IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

CHICAGO JOHN DINEEN LODGE #7, *Plaintiff,* v. CITY OF CHICAGO, DEPARTMENT OF POLICE, BRANDON JOHNSON, in his official capacity as MAYOR, and LARRY SNELLING, in his official capacity as Superintendent of the Chicago Police Department, and the CHICAGO CITY COUNCIL, *Defendants.*	Case No. 2024CH00093 Judge Michael T. Mullen

MEMORANDUM OPINION AND ORDER

This matter comes to be heard on the parties' Cross Motions for Summary Judgment brought pursuant to the provisions of 735 ILCS 5/2-1005(c) (West 2022). More specifically, Plaintiff Chicago John Dineen Lodge #7 ("the Lodge") seeks to confirm and enforce final and binding interest arbitration awards issued by the Dispute Resolution Board ("DRB"), a tripartite panel chaired by Arbitrator Edwin H. Benn ("Neutral Chair"). The Lodge commenced this action by filing its Verified Complaint to Confirm Interest Arbitration Award on January 4, 2024 against Defendants City of Chicago, Department of Police, Brandon Johnson, Larry Snelling and the Chicago City Council ("the City").

On January 30, 2024, the City filed its Verified Answer to the Lodge's Complaint. On February 1, 2024 and with leave of Court, the Lodge filed a First Amended Verified Complaint. In Count I, the Lodge specifically requests that this Court confirm and enforce the Final Opinion and Award issued on October 19, 2023, and the Supplemental Final Opinion and Award issued on January 4, 2024, issued by the DRB. In Count II, the Lodge requests that, pursuant to certain

provisions of the Illinois Uniform Arbitration Act and the Illinois Public Labor Relations Act ("IPLRA"), this Court confirm and enforce the October 19, 2023 Final Opinion and Award.

The City filed its Answer to Lodge's Amended Complaint on February 14, 2024. On February 15, 2024, the City requested permission to file its First Amended Verified Answer and Counterclaim. With leave of Court, the City's Counterclaim was filed with the Clerk of the Court on February 23, 2024. The City's Counterclaim is comprised of two counts. In Count I, the City seeks a declaration that the Chicago City Council "retained the right to accept or reject the language set forth in the January 4, 2024, Supplemental Final Award." In Count II, the City requests that this Court vacate the January 4, 2024, Supplemental Final Award pursuant to Section 14(k) of the IPLRA as it relates to the arbitration of serious police discipline cases as the City maintains that the award is arbitrary and capricious and contrary to public policy. In addition to the parties' summary judgment motions, the Lodge has brought a combined motion pursuant to 735 ILCS 5/2-619.1 and alternatively seeks to dismiss the City's two count Counterclaim pursuant to both 735 ILCS 5/2-615 and 735 ILCS 5/2-619(a)(5).

I. The Collective Bargaining History Between the Lodge and the City

The Lodge is the exclusive collective bargaining representative for Chicago Police Officers below the rank of Sergeant. Although the details of the collective bargaining process between the Lodge and the City have been set forth with significant specificity in the Supplemental Interim Opinion and Award dated August 2, 2023, the Final Opinion and Award ("Final Award") dated October 19, 2023, and in the Supplemental Final Opinion and Award dated January 4, 2024, a summary of the bargaining history is appropriate so as to put the present motions in context.

The Lodge and the City have engaged in formal collective bargaining since 1981. Since 1981, the Lodge and the City have negotiated twelve collective bargaining agreements. The City and the Lodge were parties to a collective bargaining agreement originally in effect from July 1, 2012, to June 30, 2017.

The Superintendent of Police does not have authority to discharge or separate a non-probationary Chicago Police Department ("CPD") officer. Section 8.8 of the 2012-2017 CBA provides that the Superintendent's authority is capped at suspending an officer up to 365 days. Under both City ordinance and the Illinois Municipal Code, the authority to discharge or suspend

an officer[1] for more than 365 days is reserved to the Chicago Police Board. 65 ILCS 5/10-1-18.1; Chi. Mun. Code § 2-84-030. The Police Board is an independent civilian body providing oversight of the Chicago Police Department. The Board's nine members are all Chicago residents who were nominated by the Community Commission for Public Safety and Accountability, appointed by the Mayor and approved by the City Council.

Section 8.8 of the 2012-2017 CBA provides for officers to be suspended without pay pending separation. Any such suspension is subject to review by a Police Board hearing officer within seven days after the notice of suspension. See, Police Board Rules, § IV(D). All other City collective bargaining agreements allow for arbitration or Human Resources Board hearings as an appeal from dismissal; none permit an employee to remain in paid status pending a hearing or arbitration. Put another way, none of the City's 43 collective bargaining agreements allow an employee who has been discharged to remain on the payroll while the appeal process is pending, whether it is via arbitration or an appeal to the City's Human Resources Board.

II. The City Enters into a Consent Decree

On August 29, 2017, the State of Illinois filed a lawsuit in the United States District Court for the Northern District of Illinois (the "District Court") against the City under several statutes and constitutional provisions seeking to enjoin the CPD from "engaging in a repeated pattern of using excessive force, including deadly force, and other misconduct that disproportionately harms Chicago's African American and Latino residents." On January 31, 2019, the District Court issued a Memorandum and Opinion approving a final Consent Decree between the State of Illinois and the City in which the court stated in its opinion that "the decree aims to ensure that the critically important job of policing in Chicago is done fairly, transparently, and without bias, affording dignity to those who are served and protected and proper guidance, training, and support for the women and men who comprise the police force."

The Consent Decree identifies "accountability and transparency" as key principles in its process for holding officers accountable for misconduct. The Consent Decree required the City to establish criteria for the selection of Police Board members and to ensure that Police Board members and hearing officers receive training on topics including constitutional law, police tactics,

[1] The Award's arbitration available to police officers is only available to non-probationary officers.

investigations of police conduct, impartial policing, policing individuals in crisis, CPD policies, procedures, and disciplinary rules, procedural justice, and community outreach.

III. The Collective Bargaining Agreement "Successor Agreement" to the 2012-2017 Collective Bargaining Agreement

In October 2017, the City and the Lodge commenced negotiations over a successor agreement to the 2012-2017 CBA. In the first phase of negotiations, completed in July 2021, the parties reached agreement on various terms for a successor agreement, including the time period of the agreement (July 1, 2017 through June 30, 2025); a 20% base salary increase; a duty availability allowance; a uniform allowance; health care commitments and contribution increases; salary cap increases; prescription drug deductible modifications; retiree health insurance contributions; and police accountability provisions. These terms were ratified by the Chicago City Council on September 14, 2021.

