contract Terms: A New Approach To The Resolution of Disputes In The Public Sector, 72 Colum. L. Rev. 1192 (1972); Block, Criteria in Public Sector Interest Disputes, Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators, 171 (G. Somers, Ed. BNA 1971); Smith, Comment, Arbitration in the Public Interest, Proceedings of the 24th Annual Meeting of the National Academy of Arbitrators, 180 (G. Somers, Ed. BNA 1971); Berkowitz, Arbitration of Public Sector Interest Disputes: Economics, Politics and Equity, 1976 Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, 159 (J. Stern and B. Dennis, Eds. BNA 1982).

Commentaries represented by the above writing reveal the evolution of the term "such other factors" to include the following.

1. Bargaining History. Bargaining history has several

aspects. In the Section 14(h)(4) comparison factors, the implication was recognized that there has been a ten year bargaining history between the City and the Lodge; that this bargaining history has resulted in certain agreements, particularly as to wages and other benefits, which can be compared with other City employees, the employees of other major city police departments, as well as suburban Chicago police departments. This aspect of bargaining history establishes certain economic relationships between the parties.

The second aspect of bargaining history is the current bargaining history. As a result of current bargaining, consideration can be given to agreements reached by other City employees and other police departments in the current economic climate.

In addition, the current bargaining history, as between the Lodge and the City, namely, what went on at the bargaining table, gives some guidance to the impasse resolution panel as to what the parties may very well have been prepared to mutually accept. In other words, the bargaining history factor, which is considered by mediators, fact-finders and arbitrators, gives guidance through both past and current bargaining history, as to what the parties, left without impasse resolution, might have reached as to a contract settlement.

2. The Strike Factor. The strike factor is an offshoot of the collective bargaining or negotiation history factor. The strike factor is utilized in mediation, fact-finding and arbitration to anticipate what the parties may have settled for if in fact there was a right to strike. In Stern, Fact Finding Under Wisconsin Law, (3rd Ed. 1966), at page 15, the author states:

> One other criteria for wage settlements mentioned by fact finders is unique to the public area. This is what the wage increases granted should be the one upon which the parties might have agreed through free collective bargaining where they had the right to strike.; In one decision, a fact finder said:
>
> > Collective bargaining can never be completely free unless accompanied by the right to strike. It has been found necessary to impose reasonable restraints on the right to strike of government employees. Consequently, within the framework of bargaining by government employees, it becomes the duty of responsible government officials to make a prediction of the results which could reasonably be expected to follow if the process were completely free. ... [The fact finder's] sole function is to supply [government] officials ... with a prediction of the probable results of free collective bargaining on the issues involved, in the form of

> recommendations. (Philip G. Marshall, Fact Finder, Fact Finding Petition #29, July 20, 1964, City of Watertown v International Brotherhood of Teamsters, Local 695).

Arbitrator Monroe Berkovitz, in Arbitration of Public Sector Interest Disputes: Economics, Politics and Equity, 1976 Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, J. Stern and B. Dennis, Eds. 1982 BNA, at 169, made this point when he wrote:

> If neutrals are to do the job in the public sector, it is necessary that they assume the same role as neutrals do in the private sector. They must be able to suggest or order settlements of wage issues that would conform in some measure to what the situation would be had the parties been allowed the right to strike and the right to take the strike.

The Lodge has not gone on strike. But it is suggested that certain issues between the parties, to be discussed below, such as a change in the arbitration procedure by utilization of the Police Board and the issue of employee security (remaining on the payroll while suspended) would be issues over which the parties probably would not, from either point of view, permit a strike to evolve.

3. The Art of the Possible. In most negotiations, the parties begin (in the negotiations here as evidenced by the number of issues before this Panel), with a number of issues. As the bargaining process proceeds, the respective parties elect to eliminate or resolve issues. For example, in the negotiations between the City and the Lodge, the art of the possible had been mutually applied for, as noted at page 15 of this Opinion, both the City and the Lodge had acquiesced to certain proposals each had made prior to the opening statements on July 24, 1992. (TR 75, 380; CEX 15, Attachment B). Thus, the art of the possible is a recognizable factor in negotiations.

4. Unique Factors. There sometimes are unique factors that influence the negotiations and must be considered under the "such other factors" concept. The unique factors could include the skill of the employees involved, the available labor pool, or unusual demands placed on employees in the bargaining unit involved in the negotiations. See, Berkowitz, Arbitration of Public-Sector Interest Disputes: Economics, Politics, and Equity, 1976 Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, 171, G. Somers, Ed. (1971 BNA) at 168-169.

These "such other factors", along with the enumerated factors in Section 14(h), have one goal, namely, to serve as guideposts to predict with some degree of certainty a reasonable resolution of the impasse

> dispute. In other words, impasse resolution is a substitute for a strike. Most strikes at some point are settled based upon the give and take of negotiations. The negotiators would consider the statutory factors, whether in the public or private sector, as well as the "such other factors" as described above.
>
> This impasse resolution panel is serving as a substitute for a strike and is guided by virtue of the parties' contract to invoke the Section 14(h) factors, including 14(h)(8).
>
> For these reasons, as the Chairman analyzes the various issues, as will become obvious, he has attempted to be loyal to the parties' Collective Bargaining Agreement as se forth in 28.3B.11., and applied the Section 14(h) factors where applicable, recognizing that each issue may invoke different factors.

Some of the arbitrators that this Neutral Chair has referred to in different language recognized the point of the bargaining history and the strike criteria along with the art of the possible. Only recently, for example, there was a 30 day strike or more with the General Motors Corporation and the UAW over an issue which eventually was settled. In other words, even when there is an impasse, there is a give and take and the art of the possible, particularly when there is a mature labor relationship between the parties that, even when there is a breakdown and there is an impasse, whether settled by a strike or interest arbitration, the strike, art of the possible and unique factors are criteria to be considered.

In this situation, there have been previous interest arbitrations with the Sergeants. The FOP Chicago Lodge No. 7, since 1981, has been involved in five interest arbitrations with the City. There are provisions in the FOP contract that have resulted from those interest arbitrations that do impact on some of the operational issues involved in these proceedings. Whether this should be a factor depends on the analysis of the bargaining history of these parties, the strike criteria, the art of the possible and unique factors. In the final analysis, the Board is obliged to view the position of the parties considering a number of factors as set forth in 14(h), including

the factors envisioned by 14(h)(8) as discussed by this Neutral Chair back in 1993. In the view of this Neutral Chair, the language used by the distinguished arbitrators cited in reaching their results in effect is not that much different than this Neutral Chair's previous discussion which had its genesis in an equivalent statute passed in Michigan in 1969 which was almost identical in regard to the factors listed in 14(h) and the pioneer work in this field that was instituted many years ago in the State of Wisconsin.

It is this analysis that will guide the Neutral Chair in carefully reviewing the positions of the parties on each issue.

The parties submitted pre-hearing briefs addressing their respective viewpoints as to the proceedings in general and the issues in dispute. Subsequently, following the completion of the hearings, the parties submitted post-hearing briefs and final offers on the issues in dispute. As to the final offers, the parties acknowledged that the Board is not bound to choose one or the other final offer on an issue, but could formulate a different resolution of the issue.

The DRB's Resolution of the Issues

1. Anonymous Complaints – Sections 6.1.E and F, Section 6.10

In the current respective CBAs of the PBPA supervisor Units, there is Article 6 entitled "Bill of Rights". Section 6.1 is entitled "Conduct of Disciplinary Investigation". Paragraph 6.1.E and F in the Sergeants' contract, which is the same as in the Lieutenants' and Captains' contract, reads:

> E. No anonymous complaint made against a Sergeant shall be made the subject of a Complaint Register investigation, unless the allegation is a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute.
>
> F. No anonymous complaint regarding residency or

medical roll abuse shall be made the subject of a Complaint Register investigation until verified. No ramifications will result regarding issues other than residency or medical roll abuse from information discovered during an investigation of an anonymous complaint regarding residency or medical roll abuse, unless of a criminal nature as defined in the preceding paragraph.

Section 6.10 entitled "Affidavits" reads:

When an allegation of misconduct against a Sergeant is initiated by a non-Department member, and the allegation is not of a criminal nature within the meaning of Section 6.1(E) or does not regard residency or medical roll abuse within the meaning of Section 6.1(F), the Independent Police Review Authority or the Internal Affairs Division shall secure an affidavit from the complainant. If the complainant executes the affidavit, the investigation shall proceed as a Complaint Register investigation. If the complainant refuses to execute the affidavit, the Independent Police Review Authority or the Internal Affairs Division shall, subject to the provisions below, proceed in accordance with the provisions applicable to Complaint Register investigations.

If the Independent Police Review Authority or the Internal Affairs Division determines to conduct a Complaint Register investigation where the complainant does not execute an affidavit, the appropriate official shall execute an affidavit stating that he/she has reviewed the evidence compiled in a preliminary investigation, and, based upon the sufficiency of the evidence, continued investigation of the allegation is necessary. For Independent Police Review Authority cases, the "appropriate official" shall be the Commanding Officer of the Internal Affairs Division. For Internal Affairs Division cases, the "appropriate official" shall be the Chief Administrator of the Independent Police Review Authority. If an affidavit is not executed by the Independent Police Review Authority or the Internal Affairs Division, the matter shall not be used by the Department with respect to any aspect of the Sergeant's employment.

Attached to each CBA is the following July 13, 2005 letter:

Sean Smoot, Esq.
Policemen's Benevolent & Protective Association
435 West Washington Street
Springfield, Illinois 62702

Re: City of Chicago and PBPA, Unit 156 Negotiations - Sworn Affidavits

Dear Mr. Smoot:

This will confirm the representations made to the Union during negotiations for the 2003-2007 collective bargaining agreement, with respect to how the Department intends to operate under the proposed agreement dealing with sworn affidavits.

We have advised you that in those instances where an affidavit is necessary, the Department will make a good faith attempt to obtain an affidavit from the complainant within a reasonable time. When an affidavit cannot be obtained from a citizen complainant, the head of either IAD or OPS may sign an appropriate affidavit according to the following procedure. An "appropriate affidavit" in the case of the head of either OPS or IAD is an affidavit wherein the agency head states that he or she has reviewed objective verifiable evidence, specifies what evidence has been reviewed and in reliance on that evidence the agency head affirms that continued investigation is necessary. The types of evidence the agency head must review and may rely upon will be dependent upon the type of case, but may include arrest and case reports, medical records, statements of witnesses and complainants, video or audio tapes, and photographs. This list is illustrative only and is not to be considered exclusive or exhaustive.

In the case of a sustained finding that is subject to the parties' grievance procedure, the arbitrator has the authority to review whether the Department made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of OPS or IAD was based upon objective evidence of the type specified above, in addition to the issues of just cause and the appropriateness of the penalty in determining whether to grant the grievance.

If this letter accurately reflects your understanding and agreement regarding this issue, please sign where indicated and return a copy to me.

Very truly yours,
James C. Franczek, Jr.
James C. Franczek, Jr.

Acknowledged and Agreed to this 13th day of July, 2005

Sean M. Smoot, Esq.
Sean M. Smoot, Esq.
Attorney, Policemen's Benevolent & Protective Association
Unit 156 - Sergeants

The Unions' final offer as to Section 6.1.E, 6.1.F and 6.10 is to continue the language as

is, as well as the Letter of Understanding, namely, status quo. In other words, the Unions are urging the continuation of the general prohibition against anonymous complaints.

The final offer of the City as to 6.1.E, 6.1.F and 6.10 and the Letter of Understanding is as follows:

Anonymous Complaints (Sections 6.1.E, 6.1.F and 6.10; and Side Letter)

Section 6.1.E:

Allegation(s) against a [Sergeant] [Lieutenant] [Captain] which would constitute ~~No anonymous complaint made against a [Sergeant] [Lieutenant] [Captain] shall be made the subject of a Complaint Register investigation, unless the allegation is~~ a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute may be made the subject of a Complaint Register investigation.

Section 6.1.F:

Delete

Section 6.10:

When an allegation of misconduct against a [Sergeant] [Lieutenant] [Captain] is initiated by a non-Department member, and the allegation is not of a criminal nature within the meaning of Section 6.1(E) ~~or does not regard residency or medical roll abuse within the meaning of Section 6.1(F),~~ the ~~Independent Police Review Authority or the Internal Affairs Division investigative agency,~~ the investigative agency shall secure an affidavit from the complainant. If the complainant executes the affidavit, the investigation shall proceed as a Complaint Register investigation. If the complainant is anonymous or refuses to execute an affidavit, the ~~Independent Police Review Authority or the Internal Affairs Division~~ investigative agency shall, subject to the provisions below, proceed in accordance with the provisions applicable to Complaint Register investigations.

If the investigative agency ~~Independent Police Review Authority or the Internal Affairs Division~~ determines to conduct a Complaint Register investigation where the complainant is anonymous or does not execute an affidavit, the appropriate official shall execute an affidavit stating that he/she has reviewed the evidence compiled in a preliminary investigation, and, based upon the sufficiency of the evidence, continued investigation of the allegations is necessary. For ~~Independent Police~~

~~Review Authority~~ Civilian Office of Police Accountability and Inspector General cases, the "appropriate official" shall be the Commanding Officer of the ~~Internal Affairs Division~~ Bureau of Internal Affairs. For ~~Internal Affairs Division~~ Bureau of Internal Affairs cases, the "appropriate official" shall be the Chief Administrator of the ~~Independent Police Review Authority~~ Civilian Office of Police Accountability. If an affidavit is not executed by the ~~Independent Police Review Authority, or the Internal Affairs Division~~ Civilian Office of Police Accountability or the Bureau of Internal Affairs, the matter shall not be used by the Department with respect to any aspect of the [Sergeant's] [Lieutenant's] [Captain's] employment.

SIDE LETTER

~~Sean Smoot, Esq.~~
Thomas J. Pleines
~~Policemen's Benevolent & Protective Association~~
~~435 West Washington Street~~
~~Springfield, Illinois 62702~~

Re: City of Chicago and PBPA, Unit 156 Negotiations - Sworn Affidavits

Dear Mr. ~~Smoot~~ Pleines:

This will confirm the representations made to the Union during negotiations for the ~~2003-2007~~ ~~2016-2022~~ collective bargaining agreement, with respect to how the ~~Department~~ Employer intends to operate under the ~~proposed~~ agreement dealing with sworn affidavits.

We have advised you that in those instances where an affidavit is necessary, the ~~Department~~ investigative agency will continue to make a good faith attempt to obtain an affidavit from the complainant within a reasonable time. When an affidavit cannot be obtained from a citizen complainant, the head of either ~~IAD~~ BIA or ~~OPS~~ COPA may sign an appropriate affidavit according to the following procedure. An "appropriate affidavit" in the case of the head of either ~~OPS~~ COPA or ~~IAD~~ BIA is an affidavit wherein the agency head states that he or she has reviewed objective verifiable evidence, specifies what evidence has been reviewed and in reliance on that evidence the agency head affirms that continued investigation is necessary. The types of evidence the agency head must review and may rely upon will be dependent upon the type of case, but may include arrest and case reports, medical records, statements of witnesses and complainants, video or audio tapes, and photographs. This list is illustrative only and is not to be considered exclusive or exhaustive.

In the case of a sustained finding that is subject to the parties'

grievance procedure, the arbitrator has the authority to review whether the ~~Department~~ investigative agency made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of ~~OPS~~ COPA or ~~IAD~~ BIA was based upon objective evidence of the type specified above, in addition to the issues of just cause and the appropriateness of the penalty in determining whether to grant the grievance.

If this letter accurately reflects your understanding and agreement regarding this issue, please sign where indicated and return a copy to me.

Very truly yours,

James C. Franczek, Jr.

Acknowledged and Agreed to this__ day of___, ~~2005~~20

Essentially, the City proposes that a CR investigation based on an anonymous complaint can be commenced following information obtained in a preliminary CL investigation and there is an affidavit override as now utilized when known complainants refuse to sign affidavits.

The first CBAs between the City and the PBPA Units was for the period January 1, 1999 - June 30, 2003. As to Section 6.1 addressing the prohibition against anonymous complaints, the supervisors' CBAs followed the FOP CBA. The first CBA between the City and the FOP covering the period January 1, 1981 - December 31, 1983 established Article 6, "Bill of Rights", and in 6.1 provided for no anonymous complaints unless the allegation was of a criminal nature. (*See*, Ex. 20).

The fifth City of Chicago-FOP CBA, January 1, 1992 - June 30, 1995, came as a result of an interest arbitration as to which the Neutral Chair of this Board was the Chairman of the Board addressing the 1992-1995 FOP CBA.

To address issues posed by violation of the medical roll policy and the residency provisions, this Neutral Chair agreed with the City's Appointee to modify the prohibition against

anonymous complaints by including anonymous complaints regarding residency or medical roll abuses that were verified. In reaching this result, at page 137 of the January 25, 1993 opinion, this Neutral Chair wrote:

> Accepting the proposition that 6.1D. is an anti-harassment provision as part of an officer's Bill of Rights, carefully negotiated by the Lodge, there is still the argument made by Commander Waldhier that "it improves morale among troops, you know, someone's not getting away with something." (TR 2421). This Chairman doubts that the members of the Lodge are sympathetic to officers who violate the residency provisions or take advantage of the medical roll provisions. After all, when the Lodge was convinced that there was a problem in 1984, that the "criminal in nature" should be added to 6.1D., it agreed to do so. When the Lodge was convinced in 1989 that the Department may have a medical leave abuse, the Lodge agreed to cooperate with the Department. This shows the Lodge's willingness to address these issues.

After doing so, at page 138, this Neutral Chair did indicate a reluctance to expand the exceptions to the anonymous complaint prohibition when he wrote:

> It must be emphasized that the Award is not an attempt to erode the vitality of 6.1D., but only addresses two specific problems. In the future, if the Department seeks additional modifications (at the bargaining table), it has a substantial burden of proof when one recognizes that the rationale for the Bill of Rights is to avoid "harassment", using the Lodge Advocate's word, or relying on anonymous complaints which, generally speaking, is the antithesis of the democratic way of life, by denying one the right to confront his accuser. (*See*, Ex. 9).

So, years later, the Neutral Chair is asking whether the City has met "a substantial burden of proof" in establishing its position as to anonymous complaints and proposed language to address the issue. The City, as to proof, relies on certain comments of the Police Accountability Task Force report, the investigative report of the U.S. Justice Department, the Consent Decree entered as a result of a lawsuit brought by the State of Illinois against the City, as well as a trend in other police departments.

The Police Accountability Task Force appointed by the then Mayor of the City of

Chicago consisting of a number of citizens issued their report in April 2016, Recommendation for Reform. At page 71, the report notes:

> The CBAs also prohibit most anonymous complaints. Like the affidavit requirement, this may discourage some people from bringing perfectly legitimate complaints. Indeed, more and more cities are recognizing that the cost of forbidding anonymous complaints greatly exceeds the benefits. Today there is a strong trend toward accepting them, including as part of court-enforced Department of Justice consent decrees (in New Orleans and Cincinnati). Accepting anonymous complaints allows a police department to use an additional set of data as a management tool for proactively addressing performance problems.
> (Footnotes omitted.)

As a result, the report at 159 recommends that "the following CBA provisions should be removed or revised: 'Anonymous complaints should be allowed to encourage reporting by those who fear retaliation, including whistle blowers'."

On December 7, 2015, the United States Department of Justice Civil Rights Division initiated an investigation of the City of Chicago Police Department and the Independent Police Review Authority. On January 13, 2017, the Department of Justice issued its report. At page 8 of the report, the following statement is made: "The City does not investigate the majority of cases it is required by law to investigate. Most of those cases are uninvestigated because they lack a supporting affidavit from the complaining party, but the City also failed to investigate anonymous and older misconduct complaint as well as those alleging lower level force and non-racial verbal abuse." At pages 51-52, the report notes:

> CPD's and IPRA's failure to investigate anonymous complaints, pursuant to the City's collective bargaining agreement with officers, further impedes the ability to investigate and identify legitimate instances of misconduct. As noted above, given the code of silence within CPD and a potential fear of retaliation, there are valid reasons a complainant may seek to report police misconduct anonymously, particularly if the complainant is a fellow officer. Indeed, it was an anonymous tip that led to the video release of the Laquan McDonald shooting. IPRA and BIA should have greater discretion in investigating

tips and complaints from anonymous sources.

After so noting, at page 154 the Department of Justice made the following recommendation:

> **B. Accountability**
>
> A well-functioning accountability system (in combination with effective supervision) is the keystone to lawful policing. The City and CPD must create impartial, transparent, and effective internal and external oversight systems that will hold officers accountable in a timely manner for violations of law, CPD policy, or CPD training. To that end, the City and CPD must:
>
> **1. Improve the City and CPD's accountability mechanism for increased and more effective police oversight.**
>
> a. Work with police unions to modify practices and procedures for accepting complaints to make it easier for individuals to register formal complaints about police conduct;
>
> b. Adopt practices to ensure the full and impartial investigation of all complaints, and assessment of patterns and trends related to those complaints;
>
> * * *

The Consent Decree entered on September 13, 2015 in Paragraphs 710 and 711 at pages 213-214 acknowledges that the Consent Decree is not intended to "alter any of the CBAs between the City and the Unions". However, at Paragraph 427, page 121, the Consent Decree does recognize that there could be anonymous complaints for the paragraph reads:

> 427. The City and CPD will ensure all complaints are accepted, documented, submitted to C●PA, and investigated in accordance with this Agreement and the applicable collective bargaining agreement, whether submitted: by a CPD member or a member of the public; verbally or in writing; in person, by telephone, online, or by a complainant anonymously; or by a third-party representative.

In addition, at page 139, Paragraph 477 of the Consent Decree reads: "The City and the CPD will undertake best efforts to ensure that all complaints, including anonymous complaints, can be the subject of a misconduct investigation".

It may be that the Consent Decree was not as specific in recommending elimination of the prohibition against anonymous complaints as set forth in the Task Force report and the Department of Justice report. But it is clear that the Court was setting forth suggestions as to anonymous complaints.

