BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST POLICE OFFICER TRISTON EILAND, STAR No. 13052, DEPARTMENT OF POLICE, CITY OF CHICAGO,	**)**	**No. 21 PB 2984**
RESPONDENT.	**)**	**(CR No. 1091645)**

MEMORANDUM AND ORDER

On January 11, 2021, the Superintendent of Police filed with the Police Board of the City of Chicago (the "Board") charges against Police Officer Triston Eiland, Star No. 13052 ("Respondent"), recommending that Respondent be discharged from the Chicago Police Department ("CPD") for violating several Rules of Conduct.

On August 11, 2021, the Superintendent filed a Motion to Withdraw Charges against the Respondent, stating that the Superintendent and Respondent had reached a settlement agreeing that if the Board grants the Motion, the Superintendent will suspend Respondent for 180 days for violating Rules 1, 2, 3, 6, 8, and 9. The Motion included a factual background, reasons for the settlement agreement, and several exhibits, including the settlement agreement. On August 24, 2021, the Board entered an order denying the Motion to Withdraw Charges.

On October 7, 2021, Respondent filed a Motion to Enforce Settlement Agreement. In the Response to Respondent's Motion to Enforce Settlement Agreement, the Superintendent requests that the Board reconsider its denial of the Motion to Withdraw Charges. The Police Board has reviewed these filings.

I. Charges Against Respondent

On January 11, 2021, the Superintendent filed charges with the Board alleging that Respondent violated CPD Rules of Conduct 1, 2, 3, 6, 8, and 9 in relation to his allegedly threatening behavior toward his wife on or about November 6, 2018. Specifically, the charges alleged that Respondent: (1) threatened his wife, [redacted], by stating "I will kill you too" and/or "If it comes down to it, I will hurt you," and/or "I'm going to shoot the whole house up," or words to that effect; (2) made numerous threats to harm [redacted] and/or members of [redacted]' family; (3) owned and/or possessed a firearm that he failed to register with the Department; (4) failed to properly secure a loaded firearm without a locking device, in his possession and/or under his control, which was located under a bedroom mattress, where minor children and/or other unapproved individuals could access it; and (5) consumed an alcoholic beverage while carrying a firearm.

II. Respondent's Motion to Enforce Settlement Agreement

Respondent's Motion to Enforce Settlement Agreement shall be denied for the following reasons.

A. The Board's Power to Adopt Rules and Procedures

Respondent's first argument in his Motion to Enforce Settlement Agreement, presumably in reference to Police Board Rule of Procedure II.E regarding agreements to recommend a specific disciplinary action to the Board, is that "[n]owhere in the municipal ordinance was the Police Board given the power to enter substantive rules and policies that affect members of the FOP." [1]

[1] Respondent further states that "[n]either the City of Chicago nor the Police Board have ever collectively bargained with the FOP over the enactment of these rules of procedure, but rather have unilaterally enacted and enforced them," suggesting that the Board or City needed to have bargained with FOP for the Board's rules to be enforceable. Mot. ¶ 7. Respondent points to no authority supporting the proposition that the FOP needs to be involved in the enactment or enforcement of the Board's rules. Indeed, the collective bargaining agreement ("CBA") currently in effect includes

Mot. ¶ 6. Respondent then states that '[a]gency actions which are beyond the scope of an administrative agency's jurisdiction or authority are void." Mot. ¶ 8.

It is perfectly within the Board's rights to establish rules of procedures generally, and the rule regarding stipulations specifically. Despite Respondent's assertion to the contrary, courts have found that the Board has the power to adopt rules and procedures that substantively affect police officers. *See Lesner v. Police Bd. of City of Chicago*, 2016 IL App (1st) 150545, ¶ 3 ("At its core, the petitioner and the dissent view the Chicago police board as a sort of bureaucratic rubber-stamp . . . This essentially treats the police board as a procedural extension of the superintendent's authority. *To the contrary, the Illinois and Chicago Municipal Codes, which created the police board, put an end to dealing with police misconduct as solely an internal police function. The municipal codes along with the police board's rules of procedure place final decision-making power on matters of discharge, removal, and suspension exceeding 30 days in the control of the police board as an autonomous, impartial public body. Any other interpretation circumvents the legislative purposes for the police board and renders the police board's function symbolic instead of substantive*.") (emphasis added). In fact, prior case law supports the Board's authority to reject stipulations entered into between a respondent officer and the Superintendent. *See Lesner*, 2016 IL App (1st) 150545, ¶¶ 10-11 ("Following the filing of the charges, Lesner and the superintendent, in an attempt to resolve the matter without an evidentiary hearing, negotiated a stipulation under which Lesner would plead guilty and accept the 60–day suspension. . . . The

