

**BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO**

<b>IN THE MATTER OF CHARGES FILED AGAINST</b>	)	
	)	
<b>POLICE OFFICER EULALIO RODRIGUEZ,</b>	)	<b>No. 23 PB 3013</b>
<b>POLICE OFFICER CARLOS BARONA,</b>	)	<b>No. 23 PB 3030</b>
<b>POLICE OFFICER NOBLE WILLIAMS,</b>	)	<b>No. 23 PB 3018</b>
<b>POLICE OFFICER AMIN ELMESQUINE,</b>	)	<b>No. 23 PB 304</b>
<b>POLICE OFFICER SHAWN BRYANT,</b>	)	<b>No. 23 PB 3019</b>
<b>POLICE OFFICER TARTANE HUTCHINSON,</b>	)	<b>No. 23 PB 3027</b>
<b>POLICE OFFICER MICHAEL MANCHA,</b>	)	<b>No. 23 PB 3028</b>
<b>POLICE OFFICER ERIC STILLMAN,</b>	)	<b>No. 23 PB 3025</b>
<b>POLICE OFFICER JENNIFER CAPUTO,</b>	)	<b>No. 23 PB 3020</b>
<b>POLICE OFFICER MARK JOHNSON,</b>	)	<b>No. 23 PB 3029</b>
<b>POLICE OFFICER PATRICK BUNYON,</b>	)	<b>No. 23 PB 3030</b>
<b>POLICE OFFICER DANIEL BARNAK,</b>	)	<b>No. 23 PB 3022</b>
<b>POLICE OFFICER ADRIANNA KONDILIS,</b>	)	<b>No. 23 PB 3024</b>
<b>POLICE OFFICER ROBERT DAVIS,</b>	)	<b>No. 22 PB 3007</b>
<b>POLICE OFFICER DAVID LASKUS,</b>	)	<b>No. 22 PB 3005</b>
<b>POLICE OFFICER PATRICK BROWN,</b>	)	<b>No. 22 PB 3007</b>
<b>POLICE OFFICER MICHAEL COUGHLIN,</b>	)	<b>No. 18 PB 2949-1</b>
<b>POLICE OFFICER JOSE TORRES,</b>	)	<b>No. 18 PB 2949-2</b>
<b>POLICE OFFICER MICHAEL ST. CLAIR,</b>	)	<b>No. 21 PB 3009-1</b>
<b>POLICE OFFICER ARMANDO UGARTE,</b>	)	<b>No. 21 PB 3009-2</b>
<b>POLICE OFFICER JOSE TROCHE-VARGAS,</b>	)	<b>No. 21 PB 2998</b>
<b>POLICE OFFICER SHELDON THRASHER, AND</b>	)	<b>No. 21 PB 2995</b>
<b>POLICE OFFICER KRIS STIPANOV,</b>	)	<b>No. 23 PB 3032</b>
	)	
<b>RESPONDENTS.</b>	)	

**MEMORANDUM AND ORDER**

On June 26, 2023, Neutral Chair Edwin H. Benn (the “Neutral Chair”) issued an Interim Award and Opinion (the “Interim Award”) in an interest arbitration proceeding between the City of Chicago and the Fraternal Order of Police Lodge 7 (the “FOP” or “Lodge”) concerning the parties’ successor collective bargaining agreement (“CBA”) to their prior 2012-2017 CBA which expired June 30, 2017 (the “2012-2017 CBA”). The Interim Award adopted the FOP’s proposal for the successor CBA to provide for “[t]he ability of the Lodge to have the option to have certain grievances protesting discipline given to officers in excess of 365-day suspensions and separations

Memorandum and Order  
FOP Motion

(dismissals) decided by an arbitrator in final and binding arbitration or by the Police Board as opposed to the current procedure of having all such disciplinary actions decided by the Police Board.” Interim Award at 72. The matter was remanded “to the parties for drafting of language consistent with the terms of [the] Interim Award.” *Id.*

The City and FOP subsequently submitted competing language proposals, both of which were rejected in a Supplemental Interim Opinion and Award on August 2, 2023 (the “Supplemental Interim Award”). In his Supplemental Interim Award, the Neutral Chair found that neither party submitted reasonable language proposals, drafted his own “language to meet the intentions of the adopted proposal[] found by the Interim Award,” and held that such language “shall be the contract language for . . . arbitration of suspensions in excess of 365 days and separations” unless the parties agreed to alternative language within seven days of the opinion. Supplemental Interim Award at 30-31. The parties did not agree to alternative language within the seven-day period. The language adopted by the Supplemental Interim Award on this issue reflected that its modifications to the parties’ CBA would be deemed “retroactive to September 14, 2022.” *Id.* at App’x C.<sup>1</sup>

