BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST	)	
	)	
POLICE OFFICER CARLOS BARONA,	)	**No. 23 PB 3017**
STAR No. 16054, DEPARTMENT OF POLICE,	)	
CITY OF CHICAGO,	)	
	)	
POLICE OFFICER SHAWN BRYANT,	)	**No. 23 PB 3019**
STAR No. 4142, DEPARTMENT OF POLICE,	)	
CITY OF CHICAGO,	)	
	)	
POLICE OFFICER JENNIFER OPPEDISANO-CAPUTO,	)	**No. 23 PB 3020**
STAR No. 9687, DEPARTMENT OF POLICE,	)	
CITY OF CHICAGO,	)	
	)	
RESPONDENTS.	)	

MEMORANDUM AND ORDER

On April 4, 2024, Officers Carlos Barona, Jennifer Oppedisano-Caputo, and Shawn Bryant (together, "Respondents") each filed Motions in Response to the Memorandum Opinion and Order Entered in Case No. 2024 CH 00093 (collectively, the "Motions"). The Superintendent filed a consolidated Response in Opposition to the Motions ("Response") on April 12, 2024, and each Respondent filed a Reply in support thereof on April 16, 2024. For the reasons set forth below, Respondents' Motions are denied.

BACKGROUND

Interest Arbitration Proceedings

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 (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 dated 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." Supplemental Interim Award at 30–31. Of particular note, the FOP's proposal had included a retroactivity provision stating 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." *Id.* at 20–21.

The language ultimately adopted by the Supplemental Interim Award on the issue of arbitration reflected that its modifications to the parties' CBA would be deemed "retroactive to September 14, 2022." *Id.* at App'x C. Though the Supplemental Interim Award did not explicitly address the treatment of pending cases for which a full evidentiary hearing before the Board had already commenced, the Neutral Chair only disagreed with the FOP's proposal on retroactivity with respect to the specific date proposed, suggesting that the FOP's proposed

carveout for cases that had already proceeded to an evidentiary hearing was likewise adopted.

On October 19, 2023, the Neutral Chair issued a Final Opinion and Award (the "Final Award"), which reiterated the Interim Award and Supplemental Interim Award's adoption of the Lodge's proposal for the parties' successor CBA to include an option to arbitrate grievances protesting officer discipline in excess of 365-day suspensions and separations. Pursuant to the terms of the 2012–2017 CBA, the Final Award was sent to the City Council of the City of Chicago ("Chicago City Council") for ratification. On December 13, 2023, the Chicago City Council rejected the arbitration provisions of the Final Award, which returned the matter to the Dispute Resolution Board for consideration. On January 4, 2024, the Neutral Chair issued a Supplemental Final Opinion and Award (the "Supplemental Final Award") which concluded that the "arbitration provisions of the Final Award stand unchanged." Supplemental Final Award at 64.

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On January 4, 2024, the Lodge filed a verified complaint in the Circuit Court of Cook County which sought to confirm and enforce the arbitration provisions of the Supplemental Final Award and to compel the compliance of respondents, including the City of Chicago. The parties to that proceeding (Case No. 2024 CH 00093) filed cross-motions for summary judgment, and on March 21, 2024, the Court issued a Memorandum Opinion and Order (the "Order"), which provided final resolution of the disputed issues in the case. Among other items, the Order (i) confirmed, in part, the "portions of the 'Final Opinion and Award' and the 'Supplemental Final Opinion and Award'" providing for a right to arbitration, (ii) observed that "[t]he 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," (iii) enjoined and prohibited the City of Chicago "from conducting any such disciplinary hearings before the Chicago Police Board unless any officer so charged on or after September 14, 20[2]2, has consented to such a procedure," and (iv) clarified that "[t]his Order applies to *all* pending disciplinary hearings that have not proceeded to an evidentiary hearing." Order at 25–26, emphasis in original.

Status of Respondents' Proceedings Before the Police Board

As explained in Respondents' Motions, charges were filed with the Police Board against each Respondent over a year before the Order was issued. Charges seeking the separation of Officer Barona from the Chicago Police Department ("CPD") were filed on February 16, 2023, and, on March 3, 2023, charges seeking the separation of both Officer Oppedisano-Caputo and Officer Bryant were filed. Thereafter, all three cases proceeded to full evidentiary hearings: Respondent Barona's evidentiary hearing began on October 2, 2023, Respondent Oppedisano-Caputo's evidentiary hearing began on November 27, 2023, and Respondent Bryant's evidentiary hearing began on January 8, 2024.