the following "management right": "The Employer has and will continue to retain the right to operate and manage its affairs in each and every respect. The rights reserved to the sole discretion of the Employer shall include, but not be limited to, rights: …to add, delete, or alter policies, procedures, rules and regulations." (CBA, Article 4, Section N).

parties presented the stipulation to the police board and argued in its favor. The police board rejected the stipulation. The case then proceeded to an evidentiary hearing[.]").

B. The Board Did Not Commit an Unfair Labor Practice

Respondent next argues that the Board interfered with a collectively bargained for agreement in violation of the Illinois Public Labor Relations Act (the "Act"). Under the Act, it is considered an unfair labor practice "for an employer or its agents: (1) to interfere with, restrain or coerce public employees in the exercise of the rights guaranteed in [the] Act or to dominate or interfere with the formation, existence or administration of any labor organization or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay; [or] (4) to refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of public employees in an appropriate unit, including, but not limited to, the discussing of grievances with the exclusive representative[.]" 5 ILCS 315/10(a).

According to Respondent, the Board interfered with a collectively bargained for agreement and committed an unfair labor practice. However, Respondent fails to identify a provision of the Act that his "employer or its agents" allegedly violated.

Respondent states that, "[p]rior to the hearing, the City of Chicago and the FOP engaged in negotiations and collectively bargained over a resolution short of discharge. The settlement agreement was negotiated pursuant to the duty to bargain provision of the Illinois Public Labor Relations Act. 5 ILCS 315/1 0(a)(4). . . . The Police Board reviewed the motion to withdraw and refused to accept the withdrawal of charges." Mot. ¶ 14. Respondent appears to assert that the Board's failure to accept the settlement agreement between the City and Respondent amounts to a violation of the Act.

Respondent does not plausibly allege that the Board (or even the City) "refuse[d] to bargain collectively in good faith with [the FOP]," nor does he allege that the Board (or City) "interfere[d] with, restrain[ed], or coerce[d] [Respondent] in the exercise of the rights guaranteed in [the Act]." *See* 5 ILCS 315/10(a)(4), (1). In fact, and as noted by the Superintendent, Respondent is mistaken in his contention that the settlement agreement was collectively bargained for. The settlement agreement was negotiated between Respondent (one individual officer) and the Superintendent, and does not affect any other members of the collective bargaining unit. Resp. at 3. Although FOP was a signatory to the Agreement, FOP did not participate in the negotiations and joined in the settlement agreement to release FOP from all future claims against them regarding representation in Respondent's Police Board case. *Id.*

Furthermore, the FOP is not a party to the disciplinary case before the Board and has no standing to negotiate, enter into, or join the settlement agreement. Respondent is represented in this matter by attorneys Timothy Grace, James Thompson, and Robert Arroyo, who filed appearances on behalf of Respondent on February 5, 2021. The FOP has not filed an appearance on behalf of Respondent. The Board's Rules of Procedure include the following requirement: "If the Respondent chooses to be represented by an attorney of the Respondent's own choosing, the attorney shall file a written appearance with the Police Board on an appearance form provided by the Board….No attorney may appear before the Board on behalf of any Respondent until a written appearance is on file." Police Bd. R. Proc., Sect. I.J. Nor has the FOP filed with the Board a motion seeking leave to intervene in this case on behalf of Respondent.

Respondent also references Section 6.11 of the CBA. While Respondent does not explicitly state that the settlement agreement was negotiated pursuant to this section, that appears to be the implication of his argument. Regardless of Respondent's reason for referencing this section,

Section 6.11 does not apply here. Section 6.11 begins: "At any time during an investigation, the parties may agree to mediate the resolution of the Complaint Register investigation. The 'parties' shall mean the accused Officer, with or without his or her Lodge representative, and a representative of IAD or IPRA, as appropriate." First, the Complaint Register investigation of this matter concluded before charges against Respondent were filed with the Board. The investigation is over, and the opportunity to mediate its resolution has passed. Second, IAD and COPA (which replaced IPRA) are not parties to the case before the Board. Thus, by its very terms, Section 6.11 is not a basis for negotiating a settlement agreement in a Police Board case.