Paragraph 477 of the Consent Decree is consistent with a number of consent decrees and settlement agreements negotiated by the Department of Justice mandating acceptance of anonymous complaints, namely:

Baltimore (2017) (¶336)
Newark (2016) (¶114)
Ferguson, MO (2016) (¶370)
Cleveland (2015) (¶¶190, 202)
Los Angeles County (2015) (¶125)
Albuquerque (2014) (¶172)
New Orleans (2013) (¶390)
Washington, D.C. (2001) (¶92)
Los Angeles P.D. (2001) (¶74)
New Jersey State Police (1999) (¶61)
Steubenville, OH (1997) (¶36)
Pittsburgh (1997) (¶48)
(*See*, Exs. 32, 34-45).

Within the City of Chicago, the Chicago Inspector General, having jurisdiction to investigate City employees, in Section 11.3 of the OIG's Rules, expressly provides for the investigation of anonymous complaints. (*See*, Ex. 54, 58). The "model policy" of the International Association of Chiefs of Police provides that complaints may be lodged anonymously. (*See*, Ex. 50).

In addition to the reports and the tendency in consent decrees and settlements and "model policy" plus the OIG Rules, on April 1, 2020 in a decision and award involving these parties in *Gr. Nos. 545-19-011 et seq.*, Arbitrator Meyers agreed with the Unions that under the current CBAs the City could not use the Section 6.10 override provisions in regard to anonymous

complaints. However, at pages 29-30, Arbitrator Meyers, by way of dictum, did seem to suggest as a neutral that there is vitality to the City's arguments concerning the need to address the issue of anonymous complaints:

> This Arbitrator is not unmindful of the Commission headed by the current mayor, Lori Lightfoot, that was seeking more sunshine in this process so that the public could be better protected against potential police abuses. There is nothing wrong with that goal being sought by the Commission. As a matter of fact, it is an important goal. The problem here is that the language that the City would like to be in the contract is not in the contract. This Arbitrator cannot change the language of the collective bargaining agreement to meet the needs of the Commission or the City. This Arbitrator only has the authority to interpret the language that currently is in these three collective bargaining agreements. Any changes to that language must take place through the collective bargaining process and not through arbitration.

The above recitation of various facts would suggest that the City is addressing the burden of proof required on this issue as noted by this Neutral Chair in 1993.

There are two themes that underline the dispute between these parties over the receipt of anonymous complaints. The City notes that there are communities who allegedly "live in fear of the police and are reluctant to report any alleged misconduct because of fear of retaliation if their identity is known." (Tr. 56).[1] The City also suggests that there may be members of the Department who likewise are reluctant to report on co-workers. (Tr. 559). On the other hand, officers and supervisors are concerned with "false, vindictive, vendetta-type allegations" and the need to safeguard against such allegations. (Tr. 702). There is high passion between the parties as represented by their Counsel in arguments made as to the impact of these themes on the issue. This passion was evidenced throughout the hearings, but in particular was exemplified by the oral argument made by Counsel as revealed at Tr. 688-704 on the last hearing day, January 21,

[1] "Tr." refers to the transcript of the interest arbitration hearings.

2020.

The importance of this issue was highlighted by a statement in the pre-hearing brief of the Unions at page 30 where it was represented that in the first bargaining session for the upcoming CBAs the then-Chief Labor Negotiator for the City of Chicago, Joseph Martinico, informed the Unions there would be no agreement by the City to any of the Unions' proposals without the City obtaining the City's accountability proposals. There was a suggestion that, as to the anonymous complaint issue, if such complaints were not permitted, the contract might not be recommended for ratification by the City Council. This tension suggests that in applying the Section 14.(h) factors this could be considered a strike factor, namely, if there was a right to strike how far would the parties go in permitting a strike over this issue? Then, too, as this Neutral Chair pointed out in the 1993 award, the anonymous complaint issue is ripe to apply the concept of the art of the possible, which means what is the compromise to this issue important to both parties? On this score, there was even the comment on the record that the parties were not "that far apart, but these are very important protections". (Tr. 15-16).

Regardless of the evidence suggesting the trend in consent decrees to permit anonymous complaints and the statements in the Department of Justice's report and in the Task force report, the Unions maintain that the elimination of the prohibition against anonymous complaints would be against Illinois public policy. Specifically, the Unions point to two statutes which the Unions apparently played a part in drafting for the adoption by the Illinois State legislature.

The Illinois Uniform Peace Officers Disciplinary Act, 50 ILCS 725 3.8(b) states in pertinent part:

> [a]nyone filing a complaint against a sworn peace officer must have the complaint supported by a sworn affidavit. Any complaint,

> having been supported by a sworn affidavit, and having been found, in total or in part, to contain knowingly false information, shall be presented to the State's Attorney for a determination of prosecution.

The Illinois Public Labor Relations Act, 5 ILCS 315/15(a) states in pertinent part:

> ... nothing in this Act shall be construed to replace the necessity of complaints against a sworn peace officer, as defined in Section 2 of the Uniform Police Officers Disciplinary Act from having a complaint supported by a sworn affidavit.

In essence, the Unions argue that "the City cannot avoid or change the statutory mandate to allow for the acceptance of anonymous complaints". To put it another way, the Unions argued that "the DRB does not have the authority to rewrite state law". (Pg. 19, Unions' post-hearing brief).

The City's Advocate on the record responded to the statutory argument made by the Unions' Counsel as follows:

> The statute he sites, again, this is where – If we had come in and said gut, eliminate the affidavit requirement, then our proposal would be a collective bargaining agreement in Illinois under a wealth of labor law precedent, public labor law precedent, a collective bargaining agreements trumps, supercedes, takes precedence over any other statute dealing with discipline or working conditions.
>
> So were you to issue an arbitration award that gutted, removed, deleted the affidavit requirement, I don't care what's in the other statute, that award, that collective bargaining agreement takes precedence over any other contrary statute.
>
> And there's a supremacy provision, it's either Section 15 or 16 in the Illinois Public Labor Relations Act, to that very effect, that says the provisions of a collective bargaining agreement negotiated pursuant to the statute take precedence over any contrary law, ordinance, statute, pertaining to employee working conditions, labor relations.
>
> That would be our defense to the statutory claim if we were to gut and eliminate the affidavit requirement. We don't even have to get to that particular juncture because we're not proposing the elimination of the affidavit requirement. ...
> (Tr. 703-704).

The Unions' Counsel responds by suggesting that the provision proposed would be the result of the impasse resolution procedure in Article 28.3 and not part of the collective bargaining agreement. This argument overlooks the fact that this impasse procedure is an extension of the parties' collective bargaining agreement and the results will become part of the parties' successor collective bargaining agreement. This is what occurred following the January 1993 interest arbitration chaired by this Neutral Chair wherein the provision for anonymous complaints as to residence and medical roll abuse were added to the FOP contract and subsequently became part of the PBPA CBAs.

The Neutral Chair has set forth the statutory arguments raised by the Unions and the City's rebuttal to these arguments in recognition that they have been made. The Neutral Chair, along with the City Appointee, over a vigorous dissent of the Unions' Appointee, will issue an award on the issue of anonymous complaints but, in doing so, the Board is not resolving the statutory arguments being made.

The anonymous complaint issue requires a review of the process followed as to complaints made against police officers and supervisors in the Chicago Police Department. All complaints are funneled through the Civilian Office of Police Accountability (COPA). Each complaint received is given a complaint log number, namely, a CL, which is for the purposes of tracking the complaint. *(See*, Ex. 92; Tr. 32-33). The complaint either is assigned for investigation to a COPA investigator or is forwarded to the Department's Bureau of Internal Affairs for investigation, depending on the nature of the complaint. In some situations, the City's Office of Inspector General could become involved.

A preliminary investigation is conducted by the agency involved to verify available

evidence. If an affidavit is obtained from the complainant or the override affidavit provisions are implemented pursuant to Section 6.10 when the complainant is known but refuses to submit an affidavit, the CL number is converted to a Complaint Register Number using the same number and the investigation is continued, including interviewing the member involved. There has been some question in the past as set forth in this Neutral Chair's opinion to the limits on preliminary investigations involving anonymous complaints in an opinion and award issued in *FOP Gr. No. 630-92-002 (Det. James Green)* (1992). If the agency concludes prior to issuing a CR number that there is no or an inadequate basis for continuing the investigation and seeking a CR number, the matter is closed administratively.

The closing of a CL number, meaning that the investigation was not continued and no CR number was issued nor was there a reported recognition that the complaint had no validity, caused concern expressed by Union representatives at the hearings. Questions were asked as to what the City was going to do with the CL files that were closed and whether they would be kept on the record. (Tr. 24-26; 29-30).

It was pointed out that the CLs that did not result in CRs would be on the record of the member and would not be destroyed. This particularly follows based upon this Neutral Chair's conclusions as to 8.4 and the applicable Illinois public policy. (Tr. 26). Following this point it was also brought up that if there was an FOIA request for a member's discipline file, what would be produced is the disposition of CR investigations. If there was an FOIA request for a member's complaint history, the CL file would be produced.

This discussion as to the existence of the CL records brought forth a discussion as to the method of noting the CL files that have not resulted in CR numbers. (Tr. 36). Ultimately, the

discussion on this point led to the suggestion that the City continues noting that when a CL file is dismissed there will be a notation "no affidavit".

The other issue that surfaced concerning closed out CL files is whether the existence of closed out CL files on members' records which may have involved issues of credibility and whether in such a case the CL files could be used against the member in future disciplinary actions. The further concern was whether any closed CL could be used by the Department in determining promotions or assignments of members. (Tr. 36-37). The Neutral Chair agrees that these are important concerns to the Unions' members. For this reason, in formulating a decision as to anonymous complaints, this Neutral Chair will provide that closed out CL numbers may not be used by the Department for any purpose and that there be a designation to the closed out files "no affidavit". It is important that these safeguards for the members be implemented as part of the overall approach to the issue of anonymous complaints.

In urging the Board to adopt its position as to anonymous complaints, the City has proposed to utilize the override provisions set forth previously in 6.10 used in connection where the complainant is known but declines to sign an affidavit. This urging presented a most fascinating aspect of this record which, for completeness, bears mentioning and, as it turns out, has influenced the Neutral Chair, consistent with the Neutral Chair's comments during the hearing to add certain protections to the members over and above those proposed by the City in urging the override provisions.

At page 51 of the Department of Justice report, which as previously noted was issued on January 13, 2017, there is the following sentence: "Not surprisingly, this override provision was used only 17 times in the last five years". There was a suggestion in the record that the override

provision, pursuant to the current 6.10, was an unusual event. However, introduced into the record was a document prepared by the Bureau of Internal Affairs dated 26 January 2020 entitled "Sworn Affidavit Override Requests". This document lists the number of override requests from 3 May 2016 through 18 December 2019. There were approximately during this period 125 override requests, all of which were granted with the exception of one that at the time of the report was still pending. The requests show interesting patterns. For example, between 28 October 2019 and 19 November 2019 involving 13 requests, all were made by the BIA. This same pattern continued through 18 December 2019 with all the requests being made by the BIA. There are examples where COPA had made requests. Until recent times, the Unit requesting an override was distributed fairly equally between COPA and BIA, but this has changed, as noted, in recent times.

An analysis of the BIA's 28 January 2020 Sworn Affidavit Override Requests report suggests that the Department is utilizing the override procedure more than what is acknowledged. The document further fortifies a concern that the Neutral Chair expressed as to the possible pro forma signing of affidavit overrides as revealed in the following colloquy between the Neutral Chair and the City's Advocate:

> ARBITRATOR ROUMELL: ... Now, if any of you had any experience with investigations, you might read my underlying statement. The only thing I'm concerned about on this one, and maybe the director can help me on this, is I want some assurance that people aren't going to be signing affidavits just to sign affidavits. Because in that case, then we have no real protection.
>
> I guess what I'm really saying to you is, okay, you've got an anonymous complaint. In fact, you're going to have an anonymous hotline if I read the material on the website. But there's another Latin word, pro forma, and I don't want these affidavits to be pro forma. Because in that case, then I think the unions have a right to grieve if that becomes the issue.

> I don't know whether you want to have the director address that, but that's my concern. Because those who have practiced law know that on convictions, you just sign an affidavit without reading them. I did want some protection.
>
> MR. JOHNSON: And I would suggest that those protections are already actually embedded in the contract. They're not just formally protected, but the fifteen years or fourteen years of experience the parties have had with the override process have taught that it is in fact, it is in practice, a substantive protection.
>
> There is a side letter in the back of each of the collective bargaining agreements applicable to the affidavit process, and that existing side letter provides that --
> (Tr. 16-17).

The reference to the Side Letter would seem to acknowledge the point this Neutral Chair made for the Letter does provide that an arbitrator in the case of a sustained finding has the authority to review the agency's efforts in obtaining an affidavit and the basis of the override affidavit.

The problem with the Side Letter is that, so to speak, it "lets the horse out of the barn". If in fact the preliminary investigation does not reveal objective, verifiable evidence which could include arrest and case report, medical records, statements of witnesses and complainants, video or audio tapes and photographs, but then this information may have been obtained after a CR number has been issued and a full investigation made, it is suggested that the proposal does not offer the protections that the member would be entitled to assert because it would be too late to do so as a practical matter. This is of particular concern against a history of many years of no anonymous complaints. For this reason, the members should have additional protection against false, unsupported and vicious complaints while recognizing from the City's viewpoint that there are citizens who are reluctant to come forward with complaints because of fear of the police.

Recognizing competing concerns, the adamant positions of the parties on this issue which

could be considered a candidate for considering strike criteria and then applying, when faced with such strong positions, the art of the possible, the Neutral Chair has added in Appendix O the right of a member as to whom allegations have been sustained to challenge the good faith issuance in signing the override affidavit in an anonymous complaint situation.

In the end, applying the art of the possible, the City obtained the right to utilize anonymous complaints and the supervisors obtained the right of having the utilization of the anonymous complaint procedure reviewed by a neutral not affiliated with any investigative agency or either party. The City's Appointee reluctantly joined the Neutral Chair with this award. The Units' Appointee vigorously dissents.

The final offer of the City is adopted with the addition of Appendix O and the reference in the Side Letter to Appendix O with Section 6.1.F being deleted and Section 6.1.E and 6.10, along with the Side Letter reading:

> Anonymous Complaints (Sections 6.1.E, 6.1.F and 6.10; and Side Letter)
>
> *Section 6.1.E:*
> Allegation(s) against a [Sergeant] [Lieutenant] [Captain] which would constitute a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute may be made the subject of a Complaint Register investigation.
>
> *Section 6.1.F – Deleted*
>
> *Section 6.10:*
> When an allegation of misconduct against a [Sergeant] [Lieutenant] [Captain] is initiated by a non-Department member, and the allegation is not of a criminal nature within the meaning of Section 6.1(E) the investigative agency shall secure an affidavit from the complainant. If the complainant executes the affidavit, the investigation shall proceed as a Complaint Register investigation. If the complainant is anonymous or refuses to execute an affidavit, the investigative agency shall, subject to the provisions below, proceed in accordance with the provisions applicable to Complaint Register investigations.

If the investigative agency determines to conduct a Complaint Register investigation where the complainant is anonymous or does not execute an affidavit, the appropriate official shall execute an affidavit stating that he/she has reviewed the evidence compiled in a preliminary investigation, and, based upon the sufficiency of the evidence, continued investigation of the allegations is necessary. For Civilian Office of Police Accountability and Inspector General cases, the "appropriate official" shall be the Commanding Officer of the Bureau of Internal Affairs. For Bureau of Internal Affairs cases, the "appropriate official" shall be the Chief Administrator of the Civilian Office of Police Accountability. If an affidavit is not executed by the Civilian Office of Police Accountability or the Bureau of Internal Affairs, the matter shall not be used by the Department with respect to any aspect of the [Sergeant's] [Lieutenant's] [Captain's] employment.

SIDE LETTER

Thomas J. Pleines

Re: City of Chicago and PBPA, Unit 156 Negotiations - Sworn Affidavits

Dear Mr. Pleines:

This will confirm the representations made to the Union during negotiations for the 2016-2022 collective bargaining agreement, with respect to how the Employer intends to operate under the agreement dealing with sworn affidavits.

We have advised you that in those instances where an affidavit is necessary, the investigative agency will continue to make a good faith attempt to obtain an affidavit from the complainant within a reasonable time. When an affidavit cannot be obtained from a citizen complainant, the head of either BIA or COPA may sign an appropriate affidavit according to the following procedure. An "appropriate affidavit" in the case of the head of either COPA or BIA is an affidavit wherein the agency head states that he or she has reviewed objective verifiable evidence, specifies what evidence has been reviewed and in reliance on that evidence the agency head affirms that continued investigation is necessary. The types of evidence the agency head must review and may rely upon will be dependent upon the type of case, but may include arrest and case reports, medical records, statements of witnesses and complainants, video or audio tapes, and photographs. This list is illustrative only and is not to be considered exclusive or exhaustive.

In addition, the provisions set forth in Appendix O are applicable to anonymous complaints. In the case of a sustained finding that is subject to the parties' grievance procedure, the arbitrator has the

authority to review whether the investigative agency made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of COPA or BIA was based upon objective evidence of the type specified above, in addition to the issues of just cause and the appropriateness of the penalty in determining whether to grant the grievance.

If this letter accurately reflects your understanding and agreement regarding this issue, please sign where indicated and return a copy to me.

Very truly yours,

James C. Franczek, Jr.

Acknowledged and Agreed to this__ day of___, 2020

Appendix O

If an allegation is sustained against a member as a result of an override affidavit where the complainant or complainants are anonymous, the member may grieve and challenge whether the override affidavit was executed in good faith, namely, whether there was a good faith effort to secure an affidavit from the complainant(s) and whether the affidavit of the head of COPA or BIA was based upon a review of objective verifiable evidence and that the agency head stated that he or she has reviewed objective verifiable evidence and specifies what evidence has been reviewed and in reliance on that evidence the agency head affirms that continued investigation is necessary. The types of evidence the agency head must explain that he or she reviewed and relied on will depend upon the type of case, but may include arrest and case reports, medical records, statements of witnesses and complainants, video or audio tapes and photographs. This list is illustrative only and is not to be considered exclusive or exhaustive. Once the member is notified of the sustained allegations and recommended discipline, if any, the member through his or her Union can request a review of the evidence that the investigative agency head considered when exercising the override affidavit and can elect to have the arbitrator selected, in the event the member has challenged the sustained findings and recommended discipline, to first determine whether the investigative agency made a good faith effort to secure an affidavit from the complainant and whether the affidavit of the head of COPA, BIA or OIG was based upon objective evidence of the type specified above. The arbitrator shall make the determination of the sufficiency of the override affidavit before hearing the merits. If the arbitrator determines that the override affidavit was not issued in good faith or not based on objective evidence of the type specified above, then the allegations and charges are to be dismissed with the notation "no affidavit". The losing party shall be responsible for the arbitrator's fees and expenses.

> This procedure applies only to override affidavits involving anonymous complaints.

2. Section 6.1.G – Revealing Names of Complainants

Article 6, "Bill of Right", Section 6.1.G in the current contracts, reads:

> Immediately prior to the interrogation of a Sergeant under investigation, the Sergeant shall be informed, in writing, of the nature of the complaint, the names of all complainants and the specific date, time and, if relevant, location of the incident.

Initially, the City proposed "that the identity of the Complainant need not be disclosed until immediately after the interrogation". (Pg. 21, City's post-hearing brief). After so writing, the City in its post-hearing brief at page 21 noted:

> ... However, we acknowledge that the principal objectives of the proposal would be achieved should the Neutral Chair clarify in his Award that the requirements of Section 6.1.G are satisfied where the accused member is told the name of the complainant immediately *prior* to the start of an interrogation.

As a result, the final offer of the City did not include any change to Section 6.1.G, apparently relying on the statement in the City's brief just noted.

At two points on the record, when asked by the Neutral Chair as to the Unions' interpretation of 6.1.G in regard to the timing of providing the name of the complainant, the Unions' Counsel responded:

> ARBITRATOR ROUMELL: You're saying that if I bring in Officer Pleines, I have given you the allegation that you hit George Roumell at 300 South Wacker. That you do. You bring me into the interrogation room. At that point under your contract, I've got to tell you who made the complaint.
>
> MR. PLEINES: Correct.
>
> ARBITRATOR ROUMELL: I don't have to tell you the day before or an hour before, as long as I tell you before I ask questions.
>
> MR. PLEINES: That's what the contract currently provides.

(Tr. 86-87).

Subsequently, when asked again by this Neutral Chair as to the timing of revealing the name of the complainant, Union Counsel responded:

> ARBITRATOR ROUMELL: Yesterday Mr. Pleines suggested that the department under the current language has the right not to reveal the name of the complainant until the interview. Is that what I heard you say?
>
> MR. PLEINES: That is an accurate statement of the rules, the contract.
> (Tr. 170).

The parties' practice over the years in interpreting and applying 6.1.G was explained in the following colloquy between Counsel:

> MR. JOHNSON: But I want to make sure that my understanding of the union's position is clear. It would be consistent with, and correct me if I'm wrong, but as I understand the unions to say, it would be consistent with the current language in Article 6.1G and Article 6 generally that we can maintain the current practice of giving you the specific date, time and, if relevant, location of the incident several days, a few days, in advance, but withhold the name of the complainant until immediately prior to your coming in for the interview. That would comport with 6.1G, as I understand the union's position.
>
> MR. PLEINES: The union's position is spelled out very clearly in that paragraph.
>
> MR. JOHNSON: That would be a yes then?
>
> MR. PLEINES: Immediately prior you get the name of the complainant.
> (Tr. 98).

This colloquy addresses the parties' past practice in applying Section 6.1.G by giving the specific date, time and relevant location of the incident and the names of the complainants several days in advance of the interview as well as at the beginning of the interview.

The clear language of Section 6.1.G provides that this information, including the names of the complainants are to be given "immediately prior to the interrogation". What the parties

have done by a binding past practice is to modify the language as noted above. The City has agreed to continue the practice of notifying the member of the specific date, time and relevant location of the incident involved several days in advance of the interview as well as at the interview, but intends to exercise the language of Section 6.1.G and not provide the names of the complainants until the time immediately prior to the interrogation of the member. As long as the Department applies Section 6.1.G as just noted, the Board concludes there is no need to make any changes to Section 6.1.G, namely, the Department will reveal to the member several days prior to the interview the specific date, time and relevant location of the incident involved as well as doing so at the time of the interview but, as to the names of the complainants, those names, consistent with the language of Section 6.1.G, need not, at the discretion of the interviewer, be revealed until the beginning of the interview.