After completing the first phase of negotiation, the parties continued to negotiate over numerous unresolved issues. The parties exchanged proposals in late 2021 and participated in six formal bargaining sessions in February, May, June, July, and November 2022. After reaching an impasse, the Lodge and the City engaged in seven mediation sessions in August, September and October 2022. Despite the negotiations and mediation sessions, the parties were unable to resolve many of the remaining disputed issues.

IV. Impasse Arbitration Occurs

Under Section 28.3(B), *i.e.*, (§ 28.3(B)1-5), of the 2012-2017 CBA, if the parties are unable to reach complete agreement on terms of a successor agreement, the disputed issues are referred to a three-person DRB consisting of one member selected by each of the parties and a third member to be jointly selected by the parties, with the third member serving as the Neutral Chair. A DRB was established as provided in the 2012-2017 CBA to address the issues remaining unresolved between the City and the Lodge after their negotiations and mediation sessions. In September 2022, the Neutral Chair, *i.e.*, arbitrator Edwin H. Benn, was appointed to serve as the Neutral Chair of the DRB pursuant to procedures established by the American Arbitration Association ("AAA"). After meeting with the parties, the Neutral Chair issued a scheduling order that formalized the process for proceedings so that any remaining matters in dispute between the parties could be

addressed. More specifically, the scheduling order established the process, procedure, and schedule for the parties to identify issues that were in dispute, as well as to make final offers on those issues. The order also set deadlines for: the submission of evidence and pre-hearing and responsive briefs; the potential for mediation; and the identification of issues that the Neutral Chair deemed necessary to be heard in any hearing. The process was to be completed by April 20, 2023.

The City identified 15 issues and the Lodge identified 17, with over 50 sub-issues to be resolved. Both the City and the Lodge submitted final offers. In the Lodge's December 16, 2022 final offer, the Lodge proposed that the separation of an officer from service should be subject to arbitration. The Lodge further proposed that officers would not be subject to suspension without pay pending dismissal.

In the City's December 16, 2022 final offer and in response to the Lodge's request for arbitration of dismissal cases, the City proposed that in cases of dismissal or suspensions in excess of 365 days, those cases would continue to be heard by the Police Board in the first instance, but if a Police Board decision resulted in the separation or suspension in excess of 365 days, the Lodge would then be entitled to invoke arbitration challenging the suspension or separation under Article 9 of the Agreement. The City further proposed that the arbitrator should be a resident of Cook County and have completed the same training as required for members of the Police Board under the Consent Decree. The City also proposed that the arbitration hearing should be open to the public "in the same manner as hearings before a hearing officer employed by the [Police] Board." The City further proposed that the arbitrator would be supplied with the complete record of the Police Board hearing process and also that the arbitrator would provide deference to the findings of the Police Board. However, the arbitrator could not overrule the Police Board's findings unless the Lodge demonstrated by clear and convincing evidence that the findings were erroneous with respect to an issue of fact or the existence of cause for separation.

V. The Neutral Chair Rules on the Arbitration of Serious Police Discipline Cases

On June 26, 2023, the Neutral Chair issued a 74-page Interim Opinion and Award accepting the Lodge's proposal in its entirety and which provided the Lodge with the option of having grievances protesting separations and suspensions in excess of one year to be decided by an arbitrator in the first instance, rather than by the Police Board. In accordance with the Interim

Opinion and Award, on July 13 and 14, 2023, the Lodge and the City submitted their proposed language regarding the arbitration of serious discipline. The City modified its prior proposal by dropping the requirement that separations and suspensions in excess of one year first be heard by the Police Board. In other words, the City's proposal provided officers with an option of either proceeding before the Police Board or through the grievance and arbitration process. However, the City's proposal preserved the existing practice of the Superintendent filing charges if a suspension in excess of 365 days or if dismissal or separation was sought. In such cases, an officer would not receive pay once the written charges had been filed, subject to review by a Police Board hearing officer in accordance with the Police Board's existing rules.

The City further proposed that the arbitrator be a resident of Illinois and have completed the same training (or certify that he or she had read the training materials, to be provided by the City) required for members of the Police Board pursuant to Paragraphs 540-43 of the Consent Decree. The City also proposed that the arbitration hearing be open to the public in the same manner as hearings before a hearing officer employed by the Police Board. Additionally, the City proposed that its suggested procedure would only apply to written charges filed by the Superintendent on or after the date of ratification of the Successor CBA.

The Lodge proposed that arbitration proceedings for separation or suspensions exceeding 365 days should be private and not open to the public. The Lodge further proposed that the award should apply retroactively to any case that had been filed after August 1, 2021. More specifically, and per the Lodge's proposal, any case that had been filed after August 1, 2021, but that had not proceeded to a full evidentiary hearing, would be subject to the arbitration option. Thus, any filed cases that had been limited to pre-hearing motions, filings or rulings, would still permit the officers with the arbitration option as an evidentiary hearing had not commenced.

The Neutral Chair requested the parties to submit comments on each other's proposals. In the City's comments, the City noted that the Lodge's proposal that an officer subject to discharge remain in pay status pending an arbitration hearing was unprecedented and at odds with how challenges to discharges were handled under the City's 43 collective bargaining agreements with other unions. The City further maintained that retroactive application of the arbitration option would be unworkable. The City also argued that no consideration of professional responsibility of arbitrators mandated that a discharge hearing should be closed to the public.

On August 2, 2023, the Neutral Chair issued a 52-page Supplemental Interim Opinion and

Award. With respect to the arbitration of grievances protesting separations and suspensions in excess of 365 days, the Neutral Chair found that the proposals from both the Lodge and the City were "so unreasonable that the selection of the more reasonable offer is not possible, thus again forcing a formulation of the language by this Board." The Neutral Chair rejected the City's proposals that: the arbitration option include maintenance of the long-established practice that officers confronting the prospect of separation not be kept in pay status (subject to review by the Police Board hearing officer); the arbitration hearing be open to the public; the arbitrator be provided with the same training materials required of Police Board members; and the arbitration option apply prospectively. The Neutral Chair deemed the City's proposal facially unreasonable as "the City seeks to maintain crucial elements of the Police Board process."

The Neutral Chair determined that the City's proposal that arbitration hearings in cases involving suspension and separations in excess of 365 days be open to the public was contrary to the law, as arbitration is inherently private. In support of this finding, the Neutral Chair referenced the rules of the American Arbitration Association and the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes of the National Academy of Arbitrators. Of some significance is that these rules are promulgated by private bodies that apply only to arbitrators and private parties that agree to follow them. The Neutral Chair did not address whether there was a public interest in transparency and accountability of cases involving serious discipline of sworn police officers. Further, the Neutral Chair did not identify problems of any kind resulting from the lengthy history of Police Board hearings being open to the public.