In the only court case cited by Respondent, the court held that the basis of the Board's finding that the City violated the act was the City's "fail[ure] to comply with the terms of the settlement." *City of Burbank v. Illinois State Labor Relations Board*, 185 Ill. App. 3d 997 (1st 1989). Here, there is no allegation that any party failed to comply with the terms of the settlement agreement—to the contrary, the settlement agreement explicitly provided that its enforcement was "subject to and conditioned upon the Police Board's acceptance of the Superintendent's Motion to Withdraw the Charges." Mot., Ex. B ¶ 8. Respondent's disappointment that the Board exercised its option to reject the stipulation does not equate to violation of the Act.

C. The Board's Basis for Rejecting the Settlement Agreement

Finally, Respondent argues that the Board provides no identifiable basis for rejecting the agreement, has not identified any action by either party that was not in compliance with the Board's rules, and has not indicated that either party has acted in bad faith in arriving at the agreement. Mot. ¶ 15. It is unclear what source Respondent derives these arguments from or why they are necessary for the Board to reach its decision (and they also are not persuasive or correct). According to the Rules of Procedure, "the Board *may in its discretion reject the Stipulation* and

order the parties to proceed to a hearing on the charges" at any time prior to the Board rendering its findings and decision. Police Bd. R. Proc. II.E.4 (emphasis added).

In its August 24, 2021 Order, the Board stated that it was "not convinced, on the record currently before the Board, that the proposed settlement is an appropriate resolution to this case or that the interest of justice is served in so agreeing." The Board used its discretion to reject the proposed stipulation prior to rendering its findings and decision—thus, the Board was in compliance with the rules and Respondent's argument to the contrary has no merit.

D. The Settlement Agreement was Subject to the Board's Approval by its Very Terms

Importantly, even accepting the validity of any of the arguments made in Respondent's Motion, Respondent agreed to the Board's action here because the settlement agreement by its very terms was "*subject to and conditioned upon the Police Board's acceptance of the Superintendent's Motion to Withdraw the Charges*." Mot., Ex. B ¶ 8 (emphasis added). The agreement further states that, "*in the event that the Motion is not accepted by the Board, this Agreement shall be null, void, and unenforceable*." *Id.* (emphasis added). In signing the agreement, Respondent acknowledged that he "carefully read [the] Agreement, consulted with counsel, had adequate time to consider the terms of the Agreement before executing it and [that he was] fully aware of its contents and of its legal effects[.]" *Id.* ¶ 9.

As acknowledged by Respondent, "there is no doubt that the City of Chicago and Officer Eiland through the FOP came to a 'meeting of the minds' and an agreement." Mot. ¶ 20. Respondent incorrectly asserts that "the only obstacle before implementation was the Rules and Procedures of the Police Board," and that the "Police Board's refusal to accept the negotiated decision is based upon a standard *not found anywhere in the CBA, the statutes, or even in its own rules*." Mot. ¶¶ 20, 22 (emphases added). However, Respondent conveniently forgets about the

"obstacle" in the settlement agreement itself—that the agreement was explicitly contingent upon the Board's acceptance of the Superintendent's Motion to Withdraw the Charges. Thus, as noted by the Superintendent, "'enforcing' the Agreement would necessarily mean declaring it 'null, void, and unenforceable' pursuant to its express and agreed-upon terms." Resp. at 4.

In construing the provisions of a contract, a court's primary objective is to give effect to the intent of the parties at the time the contract was made. *Owens v. McDermott, Will & Emery*, 316 Ill. App. 3d 340, 344 (2000). Such intentions are to be ascertained from the language of the contract. *Id.* If the language in the contract is clear and unambiguous, the court must determine the intention of the parties "solely from the plain language of the contract." *Id.* (internal citations omitted). "A clear and unambiguous contract will be enforced as written." *Prime/Mansur Inv. Partners, LLC v. Phoenix Off., LLC*, No. 1-10-0928, 2011 WL 10069096, at *6 (Ill. App. Ct. June 30, 2011) ("Because the contract is clear and unambiguous, Phoenix was within its right to terminate the contract by its terms when Prime failed to obtain Ball's consent before December 15, 2005"). Respondent cannot now seek to avoid the explicitly negotiated terms of the agreement because the Board exercised its right to refuse the stipulation.