The Neutral Chair will add as his own statement that though there will be cases where the alleged victim may not be the complainant, there may be times when the name of the complainant, nevertheless, will "jog" the memory of the member or be of assistance in allowing the member to explain the circumstances.

3. Section 6.1.L "Conduct of Disciplinary Investigation; Section 6.2 "Witness Statements in Disciplinary Investigations

The Neutral Chair has elected to address the final offer of the City concerning amendments to Section 6.1.L and Section 6.2 as the amendments address the same issue. The Units' final offer suggests, as revealed in their post-hearing brief, that there be no amendments to the current Section 6.1.L and Section 6.2 addressing conduct of disciplinary investigations and witness statements in disciplinary investigations.

The City's final offer is to add the following language to Section 6.1.L and to Section

6.2.E, namely:

> The investigative agency shall note on the record of the interrogation any time the Sergeant seeks or obtains information from his or her counsel or Unit 156-Sergeants representative, and ensure that the Sergeant's counsel or Unit 156-Sergeants representative does nothing to disrupt or interfere with the interrogation.

In 1997, in an arbitration between the City and the Fraternal Order of Police Chicago Lodge No. 7 in *Gr. No. 129-97-008/238*, this Neutral Chair issued an opinion and award concluding that there was a binding past practice where the statements being taken from officers in the investigative process made no reference when the officer conferred with his or her attorney or Union representative during the interview. At the time, the statements that were being taken by the investigative agency were typewritten. Since 1997, there has been a change in the underlying circumstances from which this Neutral Chair has concluded there had been a past practice. The statements are now taken by an audio recording. As the City's Counsel noted at page 22 of their post-hearing brief, "The admission of the occasions and duration of the consultation with counsel stands as a glaring and unanswerable void in the real time recording of the statement". The argument proceeds to suggest that such voids could undermine the integrity of the interview when viewed by others without an explanation as to voids in the recording as a result of time out for consultation.

Nevertheless, this Neutral Chair believes that it is a basic right of a member to be represented by counsel or a Union representative during an interview and to be able to consult. This is a basic right recognized in union contracts and in the legal system generally.

However, the change in circumstances is not limited to the advent of the method of conducting interviews by advanced technology, namely, audio interviews. On January 31, 2019, Judge Dow issued his Consent Decree in *State of Illinois v. City of Chicago, Case No. 17-cv-*

6260 (United States District Court for the Northern District of Illinois, Eastern Division), wherein in Paragraph 465(d) at page 134 the Court noted:

> 465. When conducting an administrative interview of any CPD member, COPA, BIA, and the districts will:
>
> * * *
>
> d. note on the record of the interview anytime the CPD member seeks or obtains information from his or her legal or union representative, as well as the length of any "off the record" discussion between the CPD member and his or her legal or union representative and ensure that the CPD member's counsel or representative does nothing to disrupt or interfere with the interview;
>
> * * *
>
> f. audio record all CPD member in-person interviews.

There is now a Federal Court Decree requiring such notations.

In addition, Mayor Lightfoot, in discussing the issue, noted that she has had a career as a litigator and "probably took a thousand plus dispositions. It was standard fare that when there was a break, when there was a moment of consultation, you note it for the record and you moved on. This is not a big deal, this is not the end of the world to have an accurate record where you're noting a break, a moment of reflection between the witness and counsel." (Tr. 541).

The Neutral Chair concludes that based upon the change in technology and the Court Decree plus general practice in the taking of depositions, there are changed circumstances and the proposal in the final offer of the City is well taken and will be adopted by a majority of the Board with the Union Appointee dissenting.

In closing on this point, the Neutral Chair again emphasizes that the members have the right to consult with legal counsel or Union representatives during interviews. The adoption of

the City's final offer is a recognition of changed circumstances. Section 6.1.L and Section 6.2.E of the respective contracts shall have the following language added:

> The investigative agency shall note on the record of the interrogation any time the Sergeant seeks or obtains information from his or her counsel or Unit 156-Sergeants representative, and ensure that the Sergeant's counsel or Unit 156-Sergeants representative does nothing to disrupt or interfere with the interrogation.

4. Section 6.4 – Photo Dissemination and Section 6.8 – Media Information Restrictions

During the hearing, the City presented evidence in pursuant of proposed changes in the Section 6.4 and Section 6.8 language. The Unions objected to any changes. In the final offers both the Unions and the City as to Sections 6.4 and 6.8 proposed "status quo". For this reason, the award of the unanimous Board will be to continue the language in Sections 6.4 and 6.8 as in the expiring contracts.

5. Section 8.1 Disciplinary Matrix

Article 8 of the PBPA supervisor Units' CBAs is entitled "Employee Security". Each contract contains the following Section 8.1 as appearing in the Sergeants' contract:

> **Section 8.1 Just Cause Standard**
> No Sergeant covered by this Agreement shall be suspended, relieved from duty or disciplined in any manner without just cause.

Letter of Understanding Re: Section 8.1

Neither party in their respective final offers proposed the elimination of the just cause standard set forth in Section 8.1 which embraces the concept that the discipline is to be reasonable, within the range of reasonableness, devoid of due process and procedural objections, and an Officer's record, including longevity, discipline record and complimentary record are all considerations in determining whether the standard has been applied which arbitrators between these parties and between the City and FOP have enunciated over the years.

As the City noted at page 26 of its post-hearing brief, after announcing no change in the just cause language, "Rather, the City is simply proposing that the Unions drop their insistence on negotiating the terms of the Disciplinary Matrix. The City is proposing that both BIA and COPA be free to utilize a Matrix as an internal guide for insuring consistency in recommending penalties. ... with the neutral according the Matrix whatever weight he or she believes it is entitled to or even disregard the Matrix altogether if the neutral sees fit." (Tr. 154-155).

Consistent with this statement, the City proposed a Letter of Understanding to be attached to the CBAs which will be discussed later.

The Unions' final offer is:

> On the Issue of the City's Proposal to amend section 8.1 to utilize a Disciplinary Matrix, the Unions' final offer is current language and the ***Status Quo***.

The record sheds substantial light on the parties' disagreement over this issue and leads the way to resolution applying the art of the possible. The starting point of the analysis of the issue of a Disciplinary Matrix are the following statements at page 23 of the City's pre-hearing brief as to the purpose of the Department's adoption of a written Disciplinary Matrix:

> ... The City (both BIA and COPA) should be free to utilize a Matrix as an internal guide for ensuring consistency in recommending penalties, ...
>
> It is incumbent on the Employer, when imposing disciplinary penalties, to ensure that the process for recommending penalties is consistent, unbiased, and takes into account all relevant factors and considerations. A Matrix is nothing more than an aid to the Employer in fulfilling this obligation: it reminds the individuals charged with this task to dot the i's and cross the t's before finalizing the recommendation. ...

The Department did adopt a written Disciplinary Matrix of approximately 50 pages in length plus a 10 page introduction. (Tr. 138). Following the adoption of the written Disciplinary

Matrix, apparently the Fraternal Order of Police Chicago Lodge No. 7 demanded to bargain over the terms and implementation of the Disciplinary Matrix, resulting in the Lodge filing an unfair labor practice with the Illinois Labor Relations Board seeking to require the City to bargain. Similarly, the Lieutenants filed an unfair labor practice seeking the same relief.

Board Member Ms. Porter-Adams explained the status of the FOP unfair labor practice as follows:

> With the FOP, the Board issued a decision, the ALJ issued a decision that we had to bargain. The recommended decision order was that we bargain the matrix, and the Board held the decision in abeyance while FOP and the City continued to bargain. So we are bargaining that issue with the FOP. It's in the proposal that we're making here. (Tr. 142).

After Ms. Porter-Adams made this statement, Unions' Representative Joseph Andruzzi noted:

> It was an agreement with the lieutenants' association and the City that we would abide by the outcome of FOP's ULP. (Tr. 142).

What followed after these comments about the unfair labor practice was a discussion concerning the City questioning the necessity of negotiating the details of the written Disciplinary Matrix and the Unions questioning whether the Disciplinary Matrix should be available to an arbitrator reviewing the disciplinary action. There was also a question that if the Disciplinary Matrix was not supplied to the arbitrator, could the representative of the Department testifying acknowledge that there was reliance on the written Disciplinary Matrix. These questions brought forth quandaries perhaps at least from the City's standpoint where summarized by City Board Member Ms. Porter-Adams when she observed:

> Because we want to rely on the matrix, so we can't have our witness lie. Part of our proposal is that we will still be able to use the matrix, but it's an internal tool, and you can challenge it and say it's unreasonable that he came up with ten days even by using the matrix.

But to make our witnesses feel like they can't say what they relied on is going to be a problem for us.

And I don't know how an arbitrator would feel about that in terms of him not – if he said the matrix is what he relied on, which can be the truth –
(Tr. 151).

After the discussion as just described, the Neutral Chair made a suggestion as to resolution with the colloquy concerning the suggestion and the reaction of Counsel being as follows:

ARBITRATOR ROUMELL: The idea I had, you keep the language in the contract, you have a letter of understanding in return for withdrawing the unfair labor practice that the Arbitrator can apply traditional concepts of just cause, that the department will not submit evidence, the actual matrix. That doesn't prevent an individual when he is asked from the department, "Well, how did you come up with ten days?"

"Well, we relied on an internal matrix."

But I don't see the matrix.

MR. ANDRUZZI: I think the union cold agree with that.

ARBITRATOR ROUMELL: Now, you might want to think about it.

MR. JOHNSON: We will, yeah.

ARBITRATOR ROUMELL: In other words, that doesn't prevent, "How did you arrive at it?"

"We arrived at it based on the internal matrix."

But the letter of understanding would indicate that we're applying traditional just cause sentences.

MR. JOHNSON: No quarrel there.

ARBITRATOR ROUMELL: All right.

MR. PLEINES: And we would also want the language to also include that there's no way the Arbitrator or the accused is going to treat the matrix as presumptively valid.

MR. JOHNSON: Well, how could he if he's never going to see it?

MR. PLEINES: Just the disclosure of its existence.
(Tr. 154-155).

This dialogue assumed that if a letter of understanding was adopted the Lieutenants would withdraw their unfair labor practice. However, the Neutral Chair also assumes that any resolution in this proceedings as to the Disciplinary Matrix issue is limited to the PBPA supervisors Units.

With the dialogue just discussed and quoted, then observe the final offers presented. The Unions, as noted, opted for the status quo, namely, continuing the Section 8.1 just cause language without any other additions or letters of understanding.

The City proposed to continue the Section 8.1 just cause language and proposed the following Letter of Understanding:

> The Unions acknowledge that the Employer has developed a Complaint Register Matrix ("Matrix") and accompanying Complaint Register Matrix Guidelines ("Guidelines"). The Employer has advised the Unions that the purpose of the Matrix and the Guidelines is to ensure that disciplinary penalties are fairly administered through consistent application and enforcement, reflect the gravity of the alleged misconduct, and promote a culture of public accountability, individual responsibility and professionalism while protecting the rights of employees.
>
> The Employer acknowledges and agrees that the principles of just cause apply to review of disciplinary penalties and that an arbitrator presiding over a discipline grievance pursuant to Article 9 of the Agreement is to apply the principles of just cause in reviewing the penalty imposed. In an instance where the Arbitrator finds that principles of just cause require a penalty other than one provided for in the Matrix, the parties agree that the Arbitrator has the authority to depart from the Matrix and impose a different penalty. In such event the Arbitrator will provide a written explanation of why he or she awarded a penalty different from that contemplated by the Matrix.

After further consulting with the parties, the Neutral Chair agreed to adopt the City's

proposed Side Letter as set forth above with the following added language at the end of the Letter:

> ... It is understood that this language does not change the fact that the City bears the burden of proving that the accused committed the acts which are the basis for the charges/allegations as well as the burden of proving that the recommended suspension is of an appropriate duration under the circumstances presented.

With this modification, the unanimous Board adopts the final offer of the City, with some reluctance on the part of the Unions' Appointee.

6. Section 8.4 Use and Destruction of File Material

Section 8.4 in each of the Units' CBAs is entitled "Use and Destruction of File Material". For purposes of discussion, the Neutral Chair has in parenthesis marked each paragraph of Section 8.4:

> (1) All Disciplinary Investigation Files, Disciplinary History Card Entries, Office of Professional Standards or Independent Police Review Authority disciplinary records, and any other disciplinary record or summary of such record other than Police Board cases, will be purged from the online file system five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, and, therefore, will not be used against the Sergeant in any future disciplinary proceedings, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five-(5-) year period. In such instances, the Complaint Register case files will be purged from the online file system five (5) years after the date of the final arbitration award or the final court adjudication, unless a pattern of sustained infractions exists.
>
> (2) Any information of an adverse employment nature which may be contained in any unfounded or exonerated file shall not be used against the Sergeant for any reason. A not sustained finding shall not be used against the Sergeant in any future proceeding.
>
> (3) A finding of "Sustained-Violation Noted, No Disciplinary Action" entered upon a Sergeant's disciplinary record or any record of summary punishment may be used for a period of time not to exceed one (1) year and shall thereafter be removed from the Sergeant's disciplinary record and not used for disciplinary action. The Department's finding of

"Sustained-Violation Noted, No Disciplinary Action" is not subject to the grievance procedure.

(4) Information relating to a "preventable" traffic accident involving a Department vehicle may be used and/or considered in determining future discipline for a period of time not to exceed two (2) years from the date of such "preventable" traffic accident and shall thereafter not be used and/or considered in any employment action, provided there is no intervening "preventable"traffic accident involving a Department vehicle, and if there is, the two- (2-) year period shall continue to run from the date of the most recent "preventable" traffic accident and any prior incidents which were determined to be "preventable" traffic accidents may be used and/or considered in employment actions. In no event shall any prior "preventable" traffic accident five (5) or more years old be used and/or considered.

The Unions' final offer is to continue the Section 8.4 language, namely, "status quo". The City essentially proposes to re-write Paragraph (1) referring to "the Employer's investigative agencies" and to provide that the disciplinary records be "retained indefinitely by the Employer", thereby eliminating most of the language of Paragraph (1). As to Paragraph (2), the City would add the following language:

Notwithstanding the above, Not Sustained files alleging criminal conduct, excessive force, or verbal abuse (as defined in Section 2-78-100 of the Municipal Code of Chicago), for a period of seven (7) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, may be used in future disciplinary proceedings to determine credibility and notice.

The City would continue Paragraphs (3) and (4) without change.

The argument made by the Unions in their pre-hearing brief in support of the status quo as to Section 8.4 was summarized with the following statement at page 21: "This proposal comes after the Arbitrator's award of Arbitrator Crystal which overturned exactly what the Employer is proposing the Unions agree to know." (U Ex 13).

On November 4, 2015, Arbitrator Crystal did issue an award finding that the City violated 8.4 in failing "to purge CR and disciplinary records from the online file system as set forth in

Section 8.4 of the agreement". (Pg. 46). However, following a request from the City to clarify the remedy, Arbitrator Crystal on February 29, 2016 in a clarification at pages 16-17 wrote:

> The undersigned cannot simply shut his eyes to the events that have taken place since the issuance of his Award. He is compelled by the circumstances of this case and his responsibilities as Arbitrator to consider the broader context. In light of recent developments that have transpired and become more consequential since the issuance of the Award, I must agree with the City that the contract provision at issue is a direct contravention of what has become a clear and predominant public policy – a public policy that has been embraced by recent judicial pronouncements and mirrored in the language of existing legislation. With respect to the latter, the language of FOIA, the Public Records Act and the Local Records Act supports the trend toward disclosure. This legislation makes clear that public records must be maintained rather than destroyed, and that subject to judicial approval, be made accessible to plaintiffs in the event of court actions initiated by citizens alleging City and/or police misconduct.

As a result, Arbitrator Crystal issued a decision which in part read:

> Accordingly, the undersigned directs the parties to comply with the directives of Article 8.4 and negotiate a substitute provision for Section 8.4 – a provision that addresses the pertinent issues and concerns raised by both parties and that is not inconsistent with court rulings, judicial pronouncements and/or legislative enactments. ...

The Crystal award, along with an award issued by this Neutral Chair involving the destruction of records pursuant to the FOP CBA became the subject of litigation in the Illinois Courts. As to both the Crystal award and this Neutral Chair's award, the Illinois Court of Appeals for the First District reversed the Circuit Court and vacated an injunction that sought to prohibit the City from releasing certain records. (*See,* C. Ex. 64). This background establishes that the reliance on the Crystal award is not a viable argument. On June 18, 2020, the Illinois Supreme Court in *Chicago v. FOP Chicago Lodge No. 7*, DKT 124831, concluded that the disciplinary records are public records and that it is against public policy in Illinois to destroy the records at issue.

Even Arbitrator Crystal ultimately directed that the parties negotiate a substitute provision for Section 8.4 which, given the approach of the Illinois Courts as to public policy, favors the City's proposal eliminating the requirement to purge or destroy records.

There is a practical reason to eliminate the purging or destruction of record provision. The "Invisible Institute" and the Citizens Police Data Project has accumulated a library for police misconduct investigations and materials going back many years which material has been used to support claims against the City (*See*, Ex. 23); http://invisible.institute/police-data. The Invisible Institute claims to have records of 249,782 allegations of misconduct against 23,444 Officers in the past 50 years. "https://data.cpdp.co/data/bPp76r/. Since 2002, the City has been sued 3,729 times for alleged improper conduct by Department members.

The City, noting the above information, makes a strong case that the records should not be purged or destroyed as the City may need records beyond the five year period in the current Section 8.4 in order to successfully defend against lawsuits.

For the above reasons, the City's proposal to retain the discipline records or summary of such records indefinitely is supported by the record.

The City also in its final offer proposes, as already noted, to be able to utilize non-sustained findings for a period of seven years after the date of the incident or the date upon which the violation is discovered, whichever is longer, in future disciplinary proceedings to determine credibility and notice if the non-sustained violation alleged criminal conduct, excessive force or verbal abuse.

With the exception of the reference to "verbal abuse", this language has appeared in the FOP CBA since 2002 as a result of an interest arbitration chaired by Arbitrator Steven Briggs.

Not only is this provision in the FOP CBA, but the comments of Chairman Briggs bear repeating on the issue for they clearly articulate the reason for the provision. At pages 81-82 in the opinion issued by the Briggs' Board, the following is stated:

> Moreover, the Board has concluded from the record that the retention of "not sustained" files might assist the Department in identifying problem offers – perhaps even early enough to correct their aberrant behavior through additional training. With appropriate safeguards, therefore, we believe the thrust of Department's proposal on this issue has merit.
>
> Clearly, there are no due process issues associated with the use of prior "not sustained" complaints to demonstrate that an officer was aware of the rules and/or regulations allegedly violated. With the procedural protections contained in the parties' November 14, 2000 side letter and in the current disciplinary system, the retention of "not sustained" complaints should not compromise the disciplinary fairness Chicago police officers deserve. Among those protections are the following: (1) a "not sustained" cannot automatically be determinative of notice, credibility and penalty; (2) the Department retains the burden or proving just cause for discipline; and (3) the Lodge reserves the right to challenge "not sustained" files' similarity, validity, relevance and weight. ...
> (*See*, C. Ex. 10).

Not only did the Briggs Board adopt the not sustained language at issue, which became part of the FOP CBA, but the reasoning of the Briggs Board as just quoted is most persuasive and cannot be improved on by this Neutral Chair.

There is one difference between the contract language in the FOP CBA as adopted by the Briggs and the final offer of the City in this case. The City proposes to add "verbal abuse". Verbal abuse can indicate a problem officer, just as criminal conduct and excessive force. For this reason, there is merit for the Department being able to identify officers involved in verbal abuse so as to aid those officers in correcting their behavior by further training, just as it would be in the case of criminal conduct and excessive force. For this reason, the Board will adopt the final offer of the City on this point.

During the discussions with the Board, the Units' representative and Counsel raised the question of the utilization of non-sustained files to affect promotions and assignments. The Neutral Chair agrees that non-sustained files cannot be used in determining promotions or in making assignments. For this reason, the Board will adopt the final offer of the City with the addition of the following sentence: "Non-sustained files shall not be used in determining promotions or in making assignments".

For the above reasons, the majority of the Board, with some reluctance on the part of the City's Appointee as to the added sentence, and the Unions' Appointee dissenting, adopts the following provisions of Section 8.4, namely, the City's final offer as amended by the Board:

> File Retention, Use and Pattern Analysis (Section 8.4)
>
> All Disciplinary Investigation Files, Disciplinary History Card Entries, ~~Office of Professional Standards or Independent Police Review Authority~~ the Employer's investigative agencies' disciplinary records, and any other disciplinary record or summary of such record ~~other than Police Board cases~~, will be retained indefinitely by the Employer. ~~Purged from the online file system five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, and, therefore, will not be used against the [Sergeant] [Lieutenant] [Captain] in any future disciplinary proceedings, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five-(5-) year period. In such instance, the Complaint Register case files will be purged from the online file system five (5) years after the date of the final arbitration award or the final court adjudication, unless a pattern of sustained infractions exists.~~
>
> Any information of an adverse employment nature which may be contained in any unfounded or exonerated file shall not be used against the [Sergeant] [Lieutenant] [Captain] for any reason. A not sustained finding shall not be used against the [Sergeant] [Lieutenant] [Captain] in any future proceeding. Notwithstanding the above, Not Sustained files alleging criminal conduct, excessive force, or verbal abuse (as defined in Section 2-78-100 of the Municipal Code of Chicago), for a period of seven (7) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, may be used in future disciplinary proceedings to determine credibility and notice. (Non-sustained files shall not be used in determining promotions or in making

assignments.)

> A finding of "Sustained-Violation Noted, No Disciplinary Action" entered upon a [Sergeant's] [Lieutenant's] [Captain's] disciplinary record or any record of summary punishment ay be used for a period of time not to exceed one (1) year and shall thereafter be removed from the [Sergeant's] [Lieutenant's] [Captain's] disciplinary record and not used for disciplinary action. The Department's finding of "Sustained-Violation Noted, No Disciplinary Action" is not subject to the grievance procedure.
>
> Information relating to a "preventable" traffic accident involving a Department vehicle may be used and/or considered in determining future discipline for a period of time not to exceed two (2) years from the date of such"preventable" traffic accident and shall thereafter not be used and/or considered in any employment action, provided there is no intervening "preventable" traffic accident involving a Department vehicle, and if there is, the two- (2-) year period shall continue to run from the date of the most recent "preventable" traffic accident and any prior incidents which were determined to be "preventable" traffic accidents may be used and/or considered in employment actions. In no event shall any prior "preventable" traffic accident five (5) or more years old be used and/or considered.