In the August 2, 2023 Supplemental Interim Opinion and Award, the Neutral Chair concluded that the arbitration option was "retroactive to September 14, 2022" which was the date of his appointment to the position of Neutral Chair. Although the Neutral Chair did not find that the City had stalled the interest arbitration proceedings, the Neutral Chair further concluded that "not awarding retroactivity on this issue would have a chilling effect on collective bargaining by encouraging one party to delay the outcome. . . ."

On October 19, 2023, the Neutral Chair issued a Final Opinion and Award incorporating the prior tentative agreements between the parties and the Interim and Supplemental Interim Opinions and Awards regarding procedures for arbitration of serious police discipline. The City dissented from that award. On December 13, 2023, the Chicago City Council ratified, in ordinance form, all the remaining terms resolved through negotiation, mediation, and impasse arbitration proceedings,

with the one exception of the arbitration of police officer discipline cases involving separation or suspensions in excess of 365 days. As to those provisions, the City Council expressly rejected the contract language included in the Neutral Chair's award.

The City and the Lodge understood and agreed that if the City Council rejected the arbitration terms included in the October 19, 2023, Final Opinion and Award, the matter would be returned to the DRB for further consideration and issuance of a further award. This understanding was also reflected in the October 19, 2023, award. In accordance with the parties' agreement, the terms rejected by the City Council were referred back to the DRB to discuss the concerns of the City Council that led to its rejection and to determine whether modifications to the contract could be made. The DRB met on December 21, 2023. On January 4, 2024, the Neutral Chair issued a 64-page Supplemental Final Opinion and Award. The City Council rejected the Supplemental Final Award on February 15, 2024, by a vote of 32-18.

VI. Analysis

A. The Lodge's Motion to Strike and/or Dismiss the City's Counterclaim

Both the Lodge and the City have brought potentially dispositive motions before this Court. However, as the City's arguments and the remedy that it seeks are somewhat dependent upon its counterclaim, it is logical to first address whether or not the counterclaim survives the Lodge's motions. The Lodge has brought a combined motion to dismiss the City's counterclaim pursuant to 735 ILCS 5/2-615 and 735 ILCS 5/2-619, which is permitted under 735 ILCS 5/2-619.1 of the Illinois Code of Civil Procedure. *Heastie v. Roberts*, 226 Ill. 2d 515 (2007). Each part of the motion must be limited to and specify that it is made under section 2-615 or section 2-619 and clearly show the grounds relied upon under the section upon which it is based. *Mareskas-Palcek v. Schwartz, Wolf & Bernstein*, LLP, 2017 IL App (1st) 162746, ¶ 21. If a section 619.1 movant fails to delineate which portions of their argument pertain to which type of individual motion, it may be fatal. *Id.* ¶ 22.

A section 2-615 motion to dismiss challenges a complaint's legal sufficiency based on facially apparent defects. *K. Miller Constr. Co. v. McGinnis*, 238 Ill. 2d 284, 291 (2010) (citing *Pooh-Bah Enter., Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009)). This motion presents the question of whether the allegations of the complaint, "when construed in the light most favorable to the plaintiff, are sufficient to set forth a cause of action upon which relief may be granted."

Carter v. New Trier E. High Sch., 272 Ill. App. 3d 551, 555 (1st Dist. 1995) (citing *Duncan v. Rzonca*, 133 Ill. App. 3d 184, 190-91 (2d Dist. 1985)). To avoid dismissal, "the complaint must sufficiently set forth every essential fact to be proved." *Id.* If the complaint "fails to allege such facts, the deficiency may not be cured by liberal construction." *Id.*

When reviewing the sufficiency of a complaint, the court must "accept as true all well-pleaded facts . . . and all reasonable inferences that may be drawn from those facts." *K. Miller*, 238 Ill. 2d at 291 (citing *Pooh-Bah*, 232 Ill. 2d at 473). The court disregards legal and factual conclusions unsupported by specific allegations of fact, and exhibits attached to the complaint will control over any conflicting allegations. *Carter*, 272 Ill. App. 3d at 555; *Compton v. Country Mutual. Ins. Co.*, 382 Ill. App. 3d 323, 326 (1st Dist. 2008) (quoting *Abbott v. Amoco Oil Co.*, 249 Ill. App. 3d 774, 778-79 (2d Dist. 1993)). Moreover, while the complaint must contain allegations of fact sufficient to establish a cause of action, "the plaintiff is not required to set out evidence; only the ultimate facts to be proved should be alleged, not the evidentiary facts tending to prove such ultimate facts." *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 369 (2004) (quoting *Chandler v. Ill. Cent. R.R.*, 207 Ill. 2d 331, 348 (2003)).

Section 2-619 provides that a party may seek a dismissal of the claim asserted against it if the claim "is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9). A section 2-619 motion affords a "'means of obtaining . . . a summary disposition of issues of law or of easily proved issues of fact.'" *Smith v. Waukegan Park Dist.*, 231 Ill. 2d 111, 120 (2008) (quoting *Kedzie & 103rd Currency Exch. v. Hodge*, 156 Ill. 2d 112, 115 (1993)). Under this section, a motion to dismiss "admits the legal sufficiency of the complaint" but asserts certain defects, defenses, or other affirmative matters that appear on the face of the complaint or are established by external submissions that act to defeat the claim. *Jenkins v. Concorde Acceptance Corp.*, 345 Ill. App. 3d 669, 674 (1st Dist. 2003). In ruling on a section 2-619 motion, the court must interpret "all pleadings and supporting documents in the light most favorable to the nonmoving party." *Hubble v. Bi-State Dev. Agency*, 238 Ill. 2d 262, 267 (2010).

If the grounds for dismissal or elements of the defense do not appear on the face of the pleading attacked, the party seeking dismissal must file an affidavit in support of the motion. *Young v. Caterpillar, Inc.*, 258 Ill. App. 3d 792, 793 (1st Dist. 1994). If facts set forth in an affidavit supporting a motion to dismiss are not contradicted by a counter-affidavit, they will be taken as true "notwithstanding contrary unsupported allegations in the plaintiff's pleadings." *Pryweller v.*

Cohen, 282 Ill. App. 3d 899, 907 (1st Dist. 1996) (citing *Griffin v. Universal Casualty Co.*, 274 Ill. App. 3d 1056, 1064 (1st Dist. 1995)).