III. Superintendent's Request for Reconsideration of the Motion to Withdraw Charges

In the Response to Respondent's Motion to Enforce Settlement Agreement, the Superintendent requests that the Board reconsider its denial of the Motion to Withdraw Charges for two reasons: (A) the Board exceeded its authority by denying the Motion to Withdraw Charges, and (B) the Superintendent's difficulty in meeting the burden of proof.

A. The Board Did Not Exceed its Authority by Denying the Motion to Withdraw Charges

The Superintendent's argument that the Board exceeded its authority by denying the Motion to Withdraw Charges is unpersuasive.

The Superintendent argues that the Board exceeded its statutory authority when it denied the Superintendent's Motion to Withdraw. Under the Chicago Municipal Code, the Superintendent has the power to "suspend . . . employees of [CPD]" "subject to . . . the instruction of the Board." Mun. Code Chi. at §2-84-050. The Board has the power to 1) adopt rules and regulations for the governance of the CPD; and 2) hear disciplinary actions for which a suspension of more than 30 days or discharge is recommended. Mun. Code Chi. at §2-84-030. §2-84-030 of the Chicago Municipal Code, which deals with the Board's powers and duties, specifies that "[n]othing in this section limits the power of the superintendent to suspend a subordinate for a reasonable period, not exceeding 30 days." *Id.* Section 8.8 of the collective bargaining agreement in turn increases the Superintendent's authority to suspend an officer, as set forth in section 2-84-030 of the Municipal Code of Chicago, to a limit not to exceed three hundred and sixty-five (365) days.

The Superintendent asserts that, because the 180 day suspension "is within the Superintendent's authority to impose on his own, and COPA does not object to the 180 day suspension, the Board has exceeded its statutory authority in denying the procedural Motion to Withdraw on substantive grounds." Resp. at 4. He urges that, "in filing the Motion [to Withdraw], the Superintendent is not requesting that the Police Board impose discipline on Eiland. Rather, the Superintendent is utilizing his authority to impose suspensions of less than 365 days, and does not require the Police Board's statutorily prescribed involvement in the matter to 'hear (the) disciplinary action.'" *Id.* at 5.

The Superintendent's assertion that he now has the authority to impose an 180-day suspension of Respondent without approval by the Board is incorrect. Once the Superintendent filed charges against Respondent with the Board recommending that Respondent "be separated from the Department", the Municipal Code of Chicago granted the Board the power to hear and

decide the case. *See* Mun. Code Chi. at §2-84-030 ("The Board shall exercise the following powers:…2. To serve as a Board to hear disciplinary actions for which a suspension for more than the 30 days expressly reserved to the Superintendent is recommended, or *for removal or discharge* involving officers and employees of the Police Department in the classified civil service of the City.") (emphasis added). The Municipal Code further requires the Superintendent to carry out the Board's decision: "The findings and decision of the Police Board, including an explanation of those findings and decision, when approved by said Board, shall be certified to the Superintendent and *shall forthwith be enforced by said Superintendent*." Mun. Code Chi. at §2-84-030 (emphasis added).

The Superintendent is on record recommending the discharge of Respondent from the CPD, and the final decision is now the Board's per the Municipal Code. While the settlement agreement states that Superintendent now agrees to impose a 180-day suspension in consideration for Respondent's acceptance of it, this provision of the agreement does not constitute a suspension pursuant to Section 2-84-050(4) of the Municipal Code, nor does it constitute a "recommendation for discipline" governed by Section 9.6 of the collective bargaining agreement. The Superintendent has made his recommendation for discipline, and it is discharge from the CPD. Once he filed it with the Board, he gave up his authority to take disciplinary action or to unilaterally rescind or amend his disciplinary recommendation.