The language in parenthesis are the additions by the Board.

7. **Section 11.2 – Compensation for Holidays, Section 11.2.D**

Currently, Section 11.2.D of the supervisors' CBAs reads:

> All hours in excess of a regular tour of duty on a holiday will be compensated in accordance with the provisions of Article 20.

The City's final offer is status quo. The Unions' final offer is:

> All hours in excess of a regular tour of duty on a holiday will be compensated ~~in accordance with the provisions of Article 20~~ **at two-and-one-half times the normal rate of pay, in fifteen (15) minute increments.**

Currently, if a supervisor works a regular tour of duty on a holiday, the supervisor is paid one and one-half times his or her normal rate in addition to paid hours of comp time or pay for the holiday. (Tr. 620). If the supervisor works beyond his or her normal tour of duty during a holiday, the supervisor continues to be paid at the rate of time and one-half for all hours worked.

(Tr. 629). This arrangement has been the procedure followed since the supervisors have had collective bargaining. (Tr. 630).

What this evidence suggests is that through various CBAs negotiated the parties have not changed the method of compensation when working on holidays. To the Neutral Chair, this factor, namely, the bargaining history, would suggest that unless there was a compelling reason for a change, namely, to pay two and one-half times for all hours worked beyond the regular tour of duty on a holiday, it is doubtful that the parties would have reached an agreement on this issue as proposed by the Unions. The fact is the members are receiving time and one-half pay for all hours worked on a holiday, including beyond the member's normal tour of duty. With the absence of a compelling reason for the change and no evidence that there would be a *quid pro quo* offered by the Unions for this benefit, the Board will accept the City's final offer of status quo and reject the Unions' final offer and award as to Section 11.2.D the current language, namely, status quo, with the Unions' Appointee dissenting.

8. <u>Section 12.2 Chicago Labor-Management Trust (Plan Design)</u>

Section 12.2, "Chicago Labor-Management Trust", in each of the Units' CBAs contains the following language as appearing in the Sergeants' contract:

> Unit 156-Sergeants commits to becoming a signatory labor organization of the labor-management cooperation committee known as the Chicago Labor-Management Trust ("Trust") and shall have one (1) Trustee appointed to the Trust. Upon the ratification of this Agreement, Unit 156-Sergeants agrees to meet with the employer and representatives from the signatory labor organizations to the Agreement and Declaration of Trust establishing the Trust ("Trust Agreement") for the purpose of determining the guidelines and procedures to be used in expanding the Trust to include the members of the bargaining unit. After Unit 156-Sergeants becomes a signatory labor organization to the Trust, Unit 156-Sergeants shall be afforded the same right to withdraws from the Trust as is granted to any other signatory labor organization pursuant to the Trust Agreement.

The Unions' final offer as to Section 12.2 is:

> On the issue of the Unions' proposals to withdraw from LMCC, the Unions' final offer is to delete Section 12.2 from the parties' agreements and to recognize that the Supervisor Units are no longer members of the LMCC.

The City's final offer is:

> Beginning no later than 2020, members of the [Sergeants'] [Lieutenants'] [Captains'] bargaining unit will be subject to the plan Design changes implemented through the LMCC resulting from the commitment in the COUPE collective bargaining agreements to achieve savings in the targeted amount provided for in those agreements. The [Sergeants] [Lieutenants] [Captains] Unions, as members of the LMCC, shall be an active participant in the LMCC deliberations with respect to such changes.

Essentially, the City is proposing the status quo, namely, that the Medical Plan Design for Sergeants, Lieutenants and Captains shall be governed pursuant to the provisions of the Chicago Labor-Management Trust.

In 2008, a group of representatives from the City and representatives from collective bargaining units across the City came together in a committee known as the Labor Management Cooperation Committee to come to an agreement with the City on a health care plan that would apply to the members of the unions involved. (Tr. 634). In the supervisors units 2007-2012 CBAs, the supervisors adopted the Section 12.2 language and became a part of the LMCC and in particular the Chicago Labor Management Trust which was the document upon which the Coalition operated.

The supervisors units became involved with the Coalition and the Trust as a result of discussing health care issues during the negotiations for the 2007-2012 CBAs. (Tr. 636). As James Ade, former President, now retired, of the Sergeants' Unit testified, the reason for the

City-Unions including the Sergeants, Lieutenants and Captains for participating in the Coalition and Trust was: "I believe they all thought if we worked together we could have better health care for our members". (Tr. 637). All unions in the City, including the Fire Fighters, became members and were bound by the Trust except the Fraternal Order of Police Chicago Lodge No. 7. The issue of whether the Lodge would become a member of the LMCC was before Arbitrator Ed Benn in an interest arbitration in 2010 where he held that he could not force the FOP to join the LMCC. (Tr. 637). However, every other union representing City of Chicago employees, including civilians, firemen and police supervisors, are part of the LMCC. (Tr. 636-637).

The FOP did not join the LMCC. As a result, the LMCC unions have negotiated one health plan covering all the City unions except the FOP, resulting in benefits that the FOP may not enjoy, although it was suggested that the differences were "two or three minimal benefits that FOP did not have yet". (Tr. 647). It was also suggested that the benefit package that the LMCC obtains usually is obtained by the FOP in subsequent negotiations. The LMCC is governed by trustees.

The Sergeants, Lieutenants and Captains Units designated one of the trustees. James Ade, when he was active, was the trustee designated by the supervisors' units. (Tr. 642). In 2011, the trustees voted to adopt a wellness program.

The wellness program provides that husbands and wives and partners, but not children, participate in the program. (Tr. 64). The program was adopted by the trustees of the LMCC. If members do not participate, "the City put a requirement or basically a fine of $50 per paycheck if you did not participate in the wellness program". (Tr. 639).

The Fraternal Order of Police Chicago Lodge No. 7's CBA does not have the LMCC

wellness program and, therefore, there is no fine for non-participation in the Lodge's contract.

For this reason, the supervisors Units believe that they should be permitted to leave the Coalition and accept the health plan in the FOP contract because of objections to the wellness plan and the associated fine for not participating.

The dispute between the parties on this issue is highlighted by the following comments in their respective post-hearing briefs. At pages 49-50, the following statement appears in the Unions' brief:

> By withdrawing from the LMCC, the Unions will negotiate their future health care issues at the bargaining table, not at the LMCC. The PBPA supervisor Unions will speak for themselves individually. The LMCC will not decide health care issues and will no longer be able to impose changes on the supervisor Units".

At page 45 of the City's brief, the following is stated:

> As argued in the pre-hearing brief, interest arbitrators have long held that there is one medical plan for all employees, and there has never been a sufficiently compelling reason for one union to have a significantly different plan than everyone else.[36]

Footnote 36 reads:

> This, candidly, is why these Unions agreed to join the LMCC in the first place. They might as well be inside the tent as active participants in shaping the parameters of their health care than have other City unions decide the term of the Plan, only to have a neutral tell them that is the deal they have to accept.

In terms of bargaining history and the art of the possible, it would seem that in negotiations the various unions in the City, if bargaining separately, would end up with the same health care plan, noting that health care is a major issue in negotiations and comparability among the same employees would be a guide in negotiations. Therefore, the City does make a case, as seemingly previously recognized by the PBPA Units, that there be one plan for City employees.

The Neutral Chair recognizes that in some respects the PBPA supervisors Units look to the FOP contract for comparisons and in effect are making this argument on this issue suggesting that, in order to avoid the wellness plan and its fines, the Units would accept the FOP plan.

The problem with such an approach is that it is a double-edged sword. There is a history of parity between Police and Fire in that Police Sergeants and Fire Lieutenants have the same basic base salary pay plan. (Tr. 648). Noting this point, the following question was asked of James Ade:

> Q So, let's say that the LMCC agrees on a particular plan design change that applies to Fire Lieutenants, that would then apply to the Sergeants, correct?
>
> A Yes, it would.
> (Tr. 648-649).

The background to this answer is Article 12.1 in the respective contracts which contains a "me too" clause, referring to health care, which provides in part, "any changes during the terms of this agreement relating to health care ... agreed to with Lodge 7 and applicable to bargaining unit members represented by Lodge 7 or Fire Lieutenants represented by Local 2 shall be applicable to Sergeants covered by this agreement". The same "me too" clause appears in the Police Lieutenants' CBA as to the analogous Fire Lieutenant rank and in the Captains' CBA to the analogous fire Battalion Chief rank.

So, what this record shows is that the PBPA supervisors Units have a trustee on the LMCC; that the trustees of the LMCC voted for a wellness plan; that the Fire Fighters, Local 2, are members of the LMCC; that the Fire Fighters are subject to the wellness plan, as are the PBPA Units; that in the past the FOP health care plan that is negotiated is a "catch up" on the plan design established by the LMCC. In other words, the PBPA Units are asking to have the

FOP plan in order to avoid the wellness plan and yet have a parity based pay structure, at least with the Sergeants, with the Fire Fighters who remain in the LMCC and plan approval by the trustees. Although not established on the record, presumably the PBPA trustee voted against the wellness plan.

When analyzed as above and the recognition that an employer such as the City of Chicago would opt for one health care plan design and has accomplished this for the most part through the LMCC plus noting the parity issue as discussed, which can work either way, it is doubtful that the parties would have arrived at a contract with the elimination of the Unions' participation in the LMCC.

Based upon the above analysis, the Board, with the Union Appointee dissenting, rejects the Unions' final offer to withdraw from the LMCC and accepts the City's final offer of status quo.

However, the Neutral Chair, if the Board had the authority to do so, would have voted to remove the wellness plan. The wellness plan has created hostility among the members pushing to be relieved from participating in the LMCC plan. Usually, wellness plans are based upon an incentive, not a fine. It would behoove the City, in the view of the Neutral Chair, to revisit the wellness plan requirement as it is a source of tension which in the end could well undermine the City's attempt to have a universal health plan for all its employees. But for the lack of authority, the Neutral Chair would have voted to eliminate the wellness plan and the financial penalty imposed.

9. <u>Article 16 – Secondary Employment</u>

Article 16, "Secondary Employment" in the Units' CBAs as represented by the Sergeants'

CBA reads:

> The Employer reserves the right to restrict secondary employment when it has reasonable cause to believe that the number of hours which the Sergeant spends on secondary employment is adversely affecting his/her performance. The Employer retains the existing right to limit, restrict or prohibit the nature or type of secondary employment that a Sergeant undertakes.

This language is identical to Article 16, "Secondary Employment" in the FOP CBA with the City of Chicago.

The final offer of the PBPA Units is to continue the language of Article 16 unchanged, namely, status quo.

The final offer of the City reads:

> [Sergeants] [Lieutenants] [Captains], including those engaged in secondary employment as of the effective date of this Agreement, must submit a City of Chicago Department of Human Resources Dual Employment Form (PER-125) prior to engaging in secondary employment.
>
> No [Sergeant] [Lieutenant] [Captain] will be allowed to work, including work for a secondary employer, in excess of 16 hours in any 24-hour period unless ordered by the Department.
>
> Additionally, the ~~The~~ Employer reserves the right to restrict secondary employment when it has reasonable cause to believe that the number of hours which the [Sergeant] [Lieutenant] [Captain] spends on secondary employment is adversely affecting his/her performance. The Employer retains the existing right to limit, restrict or prohibit the nature or type of secondary employment that a [Sergeant] [Lieutenant] [Captain] undertakes.

In evaluating the respective offers as to secondary employment, it is appropriate to examine the bargaining history leading to the existing Section 16.1 language. As is obvious, the Section 16.1 language tracks the Section 16.1 "Secondary Employment" language of the FOP CBA which suggests that the Lodge's negotiation as to 16.1 merits examination.

On August 18, 1976, the Chicago Police Department issued General Order No. 76-12

superceding General Order No. 74-23. The Order was amended on August 23, 1976 and December 21, 1979. General Order No. 76-12 provided that an officer seeking secondary employment was required to obtain permission from the Department to do so.

In the first negotiated FOP contract in 1981, the FOP and the City agreed to Article 16, "Secondary Employment": "The Employer reserves the right to restrict secondary employment for good cause". (U Ex. 15). In an opinion dated August 26, 1982 in an arbitration between the Lodge and the City, Arbitrator Robert Howlett concluded that, based upon the negotiated Article 16 language in the 1981-1983 CBA, the City had negotiated away the requirement of permission to engage in secondary employment.

On January 25, 1993, this Neutral Chair, serving as the Chairman of an interest arbitration panel between the Lodge and the City for a CBA commencing January 1, 1992, wherein the City had proposed as to secondary employment a requirement of notice and permission to engage in secondary employment, at pages 64-65 of the Board's opinion written by this Neutral Chair, this Neutral Chair noted:

> ... This suggests that the modification of Article 16 was not a high priority for the City, particularly when in previous negotiations the City had not obtained a change in the Article 16 language.
>
> It is therefore doubtful, applying the strike, the bargaining history, and the art of the possible factors, that Article 16 would have been modified.
>
> In addition, not even the internal comparables would support the City's position for, as noted, the Sergeants, Lieutenants and Captains are not required to give notice or obtain prior approval for secondary employment. (TR 2343-2344). If this internal comparison had shown that the Sergeants, Lieutenants and Captains were subject to such a requirement, then it would seem that the Lodge may have had difficulty attempting to obtain the change in furloughs while resisting a change in Article 16. The point is, in addition to the other factors, for some reason the Department has not applied this requested provision to other sworn personnel except its highest administrators, even though it apparently

has the wherewithal to do so.

> It is for these reasons that the Chairman will agree with the Lodge and not award any changes in the current Article 16 secondary employment language.
> *(See,* Ex. 9).

Thus, in 1993, this Neutral Chair was relying on the fact that the supervisors were not required to give notice of or to seek permission to engage in secondary employment as the reason for not adopting the City's then proposal of notice and the requirement of permission.

In the negotiations for the 1995-1999 FOP contract, the language that now appears in the Units' CBAs was adopted, namely:

> [t]he Employer reserves the right to restrict secondary employment when it has reasonable cause to believe that the number of hours which the officer spends on secondary employment is adversely affecting his performance as a police officer. The Employer retains the existing right to limit, restrict or prohibit the nature or type of secondary employment that an officer undertakes.

This history suggests that for about 15 years of bargaining the secondary employment language in the police CBAs was limited. Then, the language was expanded to confirm certain rights of the Department as to restricting secondary employment. This change in 1995 apparently came about by negotiations between the Lodge and the City without the intervention of an interest arbitration board. In other words, the FOP bargained the current provision which the PBPA Units adopted.

The first paragraph of the City's final offer, namely, submitting Dual Employment Form (PER-125) provides for notice and requires permission to engage in secondary employment. As pointed out, for almost 40 years of collective bargaining with the police unions, the City has not either in voluntary negotiations or through interest arbitration obtained the ability to require permission before officers and supervisors covered by CBAs can engage in secondary employment. Apparently, during this period and currently, other City employees are required to

obtain permission for secondary employment. This may be true. But, despite this fact, in bargaining with the police unions the City has not obtained the permission requirement.

Likewise, it has been urged on this Board by way of comparison with the two largest cities in the country, noting that Chicago is the third largest city, namely, New York and Los Angeles, with both requiring permission. (*See*, Ex. 70-72). This was true during the 40 years of negotiations in Chicago. Yet, to repeat, the City was not able to obtain the permission requirement or for that matter the notice requirement.

It is now 2020. What has changed in 25 years since 1995, when the current language appeared in the FOP contract? Remember, there was agreement as reflected in the language that the Department could restrict the number of hours worked in secondary employment as well as limit, restrict or prohibit the nature or type of secondary employment.

The change is that the citizens of Chicago elected Lori Lightfoot. Mayor Lightfoot came into office with an extensive background in addressing police issues, having served as a Federal Prosecutor, worked in OPS and as President of the Chicago Police Board, which suggests that she is most knowledgeable on police issues. (Tr. 522-525). Mayor Lightfoot also led the Police Accountability Task Force that prepared an extensive report concerning police matters.

Mayor Lightfoot testified: "I think it's simply outrageous that the Department and the City had no idea what our officers are doing in terms of secondary employment." (Tr. 536). On cross-examination, she noted: " ... that General Order essentially leaves everything to the discretion of the officer, and that the Department itself can exercise little to no oversight". (Tr. 551). Mayor Lightfoot in her testimony on the point, referring to secondary employment, noted: "Well, we're not talking about banning the practice. What we're talking about is bringing it into

the light. This is not about saying to officers, you can't engage in secondary employment." (Tr. 547).

Mayor Lightfoot emphasized that it was not the intention of the City to eliminate secondary employment when she further testified:

> ... I don't envision a world in which the department is going to suddenly, vigorously clamp down on secondary employment so that nobody can have a side job. I don't see a world in which that exists, particularly because the people who ultimately are going to be making the decision are police officers themselves who also may be working side jobs or may have worked side jobs, you know, in another part of their career.
> (Tr. 551).

After so testifying, Mayor Lightfoot made a succinct argument as to the need of notice as to a member's secondary employment and hours of employment when she testified:

> Right, but that clause presumes facts and knowledge. And right now, if you couple that with what's in the general order, we don't have any visibility into that, so we don't have any information unless it comes to us through some other means to be able to exercise that clause of the contract. We have to have a factual basis, and as you would want us to, not to arbitrarily make decisions about secondary employment, but base it on data information that we have.
>
> Right now we have zero information on a systematic basis. We only get it opportunistically when something else happens. ...
> (Tr. 553).

It is difficult to rebut this argument when the Unions, beginning in 1995, agreed to restrictions on secondary employment that the Department could exercise. Without notice the Department might not have the information needed to exercise a contractual right that has been agreed to.

As to the issue of hours, the Neutral Chair begins with the fact that currently the Department can limit the number of hours worked if the hours "adversely" affect the member's performance. Mayor Lightfoot gave an example that came to her attention while serving on the

Police Board where an officer was working secondary employment who had apparently been working more than 16 hours, including his watch with the Department, who was involved in an erroneous shooting, suggesting that the error in judgment may have been caused by fatigue. This observation perhaps was the genesis of the proposal of 16 hours in a 24 hour day. This seems reasonable. For those officers working on their off days in secondary employment, 16 hours should be sufficient. Some serve as security with weapons, raising questions concerning fatigue factors. If working during a duty day, the 16 hours, which would include the duty hours, emphasized the point. The 16 hours would seem to be consistent with the current language.

When the issue of secondary employment is analyzed as above, the change is the need of the Department to have knowledge of the secondary employment and hours of secondary employment so that the Department can exercise the right that the parties have previously agreed to. The 16 hour limitation by any definition is reasonable.

On the other hand, for 40 years there has not been a requirement to obtain permission. If the two provisions that the majority of the Board will adopt, namely, the 16 hour provision and the notice of the employment and hours of employment, this should be sufficient for the Department needs while recognizing the bargaining history. This bargaining history would suggest that if there was not an interest arbitration applying the art of the possible, the decision of the Board would be the agreement that the parties have reached. What the majority of the Board has done, with the City member reluctantly agreeing and the Unions' member dissenting, is to reconfigure Section 16.1. It is anticipated that the notice form will be a form developed by the Chicago Police Department in compliance with Section 16.1.

There is one more point that could result in unanticipated situations or perhaps

overzealous enforcement. For this reason, at the insistence of the Neutral Chair, there has been added a provision that for the first three alleged violations the member shall be counseled before any potential discipline is administered under the just cause standard for an alleged violation. The Award will so provide and as to Section 16.1 is as follows with the City Appointee reluctantly agreeing and the Unions' Appointee dissenting:

> [Sergeants] [Lieutenants] [Captains], including those engaged in secondary employment as of the effective date of this Agreement, must submit on a form developed by the Chicago Police Department prior to engaging in secondary employment, giving notice of the place of secondary employment and the time and hours of said employment.
>
> The Employer reserves the right to restrict secondary employment when it has reasonable cause to believe that the number of hours which the [Sergeant] [Lieutenant] [Captain] spends on secondary employment is adversely affecting his/her performance. The Employer retains the existing right to limit, restrict or prohibit the nature or type of secondary employment that a [Sergeant] [Lieutenant] [Captain] undertakes.
>
> No [Sergeant] [Lieutenant] [Captain] will be allowed to work, including work for a secondary employer, in excess of 16 hours in any 24-hour period unless ordered by the Department. No [Sergeant] [Lieutenant] [Captain] shall be subject to discipline applying the just cause standard for violating this provision without prior being given a counseling for up to three separate alleged violations.
>
> A [Sergeant] [Lieutenant] [Captain] may challenge by filing a grievance the administration or application of this provision on the basis that the Department did not act reasonably or in good faith.

10. Rank Credit – Section 20.10

Currently, in the respective CBAs in Section 20.10, bargaining unit members at the Captain, Lieutenant and Sergeant rank receive 45 minutes per day worked in rank credit in the form of compensatory time, provided the member works at least four hours in the work day. The City's final offer is the status quo, namely, the current language. The PBPA Units' final offer is as follows:

> On the issue of the Unions' proposal to increase the Rank Credit to one hour for the Sergeants and Captains and one and one-half hour for the Watch Operations Lieutenant the Unions' final offer is to include the following language in Section 20.10 of the [Sergeants'] and [Captains'] agreements:
>
> > The Employer will credit each [Sergeant] and [Captain] with ~~forty five~~ **sixty** minutes per day of compensatory time. Said ~~forty five~~ **sixty** minutes per day will be credited for each day on which a [Sergeant] [Captain] works, provided the [Sergeant] [Captain] works at least four (4) hours that day.
> >
> > The Lieutenants' agreement will include the following language:
> >
> > The Employer will credit each Watch Operations Lieutenant with ~~forty five~~ **ninety (90)** minutes per day of compensatory time. Said ~~forty five~~ **ninety (90)** minutes per day will be credited for each day on which a Watch Operations Lieutenant works, provided the Watch Operations Lieutenant works at least four (4) hours that day.

There is a history behind the establishment of rank credit for the supervisors. Rank credit existed prior to the first PBPA CBAs negotiated in 1999 and rank credit was recognized in the 1999 CBAs. The concept was established because, until the first PBPA contracts, supervisors were not eligible for overtime. (Tr. 778; C. Ex. 120, *City of Chicago and Chicago Fire Fighters Union Local No. 2,* Lieberman at 14-19 (1987). The rank credit was recognized in the 1999 CBAs.