On August 11, 2023, the FOP filed a Motion to Transfer Pending Cases to the Arbitration Call or in the Alternative to Stay All Police Board Cases (the “Motion”). The Superintendent filed a Response on September 1, 2023, and the FOP filed its Reply on September 11, 2023. The

---

<sup>1</sup>The Board interprets the retroactive effect of the Supplemental Interim Award to include those cases currently pending before the Board that were filed on or after September 14, 2022, for which an evidentiary hearing has not yet commenced. Notably, the FOP’s proposal for a retroactivity provision stated that “[t]he Interim Award shall apply to any case that was filed before the Police Board after August 1, 2021, for which the full evidentiary hearing before the Police Board has not commenced. This Interim Award also covers any case filed after August 1[,] 2021, and currently pending before the Police Board where pre-hearing motions, filings or rulings have occurred and the full evidentiary hearing before the Police Board has not commenced.” Supplemental Interim Award at 20-21. The Neutral Chair ultimately included a retroactivity provision that states, “Modifications to this Appendix Q which change this Appendix Q and Article 9 from the prior Agreement are retroactive to September 14, 2022.” *Id.* at App’x C. Because the Neutral Chair only disagreed with the FOP’s proposal with respect to specific date proposed, the Board concludes that the retroactivity provision should only apply to those cases for which an evidentiary hearing did not commence prior to the date on which the Neutral Chair issued the Supplemental Interim Award.

members of the Board have reviewed and considered the FOP and Superintendent's filings.

For the following reasons, the Board determines that the FOP's motion should be denied in its entirety.

**I. The FOP's and Superintendent's Filings**

**A. *The FOP's Motion***

The FOP filed its Motion on August 11, 2023, in connection with the above-captioned disciplinary proceedings against 22 individual officers, each of whom are alleged to have had their disciplinary charges pending before the Board after September 14, 2022.<sup>2</sup> Motion at 1-2. The Motion notes that each of the 22 individual officers have filed a "combined grievance . . . seeking that their recommended discipline be heard by way of an arbitrator pursuant to the time periods and provisions of the CBA." Motion at 4. The Motion argues that "[u]pon the filing of the Supplemental Interim Opinion and Award and the filing of the individual grievances, the Chicago Police Board . . . lost jurisdiction of the Officers' cases" as the officers have now elected "to have their cases heard before an arbitrator." *Id.* Should the Board decline to transfer the cases to arbitration, the Motion seeks, in the alternative, for the Board to stay the cases of the 22 individual officers. *Id.* The Motion argues that should the Board "fail[] to stay these cases . . . , many if not all will have to be re-submitted to an arbitrator and a second hearing will occur" causing "both the City of Chicago and the FOP to incur additional legal fees and costs." *Id.*

**B. *The Superintendent's Response***

On September 1, 2023, the Interim Superintendent of Police of the City of Chicago filed the Superintendent's Response to Motion to Transfer Pending Cases to the Arbitration Call or in

---

<sup>2</sup> The FOP filed its motion in the Stipanov case (No. 23 PB 3032) on August 31, 2023, which brings the total to 23 officers.

Memorandum and Order  
FOP Motion

the Alternative to Stay All Police Board Cases (the “Response”).<sup>3</sup> Response at 4. As an initial matter, the Response objects to the Motion and requests that it be denied on procedural grounds because it was filed by the FOP, which is not a party to proceedings before the Board. *Id.* Notwithstanding this purported procedural defect, the Response argues the Motion should be denied because the Supplemental Interim Award is not final (as the Neutral Chair has not issued a final award to the parties) and, even if final, has not been ratified by City Council and is subject to judicial challenge through a potential petition to vacate. *Id.* at 5-6. The Response further argues that it could take years for the issue to be resolved, and that such delay would prejudice the Superintendent’s case as “evidence becomes stale, memories fade, and witnesses become unavailable.” *Id.* at 8. Finally, the Response argues that the Motion, in addition to being premature, is unreasonable in its request for two cases already decided by the Police Board in 2020 to be transferred to arbitration (Coughlin and Torres), and seeks relief beyond the Board’s authority in requesting the transfer of cases that are presently within the jurisdiction of the Circuit Court of Cook County under the Administrative Review Law (Troche-Vargas) or pending appeal to the Illinois Appellate Court (Thrasher). *Id.* at 7.