On September 26, 2023, the Board issued an order denying a motion from FOP to transfer all pending cases (including Respondents' cases) to arbitration or, in the alternative, to stay the proceedings. Each Respondent renewed their request to stay prior to the start of their evidentiary hearing; the Board denied each of those requests in turn. The Board also rejected renewed requests to stay from Respondents Oppedisano-Caputo and Bryant in October 2023 (which were prompted by the entry of the Final Award).

Respondents' Motions

On April 4, 2024, each Respondent filed a Motion seeking reconsideration by the Board of its past denial of Respondents' requests, in advance of their evidentiary hearings, to stay their proceedings. Specifically, the Motions ask the Board to reconsider its decisions denying the stays, to retroactively grant the motions to stay, to vacate the evidentiary hearings, and to transfer the proceedings to the grievance arbitration process. In the alternative, the Motions request that the Board not render a decision in these cases.

Notably, the Motions do not argue that the cases involving Respondents are covered by the retroactive effect of the Court's Order or that the Board has been deprived of jurisdiction over these cases by the officers' election to have their grievances heard in arbitration. Instead, the primary argument advanced in the Motions for reconsideration of the Board's prior denial of stays in Respondents' cases is that these officers "have a constitutional right to arbitration," as reflected in both the Neutral Chair's award and the Court's Order, and that the Board should have found the preservation of that right to have been sufficient good cause to stay the proceedings. In other words, the Motions argue that the Board erred in finding no "good cause" to stay the proceedings in light of the fact that the Neutral Chair and Circuit Court have now confirmed Respondents' constitutional right to arbitration.

The Superintendent's Response asked the Board to deny the Motions because (i) the Court's March 21, 2024, Order providing officers with the option to present disciplinary grievances to arbitration only applies to pending disciplinary hearings that have not yet proceeded to an evidentiary hearing, and (ii) the parties and the Board have already expended significant resources to "bring these cases nearly to the finish line."

LEGAL STANDARD

A motion to reconsider is appropriate where "the [Board] has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the [Board] by the parties or has made an error not of reasoning but of apprehension." *Refrigeration Sales Co. v. Mitchell-Jackson, Inc.*, 605 F. Supp. 6, 7 (N.D. Ill. 1983) (internal citations omitted). A further basis for a motion to reconsider is a "controlling or significant change in the law or facts since the submission of the issue to the [Board]." *Id.* These problems "rarely arise and the motion to reconsider should be equally rare." *Id.* Motions for reconsideration cannot be used to introduce new legal theories for the first time or to raise legal arguments which could have been heard during the pendency of the previous motion. *In re Oil Spill by Amoco Cadiz*, 794 F. Supp. 261, 267 (N.D. Ill. 1992). Further, motions to reconsider "are not at the disposal of parties who want to 'rehash' old arguments." *Id*. A party who wishes to contend that the Board was "in error on the issues it had [previously] considered [] and spoken to" in its Order must direct those arguments to a reviewing court. *Refrigeration Sales Co.*, 605 F. Supp. at 7.

DISCUSSION

There have been no "significant change[s] in the law or facts" since the submission of Respondents' prior stay requests to warrant the instant Motions. To the contrary, following the issuance of the Board's initial rulings on Respondents' stay requests, the Order made it all the more clear that granting a stay in cases before the Board that have proceeded to an evidentiary hearing was not warranted.

The Order Does Not Apply to Respondents Because Their Cases Have Already Proceeded to an Evidentiary Hearing

As an initial matter, the Court's Order—consistent with the Lodge's original proposal and the Neutral Chair's award on retroactivity—clearly contemplates that the right to arbitration

awarded by the Neutral Chair will apply retroactively to cases filed after September 14, 2022, but only to those cases that had not yet proceeded to an evidentiary hearing. *See* Order at 25 ("[T]he City of Chicago is hereby enjoined and prohibiting from conducting any such disciplinary hearings before the Chicago Police Board unless any officer so charged on or after September 14, 20[2]2, has consented to such a procedure. **This Order applies to *all* pending disciplinary hearings that have not proceeded to an evidentiary hearing**." (bold emphasis added)); *see also id.* at 6 ("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." (emphasis added)); *id.* at 20–21 ("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 arbitration, that **the arbitration right should be provided to any officer whose case had not proceeded to an evidentiary hearing**." (emphasis added)).