B. The Lodge's Section 615 Motion

The Lodge argues that the City's counterclaim should be dismissed pursuant to section 615 as the claims asserted are "*clearly untimely*" and barred by the statute of limitations. The Lodge maintains that this Court can make that determination, *i.e.*, that the City violated the statute of limitations, by simply examining the face of the pleadings. Although the court recognizes that it may be fully appropriate to entertain a statute of limitations issue via a section 615 motion, it is only appropriate to do so if the court can determine that the applicable statute of limitations has been violated based upon the face of the pleadings. *See In re Marriage of Andrew*, 2023 IL App (1st) 221039, ¶ 39 (citing *Cangemi v. Advocate S. Suburban Hosp.*, 364 Ill. App. 3d 446, 456 (1st Dist. 2006)). If the court cannot make a determination that the applicable statute of limitations has been violated from a review of the pleading that gives rise to the cause of action, such a motion should be denied. The best practice when asserting a statute of limitations argument is for the moving party to address the statute of limitations issue in a motion brought pursuant to section 619(a)(5). In what appears to be a recognition of the limitations of a section 615 motion as it pertains to the identified statute of limitations issue, the Lodge has brought a section 619(a)(5) motion, in which it makes almost identical arguments, *i.e.*, that the City has violated the applicable statute of limitations. As this Court cannot make a determination that the City has violated the applicable statute of limitations based upon the well-pled facts contained within the City's counterclaim, the Lodge's section 615 motion seeking to strike or dismiss the City's counterclaim is denied.

C. The Lodge's Section 619(a)(5) Motion

Section 2-619(a)(5) provides that a defendant or counter-defendant, *e.g.*, the Lodge, may file a motion for dismissal when an action has not been commenced within the time limited by law. 735 ILCS 5/2-619(a)(5). The defendant has the initial burden of proving the affirmative defense relied upon in its motion to dismiss. *Kirby v. Jarrett*, 190 Ill. App. 3d 8, 12 (1st Dist. 1989) (explaining that a defendant raising a statute of limitations defense in a motion to dismiss bears the initial burden of demonstrating that the action in question was not commenced within the

applicable limitation period). Once the defendant has met this burden, however, it becomes incumbent upon the plaintiff to set forth facts sufficient to avoid the statutory limitation. *Cundiff v. Unsicker*, 118 Ill. App. 3d 268, 272 (3d Dist. 1983); *Blair v. Blondis*, 160 Ill. App. 3d 184, 188 (3d Dist. 1987).

Section 14 of the IPLRA, 5 ILCS 315/14, establishes the procedures for interest arbitration to resolve disputes over the provisions of successor CBAs. Section 14(k) provides that orders of an arbitration panel convened under section 14 are reviewable by the circuit court "only for the reasons that the arbitration panel was without or exceeded its statutory authority; the order is arbitrary, or capricious; or the order was procured by fraud, collusion or some other similar and unlawful means." 5 ILCS 315/14(k)(West 20220. Such petitions "must be filed with the appropriate circuit court within 90 days following the issuance of the arbitration order." *Id.* It is undisputed that the City filed its 14(k) petition within 90 days after the January 4, 2024 award. The Lodge maintains that the City's petition, *i.e.*, the counterclaim, is untimely as it uses October 19, 2023 - the date the Final Opinion and Award was issued - as the date of the issuance of the arbitration award.

The Lodge relies upon section 12(b) of the Uniform Arbitration Act, 710 ILCS 5/12(b), which requires that a petition to vacate an arbitration award under section 12 of the Arbitration Act be filed within 90 days after delivery of a copy of the award to the applicant. But importantly, the City's petition, *i.e.*, the counterclaim, arises under section 14(k) of the IPLRA, not the Arbitration Act. As the City has not made any application under section 12 of the Arbitration Act, the time limit for filing such an application under section 12(b) of the Arbitration Act does not apply.

Moreover, the 90-day period to vacate an order of an arbitration panel under section 14(k) of the IPLRA specifies that the deadline to file such a petition runs from the date of the issuance of the arbitration order that becomes the subject of further interest arbitration proceedings. Illinois courts interpreting section 14(k) of the IPLRA have held that when an interest arbitrator issues a supplemental award after a public employer rejects a prior award, the supplemental award is subject to review under section 14(k). In *County of Peoria v. AFSCME Council 31*, 167 Ill. App. 3d 247 (3d Dist. 1988), an interest arbitrator rendered an initial decision in February 1986, on all issues presented. The Peoria County Board rejected three of the items decided by the arbitrator. *County of Peoria*, 167 Ill. App. 3d at 248. The matter was returned to the arbitrator who issued a decision affirming the earlier award on July 2, 1986. *Id.* The county board again rejected the award

on July 8, 1986. On October 1, 1986, the county filed a complaint seeking to vacate the award. *Id.* The circuit court held that the county's complaint was untimely - *not* because the county failed to file within 90 days after the original February 1986 award, but because it filed ninety-one days after the July 2, 1986 award. *Id.* at 249.

More recently, in *County of Cook v. Ill. Fraternal Order of Police Labor Council*, 358 Ill. App. 3d. 667 (1st Dist. 2005), an interest arbitrator issued an award on January 30, 2002. On February 7, 2002, Cook County then rejected the arbitration award. *County of Cook*, 358 Ill. App. 3d. at 667. On July 15, 2002, after an additional hearing, the arbitrator issued a supplemental decision upholding the prior award. The Appellate Court held that this supplemental decision "thus became the final decision as to the mandatory interest arbitration, which was subject to review in the circuit court under section 14(k) of the Act." *Id.*

In this case, the Lodge focuses on the October 19, 2023 award as the 90-day triggering date, rather than the January 4, 2024 award. However, it was clear that the award would have to be submitted to the City Council pursuant to the provisions of the 2012 - 2017 CBA and that any provisions that might be rejected by the City Council would be returned to the DRB for further proceedings and consideration. The Lodge's interpretation of the 90-day limitations period would invite and even require parties to file section 14(k) petitions over contract terms that would be the subject of ongoing dispute resolution proceedings. This would potentially undermine the purpose of section 14(k) of the IPLRA and prematurely force the parties to unnecessarily spend finite resources fighting unnecessary battles. There is no support for the Lodge's position which is inconsistent with case law and the purpose and structure of section 14 of the IPLRA and the parties' dispute resolution procedures. The Lodge's section 619(a)(5) motion is denied as the City's counterclaim was timely filed.

D. Summary Judgment is Proper

Summary judgment is proper where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." 735 ILCS 5/2-1005(c)(West 2022). Although summary judgment aids in the expeditious disposition of a lawsuit, it is a drastic measure and should be granted only if the moving party's right to judgment is clear and free from doubt. *Traveler's Insurance Co. v. Eljer Manufacturing, Inc.*, 197 Ill. 2d 278, 292 (2001). When

considering a motion for summary judgment, the court must view the record in the light most favorable to the nonmoving party. *Pielet v. Pielet*, 2012 IL 112064, ¶ 29. "The purpose of summary judgment is not to try a question of fact, but to determine whether one exists" that would preclude the entry of judgment as a matter of law. *Land v. Board of Ed. of the City of Chicago*, 202 Ill. 2d 414, 421 (2002). Although both parties disagree with each other's respective positions, by presenting cross-motions for summary judgment, they have agreed that only a question of law is involved and by doing so, they have invited the court to decide the issues based on the record. See *Pielet*, 2012 IL 112064, ¶ 29. This Court has reviewed all of the parties' submissions, as well as heard argument from the parties' experienced and highly qualified counsel, and agrees that no genuine issue of material fact exists due to the nature of the proceedings and further agrees that the identified issues can be decided as a matter of law.