**C. *The FOP’s Reply***

On September 11, 2023, the FOP filed its Reply to the Superintendent’s Response to Motion to Transfer Pending Cases to the Arbitration Call or in the Alternative to Stay All Police Board Cases (the “Reply”). The Reply concedes that the Supplemental Interim Award “does not become effective until it has been accepted by both parties,” but argues that a stay is nevertheless

---

<sup>3</sup> The Response notes that, of the 22 individual officers identified in the Motion, two—Michael Coughlin and Jose Torres—were discharged by the Board in 2020 with their cases currently on remand from the Circuit Court, another—Jose Troche-Vargas—was discharged in early 2023 with his case pending on administrative review, and another—Sheldon Thrasher—was discharged on September 15, 2022 with his case currently pending before the Illinois Appellate Court after his discharge was upheld by the Circuit Court. Response at 4.

appropriate to avoid undue costs to the parties that would result from the “retroactive portions of the Award.” Reply at 3. The Reply further argues that a failure to stay could increase the damages/costs awarded to the officers in an eventual arbitration of their disciplinary grievances (Reply at 3-4), that the officers’ right to arbitration is required by Illinois labor law absent agreement by the parties (Reply at 4-5), that the City’s position ignores the Neutral Chair’s reasoning in giving the Supplemental Interim Award retroactive effect (Reply at 6), that the City’s position is inconsistent with the ratification process for interest arbitration awards set forth in the Illinois Public Relations Act (Reply at 6-7), and that any potential judicial challenges to the Supplemental Interim Award should not be a reason to ignore its imminent effect (Reply at 7-8).

## **II. The Board Will Consider the Motion**

As a preliminary matter, the Board finds that the Motion was improperly filed by the FOP, who is not a party to the disciplinary proceedings of the individual officers. As the Superintendent correctly explained, “[t]he parties at the Police Board are the Superintendent and the officers against whom charges are filed.” Response at 4. The FOP, here, is neither the Superintendent nor one of the individual officers against whom charges have been filed. It likewise has not filed an appearance or a motion to intervene in any of the proceedings. Consequently, the Board is unaware of any authority to suggest that the Board may properly consider the FOP’s non-party Motion under the circumstances here.<sup>4</sup> Nevertheless, because some of the individual officers have stated on the record that they adopt the FOP’s Motion as their own,<sup>5</sup> and because the analysis will not

---

<sup>4</sup> And, notably, the Board’s Rules of Procedure appear to contemplate that motions will be brought by parties to the proceeding. See, e.g., POLICE BOARD RULES OF PROCEDURE § II.F (“Any and all other motions which *the parties* desire to make shall be filed in writing with the Secretary of the Board prior to the hearing on said charges.”) (emphasis added); II.G (“It shall otherwise be the duty of *the parties* to file any and all motions within the time prescribed by these Rules of Procedure . . . .”) (emphasis added).

<sup>5</sup> As of the date of this Order, the officers who have adopted the Motion on the record as their own are: Officers David Laskus, Mark Johnson, Noble Williams, Amin Elmesquine, and Patrick Bunyon. Officers Armando Ugarte and Michael St. Clair also moved for a stay near the close of their hearing on August 3, 2023, on the basis of

change significantly from one case to another, the Board will, in the interests of efficiency, decide the issues presented in the Motion as to those officers who have adopted the Motion on the record as their own. As for the other officers identified in the Motion, the Board presumes that this result will govern the outcome in those cases unless any of the officers can raise issues unique to their cases that would compel a different result. The Board emphasizes that any request for the Board to reconsider the relief requested in the Motion in light of the specific circumstances of an individual officer's case must be brought by that individual officer.

### **III. The Board Lacks the Authority to Transfer Cases to Arbitration**

The FOP's request for the Board to transfer all pending cases to arbitration must be denied because the Board is without authority to do so. The Chicago Municipal Code provides that "upon the filing of charges for which removal or discharge or suspension of more than 30 days is recommended, a hearing before the police board, or any member or hearing officer designated by it *shall* be held." CHI. MUN. CODE § 2-84-030 (emphasis added); *see also* 65 ILCS 5/10-1-18.1. Accordingly, once charges have been filed against an officer seeking their removal, discharge, or suspension of more than 30 days, the Board is bound by statute to hold a hearing as to those charges and without power to transfer such charges or proceedings to arbitration. *See also* Police Board Memorandum and Order, 21 PB 2987 (June 8, 2021) ("Respondent's motion must be denied because the Police Board lacks the authority to appoint an arbitrator or otherwise compel arbitration. . . . The Police Board must handle all cases that fall within its mandate.").