In the supervisors' first CBAs the rank credit was 30 minutes per work day for each supervisor unit.

This 30 minute rank credit continued until 2005. What occurred is that the City had agreed with the FOP for the creation of a D-2A pay grade for Detectives. There was a grievance filed by the Unions maintaining under the "me too" clause that the supervisors should obtain this differential in pay rate caused by the D-2A pay grade. Arbitrator Meyers rejected this claim. (Tr. 78-79). As a result, the Lieutenants and Captains negotiated an increase in their rank credit by a

quarter of an hour to 45 minutes which the City maintains was an attempt "to recoup the 'lost differential' in terms of salary grades between the detectives and the supervisors rank". (Pg. 50, City's post-hearing brief).

The Sergeants declined this offer and sought in interest arbitration a 3% increase in base salary. The Neutral Chair of the Board was Arbitrator Elliott Goldstein wherein the majority of the Board rejected the 3% proposed increase and for rank credit provided that effective July 1, 2004 the rank credit for Sergeants would be increased "from 30 minutes per day to 45 minutes per day". (*See*, C. Ex. 12). In coming to the award for the Sergeants in 2005, Arbitrator Goldstein for a majority of the Board wrote:

> The basis for this conclusion is the history of negotiations between the City and the other two bargaining units represented by the PBPA, namely, the Lieutenants' and Captains' Unions. As management has suggested, the "D-2A" issue was of primary importance not only to this Union, but also to the Lieutenants' and Captains' Unions. In order to induce these latter two Unions to take the issue off-the-table, the City offered a very general economic package to the Captains and Lieutenants. The reason is simple. Although there is no binding, precise amount of wage differential between the Detectives and Sergeants, wage parity and internal comparability among the various wage classifications in the Police Department, and between the Police and Fire Departments for that matter, certainly exists and is carefully observed by all the interested parties.
>
> As the evidence suggests, the City's Police and Fire Unions – all of them – keep close tabs on each other's progress throughout negotiations. The "me, too" provisions of Jt. Ex. 1, the 1999-2003 Contract between these parties, were found by Arbitrator Meyers not to have been triggered by the "D-2A" reclassification for Detectives. But – and this is an important but – both practically and as a matter of morale, the City in its good faith negotiations with the Lieutenants and Captains was willing to attempt to do "rough justice" as regards maintaining an overall economic differential between Detectives and Sergeants. We conclude that this "rough justice" is all that this Union, too, could realistically obtain at the bargaining table.
> (*See*, C. Ex. 12).

In the words of a neutral, Elliott Goldstein, the increase in the rank credit for the

supervisors units, including the Sergeants, from 30 minutes to 45 minutes was "rough justice" to address the salary differential caused by the creation of the D-2A Detective classification in the FOP unit.

The Unions' Counsel argued that "Arbitrator Goldstein's award specifies that it is appropriate to consider the imposition of additional duties when considering a requested increase in rank credit". This statement does not represent the basis for Arbitrator Goldstein's opinion. Rather, Arbitrator Goldstein at page 21 of the Panel's opinion, in making reference to the Sergeants' argument, not Goldstein's conclusions, noted:

> From the Union's point of view, the salary differential between Detectives and Sergeants has been disrupted and there is no justification in this Board's not granting a D-3A reclassification to all the Sergeants in this PBPA-represented unit, with a resultant 3% pensionable pay increase for everyone of them. In addition to the Detective-Sergeant wage relationship argument, the Union contends that the work of the Sergeants is not only more stressful and dangerous, but that there have also been additional duties added to the routine workload of these Sergeants by Management since the predecessor Labor Contract. As a matter of fact, the Union insists that the requirement that Sergeants be the only authorized sworn officers to use TASER guns, as well as newly added responsibilities for HAZMET, fully justifies a reclassification of the entire bargaining unit group.
> (Emphasis by this Neutral Chair.)

Arbitrator Goldstein was specific when he noted that the basis for the rank credit award was, to repeat, an "attempt to do 'rough justice' as regard maintaining the overall economic differential between Detectives and Sergeants".

The parties subsequently entered into the 2012-2016 CBAs which agreements made no change in the rank credit for any of the Units. This bargaining history, along with the historical development of rank credit, would suggest that absent a factor such as the D-2A reclassification, an agreement to increase rank credit would not have been reached by the parties at the bargaining

table.

Nevertheless, there was testimony from Captain Eve Gushes (Tr. 588-605), Lieutenant Daniel O'Connor (Tr.399-418) and Sergeant Jim Calvino (Tr. 735) suggesting that because of the Consent Decree as well as the issuance of Special Order S03-03-03 "Watch Operations Lieutenant" issued on 3 March 2017, there have been increased duties for all three ranks.

The response of the City to this argument is to note that in the past there have been evolving changes in the duties of supervisors that have not resulted in increased rank credit such as the creation of the District Executive Office position in January 2012 (City Ex. D) and as discussed in this Neutral Chair's opinion involving the Sergeants in *District Station Supervisor Gr. No. Sgts-14-001* (2014).

Though the testimony was sincere, given the history of changes over the years in the Department and no change in the rank credit except in 2004-2005 in connection with the D-2A Detective reclassifications involving a salary differential, the increased duties are not persuasive in supporting the argument that with the above bargaining history against a background of changes within the Department that the parties would have reached the agreement proposed by the Unions.

This Neutral Chair appreciates the comments in the Unions' post-hearing brief concerning the additional responsibilities of supervisors as a result of the Covid-19 crisis. Although the extent and length of the crisis is yet to be determined, there presumably will be a point in time in the future where the crisis will not be the factor that it is today.

It is for these reasons that the Neutral Chair with the majority of the Board, with the Unions Appointee dissenting, will award the status quo as to the rank credit now in place for

each Unit pursuant to Section 20.10 and hereby rejects the Unions' final offer.

11. Article 21 – Uniforms

Article 21, Section 21.3, "Uniform Allowance", in Section 21.3.A of the Sergeants' CBA, which is the same in the Lieutenants' and Captains' CBAs, reads:

> Each Sergeant shall receive a uniform allowance of $1800.00 per year payable in three (3) installments of $600.00 on February 1, August 1 and December 1 of 2006 and each calendar year thereafter.

The PBPA Units in their final offer provide that the annual uniform allowance be increased to $2,100.00 with three installments of $700.00.

The City's final offer is status quo, namely, continuing the $1,800.00 per year stipend.

The Unions' witness on this issue was Captain Kevin Chambers, current President of the Captains' Unit and in the Department's Inspection Division. (Tr. 475). Captain Chambers explained that the uniform allowance as of the PBPA first contracts in 1999 was $1,200.00 which he maintained did not cover his annual expenses for items for which the uniform allowance could be used. (Tr. 483-484).

In the 2007 PBPA CBAs, the uniform allowance was increased to $1,800.00 annually and represented not only a $600.00 annual increase but a 50% increase over the previous $1,200.00.

This fact caught this Neutral Chair's eye for, in a matter of five years, for whatever reason, the City and the PBPA Units, perhaps guided by a similar increase in the FOP CBA, obtained which by any definition was a substantial increase.

It is now 2020 – 13 years later – which given the bargaining history could well suggest a basis for an increase in the annual uniform allowance.

On the other hand, the City notes that with an $1,800.00 annual uniform allowance that

during the life of the CBAs that are subject to this interest arbitration the members will have received a total of $10,800.00 in uniform allowance suggesting that "it defies credibility that any of them will exceed that amount over the term". (Pg. 54, City's post-hearing brief). The City further suggests at pages 54-55 of its post-hearing brief that the members' $1,800.00 uniform allowance exceeds that of comparable union, writing:

> Further, the external comparable communities do not support the Unions' proposed increases. The officers in this bargaining unit already enjoy a much higher[45] annual uniform allowance than most of their similarly-situated members in other large municipalities. (City Ex. 117). For example, supervisors in New York City receive a $1,050.00 annual uniform allowance; supervisors in Los Angeles receive $1,525; supervisors in Detroit receive $1,100.00 ($850 annually plus $250 cleaning allowance); supervisors in Milwaukee receive $350 per year; supervisors in Philadelphia receive $500 per year; and supervisors in San Jose receive $675 per year. (Ex. 117, 117A, 117B, 117D, 117F, 117I and 117L). There are several comparable cities who do not appear to provide any uniform allowance to supervisors at all, including Baltimore, Seattle, and Washington D.C. (Ex. 117, 117C, 117E, and 117G). The evidence shows that the officers in these bargaining units already receive one of the highest uniform allowances of any comparable cities and as a result, external comparability does not favor the Unions' request for an increase in their uniform allowance.

The only communities that are higher, according to the City, were set forth in Footnote 45 of the City's post-hearing brief at page 54:

> The only comparable communities that have higher uniform allowances than the City provides its supervisors are Houston ($2,000 annual equipment allowance), San Antonio $2,140 and going up to $2,240 in October 2020), and San Diego ($2,100 for officers with 8 or more years of service). (Ex. 117, 117H, 117J and 117K).

The City also noted that Captain Chambers acknowledged that he did not use the full $1,800.00 on uniform items every year. (Tr. 484-488, 498). Indeed, when asked how much he spent a year on uniforms, "including ammunition, everything that's required of you", he responded, "Probably $1,600 to $1,800, depending on what I have to purchase". (Tr. 484).

Captain Chambers testified as to the cost of various items that he utilizes the uniform allowance to purchase. For example, he explained that a full group vest has a life of about five years; that even with the City's current program supplementing the cost of a vest, Captain Chambers maintains that "you're still out of pocket for about $300 ball park" and that "if you wish to purchase an upgrade of a vest, this would cost about $300 or $400". (Tr. 485-486). Captain Chambers noted that he buys pants at least once a year; that a member could be running and trip and fall and get a hole in the pants, requiring the purchase of a new pair. (Tr. 486-487). Captain Chambers noted that dry cleaning of uniforms costs $50 to $60 per month "if you want to maintain the image". (Tr. 488). There was also discussion concerning the fact that members are required to qualify with their Department authorized weapon annually and are furnished 30 bullets by the Department to do so; that if an officer wished to purchase additional bullets to become proficient with a weapon, Captain Chambers noted that the price for ammunition would jump because Cook County has now imposed a five cent tax per bullet. (Tr. 489-490).

Captain Chambers' testimony continued with examples of items that he was required to purchase, including hair cuts, to meet Department standards. In response to the issue of whether spending between $1,600 and $1,800 annually on various items, Captain Chambers testified:

> Well, that's just the basic maintenance and upkeep, okay? Now, say I want to go purchase another weapon that's department-authorized, that money comes out of my pocket. If I want to purchase a rifle ad be qualified with a rifle, that comes out of my pocket.
>
> So that may be sixteen to $1,800 every year. That's not what we get actually from the uniform allowance. We get $1,800 pretax, so in essence we're getting 480 after taxes. So we're getting 1,340 to spend. I spent $1,600 to $1,800 on that 1,340.
> (Tr. 504).

There were arguments between Counsel as to whether or not members could deduct the

cost of uniform and other items on income tax and whether the current tax laws permitted such deductions. Nevertheless, Captain Chambers does make a point.

The Neutral Chair harks back to his initial observation. In bargaining, despite the comparables, the City has opted to provide annually an $1,800.00 payment established 13 years previously. Since that time, there have been increased costs as, for example, the tax on bullets. In the end, the Neutral Chair is persuaded that there is a bargaining history here, albeit perhaps influenced by the FOP's negotiations, where there have been increases not related to the comparables, but to the circumstances in Chicago. Without a raise in the uniform allowance for 13 years, when there previously was a 50% increase in 2012, with a background where there are some increased costs as explained by Captain Chambers, it would seem that in applying the art of the possible and considering the bargaining history as explained that increasing the annual uniform allowance by $150.00 prospectively, namely, the payment of $650.00 three times per year would represent the art of the possible in light of a bargaining history as explained. For this reason, a majority of the Board, with the City Appointee dissenting and the Unions' Appointee concurring, will award $150.00 increase in the uniform in three installments per year, namely, installments of $650.00, for an annual total of $1,950.00 with the new increased installment being payable in the first installment due after ratification of the CBAs by the parties.

12. Legal Representation (Sections 22.2 and 22.4)

The current CBAs contain the following provisions as set forth in the Sergeants' CBA:

> **Section 22.2 Legal Representation**
>
> Sergeants shall have legal representation by the Employer in any civil cause of action brought against a Sergeant resulting from, or arising out of, the performance of duties.
>
> **Section 22.4 Applicability**

> The Employer will provide the protections set forth in Sections 22.1 and 22.2 so long as the Sergeant is acting within the scope of his/her employment and where the Sergeant cooperates, as defined in Section 22.3, with the Employer in defense of the action or actions or claims.

The supervisors in their final offer propose that Section 22.2 "Legal Representation" read by adding the language "actual or alleged":

> Section 22.2 Legal Representation
>
> [Sergeants] [Lieutenants] [Captains] shall have legal representation by the Employer in any civil cause of action against a [Sergeant] [Lieutenant] [Captain] resulting from, or arising out of, the **actual or alleged** performance of duties.

The City's final offer is status quo, namely, to keep the current language.

The current language has been in the supervisors' CBAs since 1999 and in the FOP contract "for at least that period of time". (Tr. 455). The genesis for the PBPA Units seeking a change in the language stems from an arbitration award rendered by Arbitrator Peter Meyers in the *Tracy Walczak Gr. SGTS 545-16-022* (2017).

Sergeant Walczak's situation was explained on the record, coupled with the reason for the Units' final offer as to Section 22.2 "Legal Representation" as follows:

> As recently as 2015 there was an incident involving an off-duty sergeant who was merely out with friends who were off duty officers as well, sitting in a restaurant. These other off-duty officers left the restaurant, they subsequently got involved in a physical altercation with some civilians, and the long and short of it is, these civilians found out that this was off-duty officers and filed a lawsuit against the officers.
>
> They subsequently found out that this off-duty sergeant who was sitting in a restaurant and played no part in this altercation was a sergeant of police and named her as a defendant as well.
>
> Her defense, for lack of a better word, is the Sergeant Schultz from Hogan's Heroes: I see nothing, I heard nothing, I did nothing. The sole reason, the sole reason she was a named defendant is because she was a sergeant of police. And again, to reiterate, the fact is that she did

not partake in any way, shape or form with this incident.

So subsequently the City denied any legal representation, stating that per the current language in the contract, the City will indemnify or will provide legal representation for any civil action brought against a member resulting from or arising out of the performance of duties, and under that wording, the City successfully withheld any kind of legal representation. The union did file a grievance and it was not sustained.

So this is a hole that needs to be filled that the unions discovered, and the unions are asking that the words actual or alleged performance of duties be included in that phrase or that article. This way, if this type of situation were to arise again, the member would receive legal representation from the City.

This member, again having been named solely because she was employed by the City of Chicago as a police sergeant, ended up having to spend her own money and resources to defend herself in this. Any other customer in the restaurant, they were not named – who were also just eating in the restaurant – they were not named in the suit. They found out that she was a sergeant and threw her on the list. And that's basically what it is.
(Tr. 455-457).

At page 18 (C. Ex. 104), Arbitrator Meyers explained his reason for denying Sergeant Walczak's request to be represented by the City in the lawsuit when he wrote:

> The competent and credible evidence in the record establishes that the Grievant did not do or say anything during the January 18 incident that maybe considered as falling within the scope of her police duties. Essentially, the Grievant simply told two bloodied individuals to be calm and that help was on the way before she just left the scene entirely. I find that this action cannot, in any way, be considered as the type of response that falls within the range of duties performed by a police officer. I also find that the Grievant's minimal response to this incident instead falls within the scope of conduct that might be exhibited by a more or less disinterested and uninvolved civilian. Quite simply, the Grievant did not step up to offer any assistance, protective help, investigative action, or other reaction that the general public would recognize as being the province of a first responder.

This issue has been a challenge to the Neutral Chair due to the arguments made by the parties and became, at least in the Neutral Chair's view, one of the more perplexing issues in these proceedings. The fact is that over the years, particularly under the FOP contract, there have

been numerous arbitration decisions interpreting the application of Section 22.2. The difficulty in changing the language as proposed by the Units is it may have the unintended results of changing the body of arbitral principles that have been developed over the years in applying Section 22.2.

In *Fraternal Order of Police Chicago Lodge No. 7 and City of Chicago, Gr. No. 129-94-025*, Arbitrator Gerstenberger in 1999 denied representation to officers who on duty engaged in sexual harassment. At page 13 of her opinion, she wrote:

> ... With regard to off-duty officers, Arbitrator Seitz stated:
>
> I am convinced that as regards the obligation to indemnify a police officer for actions taken while off duty, the all-important question is to determine if the facts indicate that he/she accepted a responsibility to respond to an existing situation. If that responsibility was accepted, I conclude that his act needs to be viewed as "arising out of the performance of duties."
>
> Fromel (Seitz, 1987). Arbitrator Malinowski, in upholding the City's decision to decline legal representation to police officers involved in a locker room fight, found that the fight resulted from a personal disagreement, and that even though the officers were on-duty, in uniform, and in a police locker room, it did not follow that they were engaged in "police activity" which entitled them to representation. Murphy and Roberts (Malinowski, 1988).
>
> Based on the language of the contract and arbitral precedent, I find that Section 22.2 of the contract was intended by the parties to benefit police officers who have had civil actions filed against them for alleged injury or harm resulting from the performance of their police duties. Whether the officer was on or off duty is not the critical factor. Fedanzo (Lieberman,1988). McWilliams (Goldstein, 1987). The critical inquiry is whether the incident involved a personal dispute as opposed to the performance of police duties. Badillo (Roumell, 1990).

As noted, Arbitrator Gerstenberger in her references to other opinions under Section 22.2 made reference to the standard suggested by Arbitrator Seitz, namely, "accepted a responsibility to respond to an existing situation". She also noted that Arbitrator Malinowski concluded that

officers on duty involved in a locker room fight were not engaged in police activity entitling them to representation.

The point this Neutral Chair makes is that, adding the language "alleged" could possibly expand the City's obligation to provide legal representation to private disputes because the added language does not clearly relieve the City from representation in situations confronted by Arbitrator Gerstenberger or Arbitrator Malinowski.

The bottom line is that the proposed language could be interpreted to opening the door to require legal representation in situations that were not intended to be covered.

In other words, this Neutral Chair could not fashion language that could assure that the parties did not intend to cover certain situations as suggested by the Gerstenberger and Malinowski decisions. For this reason, in the view of this Neutral Chair, shared by the City Appointee, it is best to leave the current language as is and allow any challenges to the City's denial to be interpreted under the current language as it has done for years by arbitrators. Even in a Sergeant Walczak situation there could be a different result, depending on the proofs.

Based upon the above analysis, the Board, with the Unions' Appointee dissenting, will award the status quo as to Section 22.2.

13. Section 26.4 Payment of Wages

Section 26.4, "Payment of Wages", in all three CBAs currently reads:

> Except for delays caused by payroll changes, data processing or other breakdowns, or other causes outside the Employer's control, the Employer shall continue its practice with regard to the payment of wages, which generally is as follows: (1) payment of wages provided herein shall be due and payable to a Sergeant no later than the first and sixteenth day of each month; (2) holiday premium pay shall be due and payable to the Sergeant no later than the twenty-second day of the month following the month in which the holiday premium was earned; and (3) other premium pay shall be payable to the Sergeant no later than the last

> day of the period following the period in which the premium work was performed. The Employer shall not change pay days except after notice to and, if requested by Unit 156-Sergeants, negotiating with Unit 156-Sergeants. "Negotiating" for the purpose of this Section shall mean as it is defined in Section 8(d) of the National Labor Relations Act.

The City proposes to add the following sentences to Section 26.4:

> Notwithstanding (1) above, the day that the payment of wages provided herein is due and payable to a [Sergeant] [Lieutenant] [Captain] will be changed from the first and sixteenth day of each month to the seventh and twenty-second day of each month. This change in pay day will take effect on a date to be agreed upon by the parties, which shall be approximately six (6) months after the date of ratification. If the parties cannot agree on a date, the Arbitrator will retain jurisdiction for the purpose of specifying the date.

The Unions propose that Section 26.4 remain as written, namely, status quo, without the changes proposed by the City.

Currently, pursuant to Section 26.4, the members of the PBPA Units are paid "no later than the first and the sixteenth" of each month which is referred to as payroll 1. (Tr. 158). The City proposes to change the pay dates to "no later than the seventh and twenty-second of each month" which is payroll 7. (Tr. 158). Approximately 12,000 City employees are now on payroll 7 whereas approximately 20,000, basically the sworn members of the Department, including the PBPA membership, are on payroll 1.

Testifying for the City was John Arvetis, Deputy Comptroller for the City of Chicago Department of Finance, responsible for the City's payroll system and operations. (Tr. 187-188). Mr. Arvetis explained that the City is attempting to replace its current timekeeping system, Kronos, so as to update the City's payroll capabilities. As Mr. Arvetis explained, when the City brought in a vendor seeking an updated payroll system, the vendor "was not able to reconcile with our assumed payroll process". The current payroll 1 process assumes payment for time

prior to the time actually being worked. (Tr. 158). By issuing checks on the 1st and 16th of each month when the City is actually running the payroll six days prior to when the checks are issued, there is an assumption that the time between when the payroll commences to be run and the checks are issued will have been worked. (Tr. 189).

Payroll 7 does not assume time because the actual payroll periods are on the 1st and 15th, and then the 16th through the end of the month, which means that payroll accurately captures the time actually worked in each payroll period, thereby paying employees the correct amount without having to go back and reconcile any assumed time. (Tr. 159, 190, 192-193). This does mean holding back some time until the following pay period. However, the record reflects, based on the undisputed testimony of Mr. Arvetis, that the private sector do not run payroll on assumed time nor do sister agencies, meaning Cook County. (Tr. 189). Mr. Arvetis explained that payroll 7 represented the industry standard. (Tr. 190). He further testified that the City is not able to have vendors present new payroll systems because the payroll 1 system is outdated. Mr. Arvetis was emphatic that the change proposed by the City was not to achieve savings, but to modernize the City's payroll system. (Tr. 190).