Standard of Review

Section 14(k) of the IPLRA provides that an arbitrator's award is reviewable by the court. 5 ILCS 315/14(k) (West 2022). On review, an arbitrator's order can be disturbed for only the following reasons: (1) the arbitrator was without authority or exceeded his or her authority; (2) the order is arbitrary or capricious; or (3) the order was procured by fraud, collusion or other similar and unlawful means. *Id.* An arbitrator's action is arbitrary or capricious only if the arbitrator does one of the following: (1) relies on factors that the legislature did not intend for the arbitrator to consider; (2) entirely fails to consider an important aspect of the problem; or (3) offers an explanation for a decision that runs counter to the evidence or that is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. *Town of Cicero v. Ill. Firefighters IAFF Local 717 AFL-CIO*, 338 Ill. App. 3d 364, 372 (1st Dist. 2003). But importantly, that the "court might have decided the issue differently does not make the Arbitrator's decision arbitrary or capricious." *Id.* at 376.

The standard is one of rationality – the decision is without a rational basis. *Id.* at 372. Further, an interest arbitration award may be rejected if it is contrary to public policy. *AFSCME v. Dep't of Cent. Mgmt. Serv.*, 173 Ill. 2d 299, 318 (1996) (hereinafter *AFSCME v. CMS*) ("As with any contract, a court may not enforce a collective bargaining agreement in a manner that is contrary to public policy. Accordingly, if an arbitrator construes such an agreement in a way that violates public policy, an award based on that construction may be vacated by a court.").

Section 14(h) of the IPLRA, incorporated by reference into the CBA, provides that in formulating contract terms, the DRB was to consider the following factors, as applicable:

> (1) The lawful authority of the employer...
>
> (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. ...
>
> ⋮
>
> (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.

5 ILCS 315/14(h) (emphasis and boldface added).

A. The Neutral Chair's Decision to Allow the Lodge with an Option of Having an Arbitrator Was Neither Arbitrary nor Capricious nor Contrary to Public Policy

In determining that the Lodge had a right to elect whether to proceed before an arbitrator or before the Police Board on serious disciplinary cases, the Neutral Chair based his decision upon his interpretation of: "long and established case law in Illinois"; the grievance procedure of the IPLRA, 5 ILCS 315/8; the supremacy clause in section 15 of the IPLRA, 5 ILCS 315/15; and the Worker's Right Amendment to the Illinois Constitution, Illinois Const., Art. I, § 25. The decision

was neither arbitrary nor capricious, but rather thorough and considered. Further, his conclusion was not against public policy. In fact, the Neutral Chair's decision on this issue was entirely consistent with the public policy of the community and State. The Lodge's motion seeking to confirm this portion of the Award as it pertains to a right of a CPD officer to elect to proceed before an arbitrator or the Police Board on serious disciplinary cases is confirmed.

B. The Neutral Chair's Decision to Require That Any Arbitration That Had Been Elected Proceed in a Private Forum was Neither Arbitrary nor Capricious

The Neutral Chair determined that any arbitration that had been elected by the Lodge should proceed in a private setting. The Neutral Chair based this determination primarily on the past practices of the parties, *i.e.*, in grievance cases that were not serious police discipline cases, as well as on the ethical obligations of arbitrators which are set forth within the rules of the American Arbitration Association and those rules of the National Academy of Arbitrators. The Neutral Chair also based his decision on his interpretation of the Worker's Right Amendment to the Illinois Constitution, Illinois Const., Art. I, § 25. Although the City vigorously disagrees with each of the bases used to support the Neutral Chair's conclusion, his was a considered decision. It certainly was neither arbitrary nor capricious.

C. The Neutral Chair's Decision to Require That Any Arbitration That Had Been Elected Proceed in a Private Forum was Contrary to Public Policy

The Neutral Chair found that an officer had a right to elect to proceed before an arbitrator on any grievance that required discipline in excess of 365 days or separation (dismissal), rather than proceed before the Chicago Police Board. This Court has confirmed that portion of the Award. The Neutral Chair further determined that in the event that any such officer elected to proceed before an arbitrator, that the proceedings would necessarily not take place in a public forum. In

addition to arguing that this portion of the Neutral Chair's determination was arbitrary and capricious, the City has alternatively argued that this decision was against public policy.

In making this public policy argument, the City is relying upon a very narrow exception to the general rule on enforcing arbitration awards. More specifically, the City must establish that this questioned portion of the Award violates a well-defined and dominant public policy. Under this limitation, if an arbitration award is derived from the essence of the collective-bargaining agreement, the court has the authority to vacate the award if it is repugnant to established norms of public policy. Such vacatur is rooted in the common-law doctrine that a court may refuse to enforce contracts that violate the law or public policy. The public-policy exception is a narrow one—one that is to be invoked only if a party clearly shows enforcement of the contract, as interpreted by the arbitrator, contravenes some explicit public policy.

Our Supreme Court explained in *City of Chicago v. Fraternal Order of Police,* 2020 IL 124831, that this public policy exception is rooted in the common law doctrine that allows courts to refuse to enforce any contract where the contract, as enforced, would violate law or public policy. *City of Chicago*, 2020 IL 124831, ¶ 25. "The public policy must be "well-defined and dominant" and ascertainable "by reference to the laws and legal precedents and not from generalized considerations of supposed public interests."" *Illinois Nurses Assoc. v. Board of Trustees of the Univ. of Ill.*, 318 Ill. App. 3d 519, 529 (1st Dist. 2000) (quoting *AFSCME v. CMS,* 173 Ill. 2d at 307). In considering whether vacatur of an arbitration award under the public policy exception is warranted, a two-step analysis is employed: "a court first determines whether a well-defined and dominant public policy can be identified and, if so, whether the arbitrator's award, as reflected in his interpretation of the agreement, violate[s] the public policy." *State (Department of Central Management Services) v. AFSCME*, 2016 IL 118422, ¶ 41.

Cases in which a reviewing court has found a well-defined and dominant public policy sufficient to invalidate an arbitration award have focused on the policy as an embodiment of a fundamental state interest (*AFSCME v. CMS,* 173 Ill. 2d at 311 (stating that "the welfare and protection of minors has always been considered one of the state's most fundamental interests")), a long-established common law principle (*Board of Trustees of Community College District No. 508, Cook County v. Cook County College Teachers Union, Local 1600*, 74 Ill. 2d 412, 425-26 (1979) (observing that "Illinois courts have repeatedly expressed a reluctance, long-established in the maxims of the common law, to allow persons to profit from their intentionally committed

wrongful acts")), or a policy that is widely held based on its incorporation in multiple state statutes (*City of Chicago*, 2020 IL 124831, ¶¶ 31-37 (finding a well-defined and dominant public policy "rooted in state law concerning the procedures for the proper retention and destruction of government records" based on both the Local Records Act (50 ILCS 205/1 *et seq.* (West 2022)) and the State Records Act (5 ILCS 160/1 *et seq.* (West 2022)).