Moreover, even if a transfer of pending cases to arbitration were not prohibited by the Board's statutory mandate to hear charges pending before it, it would nevertheless be contrary to the operative version of the CBA between the City and FOP. That 2012-2017 CBA specifically

---

the Supplemental Interim Award.

states that “[t]he separation of an Officer from service is cognizable *only* before the Police Board . . . .” 2012-2017 CBA at 11 (emphasis added); *see also* Interim Award at 4 (“Under the 2012-2017 Agreement, disciplinary actions for suspensions of more than 365 days and separations (dismissals) are decided by the Police Board.”). As explained further below, the terms awarded in the Supplemental Interim Opinion are not final, have not been ratified, and are not currently effective, as the FOP concedes. *See* Reply at 3 (“The Superintendent argues that the Interest Arbitration Supplemental Interim Opinion and Award . . . is not effective. To that degree, they are correct. The Award does not become effective until it has been accepted by both parties.”). And though the FOP argues that the award “is imminent” (*id.*), such imminence does not change the fact that there is presently no right under the operative CBA for these officers’ disciplinary grievances to be resolved through arbitration.

Thus, the Board cannot grant the transfer the FOP seeks, as doing so would violate both the Chicago Municipal Code and the FOP’s contract with the City that is currently in effect.

#### **IV. The Board Declines to Stay These Proceedings For the Reasons Requested**

The Board finds that the FOP’s request, in the alternative, for the Board to stay all pending cases until they can be submitted to arbitration should also be denied. As discussed above, the Chicago Municipal Code is clear that once charges have been filed against an officer seeking their removal, discharge, or suspension of more than 30 days, “a hearing before the police board . . . shall be held.” CHI. MUN. CODE § 2-84-030 (emphasis added). Though the Board may, from time to time, decide to stay a proceeding and thereby postpone carrying out its statutory duty, the Board finds no good cause to do so here where the Supplemental Interim Award is not yet effective, and where there is uncertainty as to whether and when it will take effect.

Notably, and despite the FOP’s arguments to the contrary, the Board notes that the issuance

Memorandum and Order  
FOP Motion

of the Supplemental Interim Award did not operate to immediately (and retroactively) alter the parties' rights under the CBA. Importantly, the parties' predecessor CBA, in discussing the CBA's impasse resolution procedure, unambiguously states that "[t]here shall be no implementation of any provision of a successor agreement without Council ratification and adoption in ordinance form of the agreement," and that "the terms of this Agreement shall remain in full force and effective until a successor agreement is adopted in ordinance form." 2012-2017 CBA at 49. It likewise provides that any "terms decided upon by the [arbitration panel] shall be included in an agreement to be submitted to the City Council for adoption," and that "[t]he terms of this Agreement shall continue to bind both parties hereto during all negotiations and impasse resolution procedures." *Id.* Thus, the terms of the 2012-2017 CBA are to bind the parties (i) during all negotiations of a successor CBA, (ii) during all impasse resolution procedures concerning a successor CBA, and (iii) until implementation of a successor CBA through City Council ratification and adoption in ordinance form.

Each of these conditions remain in place today. The parties continue to negotiate over the terms of a successor CBA, including, as noted in the Motion, the specific term awarded and at issue here. Motion at 5 ("Over the last nine days, the FOP and the City of Chicago have been and are currently in, negotiations to see if agreed upon modifications can or will be had."). Likewise, impasse resolution procedures concerning a successor CBA (*i.e.*, the interest arbitration proceedings) are ongoing, as the Interim Award and Supplemental Interim Award only addressed two of the "many . . . issues that remain" in dispute between the parties. Interim Award at 23 ("The parties were going nowhere on these issues and, in my opinion, the importance of these issues required that they be removed from the table and decided so that the parties could move on to attempt to resolve other matters and, if they could not do so, have them decided by this Board.");

Memorandum and Order  
FOP Motion

*see also* Supplemental Interim Award at 30 (“It’s time to move on and address the remaining (and many) disputes between the parties.”). Finally, the arbitration term at issue has not been included in an agreement that has been ratified and adopted in ordinance form by City Council.