It was also explained that the change would not affect the time for the payment of overtime or holiday premium pay. (Tr. 194, 201). It was estimated by Mr. Arvetis that if what he described as 20,000 City employees, basically the sworn members, were moved from payroll 1 to payroll 7, the City for an entire year would save approximately $250,000. For the Sergeants, the City maintained that the savings would be about $12.50 a year for the Sergeants. (Tr. 191). When asked where the $250,000 came from, Mr. Arvetis explained that the City would have available to it money that it would not have to pay out until the 7th and the 22nd and could invest

said funds as daily interest. (Tr. 199-200).

The Union contested Mr. Arvetis' analysis as to the cost savings, suggesting that it could be as high as approximately $12 million annually. Yet, as Mr. Arvetis emphasized, the City's motive for the change was not because of the savings, but to modernize its payroll system in keeping with industry standards which Mr. Arvetis testified could not be accomplished if the payroll 1 continued without the proposed change.

The Neutral Chair, joined with the City's Appointee, will opt to adopt the City's proposal with the PBPA Appointee dissenting. The reason the Neutral Chair has so concluded is based upon factors that the parties have adopted by including 14(h) in their CBAs. Section 14(h)(4) provides for a comparison of "conditions of employment" in public employment and in private employment.

This record shows that payroll 7 is the standard in private employment; that payroll 7 has been adopted in Cook County, a public employer, which encompasses the City of Chicago. In addition, approximately 12,000 City of Chicago employees are already on payroll 7. The Board has not been presented with any evidence to suggest that there is a compelling reason to treat PBPA members differently in regard to payroll issues than other City employees. Furthermore, there was no evidence presented that would suggest that the City should be prevented from instituting efficiencies in its payroll system.

It may be that there may be some cost savings but the cost savings first was not a factor in the proposed change. Even if it were, there was no persuasive evidence to suggest that the City should not engage in efficiencies in order to meet its obligations under the various collective bargaining agreements.

The above comments all lead to the fact that not only is there an industry practice supporting the comparison theory, but there is the unique factor that there was no showing of a justification for treating the PBPA Units differently than other City employees for payroll purposes plus the art of the possible, which would suggest that if this was the only issue between the parties, it is doubtful that the parties would not have reached agreement as proposed by the City, which includes an opportunity to bargain as to the implementation date.

14. Section 26.5 – Payment of Time

The current language as set forth in the Sergeants' CBA, which appears in each CBA, reads:

> A Sergeant covered by this Agreement who resigns or dies shall be entitled to and shall be paid for all unused compensatory time accumulated by said Sergeant, including furlough time, Baby Furlough Days and personal days. A Sergeant who is separated for cause shall be entitled to receive only unused compensatory time accumulated as a result of earned overtime for hours worked in excess of 171 per twenty-eight (28-) day period.

The City's final offer is status quo. The Unions' final offer reads:

> A [Sergeant] [Lieutenant] [Captain] covered by this Agreement who resigns or dies or is separated shall be entitled to and shall be paid for all unused compensatory time accumulated by said [Sergeant] [Lieutenant] [Captain], including furlough time, Baby Furlough Days and personal days. ~~A [Sergeant] [Lieutenant] [Captain] who is separated for cause shall be entitled to receive only unused compensatory time accumulated as a result of earned overtime for hours worked in excess of 171 per twenty-eight (28-) day period.~~

Essentially, if a supervisor is separated for cause, which can only be approved by the Chicago Police Board presumably on recommendation of the Superintendent, the supervisor would forfeit any unused non-FLSA compensatory time. This provision has appeared in the first supervisor CBAs in 1999 and has appeared in all subsequent supervisors' CBAs. It is the same

provision that has appeared in the FOP CBAs since the early 1980's. Employer Ex. 113 is a spreadsheet indicating that for the last 10 years there have been approximately 30 Police Board cases involving supervisors. Of those cases, eight of those cases involved recommendations of less than separation. In at least two where the Superintendent recommended separation, the Police Board reduced the recommendation to a suspension. The remainder were either separations that were approved or the member chose to resign prior to a Police Board decision.

The position of the Unions is that members who are faced with suspensions are prone to resign in order to protect the accumulated compensatory time and receive same which would amount to substantial sums. The focus from the Unions' standpoint is to relieve the pressure on the member who, facing Police Board action, may choose not to litigate because of the potential monetary loss.

In addition, the Unions argue that the provision is basically unfair to the member for the member has earned by contract the compensatory time and for this reason, even if separated, should not forfeit compensatory time as to which the member has earned.

The City argues that this language has been in the CBAs for 21 years and has never been changed; that the language affects few individuals.

After evaluating the respective arguments, this Neutral Chair believes that the Unions have the more persuasive argument and, if this was one of the last issues to be resolved, the parties would have agreed to the elimination due to the equities presented by the Unions.

For this reason, this Neutral Chair will join with the Unions' Appointee and adopt the final offer of the Unions in eliminating the last sentence of 26.5 as proposed, with the City Appointee dissenting.

15. GreenSlips – Section 26.6

The City has proposed a new Section 26.6 dealing with GreenSlips with the City's offer reading:

> Within sixty (60) days of ratification of this Agreement, all [Sergeants] advice through direct deposit shall register to receive their notification of pay deposit advice electronically through the Employer's program for that purpose [currently "GreenSlips") if they have not done so already. [Sergeants] [Lieutenants] [Captains] will receive their notification of pay and deposit advice electronically through GreenSlips the first pay period after registering for GreenSlips.

The Unions' final offer is the status quo.

As explained to the DRB, City employees either receive an actual paycheck or arrange for direct deposit, receiving notification by a direct deposit slip either in paper form or electronically. The electronic version is referred to as a GreenSlip. (Tr. 159, 160).

According to the City's Comptroller's Office as of September 16, 2019, 1,548 of the approximately 1,598 PBPA bargaining unit employees receive their deposit advice, meaning that only 50 actually receive a check. Those who receive deposit advice have the option of receiving their deposit advice by an actual paper document or they can receive their deposit advice electronically. (Tr. 159). Whether by paper or electronically, the information as to direct deposit is the same. (Tr. 159). Approximately 87% of eligible members have elected to use what is referred to as GreenSlip advice. (Tr. 160).

The City's proposal is designed to eliminate the paper format in notifying members of direct deposits and instead provide that all members participating in direct deposit be notified electronically. It was represented that this change impacts approximately 197 supervisors represented by the PBPA Units. The purpose that the City advances for the change is the City desires to become "paperless" and be able to provide deposit information to supervisors in "an

easier, more convenient, quicker way".

The majority of the members who have elected electronic deposits have agreed to be electronically notified of the deposits. With so few of the members electing direct deposit not opting for electronic notification, it would seem that there would be no reason to deter the City from going "paperless" so as to become more efficient. The vast majority of the members affected have by their actions in the past, by electing GreenSlips, seem to agree.

With such evidence, there can be little question that the parties, even if there was a right to strike, would not have permitted this issue to be a basis supporting a strike. It is an issue that the parties would have resolved.

The Neutral Chair, along with the City's Appointee, will adopt the City's proposal with the Union Appointee dissenting.

16. <u>Section 26.6 Compensatory Time Exchange</u>

In the CBAs of each of the three Units, there is a Section 26.6 entitled "Compensatory Time Exchange" with the language reading as in the Sergeants' contract:

> A Sergeant may exchange (cash in) accumulated compensatory time not to exceed two hundred (200) hours each year of this Agreement at the Sergeant's hourly rate at the time of payment. Application for such exchange shall be on a form provided by the Employer and at a time each year set by the Employer. In no event shall payment be made later than March 1 of the year following application.

The Unions have proposed as a final offer to increase the number of compensatory time that may be exchanged from 200 to 300 hours with the following final offer:

> A [Sergeant] [Lieutenant] [Captain] may exchange (cash in) accumulated compensatory time mot to exceed ~~two~~ **three** hundred hours each year of this Agreement at the [Sergeant's] [Lieutenant's] [Captain's] hourly rate at the time of payment. Application for such exchange shall be on a form provided by the Employer and at a time each year set by the Employer. In no event shall payment be made any

later than March 1 of the year following application.

The City has proposed the status quo, namely, to keep the figure at 200 hours.

During the arbitration hearing it was estimated that providing 300 hours, namely, an additional 100 hours that could be exchanged each year as applied to 1,500 members would amount to a cost of approximately $7,500,000.00 annually. (Tr. 452). However, it was noted that this included the current 200 hours and that only half of the members, "close to 750", would be using the option. (Tr. 453). There was a suggestion that the $7,500,000.00 figure on this basis could be inflated. (Tr. 453).

The Unions' post-hearing brief argues that: "An increase in the amount of time which a supervisor may sell back is a 'win-win' for the City and the Unions." In support of this statement, the Unions' brief explains the rationale for such a claim as follows:

> The current and historical practice of the City in regards to the accumulation of compensatory time works – as it should – in favor of the employee. For example, an officer can earn one hour worth of overtime on his first day as a police officer. That hour can be saved for as long as the officer is employed by the City. The value of that hour continuously increases with every promotion and wage increase throughout the supervisor's career. At the time of retirement the supervisor can sell that hour back to the Department at a rate of pay commensurate with the supervisor's rank and current pay scale.

After so noting, the Unions observe that the compensatory time is a debt on the City's books which, if reduced by exchanges, the debt is historically not on the books. To put it another way, the debt is more costly if the accumulations continue if the individual earns the compensatory time at a lower rank but does not cash out the time until reaching a higher rank, increasing the value of the debt.

In opposition to the change, the City in its post-hearing brief notes at 58-59:

> ... But since the close of the hearing we have all been

> gobsmacked by the Coronavirus Pandemic. As of the date of filing of this Post-Hearing brief, the economy (both nationally and locally) is in freefall. No one knows when we will hit bottom, or what bottom will even look like. We do not deny that there is some advantage to the City in paying down the significant banks of compensatory time the supervisors maintain. In normal times that would be a fairly compelling argument for the proposal. But these are not normal times. Every 100 hours of compensatory time paid out is a sum of money that will not be available to pay for the wages and benefits of the incumbent officers. The current circumstances, extraordinary as they are, simply do not permit awarding this proposal.
> (Footnote omitted.)

Both the City and the Unions make good arguments in support of their respective positions as to the Section 26.6 "Compensatory Time Exchange". The Neutral Chair appreciates the impact of the coronavirus pandemic on municipal finances. Chicago is no exception to this impact.

Nevertheless, a long range view is important in developing a collective bargaining agreement. There are advantages to the City in reducing an obligation that the City is accruing. Members do earn the compensatory time because of their assignments. The compensatory time increases in value with wage increases and promotions during the course of a member's career.

It is based upon this analysis that in bargaining the parties, if faced with a strike, in the view of this Neutral Chair, would not hesitate to accept the final offer of the Unions as to Section 26.6. For this reason, the majority of the Board will award the Unions' final offer and increase the 200 hours to 300 hours with the City's Appointee dissenting.

17. <u>Section 29.A.2 Furlough Days</u>

Each of the Units' CBAs contains the following provision that appears in the Sergeants' contract:

> Effective January 1, 2006 and thereafter, Sergeants shall receive twenty-five (25) working days of furlough vacation.

The Unions' final offer on furlough days is to amend Section 29.A.2 to read:

> Effective ~~January 1, 2006 and thereafter~~, **upon the ratification of this Agreement,** Sergeants [Lieutenants] [Captains] **working an eight (8) hour schedule** shall receive twenty-five (25) working days of furlough (~~vacation~~). **[Sergeants] [Lieutenants] [Captains] working an eight-and-one-half hour (8.5) schedule shall receive twenty-four (24) working days of furlough. [Sergeants] [Lieutenants] [Captains] working a ten (10) hour schedule shall receive twenty (20) working days of furlough** (~~vacation~~).

The City's final offer is the status quo.

At first blush, upon reading Section29.A.2, there seems to be confusion as to the respective final offers as the CBAs as quoted refer to 25 working days.

This confusion is rectified when it was explained that the Department maintains three shifts. Supervisors work an eight hour shift, an 8.5 hour shift, or a 10 hour shift, depending on their assignment. As a result, the Department issued General Order "Furlough Selection and Scheduling For Sworn Members, E02-04-01" (U. Ex. 23) which sets forth the process for scheduling furloughs and essentially provides that every supervisor receives 200 hours of furlough time annually. For a supervisor working eight hours, eight divided into 200 hours equals 25 working days. A supervisor working 10 hours receives 20 working days of furlough with 10 hours being divided into 200 hours.

The Unions' final offer as noted at page 58 of their brief addresses "the problem this proposal is intended to address is in the case of an 8.5 hour supervisor the same calculation results in 23.4 days." The General Order requires "members must supplement the last day with the appropriate amount of compensatory hours. This requires an 8.5 hour supervisor to contribute 4.5 hours of compensatory time in order to reach the 24 day furlough which are necessary to equalize their furlough time".

The City's argument set forth in its brief at page 61 acknowledges that the Unions' offer as to the 8.5 hour schedule would provide supervisors on that schedule 24 full working days as furloughs. Then the brief notes, "Yes, this would give those employees a full working day furlough just like the other two schedules. But this does not constitute any sort of parity, because the employees on the schedule would now receive 204 furlough day hours in a year while everyone else had 200 hours".

The City then questions whether there is a hardship for the 8.5 hour scheduled supervisors to utilize four and one-half hours from their accumulated compensatory time "in order to achieve the full day". The City concludes, "Since the supervisors all receive 45 minutes in compensatory time every day they work, in the form of Rank Credit, the supervisor needs only work a total of six days in the course of the year to have sufficient compensatory time to be able to bridge that last half day". (Pg. 61).

The difficulty with this argument is that the supervisors on the eight hour and 10 hour schedule are not required to use accumulated compensatory time to insure that their furlough days are full days rather than half days. In other words, the current practice creates an inequity as between the 8.5 hour schedule and the eight and 10 hour schedules in that the 8.5 hour schedule does not provide for the final full day of furlough, whereas the other schedules do. Furthermore, on the eight and 10 hour schedules, there is no necessity for supervisors on those schedules to utilize accumulated compensatory time to achieve a full day of furlough.

Although the General Order is couched in terms of 200 hours, from a supervisor's standpoint furloughs are usually taken in day segments. It is based upon the above analysis that the Neutral Chairman, joined by the Union Appointee, will award the Unions' final offer with the

City's Appointee dissenting.

18. District, Unit and Watch Bids for Sergeants – Article 32

Article 32 of the Sergeants' CBA is entitled "Watch/District/Unit Selection". During the hearings in the interest arbitration, there was reference to the proposition that under the Consent Decree it is anticipated that additional Sergeants will be added to the Department's Sergeant ranks. The numbers and circumstances were not known during the interest arbitration proceedings. As a result, the City in its final offer proposed as to Article 32:

> The Employer proposes the following Reopener:
>
> This applies to three provisions: I) the Memorandum of Understanding Regarding District Bid Procedures at page 84 of the Agreement (applicable to number of District bid positions (currently 12) pursuant to Section 32.1.B); ii) Section 32.2.B.1, applicable to the number of watch bid assignments on each watch in each District (currently 5); and iii) Unit Bids, pursuant to Section 32.1.C.
>
> The parties agree that the Consent Decree contemplates the assignment of an increased number of Sergeants to District Law Enforcement, but that the final number is not yet known. The parties further agree that a significant increase in the number of assigned Sergeants may justify revisions to the number of District bid positions and watch bid assignments, but cannot at this point agree on any revisions.
>
> The Union during the term of this Agreement may tender a written demand to bargain over the issue of whether the number of District bid positions, watch assignments and/or Unit bid positions should be increased from the current numbers. The District shall respond to the demand within thirty (30) days).
>
> The parties shall negotiate for 90 days after the demand to bargain with respect to the appropriate number of District bid positions, watch bid assignments and/or Unit bid positions. If after 90 days they cannot reach agreement, they shall submit the dispute to binding arbitration. The Arbitrator shall be selected pursuant to the provisions of Article 9. The Arbitrator shall determine the appropriate number of District Bid positions, ~~and/or~~ District watch assignments and/or Unit bid positions.
>
> The Arbitrator's decision shall be final and binding on the parties.

The Unions made no offer but seemed during the hearing to recognize the concern as to

the precise numbers that might be involved. To the Neutral Chair, speaking for the Board, the final offer of the City as to Article 32, which is entitled a Reopener, addresses the issue. It permits the Sergeants Unit to demand bargaining on the issue at any point during the term of the Agreement and provides for final resolution by binding arbitration if no agreement is reached by the parties.

This is a fair resolution of this issue at this time, causing the Board unanimously to award the City's final offer as just stated.

19. Captains and Watch Commander Positions

During the arbitration hearings, a question came up as to whether the City is considering restoring the Watch Commander positions with the rank of Captain and the effect on the Captains' Unit. Since there has been no decision on the part of the City as to whether there will be a restoration, the Board has agreed with the parties that the Captains' CBA should include the following letter in the event that the Watch Commander position is restored:

DRAFT LETTER FOR CBA AND
LETTERS OF UNDERSTANDING

Reopener Language for Side Letter in Captains' CBA in the event CPD restores the Watch Commander Position

Kevin Chambers
President
Captains' Association

Re: Possible Restoration of Watch Commander Position

Dear President Chambers:

This letter will confirm the parties' mutual understandings with respect to the process to be followed should the City decide to restore the Watch Commander position during the term of the collective bargaining agreement that is currently the subject of interest arbitration proceedings before Arbitrator George Roumell.

Should the City decide to restore the Watch Commander position, the parties anticipate that it would become necessary to promote a significant number of additional Captains. In the event the City determines to restore the Watch Commander position, and prior to any additional Captain promotions, the City will notify Unit 156C of this decision. Upon request of the Union the parties agree to negotiate, as that term is defined in Section 7 of the Illinois Public Labor Relations Act, over the following issues:

- The process for determining Watch assignments for Captains within a District
- Mechanism for allowing incumbent Captains an opportunity to attempt to transfer to a District other than the one to which they are currently assigned prior to the assignment of newly-promoted Captains
- Provisions for the assignment of incumbent Captains serving as Executive Officers who do not wish to accept the Watch Commander position

If, after a period of ninety (90) days after commencement of negotiations (or such longer period as mutually agreed to), any of the above-enumerated issues remain(s) unresolved, the parties agree to submit the unresolved issue(s) to arbitration. For each issue, each party shall submit its proposed resolution to the arbitrator. The arbitrator's jurisdiction shall be limited to the specific issues enumerated above, and shall have no authority to issue an award on any other issue or subject. The arbitrator's decision shall be final and binding on the parties. The arbitrator's fee shall be shared equally between the parties.

20. Retiree Medical Care

Currently, PBPA supervisors who retire at the age of 55 contribute 2% of their annuity (retirement payment) toward medical insurance provided by the City, which is the same insurance provided for active supervisors. Supervisors who retire at the age of 60 or mandatorily retire at age 63 make no contributions. The contributions that are required cease when the employee becomes Medicare eligible.

The PBPA Units in their final offer propose retirement contributions as follows:

On the Issue of the City's proposal to amend Article 12 and the Memorandum of Understanding Regarding Retiree Healthcare, the Unions' final offer is to combine the City's proposal for an increase in the employee contribution and the Unions' proposals to limit the amount

of an increase in the employee contribution and to expand the benefit to supervisors with 30 years of service. The Unions' final offer would add the following language to the parties' agreement.

Retirement Age +30 years of service	Contribution Level
51	6%
52	6%
53	4%
54	4%
55-59	3.5%
60-63	1.5%
63-65	0%*

*Officers are mandatorily retired at age 63 but can continue in the actives' plan until age 65.

The City's final offer on retiree health care is as follows:

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF CHICAGO
AND THE
POLICEMEN'S BENEVOLENT & PROTECTIVE
ASSOCIATION OF ILLINOIS, UNIT 156A-SERGEANTS,
UNIT 156B-LIEUTENANTS AND UNIT 156C-CAPTAINS
REGARDING
RETIREE HEALTH CARE BENEFITS

The parties agree that the healthcare benefit provided to officers who retire on or after age sixty (60) pursuant to Article 12 of the parties' collective bargaining agreement effective July 1, 20~~12~~16 through June 30, 20~~16~~22 ("the Agreement") shall be extended to officers who retire on or after age fifty-five (55), subject to the following terms and conditions:

A. Health Care Benefits Upon Retirement

1. Officers Who Retire on or After Age Sixty (60)

Officers who retire on or after age sixty (60) shall continue to receive the health care benefit set forth in Article 12 of the Agreement, but shall have their final compensation paid in accordance with Section (B). Effective for retirements occurring ninety (90) or more days after the date of ratification of this Agreement, officers who retire on or after age 60 and prior to age 63 and who elect to receive the health care benefit set forth in Article 12 of the Agreement shall contribute two percent (2%) of their annuity then being received pursuant to the provisions of the Policemen's Annuity and Benefit Fund Act of the

Illinois Pension Code (40 ILCS 5/5-101 et seq.) ("Pension Code"). Such officers shall continue to contribute this percentage contribution for as long as they receive the health care benefit set forth in Article 12 of this Agreement.

2. Officers Who Retire on or After Age Fifty-Five (55) and Before Age Sixty (60).

Officers who retire on or after age fifty-five (55) and before age sixty (60) shall be eligible for the health care benefit set forth in Article 12 of the Agreement, provided that they file for retirement in accordance with the following schedule:

~~For calendar year 2012 and 2013, the schedule shall be a filing deadline of October 1 with effective dates of retirement of November 1 through December 31 of the year in which the filing for retirement occurs.~~

Notwithstanding the following provisions applicable to retirements in 20~~14~~20 and thereafter, eligible ~~Lieutenants~~ officers who provide written notice of retirement ~~between February 1 and February 21, 2014~~ within twenty-one (21) days after the date of ratification of this Agreement, with an effective date of retirement ~~at least fourteen (14) days after the notice of retirement and no later than March 31, 2014~~, between sixty (60) and ninety (90) days after the date of ratification of this Agreement, may participate in this benefit and contribute two percent (2%) of their annuity then being received pursuant to the provisions of the Pension Code. Such officers shall continue to contribute this percentage contribution for as long as they receive the health care benefit set forth in Article 12 of this Agreement. ~~Without being required to contribute any portion of their annuity. Effective calendar year 2014, the effective date of retirement shall be July 1 through December 31, provided the officer files for retirement no later than May 31, 2014.~~ Effective for calendar year 20~~15~~20 and each year thereafter, the effective date of retirement shall be between May 1 through December 31, provided the officer files for retirement at least thirty (30) days prior to the effective date of retirement.