With respect to the Award's restriction on public access to arbitrations of serious police disciplinary cases there is a well-defined and dominant public policy that exists. In January 2019 the City of Chicago and the State of Illinois entered into a Consent Decree that was the result of an investigation initiated by the United States Department of Justice. The State was concerned that the CPD engaged in "a repeated pattern of using excessive force, including deadly force, and other misconduct that disproportionately harms Chicago's African American and Latino residents." The goal of the decree was to address and reform "critical deficiencies at CPD, including departmental policies and practices, such as use of force, accountability, training, community policing and engagement, supervision and promotion, transparency and data collection and officer assistance and support." Pursuant to the Consent Decree, the City is required to increase and promote transparency in matters of police accountability. This is clear evidence of the public policy in this State, *i.e.*, the goal of having an open and transparent government. Accountability and transparency are clearly identified in the Consent Decree that evidences the State's determination to ensure that police discipline cannot occur in a private forum. From the following paragraphs of the decree, it is clear that accountability and transparency as it relates to the CPD is a well-defined and dominant public policy of the State of Illinois:

> 419. Holding public servants accountable when they violate law or policy is essential to ensuring legitimacy and community confidence.
>
> 420. A robust and well-functioning accountability system in which CPD members are held to the highest standards of integrity is critical to CPD's legitimacy and is a priority of CPD. A culture of accountability also promotes employee safety and morale, and improves the effectiveness of CPD operations. Organizational justice also plays an important role in ensuring that CPD members have confidence in the legitimacy of the system that holds them accountable.
>
> 422. Meaningful community involvement is imperative to CPD accountability and transparency. Nothing in this Agreement should be construed as limiting or impeding community participation in CPD's accountability system, including the

creation and participation of a community safety oversight board. OAG and the City acknowledge the significant work many of Chicago's community organizations have undertaken and are continuing to undertake, including work alongside CPD, in the area of police reform and accountability, and OAG and the City know this critical work will continue.

531. In order to function effectively, CPD's accountability system must protect the due process rights of involved CPD members. In order to build public trust and credibility, CPD must provide opportunities for meaningful community engagement that extends beyond the complaint process. The Police Board strives to play the important dual roles of protecting CPD members' due process rights and providing a platform for regular community feedback. The City will ensure that the Police Board has adequate resources, training, and institutional support to fulfill its important duties.

544. The City, CPD, and COPA recognize the importance of transparency to improving CPD-community relations, and the City, CPD, and COPA have taken important steps to increase transparency about their operations, including how they conduct investigations into CPD member misconduct. The City, CPD, and COPA will continue to take steps to increase transparency, including the implementation of the requirements set forth below.

554. OAG acknowledges that the City adopted a policy relating to the public release of video footage capturing weapons discharges and incidents involving death or serious bodily injury. Consistent with applicable law, the City will continue to ensure COPA publicly releases such video footage pursuant to the June 2016 Video Release Policy for the City of Chicago. The Video Release Policy will not supersede or otherwise limit the City's legal obligations pursuant to state and federal transparency laws, including the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*

The State has also legislatively demonstrated the importance of transparency regarding the affairs of government through its Freedom of Information Act. 5 ILCS §§ 140/1-100(West 2022). Section 1 is explicit:

Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of this Act. Such access is necessary to enable the people to fulfill their duties of discussing public issues fully and freely, making informed political judgments and monitoring government to ensure that it is being conducted in the public interest.

The General Assembly hereby declares that it is the public policy of the State of Illinois that access by all persons to public records promotes the transparency and

> accountability of public bodies at all levels of government. It is a fundamental obligation of government to operate openly and provide public records as expediently and efficiently as possible in compliance with this Act. Id. at §1.

In this case, the Neutral Chair concluded that arbitration hearings for serious police disciplinary cases must be closed to the public as the "Rule of Law" dictated that the Lodge had a right to arbitration and that any arbitration is inherently private. Importantly, nothing in the IPLRA or any other provision of applicable law mandates reversing the decades-long practice of hearings in serious police disciplinary cases being open to the public. Further, the Neutral Chair's reliance on the "current past practice" of the parties was based upon a conflation of the lower-level suspensions with the more serious discipline cases. There has always been a clear distinction between the lower-level suspensions and ones for serious discipline cases. The more serious discipline cases, *i.e.*, cases where discipline could result in dismissal or suspension in excess of 365 days, have always proceeded before the Police Board in an open forum. In short, there never has been a practice, past or otherwise, of having serious disciplinary cases in any forum, other than a public one.

There clearly is an extraordinarily strong public policy interest in favor of transparency in cases involving alleged misconduct by Chicago police officers serious enough to result in dismissal or suspension in excess of one year. Police officers differ from other public and private employees in one crucial respect: they are empowered to arrest and, when necessary, employ lethal force against other citizens. Although the majority of the members of the Chicago community are highly supportive of the Chicago Police Department, it is well known that there are also many members of the community that are deeply and, unfortunately, suspicious of police and the processes by which the Chicago Police Department seeks to hold officers accountable for serious misconduct. As such there is a paramount public interest and need for the transparency of the more serious disciplinary cases.

It is also significant that there is no legally mandated presumption of privacy in arbitration. Although the IPLRA does provide that collective bargaining agreements must contain grievance arbitration provisions, the Act does not dictate or speak to the rules of procedure that must be applied in arbitration hearings. While arbitration is often private, open arbitration hearings are not without precedent. For example, San Antonio, Texas, is the nation's seventh-largest city. Its collective bargaining agreement with its police force provides for all arbitration hearings to be

open to the public. Similarly, arbitration hearings in this Court's arbitration program are open to the public as they are in many other counties throughout the State. Nowhere in any of the Neutral Chair's awards was there any suggestion that making arbitration hearings in serious police disciplinary cases open to the public would negatively affect the proceedings or interests of any party. Police Board hearings have been open to the public for the last 60 years and no evidence was cited to any negative consequences of the open nature of the proceedings. The Lodge does take issue with the objective nature of the proceedings before the Police Board, but that is not a basis to close any arbitration proceeding to the public.

It is clear that accountability and transparency is a well-defined and dominant public policy of the State of Illinois. The restriction of public access to arbitrations for serious police discipline is in direct contravention of the well-defined and dominant public policy of accountability and transparency of the government services in general and the Chicago Police Department specifically. The Neutral Chair's decision that the arbitration of any cases where discipline could result in dismissal or suspension in excess of 365 days must proceed in private is against a dominant and well-defined public policy. As such, the Lodge's request to confirm that portion of the Neutral Chair's Award is denied. Further, the City's request to vacate that portion of the Neutral Chair's Award is granted.