Thus, the unambiguous language of the parties’ 2012-2017 CBA dictates that the grievance arbitration term awarded in the Supplemental Interim Award is not yet included in the parties’ CBA, and the terms of the 2012-2017 CBA should continue to apply. Indeed, the FOP concedes in its Reply that the Supplemental Interim Award is not effective, and “does not become effective until it has been accepted by both parties.” Reply at 3. And, since the 2012-2017 CBA did not include any right for the individual named officers to elect to have their disciplinary charges resolved through final, binding arbitration, no such right presently exists for those officers under the operative CBA.<sup>6</sup> Whether such a right will exist in the future, and when, is not a question the

---

<sup>6</sup> To the extent the FOP relies on Section 14(n) of the Illinois Public Relations Act to argue for a contrary conclusion, that argument is not well taken. *See* Reply at 6-7 (“As agreed upon above, the Award has not been approved by the city council. However, this is not a reason to deny the stay. The Illinois Public Relations Act could not be more clear as to the process and authority of the Award. . . . Section 14 (n) clearly states that ‘[t]he governing body [City Council] shall review each term decided by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel’s decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 20 days of issuance . . . at the next regularly scheduled meeting of the governing body after issuance, such terms or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel’s decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms.’ 315 ILCS 14 (n). And as stated in the original motion, ‘[a] challenge to this Board’s decision to issue an interim award on the two issues involved in this matter would be, in this arbitrator’s opinion, a futile action and will only prolong a labor dispute that has gone on since . . . 2017.’ [FOP Motion at Ex. A pg. 28]. It is clear that the neutral arbitrator is not going to rescind the Award.”).

Notably, however, and as correctly noted by the Interim Award, “Section 14(p) of IPLRA allows parties to collective bargaining agreements falling under Section 14’s impasse resolution procedures to agree to alternative methods of resolving disputed issues in interest arbitration,” which is precisely what these parties have done here, as reflected by the 2012-2017 CBA. Interim Award at 19; *see also* 5 ILCS 315/14(p) (“Notwithstanding the provisions of this Section the employer and exclusive representative may agree to submit unresolved disputes concerning wages, hours, terms and conditions of employment to an alternative form of impasse resolution.”); 2012-2017 CBA at 49 (“As permitted by 5 ILCS 315/14(p), the impasse resolution procedure set forth herein above shall govern in lieu of the statutory impasse resolution procedure provided under 5 ILCS 315/14, except that the following portions of said 315/14 shall nevertheless apply; Subsections (h),(i), (k) and (m).”). Though the parties agreed to incorporate certain subsections of 5 ILCS 315/14 into the 2012-2017 CBA’s alternative impasse resolution procedure, subsection (n)’s ratification process was not among those included. Accordingly, the ratification process for the Supplemental Interim Award, and its effect in the absence of such ratification, is set forth by the parties’ 2012-2017 CBA and not Section

Memorandum and Order  
FOP Motion

Board is in a position to answer. Accordingly, as the FOP's request for the Board to stay the cases of the individually named officers is based on a right to arbitration that does not presently, and may never, exist for those officers, the Board finds that its duty to consider the cases pending before it outweighs the concerns about potential duplication of efforts should the named officers eventually have a retroactive right to proceed via arbitration. The Board will therefore not implement a stay of the officers' proceedings.<sup>7</sup>

**POLICE BOARD ORDER**

**IT IS HEREBY ORDERED** that, for the reasons set forth above, the FOPs Motion to Transfer Pending Cases to the Arbitration Call or in the Alternative to Stay All Police Board Cases is **denied** in its entirety.

This Memorandum and Order is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Steven Block, Aja Carr-Favors, Mareil  Cusack, Nanette Doorley, and Michael Eaddy.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 26<sup>th</sup> DAY OF SEPTEMBER, 2023.

Attested by:

/s/ GHIAN FOREMAN  
President

/s/ MAX A. CAPRONI  
Executive Director

---

14(n) of the Illinois Public Relations Act.

<sup>7</sup> Moreover, as the Superintendent correctly notes in his Response, the Board does not have the power to transfer or stay cases that are not presently before the Board and are therefore beyond its jurisdiction (*e.g.*, the case of Jose Troche-Vargas, currently pending before the Circuit Court, and the case of Sheldon Thrasher, currently pending before the Illinois Appellate Court). *See* Response at 7.