Effective for retirements occurring on or after the date of ratification of this Agreement, officers who retire on or after age fifty-five (55) and before age sixty (60) and who elect to participate in this benefit shall contribute ~~two percent (2%)~~ four percent (4%) of their annuity then being received pursuant to the provisions of the Policemen's Annuity and Benefit Fund Act of the Illinois Pension Code (40 ILCS 5/5-101 et seq.). Such officers shall continue to contribute this percentage contribution for as long as they receive the health care benefit set forth in Article 12 of this Agreement.

B. Payment of Final Compensation Upon Retirement

(No changes)

C. Term of Memorandum of Understanding

The terms and conditions of this memorandum of understanding shall be subject to renegotiation by the parties beginning on or after June 30, 20~~16~~22 as part of the collective bargaining negotiations for a successor collective bargaining agreement.

There are obvious differences in the two offers. The City makes no proposal for retirements of supervisors who retire between 50 and 55 years of age. The proposals differ as to the percentage contribution for supervisors who retire between the ages of 55 and 60 and who retire between the ages of 60 and 63. The City's proposal also provides for certain windows when supervisors can retire applying the previous percentages and when the proposed percentages become effective.

Illinois public employee pensions are provided in the Illinois Pension Code, 40 ILCS 5/5-101 *et seq*. Section 5 of the Code pertains exclusively to Chicago police officers and provides a retirement annuity based upon the combination of age and service credits of a police officer. To be eligible for a minimum annuity, an officer, or in this case a supervisor, must be 50 years of age and have rendered 20 years of service. This means that such an officer is eligible for an annuity of 50% of annual salary. The statute establishes the maximum annuity to be 75% of annual salary based upon "final average salary" defined as the average of the four highest consecutive years in the last 10 before retirement. 40 ILCS 5/5-132. Under the Pension Plan, an officer/supervisor upon reaching the 29 years and one day of service with a minimum age of 50 can retire. (Tr. 508-509).

It is based upon the above-mentioned provisions in the Pension Code that the Units are

proposing that their members can retire prior to the age of 55 and receive the City's health care benefits. Currently members who retire prior to the age of 55 do not receive health care benefits paid by the City. The Units, as indicated in their final offer, are prepared to contribute the higher percentage of their annuities for the 50 to 55 retirement age. (Tr. 509-510). The Units support this request by maintaining that an officer's job is "very stressful" and suggests that members involved in law enforcement "have a shorter life span" and for this reason should be able to retire upon 29 years and one day. The Units emphasize that the provisions for the City providing paid health care for those who retire between 50 and 55 years of age would benefit officers who came on the job in their early 20's.

The City's objection to extending what the City describes as "subsidized" health insurance to members who retire between the ages of 50 and 55 is twofold, namely, the funded state of the Policemens' Annuity and Benefit Fund of Chicago as of December 31, 2018 and the total cost of health care insurance for police members versus the members' contribution to the cost.

The December 31, 2018 Police Fund Actuary Report prepared by well known actuaries, GRS, report that the police pension fund is a "severely underfunded plan". In particular, the report noted that the funded ratio is 23.8% of unfunded liability. The unfunded liability was approximately $10 billion. This means that the fund is only able at this time to meet 23.8% of the fund's pension obligations. As of December 31, 2019, during the hearings in this matter, GRS issued a subsequent actuary report revealing a valuation of the fund of 22.28% or a 6.4% decline since the 2018 evaluation. If the funded ratio is not improved, the obligation to pay pensions is in jeopardy. (*See*, C. Ex. 97).

On this point, the GRS report noted that due to Public Act 99-0506, effective May 30, 2016, the previous funding policy was amended requiring the City to make contributions to the fund as follows: $420 million in 2016; $464 million in 2017; $500 million in 2018; $557 million in 2019; and $579 million in 2020. Beyond 2010 through 2055, there is a requirement of further City contributions when combined with investment earnings, overage, it is to obtain a projected fund ratio of 90% by year end 2055. The report, however, notes that even with the contributions made and contemplated "the funded ratio is not projected to even reach 50% funded for another 25 years until 2043". (*See*, C. Ex. 97).

The significance of the above observations is that, under the previous system of funding the City's police fund between the years 2007 through 2014, the City funding for each year was under $200 million. In 2015, the payment went to $575,927,645.00, emphasizing the urgency in the need to increase the funded ratio. (*See*, C. Ex. 95).

During the time frames just discussed, the City had two basic plans, an HMO and a PPO. From 2007 through 2017, the average cost for an HMO per primary member per year went from $7,764 to $13,616. The average cost per primary member per year for the PPO went from $6,624 to $10,835.

Based on these facts, the City argues that if the Board awarded the Units' proposal as to retirees between the ages of 50 and 55, such individuals would be encouraged to retire prior to age 55 because of the cost of the insurance, thereby putting a strain on the police fund wherein the City is faced with the need to make substantial contributions to fund the plan; that additional employees retiring at an earlier age would affect the funding ratio and the need to make increased contributions to the fund.

Based upon these facts, the City argues that the ability to retire prior to age 55 with City paid health care would encourage a higher percentage of supervisors to retire, relying on a chart in City Ex. 96 that does illustrate a higher percentage of supervisors retiring between 2010 and 2019 between the ages of 55-59 than 2005-2009. However, though there was a spike in 2016 in the percentage of retirements as compared to all separations, namely, 66% for Sergeants, 71% for Lieutenants and 78% for Captains, the 2019 separations had this figure down to 54% for Sergeants, 47% for Lieutenants and 60% for Captains retiring between 55 years old and 59 years old. The spike came two years after Arbitrator Bierig's award in 2013 which for the first time provided for benefits at age 55 with a 2% contribution. In doing so, it is interesting that at page 88 Arbitrator Bierig wrote: "As a number of Sergeants retiring at a younger age increases, the health care cost to the City has experienced and will continue a proportional increase".

Captain Kevin Chambers, testifying for the Units on health care, suggested that reducing the age would not incentivize people to retire at an age earlier than age 55 because there are many reasons why individuals would retire prior to age 55". (Tr. 517-518). The Neutral Chair recognizes this argument. Yet, the point that the City has made that it would be attractive for individuals, given the cost of health care insurance, to opt to retire prior to age 55 even with the contributions proposed by the Units.

Balancing the two competing arguments just enumerated, the Neutral Chair concludes that encouraging retirement prior to age 55 and the strain that such encouragement puts on the police fund outweighs the argument for providing City-paid health insurance for those who retire prior to age 55.

This conclusion is buttressed by the comment of Arbitrator Benn in the interest

arbitration that he conducted in 2010 between the City and the Fraternal Order of Police Chicago Lodge No. 7 when he noted: "The parties negotiated two new 'good ideas' to schedule change and the health care provisions for officers retiring at age 55. These two accomplishments would not have been achieved through the interest arbitration process."

In other words, with the strain on the Police Fund which, if not addressed, could jeopardize pensions, it is doubtful that the parties, even applying a strike factor, would end up agreeing to providing City-paid health care for those who retire prior to the age 55.

The Neutral Chair turns to the other aspect of the retiree health care issue.

In 2005, the gross cost to the City of employee health care was $293,624,674.00. The employee contribution was $34,297,337.00, or 11.7% of the gross amount. (*See*, C. Ex. 94). Arbitrator Edwin Benn in 2005 increased the employee contribution in his interest award that year between the City and the FOP. (*See*, C. Ex. 11 at 51-52). As a result, by 2007, the employee contribution toward the total cost of health insurance of $313,465,092.00 was $46,648,157.00, or 14.9%. By 2017, the City's total cost for health care went to $457,591,630.00, whereas the employees' contribution was $49,754,975.00, or 10.9% of the City's cost. This represented a decrease in the percentage of contributions by the employees from a high of 14.9% and was actually lower than the percentage 11.7% in 2005 before the Benn award.

This phenomena of increasing cost of health care, along with the decreasing percentage of the cost contributed by employees, resulted in the active members of the PBPA supervisors Units to agree in current negotiations to a 1.5% increase in the members' contribution, which was part of an economic package that has been ratified by the City Council. In fact, "all the City unions

that have negotiated successor agreements with the City have agreed to that exact same – those same numbers for the employee contribution, which represents a point and a half increase in the cost". (Tr. 353-354).

The situation as to the active supervisors' contributions was succinctly explained in Footnote 25 at page 36 of the City's post-hearing brief as follows:

> An active employee's contribution depends on whether the employee has Single, Employee +1 or Family coverage. As set forth in Appendix G in the Agreements, under the prior Agreements the contribution rates were 1.2921%, 1.9854% and 2.4765% for the three categories. The contributions rates were a percentage of base salary up to a ceiling of $90,000 (i.e., an employee earning $111,474 (the rate for a 25 year Sergeant in 2016) paid the same contribution, expressed in dollars, as an employee making $90,000). Effective January 1, 2020, the contribution rates for each of the three categories increased by 1.50%, yielding new contribution rates of 2.7921%, 3.4854% and 3.9765%. Further, pursuant to the "Term Sheet" executed by the parties and ratified by the City Council, these increased contribution rates are applied to increases in the ceiling: $100,000 as of January 1, 2020; $115,00 as of January 1, 2021; and $130,000 as of January 1, 2022. These provisions correspond to what the civilian unions agreed to.

This Neutral Chair takes note that the referenced percentages that existed prior to the current negotiated increase were implemented as a result of the interest arbitration conducted by Arbitrator Benn in 2005 involving the FOP. In other words, these percentages had existed for approximately 15 years before the current negotiated change of adding 1.5% to each category.

Against this background, observe the import of the respective final offers as to the contributions toward retiree health care. The Units have proposed to follow the pattern set by City negotiations, including with the active PBPA members, namely, adding 1.5% to the contribution rate so that at age 55 the rate would move from 2% to 3.5%. The Units have further agreed to a contribution rate at age 60 of 1.5% where previously there had been no contribution. The City has proposed increasing the 2% at age 55 to 4% and a 2% contribution for retirements

between age 60 and age 63. The City did present an Exhibit B illustrating that basically, even with the City's final offer, the retirees would be contributing, money-wise, less than active employees toward health care costs. The City follows this point up by noting that the claims "paid per month" for active employees on an average was $316.90 in 2017 and $322.37 in 2018. For retirees in 2017 the PMPM was $536.81 and in 2018 was $561.98, or 75% more in medical expenses than active employees. (*See*, Ex. 87; Tr. 358-363). Thus, the City argues that there is a rational basis for increasing the contribution at the 55 year age by 2% and requiring a 2% contribution for those retiring between ages 60 and 63, recognizing that at age 63 there would be no contribution.

In summary, the retiree health care issue has two components. The Units are seeking City-paid health care insurance for members who retire between the ages of 50 and 55 with contributions. In addition, the Units are agreeing to increase the contribution for retirements between the ages of 55 and 59 by 1.5% and between 60 up to age 63 by a 1.5% contribution consistent with the bargaining pattern within the City and with the active PBPA members.

When faced with such a situation, the factor that comes into play is the art of the possible, namely, without the intervention of interest arbitration what would be parties eventually agree to to avoid impasse?

Lay the facts out. The Units have not previously been able to achieve, including two previous interest arbitrations with the Sergeants, health care benefits provided by the City for members who retire between the ages of 50 and 55. The City has set a pattern of a 1.5% increase in contribution. The argument that the 1.5% fails to recognize increased costs for retirees and that even with the 1.5% increase for active employees the active employees, because of their wages,

will be paying dollar-wise more than retirees at 3.5% and 1.5%. Yet, this has been a fact previously. This was true under the 2016 CBAs. The pattern has been set. The Units have recognized the need to make contributions. When the two aspects are considered and the rationale for the City's resistance to provide for retiree benefits for members retiring prior to age 55 and the Units' reliance on the 1.5% increase, the art of the possible would suggest that the settlement would be to accept the PBPA's offer in terms of increasing the contribution at age 55 from 2% to 3.5% and for retirements beginning at age 60 up to 63 at 1.5% would be the parties' final agreement, along with the acceptance of the City's offer that there be no City-provided health care insurance for members who retire between the ages of 50 and 55.

The above language and conclusions and award were written by the Neutral Chair following the presentation of final offers and post-hearing briefs. During the preparation of the Opinion through Counsel the Unions subsequently submitted a new retiree health care proposal as follows:

A. Health Care Benefits Upon Retirement

1. Members who retire on or after reaching 30 years of continuous service shall continue to receive the health care benefit set forth in Article 12 of the Agreement and shall contribute 1.5% of their retirement annuity for as long as they receive the health care benefit set forth in Article 12 of the Agreement.

2. Members who retire on or after reaching 28 years of continuous service shall continue to receive the health care benefit set forth in Article 12 of the Agreement and shall contribute 3% of their retirement annuity for as long as they receive the health care benefit set forth in Article 12 of the Agreement.

3. Members who retire on or after reaching 26 years of continuous service shall continue to receive the health care benefit set forth in Article 12 of the Agreement and shall contribute 4.5% of their retirement annuity for as

long as they receive the healthcare benefit set forth in Article 12 of the Agreement.

4. Members who retire on or after reaching 24 years of continuing service shall continue to receive the health care benefit set forth in Article 12 of the Agreement and shall contribute 6% of their retirement annuity for as long as they receive the health care benefit set forth in Article 12 of the Agreement.

5. Members who retire on or after reaching 22 years of continuous service shall continue to receive the health care benefit set forth in Article 12 of the Agreement and shall contribute 7.5% of their retirement annuity for as long as they receive the health care benefit set forth in Article 12 of the Agreement.

6. Members who retire on or after reaching 20 years of continuous service shall continue to receive the health care benefit set forth in Article 12 of the Agreement and shall contribute 9% of their retirement annuity for as long as they receive the health care benefit set forth in Article 12 of this Agreement.

Counsel for the Unions argued vigorously to the Neutral Chair that the majority of the Board should adopt this new proposal as to retiree health care.

The City's Counsel objected, maintaining that the record does not support such a proposal.

Counsel for the Unions emphasized vigorously the concern of the Unions as to the need for the opportunity to retire prior to the age of 55 and, in the Unions' view, based upon years of service and to be able to receive health care benefits.

This Neutral Chair noted this argument and understands the argument. The problem at this point faced with such a change in approach is the concern over the falling actuary evaluation of the pension fund. Even during the hearing, despite increased financial contribution by the City, the valuation of the fund was falling as noted above. The City is now in the process of

infusing the fund with substantial funds and will continue to do so.

Recognizing this fact, while acknowledging the concerns of the Unions, at this particular time while the fund is being stabilized by the infusion of monies which will be increasing annually the best the Unions can expect is the Award that a majority of the Board have fashioned maintaining the pattern of a 1.5% increase in contributions based upon the negotiations involving active employees. Again, Counsel argued vigorously concerning the new proposal. To meet existing obligations, the Police Pension Fund is in need of financial stabilization, which is in the beginning stages of being addressed. If retiree health care continues to be an issue in future negotiations, the resolution will depend on careful planning and creativity on the part of all parties to obtain a mutually acceptable financially viable resolution. It is for this reason that the Neutral Chair, joined by the City Appointee, over the vigorous dissent of the Unions' Appointee, will abide by the Award as noted above.

The parties have agreed to a window where current members could retire under the provisions of the current contract as to retiree insurance and also provide for a window of when members could elect to retire. Thus, the offer of the City on these points is well taken.

In summary, with the Units' Appointee dissenting, the Board rejects any City-provided health care insurance for retirees retiring between the ages of 50 and 55. The Board accepts the Units' offer that a contribution rate at age 55 until the employee reaches age 60 shall be 3.5% of the annuity; that for employees who retire at age 60 up to age 63, the contribution rate will be 1.5% of the annuity, with the City's Appointee reluctantly agreeing, given the status of the offers so as to obtain a majority vote. The Board unanimously accepts the window provisions of the City's offer as modified with the 3.5 and 1.5 percentages which, to repeat, reads:

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF CHICAGO
AND THE
POLICEMEN'S BENEVOLENT & PROTECTIVE
ASSOCIATION OF ILLINOIS, UNIT 156A-SERGEANTS,
UNIT 156B-LIEUTENANTS AND UNIT 156C-CAPTAINS
REGARDING
RETIREE HEALTH CARE BENEFITS

The parties agree that the healthcare benefit provided to officers who retire on or after age sixty (60) pursuant to Article 12 of the parties' collective bargaining agreement effective July 1, 2012~~12~~16 through June 30, 2016~~12~~22 ("the Agreement") shall be extended to officers who retire on or after age fifty-five (55), subject to the following terms and conditions:

A. Health Care Benefits Upon Retirement

1. Officers Who Retire on or After Age Sixty (60)

Officers who retire on or after age sixty (60) shall continue to receive the health care benefit set forth in Article 12 of the Agreement, but shall have their final compensation paid in accordance with Section (B). Effective for retirements occurring ninety (90) or more days after the date of ratification of this Agreement, officers who retire on or after age 60 and prior to age 63 and who elect to receive the health care benefit set forth in Article 12 of the Agreement shall contribute one and one-half percent (1.5%) of their annuity then being received pursuant to the provisions of the Policemen's Annuity and Benefit Fund Act of the Illinois Pension Code (40 ILCS 5/5-101 et seq.) ("Pension Code"). Such officers shall continue to contribute this percentage contribution for as long as they receive the health care benefit set forth in Article 12 of this Agreement.

2. Officers Who Retire on or After Age Fifty-Five (55) and Before Age Sixty (60).

Officers who retire on or after age fifty-five (55) and before age sixty (60) shall be eligible for the health care benefit set forth in Article 12 of the Agreement, provided that they file for retirement in accordance with the following schedule:

~~For calendar year 2012 and 2013, the schedule shall be a filing deadline of October 1 with effective dates of retirement of November 1 through December 31 of the year in which the filing for retirement occurs.~~

Notwithstanding the following provisions applicable to retirements in 20~~14~~20 and thereafter, eligible ~~Lieutenants~~ officers who provide written notice of retirement ~~between February 1 and February 21, 2014~~ within twenty-one (21) days after the date of ratification of this Agreement, with an effective date of retirement ~~at least fourteen (14) days after the notice of retirement and no later than March 31, 2014~~, between sixty (60) and ninety (90) days after the date of ratification of this Agreement, may participate in this benefit and contribute two percent (2%) of their annuity then being received pursuant to the provisions of the Pension Code. Such officers shall continue to contribute this percentage contribution for as long as they receive the health care benefit set forth in Article 12 of this Agreement. ~~Without being required to contribute any portion of their annuity. Effective calendar year 2014, the effective date of retirement shall be July 1 through December 31, provided the officer files for retirement no later than May 31, 2014.~~ Effective for calendar year 201520 and each year thereafter, the effective date of retirement shall be between May 1 through December 31, provided the officer files for retirement at least thirty (30) days prior to the effective date of retirement.

Effective for retirements occurring on or after the date of ratification of this Agreement, officers who retire on or after age fifty-five (55) and before age sixty (60) and who elect to participate in this benefit shall contribute ~~two percent (2%)~~ three and one-half percent (3.5%) of their annuity then being received pursuant to the provisions of the Policemen's Annuity and Benefit Fund Act of the Illinois Pension Code (40 ILCS 5/5-101 et seq.). Such officers shall continue to contribute this percentage contribution for as long as they receive the health care benefit set forth in Article 12 of this Agreement.

B. Payment of Final Compensation Upon Retirement

(No changes)

C. Term of Memorandum of Understanding

The terms and conditions of this memorandum of understanding shall be subject to renegotiation by the parties beginning on or after June 30, 20~~16~~22 as part of the collective bargaining negotiations for a successor collective bargaining agreement.

21. Resignations and Retirements While Under Investigation

There were discussions during the arbitration hearings concerning the resignation of Sergeants who resign or retire from the Department while the subject of an ongoing Complaint Register investigation and whether the Sergeant would receive retirement credentials or any other

post-employment honorary benefits and emoluments as well as any notations on the member's personnel file. The Board was presented with the following proposed letter and unanimously agrees to include the letter as part of the Awards:

~~April 30, 2010~~

~~Mr. Sean M. Smoot~~
~~Director & Chief Legal Counsel~~
Thomas J. Pleines
Policemen's Benevolent & Protective
Association of Illinois/Sergeants
~~435 West Washington Street~~
~~Springfield, Illinois 62702~~

Re: Resignations and Retirements While Under Investigation

Dear Mr. ~~Smoot~~ Pleines:

This letter confirms the Employer's representations during negotiations regarding the credentials to be afforded to a Sergeant who resigns or retires from the Department while the subject of an ongoing Complaint Register investigation.

In accordance with current policy, the Superintendent has the discretion to decide whether the Sergeant's personnel file should state that the Sergeant resigned or retired "while under investigation" based on the totality of the circumstances surrounding the investigation, including, but not limited to, the likelihood that the investigation will result in a sustained finding accompanied by a recommendation for a substantial disciplinary penalty, the possibility that the investigation may result in the decertification of a Sergeant as a peace officer and/or the extent to which the Sergeant has cooperated in the investigation both before and after his/her separation from employment. This same standard also governs whether the Sergeant will receive full retirement credentials or any other post-employment honorary benefits and emoluments.

In the event that Unit 156-Sergeants or the Sergeant disagrees with the Superintendent's decision, either party may file a grievance pursuant to Section 9.2 of the Agreement or submit the grievance to mediation, but the grievance shall not be subject to arbitration. Effective for resignations or retirements occurring after the date of ratification of this Agreement, Unit 156-Sergeants may submit the grievance to arbitration pursuant to the provisions of Article 9 of this Agreement. The Arbitrator may set aside the Superintendent's decision only if the

Arbitrator determines that the Superintendent's decision was an arbitrary application of the standard set forth in the preceding paragraph.

Very truly yours,

James C. Franczek, Jr.

AGREED:

~~Sean M. Smoot~~
Thomas J. Pleines
~~April 30, 2010~~

Letter of Understanding
Re: Secondary Employment – Section 16.1

It is agreed that in administering the sixteen (16) hour limitation set forth in Section 16.1, if a member is in violation, the Department will not consider any discipline action until the member has been counseled concerning the limitation at least three (3) times, namely, one time for each three separate violations. It is only after the fourth (4th) violation that the Department may consider disciplinary action. Such action must be consistent with the concept of just cause and is subject to being challenged in the grievance procedure.