D. The Neutral Chair's Retroactivity Ruling was Neither Arbitrary nor Capricious

The Neutral Chair's determination that the award must be retroactive to September 14, 2022, the date that the Neutral Chair was notified of his selection, is neither arbitrary nor capricious. In his October 19, 2023 Final Opinion and Award, the Neutral Chair stated "it cannot be found that the City was solely responsible for getting this case before me for decision." In the Supplemental Interim Award, the Neutral Chair concluded that making the award non-retroactive "would have a chilling effect on collective bargaining by encouraging one party to delay the outcome; it is unfair to penalize employees for delays in the collective bargaining and interest arbitration procedures; and denying retroactivity encourages delay in reaching a settlement."

Although the City argues that the Neutral Chair's decision was not rational and ignored the practical impact of retroactivity on cases pending before the Police Board, that simply is not so. The Neutral Chair was fully aware that certain cases had been underway before his assignment and also that many cases had been filed after his appointment. The City ignores the fact that the

Neutral Chair fully considered the impact of his ruling and concluded that as a CPD officer had a right to elect to arbitrate, that the arbitration right should be provided to any officer whose case had not proceeded to an evidentiary hearing. This decision was neither arbitrary nor capricious and certainly not in violation of public policy. As such, the Lodge's request to confirm that portion of the Neutral Chair's Award is granted. Further, the City's request to vacate that portion of the Neutral Chair's Award is denied.

E. The Neutral Chair's Decision to Require Pay Pending Dismissal Was Arbitrary and Capricious

For the entirety of the City's 40-year collective bargaining history with the Lodge, the City has had the authority to suspend an officer without pay pending dismissal or suspension in excess of 365 days, subject to the officer's right to challenge the suspension through a preliminary hearing before the Police Board. The present system strikes an appropriate balance between protecting officers from unfair suspension and the City's interest in not having to continue paying an officer during a period when it cannot send the officer out on emergency calls. In departing from the long time practice, the Neutral Chair concluded that officers should be entitled to remain in pay status pending serious discipline as there was "no rational basis" to distinguish between cases involving suspensions of up to 365 days and suspensions of 366 days or more.

There is a clear and rational basis for the current practice of suspending an officer without pay pending dismissal or suspension in excess of 365 days. In a suspension case, the employer implicitly agrees that the officer is potentially deserving of reinstatement at some point in time. A case involving separation is, however, far different. If the officer is discharged, that employee is no longer a Chicago Police Officer. A Chicago Police Officer who is acquitted and reinstated after a hearing can be made whole through back pay and monetary relief. If however, the City prevailed at the disciplinary hearing, there is no mechanism that would allow the City to recover wages paid to the employee while the dismissal case is pending.

The Neutral Chair also justified the departure from the *status quo* with reference to the "bedrock 'Rule of Law'" presumption that "a defendant is innocent until proven guilty," citing *People v. Wheeler*, 226 Ill. 2d 92 (2007). "Innocent until proven guilty" is however, a constitutional protection that only applies in criminal matters. The suspension or termination of employment is

not a criminal proceeding, and there is no rule of law prohibiting the suspension of a police officer without pay pending a dismissal or suspension hearing, even if the officer is suspended and recommended for discharge because of suspected, but yet to be proven, criminal conduct. *See Gilbert v. Homar*, 520 U.S. 924, 926 (1997) (holding that a police officer's constitutional rights were not violated by a suspension without pay pending a termination hearing because of the officer's arrest on felony drug charges). The Neutral Chair made no finding that the *status quo* fails to afford officers the right to due process in connection with an unpaid suspension. Deciding that the maxim of "innocent until proven guilty" requires upending the balance that the City and Lodge have maintained for the past 40 years and runs directly contrary to the fundamental principles that the Neutral Chair was required to follow when issuing his Award.

Further, the right to arbitration does not imply the existence of a statutory right to remain on the payroll during the discharge proceeding, as evidenced by the fact that no other City employee accused of dischargeable conduct has a right to suspension with pay pending arbitration. The Lodge's proposal in its Final Offer, accepted by the Neutral Chair, was a breakthrough unrelated to the Lodge's claim that arbitration was mandated by the IPLRA. The Neutral Chair did not identify any rational basis to radically depart from, instead of preserving, the *status quo* as to this issue. As such, the Neutral Chair's decision that officers subject to discharge should remain in a pay status pending arbitration was arbitrary and capricious. As such, the Lodge's request to confirm that portion of the Neutral Chair's Award is denied. Further, the City's request to vacate that portion of the Neutral Chair's Award is granted.

F. The Neutral Chair's Rejection of Arbitrator Training was Neither Arbitrary nor Capricious

During the bargaining process, the City proposed that in addition to arbitration hearings being open to the public, the Neutral Chair should require that arbitrators either complete the same training required of Police Board hearing officers or at least read the materials for such training to be supplied by the City. The Neutral Chair concluded that as the identified rules applied to the Police Board and pursuant to the Neutral Chair's decision relative to arbitration, that the cited rules did not apply to arbitrators. Although this Court believes that more and not less knowledge might be helpful, the Neutral Chair carefully considered the request for the identified training and

rejected it. The Neutral Chair was well aware that any arbitrator assigned to such a significant disciplinary case, such as would be at issue, would properly prepare for the proceedings, and would not render any decision until the arbitrator was fully satisfied with his or her understanding of the facts of the case, as well as all of the applicable standards, policies, procedures and rules that were at issue. The CPD will also be able to present expert witnesses that cover the important elements of the current training to future arbitrations to ensure the arbitrators will have this context. The Neutral Chair did not abdicate his obligation to craft rules for arbitration proceedings as the City has argued. The Neutral Chair's decision was neither arbitrary nor capricious nor was it in violation of public policy. As such, the Lodge's request to confirm that portion of the Neutral Chair's Award is granted. Further, the City's request to vacate that portion of the Neutral Chair's Award is denied.

G. The City's Request for a Declaratory Judgment is Without a Proper Basis

In Count I of its counterclaim, the City requests that this Court enter a declaratory judgment that the City retained the rights to accept or reject the contract language of the arbitration award. The declaratory judgment procedure allows the court to take hold of a controversy one step sooner than normal – that is, after the dispute has arisen, but before steps are taken which give rise to claims for damages or other relief. The parties to the dispute can learn the consequences of their action before acting. *Beahringer v. Page*, 204 Ill. 2d 363, 372-73 (2003); see 735 ILCS 5/2-701(a) (West 2022). A declaratory judgment action "determine[s] the rights of the parties so that the plaintiff can alter his future conduct to avoid liability." *Adkins Energy, LLC v. Delta-T Corp.*, 347 Ill. App. 3d 373, 378 (2d Dist. 2004).