In addition, the Municipal Code also explicitly states that the Superintendent has the power to suspend employees "subject to . . . the instruction of the Board," and the Superintendent—regardless of his reason for doing so—conditioned acceptance of the Agreement on the Board's approval. Mun. Code Chi. at §2-84-050; Resp'ts Mot. to Enforce, Ex. B ¶ 8. Further, while the Superintendent states that he is not "requesting" discipline and that Section II(E) of the Board's

Rules of Procedure, "by its own terms, provides a procedure for Board-imposed discipline," the text of the Board's Rule suggests that it applies to recommendations for a specific suspension. *See* Police Bd. R. Proc. II.E ("Prior to a hearing on the charges, the Superintendent and the Respondent may enter into *a stipulation in which the Respondent and the Superintendent agree to recommend a specific disciplinary action*, including a specific term of suspension") (emphasis added). Section II(E) therefore applies precisely this situation.

B. The Board Credits the Superintendent's Representation that He Will Most Likely Be Unable to Prove the More Serious Charges

In his Response, the Superintendent asserts that he "most likely will be unable to prove the more serious allegations of the charges without the cooperation from any of the occurrence witnesses." Resp. at 7. He states that, "[a]cknowledging the problems in this case, including witness unresponsiveness and lack of cooperation, and a recantation from the primary witness, the parties now wish to avoid the expense, uncertainty, and burden of a hearing on the charges." *Id.* at 7-8. The Superintendent adopts and incorporates his previously filed Motion to Withdraw "[i]n reiterating the challenges to meeting his burden." *Id.* at 8.

In light of information provided by the Superintendent's counsel, the Board is persuaded by the Superintendent's argument that the Superintendent most likely will be unable to prove the more serious of the charges due to lack of cooperation from any of the occurrence witnesses. The Board will therefore reconsider its denial and grant the Superintendent's Motion to Withdraw the Charges for the reasons set forth below.

IV. Motion to Withdraw Charges

On August 11, 2021, the Superintendent filed a Motion to Withdraw Charges against the Respondent, stating that the Superintendent and Respondent have reached a settlement. The

settlement agreement provided that, "[i]n lieu of the recommendation of discharge made at the time of the filing of the Charges, the Superintendent will impose a 180 day suspension on Eiland for the Rule Violations, with no allowance for the use of compensatory or benefit time during this 180 day suspension, in consideration of Eiland's acceptance of the 180 day suspension." Mot., Ex. B ¶ 1. The agreement further stated that "[u]pon completion of the 180 day suspension, Eiland will be subject to a Fitness for Duty psychological evaluation prior to his reinstatement as a police officer," *id.* ¶ 2, and "[t]he 180 day suspension set forth in this Agreement shall become part of Eiland's disciplinary record and may be considered by the Police Board." [2] *Id.*

Based on information provided by the Superintendent, the Board now determines that the reasons for the proposed settlement, including witness unresponsiveness and lack of cooperation and a recantation by the primary witness, are convincing and that the proposed settlement is an appropriate resolution to this case.

[2] Additionally, on January 10, 2022, a letter was filed with the Board in which the Chief Administrator of the Civilian Office of Police Accountability states that she reviewed the Motion to Withdraw Charges and the Settlement Agreement and has no objections to the motion to withdraw, the settlement agreement, or Officer Eiland accepting a 180-day suspension in accordance with the settlement agreement.

POLICE BOARD ORDER

IT IS HEREBY ORDERED that, for the reasons set forth above, Respondent's Motion to Enforce Settlement Agreement is **denied**.

IT IS FURTHER ORDERED that, for the reasons set forth above, the Board's August 24, 2021, Order is vacated, the Superintendent's Motion to Withdraw Charges is **granted**, and the proceedings before the Police Board are terminated, conditional upon the Superintendent ordering and Respondent accepting a 180-day suspension without pay for violating Rules 2, 3, and 6 as set forth in Specification Nos. 3 – 5 of the charges.

This Order is adopted and entered by a majority of the members of the Police Board: Ghian Foreman, Paula Wolff, Nanette Doorley, Michael Eaddy, Steve Flores, Jorge Montes, and Andrea Zopp. (Board Members Steven A. Block and Mareilé B. Cusack, both of whom joined the Board on December 15, 2021, did not participate in this case.)

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JANUARY, 2022.

Attested by:

/s/ GHIAN FOREMAN
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following members of Board hereby dissent from the Order of the majority of the Board.

[None]

RECEIVED A COPY OF

THIS MEMORANDUM AND ORDER

THIS ____ DAY OF _____, 2022.

_____
DAVID O. BROWN
Superintendent of Police