General

The Awards shall be effective upon ratification by the PBPA Units and the City Council unless otherwise indicated. Each Award is set forth in the discussion of the issue involved. Each Award is supported by a majority of the Board with notations as to members who elected to dissent on given issues. The language of the Opinion and the Awards is the language prepared by the Neutral Chair and does not mean that the language was the language of any other member of the Board. The Neutral Chair, on behalf of the Board, has attempted to apply, where applicable, the Section 14(h) factors.

Attached to this Opinion and Awards is Appendix A, which are agreements reached mutually by the parties as a result of mediation efforts during these impasse proceedings. The signature of the members of the Board is a recognition that each Award set forth in the body of

this Opinion is supported by a majority and that each member on one or more issues on occasion have registered dissents.

AWARD

1. The Award hereby incorporates the findings and conclusions set forth in the above Opinion as to each individual discussion with the Awards being set forth in the body of the Opinion as to each issue.

2. The Board will keep jurisdiction for the purpose of addressing any technical errors in the Opinion and the Awards.

3. Attached hereto and as part of this Award is Appendix A – the agreements reached by the parties during the impasse proceedings.

George T. Roumell, Jr.
GEORGE T. ROUMELL, JR., Neutral Chair

CICELY PORTER-ADAMS, City Appointee

PAUL BILOTTA, Union Appointee

Released June 26, 2020 at 2:00 p.m., Central Daylight Time.

APPENDIX A

BEFORE THE DISPUTE RESOLUTION BOARD

GEORGE T. ROUMELL, JR. (Neutral Chair)
PAUL BILOTTA (PBPA Appointee)
CICELY PORTER-ADAMS (City Appointee)

In the Matter of the Interest
Arbitration between:

CITY OF CHICAGO

-and-

POLICEMEN'S BENEVOLENT &
PROTECTIVE ASSOCIATION, OF
ILLINOIS, UNIT 156 – SERGEANTS,
LIEUTENANTS AND CAPTAINS

TENTATIVE AGREEMENTS IN MEDIATION

1) Article 3 in each agreement. Revise as follows:

Delete Section 3.1 in its entirety

Replace Section 3.2.A with the following:

Upon receipt of a signed authorization in a form agreed upon by Unit 156– [Sergeants] [Lieutenants] [Captains] and the Employer, the Employer shall deduct from the wages of the [Sergeant] [Lieutenant] [Captain] the dues and/or financial obligations uniformly required and shall forward the full amount to Unit 156- [Sergeants] [Lieutenants] [Captains] by the tenth day of the month following the month in which the deductions are made. The amounts deducted shall be in accordance with a schedule to be submitted to the Employer by Unit 156 – [Sergeants] [Lieutenants] [Captains]. Employee- authorized deductions may only be revoked in accordance with the terms under which the [Sergeant] [Lieutenant] [Captain] voluntarily authorized the deduction. If a [Sergeant] [Lieutenant] [Captain] requests a change in membership dues or fee-paying status, including revocation of an authorization form, the Employer shall refer the [Sergeant] [Lieutenant] [Captain] to the Union prior to initiating any action to change the employee's status. The Employer will not similarly deduct the dues of any

other organization as to [Sergeants] [Lieutenants] [Captains] covered by this Agreement.

Delete Section 3.2.B

Delete Section 3.4 in its entirety

2) Article 4A in each agreement. Additional language as follows:

A Sergeant/Lieutenant/Captain providing a statement is obligated to respond honestly and completely at all times. A Sergeant/Lieutenant/Captain has the right to consult with legal counsel and/or his /her Union representative. Sergeants/Lieutenants/Captains are obligated to report all misconduct.

3) Section 6.1.B in each agreement. Revise as follows:

The interrogation, depending upon the allegation, will normally take place at the [Sergeant's] [Lieutenant's] [Captain's] unit of assignment, ~~the Independent Police Review Authority, the Internal Affairs Division~~ or the office of the Employer's investigative agency, or other appropriate location.

4) Section 6.1.C in the Sergeants' agreement to be revised as follows:

Prior to an interrogation, the Sergeant under investigation shall be informed of the identities of the person in charge of the investigation, the interrogation officer(s), and all persons present during the interrogation. When a formal statement is being taken, all questions directed to the Sergeant during interrogation shall be asked by and through one interrogator at a time, provided that if a second interrogator participates in the interrogation, he or she is present for the entire interrogation.

5) Section 6.1.D in each agreement. Retain current language.

6) Section 6.1.E in each agreement. Revise as follows:

Allegations against a [Sergeant] [Lieutenant] [Captain] which would constitute a violation of the Illinois Criminal Code, the criminal code of another state of the United States or a criminal violation of a federal statute shall be made the subject of a Complaint Register investigation.

7) Section 6.1.I in each agreement. Revise as follows:

A [Sergeant] [Lieutenant] [Captain] under interrogation shall not be threatened with transfer, dismissal, or disciplinary action or promised

a reward as an inducement to provide information relating to an incident under investigation or for exercising any rights contained herein. The parties further agree that a [Sergeant] [Lieutenant] [Captain] who comes forward and provides information concerning potential misconduct is acting in the highest tradition of the police service, and nothing in this Agreement shall be interpreted to prevent the Employer or the Department from providing appropriate acknowledgment of such contribution.

8) Section 6.1.J in each agreement. Revise as follows:

A [Sergeant] [Lieutenant] [Captain] under investigation will be provided with a copy of any and all statements the [Sergeant] [Lieutenant] [Captain] has made that are recorded either audio electronically or in writing within seventy-two (72) hours of the time the statement was made, except that any statement that is recorded by transcription by a court reporter will be provided within seventy-two (72) hours of the investigative agency's receipt of the transcribed statement. In the event a re-interrogation of the [Sergeant] [Lieutenant] [Captain] is required within the seventy-two (72) hour period following the initial interrogation, the [Sergeant] [Lieutenant] [Captain] will be provided with a copy of his/her initial statement before the subsequent interrogation. In the event a reinterrogation of the [Sergeant] [Lieutenant] [Captain] is required following the initial interrogation where the investigative agency recorded the initial statement by a court reporter, the [Sergeant] [Lieutenant] [Captain] will be provided with a copy of the transcript of his/her initial statement before the subsequent interrogation.

9) Section 6.1.M in each agreement. Revise as follows:

The provisions of this Agreement shall be deemed to authorize the investigative agency ~~the Independent Police Review Authority and the Internal Affairs Division~~ to require [Sergeants] [Lieutenants] [Captains] under interrogation to provide audio-recorded statements, provided that provisions in Section 6.1 are satisfied.

10) Section 6.1.N in each agreement. Revise as follows:

If a [Sergeant] [Lieutenant] [Captain] provides a statement during the investigation conducted promptly following a shooting incident and then is later interrogated by ~~the Independent Police Review Authority or the Internal Affairs Division~~ the Employer's investigative agency as part of an investigation related to such incident, the [Sergeant] [Lieutenant] [Captain] shall be provided a copy of the portion of any official report that purportedly summarizes his/her prior statement before the interrogation.

11) Section 6.2 B in each agreement. Revise as follows:

The interview, depending on the nature of the investigation, will normally take place at the Sergeant's Unit of assignment, or the ~~Independent Police Review Authority or the Internal Affairs Division~~ the office of the Employer's investigative agency or other appropriate location.

12) Section 6.2.C in the Sergeants' agreement to be revised as follows:

Prior to an interview, the Sergeant being interviewed shall be informed of the identities of the person in charge of the investigation, the interviewing officer(s), and all persons present during the interview, and the nature of the complaint, including the date, time, location and relevant Records Division (RD) number, if known. When a formal statement is being taken, all questions directed to the Sergeant during interview shall be asked by and through one interviewer at a time, provided that if a second interviewer participates in the interview, he or she is present for the entire interview.

13) Section 6.2.D in each agreement. Revise as follows:

The [Sergeant] [Lieutenant] [Captain] will be provided with a copy of any and all statements he/she has made that are recorded either audio electronically or in writing within seventy-two (72) hours of the time the statement was made, except that any statement that is recorded by transcription by a court reporter will be provided within seventy-two (72) hours of the investigatory agency's receipt of the transcribed statement. In the event a re-interview of the [Sergeant] [Lieutenant] [Captain] is required within the seventy-two (72) hour period following the initial interview, the [Sergeant] [Lieutenant] [Captain] will be provided with a copy of his/her initial statement before the subsequent interview. In the event a reinterview of the [Sergeant] [Lieutenant] [Captain] is required following the initial interview where the investigative agency recorded the initial statement by a court reporter, the [Sergeant] [Lieutenant] [Captain] will be provided with a copy of the transcript of his/her initial statement before the subsequent interview.

14) Section 6.2.H in each agreement. Revise as follows:

The provisions of this Agreement shall be deemed to authorize the investigative agency ~~the Independent Police Review Authority and the Internal Affairs Division~~ to require [Sergeants] [Lieutenants] [Captains] being interviewed to provide audio-recorded statements, provided that provisions in Section 6.2 are satisfied.

15) Section 6.2.I in each agreement. Revise as follows:

If a [Sergeant] [Lieutenant] [Captain] provides a statement during the

investigation conducted promptly following a shooting incident and then is later interrogated by ~~the Independent Police Review Authority~~ ~~or the Internal Affairs Division~~ the Employer's investigative agency as part of an investigation related to such incident, the [Sergeant] [Lieutenant} [Captain] shall be provided a copy of the portion of any official report that purportedly summarizes his/her prior statement before the interview.

16) New Section 7.C in each Agreement, as follows:

After Summary Punishment has been administered two (2) times within a twelve (12) month period, a [Sergeant] [Lieutenant] [Captain] who wishes to contest the application of Summary Punishment on a third occasion within the last twelve (12) months may contest the third and/or succeeding applications of Summary Punishment by timely challenge through the Summary Opinion process in Section 9B.1.

17) Section 8.5 in each agreement. Revise as follows:

In the event the Employer receives a subpoena or other legal process (excluding discovery material) requiring the inspection, tender or submission of personnel, disciplinary or investigative records and/or files (other than a grand jury subpoena or other subpoena or process which would preclude disclosure), the Employer will promptly notify ~~send a copy of such subpoena or process to~~ the [Sergeant] [Lieutenant] [Captain] whose records have been requested. However, failure to furnish such notice shall not in any way affect the validity of any disciplinary action or personnel action taken by the Employer, provided that Unit 156-[Sergeants] [Lieutenants] [Captains] will not be barred from asserting and does not waive any rights a [Sergeant] [Lieutenant] [Captain] may have to inspect or to otherwise challenge the use of files under applicable rules, statutes or this Agreement, including Article 8.

18) Section 9.1 in each agreement to be revised as follows:

The Superintendent's authority to suspend a [Sergeant] [Lieutenant] [Captain], 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 a limit not to exceed three hundred and sixty-five (365) days. In cases where the Superintendent seeks a [Sergeant's] [Lieutenant's] [Captain's] separation from the Department, the Superintendent's current and past practice of suspending a [Sergeant] [Lieutenant] [Captain] for thirty (30) days and filing charges with the Police Board seeking a [Sergeant's] [Lieutenant's] [Captain's] separation will not change.

A grievance is defined as a dispute or difference between the parties to this Agreement concerning the interpretation and/or application of this

Agreement or its provisions. The separation of a [Sergeant] [Lieutenant] [Captain] from service ~~and suspensions in excess of thirty (30) days are~~ 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.

The grievance procedure provisions herein and the Police Board procedure are mutually exclusive, and no relief shall be available under both~~, provided that, if the Police Board reduces discipline of over thirty (30) days or under, the [Sergeant] [Lieutenant] [Captain] may grieve the reduced discipline~~

19) New Section 9.3.E in each Agreement, as follows:

E. Within thirty (30) days of the ratification of this Agreement, the parties shall develop a roster of ~~twelve (12)~~ five (5) Arbitrators who shall commit to pre-scheduled hearing dates on a regular basis. From this roster the parties shall schedule a minimum of two (2) arbitration hearing dates per month, unless waived by mutual agreement. For each arbitration, the parties shall attempt to select the Arbitrator by mutual agreement. If they cannot select the Arbitrator by mutual agreement, they will alternately strike names, with the party striking first to be determined by coin toss, until one (1) Arbitrator remains, who shall then be notified of his or her selection. The parties shall make every effort (including the substitution of cases in the event of settlement or inability to try a case when scheduled) to ensure that such dates are not canceled. The parties agree to review the roster of arbitrators annually, and each party has the unilateral right to remove one arbitrator from the roster. If one or more arbitrators are removed from the roster, the parties will mutually agree to a method to add arbitrators to the roster so that the roster will consist of five arbitrators. If, prior to the annual review, the roster of arbitrators is reduced to an even number (2 or 4), and the parties are unable to agree on an arbitrator for a specific case, the parties will request a panel of arbitrators from FMCS for that case. The parties will alternately strike names from the FMCS panel until one Arbitrator remains, and the remaining Arbitrator will serve as the Arbitrator for the specific case at issue.

20) Section 9.4.B in each agreement to be revised as follows:

Delete first paragraph of Section 9.4.B

Revise the second paragraph of Section 9.4.B:

If a [Sergeant] [Lieutenant] [Captain] ~~who holds conscientious objections pursuant to this Section~~ who has not executed the authorization form provided for in Section 3.2.A of this Agreement, or who

has revoked the authorization form, requests Unit 156- [Sergants] [Lieutenants] [Captains] to use the grievance and arbitration procedure on the [Sergeant's] [Lieutenant's] [Captain's] behalf, Unit 156- [Sergeants] [Lieutenants] [Captains] may charge the [Sergeant] [Lieutenant] [Captain] the reasonable costs of using the procedure. The Employer shall play no role in determining the reasonable costs of using the procedure, or in collecting the costs from the [Sergeant] [Lieutenant] [Captain]. Nothing in this Section shall require the Employer to deal with any individual not affiliated with the Union in connection with the grievance.

21) Section 9B.2 in each Agreement to be revised as follows:

Section 9B.2 Suspensions of Eleven (11) to Three Hundred Sixty-Five (365) Days ~~or More~~

A [Sergeant] [Lieutenant] [Captain} who receives a recommendation for suspension of eleven (11) to three hundred sixty-five (365) days ~~or more~~, not including a suspension accompanied by a recommendation for separation, may file a grievance challenging and seeking review of that recommendation. Such grievances will be sent for full arbitration on an expedited basis. The Employer will provide a copy of the complete investigative file, including all internal reviews of the file, to Unit 156-[Sergeants] [Lieutenants] [Captains}. An Arbitrator, selected by mutual agreement of the parties, will conduct a "full" arbitration evidentiary hearing and expeditiously issue an award. The award of the Arbitrator is binding on the Employer, Unit 156-[Sergeants] [Lieutenants] [Captains} and the [Sergeant] [Lieutenant] [Captain].

The [Sergeant] [Lieutenant] [Captain] will not be required to serve any of the suspension until such time as the Arbitrator's award is received. No further review of the Arbitrator's award is available under this Agreement. With respect to suspensions of between 31 and 365 days, the provision that the [Sergeant] [Lieutenant] [Captain] not have to serve the suspension until such time as the Arbitrator's award is received is contingent upon the Union's compliance with Appendix X.

APPENDIX X

The following procedures shall apply to arbitrations of grievances challenging suspensions of thirty-one (31) to three hundred sixty-five (365) days.

A. The Union and the Employer have agreed to a panel of five (5) Arbitrators who shall comprise the exclusive list of Arbitrators to preside over the suspension grievances. The five (5) Arbitrators are: . Each December the Union 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 agree upon a replacement Arbitrator(s). If the parties are unable to agree upon a replacement(s), 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(s). Both the Employer and the Union shall alternately strike names from the list. The remaining person(s) shall be the added to the panel.

B. Within ten (10) days of the Union electing to forward the suspension grievance to arbitration, the parties shall meet and select an Arbitrator from the panel. The parties shall contact the Arbitrator and request a hearing date within one hundred-twenty (120) days. If the Arbitrator is unable to provide a hearing date within this time frame from the date of being contacted, the parties shall select another Arbitrator from the panel who is able to provide a hearing date within one hundred-twenty (120) days. Upon appointment of the Arbitrator but prior to the date on which a cancellation fee would be incurred, and unless they have already done so, the parties shall schedule a date to conduct a settlement conference to attempt to resolve the grievance. More than one suspension grievance may be discussed at the settlement conference. If the parties are unable to resolve the suspension grievance, they shall proceed with the Arbitration Process outlined in this Appendix X.

C. Provided the Union accepts a hearing date within one hundred-twenty (120) days of appointment of the Arbitrator, the [Sergeant] [Lieutenant] [Captain] will not be required to serve the suspension 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 Union is not ready to proceed on a scheduled hearing date, the [Sergeant] [Lieutenant] [Captain] shall be required to serve the suspension prior to the Arbitrator ruling on the merits of the grievance.

D. The authority and expenses of the Arbitrator shall be governed by the provisions of Sections 9.4 and 9.5 of the collective bargaining agreement.

22) Section 11.2

Revise Sections 11.2A and C in each agreement as follows:

A. [Sergeants] [Lieutenants] [Captains] who are required to work a regular tour of duty [eight (8), eight and one-half (8.5), or ten (10) hours] on a holiday will be credited with ~~eight (8), eight and one-half (8.5) or ten (10) hours of compensatory time and four (4), four and one-quarter (4 ¼), or five (5)~~ twelve (12), twelve and three-quarters (12.75), or fifteen (15) hours of compensatory time or additional pay as the [Sergeant] [Lieutenant] [Captain] elects.

C. [Sergeants] [Lieutenants] [Captains] whose regular day off coincides with an established holiday and who are required to work a regular

tour of duty[eight (8), eight and one-half (8.5), or ten (10) hours] on that holiday will be credited with ~~twenty (20), twenty-one (21.25) or twenty-five (25) hours of compensatory time and one-quarter and four (4), four and one-quarter (4.25), or five (5)~~ twenty-four (24), twenty-five and one-half (25.5), or thirty (30) hours of compensatory time or additional pay as the [Sergeant] [Lieutenant] [Captain] elects.

23) Section 11.3.B.2 in each agreement to be revised as follows:

Prior to ~~January 1 of each~~ December 15 of the preceding year, the Department may identify up to three (3) dates for each watch during which personal days may not be scheduled.

24) Section 12.4 in each agreement. Revise as follows:

[Sergeants] [Lieutenants] [Captains] and their eligible dependents and retirees and their spouses will be exempt from fees for emergency medical services performed by the Chicago Fire Department.

25) Section 17.5.A and B in Sergeants' agreement. Revise as follows:

A. Subject to staffing needs, a maximum of ~~five (5)~~ ten (10) appointed or elected delegates will be permitted to attend state and national conferences of the Policemen's Benevolent & Protective Association of Illinois and the National Association of Police Organizations. Such conference time shall be equal to the duration of the conference plus reasonable travel time to and from such conference.

B. A maximum of ~~five (5)~~ ten (10) appointed or elected delegates of Unit 156-Sergeants will be permitted to attend state and national conventions of the Policemen's Benevolent & Protective Association of Illinois and the National Association of Police Organizations with pay. Such convention time shall be equal to the duration of the convention plus reasonable travel time to and from such convention up to a maximum of seven (7) days every two (2) years.

26) Section 17.5 in Lieutenants' agreement. Revise as follows:

A. Subject to staffing needs, a maximum of ~~five (5)~~ eight (8) appointed or elected delegates will be permitted to attend state and national conferences of the Policemen's Benevolent & Protective Association of Illinois and the National Association of Police Organizations. Such conference time shall be equal to the duration of the conference plus reasonable travel time to and from such conference.

B. A maximum of ~~five (5)~~ eight (8) appointed or elected delegates of

Unit 156-Lieutenants will be permitted to attend state and national conventions of the Policemen's Benevolent & Protective Association of Illinois and the National Association of Police Organizations with pay. Such convention time shall be equal to the duration of the convention plus reasonable travel time to and from such convention up to a maximum of seven (7) days every two (2) years.

27) Section 17.5.B in Captains' agreement. Revise as follows:

A maximum of three (3) appointed or elected delegates of Unit 156C-Captains will be permitted to attend state and national conventions of the Policemen's Benevolent & Protective Association of Illinois and the National Association of Police Organizations with pay. Such convention time shall be equal to the duration of the convention plus reasonable travel time to and from such convention up to a maximum of seven (7) days every two (2) years per bargaining unit member attending.

28) New Section 32.C.4 in Lieutenants' Agreement, as follows:

This paragraph applies to vacancies (as defined in C.2 above) in Lieutenant positions within the Bureau of Detectives, Areas North, Central and South, Property Crimes and Violent Crimes units, occurring on or after the final date of ratification of this Agreement. If the Employer decides to fill the vacancy, it shall post the vacancy. To be considered for the posted vacancy, a Lieutenant shall submit an application in the format required by the Employer to the Commanding Officer by the deadline established in the posting. The Employer shall review the documentation submitted and evaluate the qualifications of each candidate, offering the position to the best qualified Lieutenant in the sole judgment of the Employer.

29) Modify Binding Summary Provision in each Agreement as follows:

1. Suspensions of Ten (10) Days or Fewer

A [Sergeant] [Lieutenant] [Captain] who receives a recommendation for a suspension, not not including Summary Punishment, for a period of ten (10) days or fewer, may file a grievance challenging and seeking review of that recommendation. Such grievances will be reviewed through a Summary Opinion, as described below, which shall be binding. The Summary Opinion process of review requires the Employer to provide a copy of the investigative file, including all internal reviews of the file, to Unit 156[A] [B] [C] for review. An Arbitrator, selected by mutual agreement of the parties, will also receive the file from the Employer.

Unit 156[A] [B] [C] may file a ~~one~~ three page report to the

Arbitrator making any appropriate argument addressing the findings and/or the recommendation for discipline. The Employer may not file any argument nor respond to Unit 156[A][B] [C]'s argument unless asked to do so by the Arbitrator.

The Arbitrator will review the argument and the complete file and will issue an award granting or denying the grievance in whole or in part. The award will include the basis for the Arbitrator's opinion and award. The award will be binding on the Employer, Unit 156[A] [B] [C] and the [Sergeant] [Lieutenant] [Captain].

The [Sergeant] [Lieutenant] [Captain] will not be required to serve any of the suspension until such time as the Arbitrator's award is received. No further review of the Arbitrator's award is available under this Agreement.

The fees and expenses of the Summary Opinion Arbitrator shall be shared equally between the Employer and Unit 156[A] [B] [C].