The doctrine of nonliability for past conduct bars an action for declaratory judgment when the conduct that makes a party liable has already occurred. *Id.* The *Adkins* court gives an illustrative example with a breach of contract action. A plaintiff can request a declaratory judgment to determine if a contract in fact exists. But if the plaintiff would refuse to pay even if a contract exists then a declaratory judgment becomes improper because the plaintiff will not alter their future conduct. *Id.* In *Eyman v. McDonough District Hospital*, 245 Ill. App. 3d 394, 395 (3d Dist. 1993), plaintiff terminated an employment contract and kept the funds advanced by the defendant. Plaintiff sought a declaratory judgment that she properly terminated her employment agreement and was not liable for the advanced funds. *Id.* The appellate court held that a declaratory judgment was improper because the plaintiff was seeking a declaration of nonliability for past conduct as

she was not seeking to learn consequences of future acts. *Id.* at 396. Finally, in *Karimi v. 401 N. Wabash Venture, LLC*, 2011 IL App (1st) 102670, plaintiff lost their earnest money in a failed home purchase. *Id.* ¶¶ 5-6. Plaintiff sought a declaration that the condominium purchase agreement was still in effect when defendant sold the condo to a third party. *Id.* ¶ 1. The appellate court held that the circuit court's dismissal of declaratory judgment request was proper because plaintiff was seeking to enforce their rights after the fact, and that plaintiff should have instituted a breach of contract action instead. *Id.* ¶10.

Here, the City is seeking a declaratory judgment that the City retained the rights to accept or reject the contract language of the arbitration award after the Chicago City Council had already rejected the Award. The City is requesting this Court to approve of the City's past action(s), *i.e.*, the rejection of the Award, and not to provide guidance as to future conduct. Clearly the doctrine of nonliability for past conduct bars such a grant.

Additionally, the City is requesting this Court interpret a term of the collective bargaining agreement. This is an arbitrable issue that necessarily should be decided in an arbitration proceeding. Consequently, the City's Motion for Summary Judgment on Count I of its counterclaim is denied. The Lodge's cross-motion for summary judgment on Count I of the City's counterclaim is granted.

H. The Lodge's Request for Attorney's Fees

The Lodge argues that this Court should order the City to pay the Lodge's attorney's fees that were incurred in this litigation. Illinois follows the American Rule with regard to attorney's fees and costs. Under the American Rule, "absent statutory authority or a contractual agreement, each party must bear its own attorney fees and costs." *Uncle Tom's, Inc. v. Lynn Plaza, LLC*, 2021 IL App (1st) 200205, ¶ 72. Two questions are involved in a trial court's decision to award the prevailing party attorney's fees: first, whether the court has authority to grant attorney's fees and second whether to award fees in a particular case. See *Forest Pres. Dist. v. Cont'l Cmty. Bank & Trust Co.*, 2017 IL App (1st) 170680, ¶ 32.

It is unclear whether the Lodge is arguing that it is entitled to attorney's fees based upon either a contractual agreement or statutory authority. Even though its request for attorney's fees is not well developed, it is clear that the basis for the request is centered upon the City's opposition to the Lodge's request to have this Court confirm the underlying Award, as well as on the City

affirmatively initiating litigation via its counterclaim. The Lodge essentially argues that the position(s) that the City has taken resulted in this litigation, which the Lodge maintains was both unnecessary and undertaken in bad faith. The Lodge specifically has argued that the positions that the City has taken in this litigation were outright frivolous. Although this Court has both agreed and disagreed with the City's analysis of certain issues, it does not mean that the City was without a proper basis to pursue the litigation that it did. Thus it is clear, the City had a clear and good faith basis to address the underlying Awards in the manner that it has. Based upon this Court's conclusions, both parties may be considered "prevailing" parties.

As the Lodge's premise for seeking attorney's fees is without support, *i.e.*, that the City acted in bad faith and in a frivolous manner, the Court denies the Lodge's request for attorney's fees on that basis. Further, there is no basis under equitable rules and principles to award the Lodge attorney's fees. The Lodge's request for attorney's fees is denied.

For the Foregoing Reasons:

IT IS HEREBY ORDERED:

1. The Plaintiff's Motion seeking to strike and/or dismiss the Defendants' counterclaim pursuant to section 2-615 is denied;
2. The Plaintiff's Motion seeking to dismiss the Defendants' counterclaim pursuant to section 2-619(a)(5) is denied;
3. As both the Plaintiff's and the Defendants' Motions for summary judgment are granted in part and denied in part for the reasons set forth in this decision, the identified portions of the "Final Opinion and Award" and the "Supplemental Final Opinion and Award" are confirmed in part and vacated in part;
4. The City of Chicago is required by the terms of the Supplemental Final Opinion and Award to offer any police officer, who is protesting a suspension in excess of 365 days or separation (dismissal), with the option to present any grievances to final and binding arbitration instead of having the Chicago Police Board decide the disciplinary action;

5. As the City of Chicago is required by the terms of the Supplemental Final Opinion and Award to offer any police officer, who is protesting a suspension in excess of 365 days and separations (dismissal), with the option to present any grievances to final and binding arbitration instead of having the Chicago Police Board decide the disciplinary actions, the City of Chicago is hereby enjoined and prohibited from conducting any such disciplinary hearings before the Chicago Police Board unless any officer so charged on or after September 14, 2002, has consented to such a procedure. This Order applies to *all* pending disciplinary hearings that have not proceeded to an evidentiary hearing;
6. That portion of the Supplemental Final Opinion and Award that requires any arbitration proceeding to be held in a private forum is vacated;
7. That portion of the Supplemental Final Opinion and Award that requires that a Chicago Police Officer against whom disciplinary charges have been filed must remain in a pay status during the pendency of Police Board or arbitration proceedings is vacated;
8. All other portions of the Supplemental Final Opinion and Award are hereby confirmed;
9. Judgment is entered on behalf of the Plaintiff and against the Defendant on Count I of the Defendant's counterclaim; and
10. The Lodge's request for attorney's fees is denied.

IT IS SO ORDERED.

THIS IS A FINAL AND APPEALABLE ORDER.

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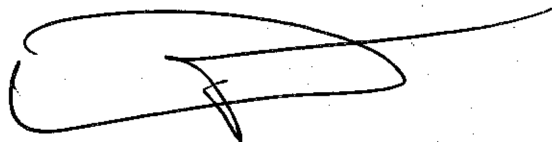

Judge Michael T. Mullen, No. 2084

3-21-2024

Date

Judge Michael T. Mullen

MAR 21 2024

Circuit Court - 2084