Though the Order does not clarify the date by which an evidentiary hearing is required to have occurred to bring the case outside the scope of the award's retroactive effect, its plain language suggests that the operative date is the date of the Order: March 21, 2024. Notably, the Order expressly limits its application to "pending disciplinary hearings that have not proceeded to an evidentiary hearing." Order at 25. If the term "pending" is taken to mean cases pending before the Board at the time of the Order (and there has been no suggestion that it means

anything else), it should follow that the modifier "that have not proceeded to an evidentiary hearing" should likewise be assessed as of the date of the Order. Any other interpretation would ignore the plain meaning of the term "pending" within the context of the Order.

The Order could not be more clear: it applies *only* to pending cases that have not proceeded to an evidentiary hearing. And here, each of Respondents' cases proceeded to a hearing well before March 21, 2024; evidentiary hearings for Respondents Barona, Oppedisano-Caputo, and Bryant began in October 2023, November 2023, and January 2024, respectively. For that reason alone, Respondents are excluded from the retroactive effect of the award and the scope of the Order's prohibition on Board activity, and their Motions must be denied.

Respondents Do Not Have an Independent Right to Arbitration

Respondents' Motions also must be denied because the Neutral Chair and Circuit Court did not find that *these* specific officers have a right to arbitration. Notably, the Illinois Public Labor Relations Act ("IPLRA") does not provide any individual officer with an independent right to have their disciplinary grievances heard in arbitration. It only requires an option for final and binding arbitration to be included in the City and FOP's CBA unless the parties mutually agree otherwise. The Neutral Chair and Circuit Court, interpreting those provisions of the IPLRA, found that the parties' successor CBA must include a term providing officers protesting suspensions in excess of 365 days and separations with the option to have those grievances heard in arbitration instead of before the Board, but only if those officers' cases were brought after September 14, 2022 and have not proceeded to an evidentiary hearing. As explained above, the cases involving Officers Barona, Oppedisano-Caputo, and Bryant have each proceeded to an evidentiary hearing within the meaning of the Order. Accordingly, as found by the Neutral Chair and Circuit Court, *these* officers do not have a right to have their cases decided in arbitration.

See Superintendent's Response at ¶ 4 (arguing that the Court's Order, "[b]y its plain, specific, and unambiguous language," only applies to pending disciplinary hearings that have not proceeded to an evidentiary hearing, and therefore it "simply does not apply to" Respondents).

The Board Did Not Err in Denying Respondents' Earlier Stay Requests

The Motions also fail to explain how the Board erred in denying Respondents' earlier requests to stay their proceedings. Notably, there was no final disposition by the Dispute Resolution Board as to the right to arbitration until the Supplemental Final Award was issued on January 4, 2024 (and no ratification or confirmation of that right until the Order was issued on March 21, 2024). Indeed, when the Board issued its September 26, 2023 Memorandum and Order denying the FOP's Motion to Transfer Pending Cases to the Arbitration Call or in the Alternative to Stay All Police Board Cases, it did so not on the basis that there would *never* be a right for the officers to have their cases resolved through final, binding arbitration, but on the basis that "no such right *presently* exists for those officers under the operative CBA" as "the Supplemental Interim Award is not yet effective, and [] there is uncertainty as to whether and when it will take effect." *See* Sept. 26, 2023, Order at 7, 9 (emphasis added). That the Neutral Chair and Circuit Court have since awarded a right for officers (though not, as discussed above, *these* officers) to have their disciplinary grievances heard in arbitration does not change the fact that there was no such right at the time of the original request for stays and likewise no certainty at that time as to whether there would ever be such a right. In other words, that the uncertainty involving a then-future right to arbitration was ultimately resolved in favor of providing such a right does not render the Board's prior decision to deny a stay in light of the prior state of uncertainty in error. Indeed, the Board then – and now – must and will resolve issues before it according to the Municipal Code and with the purpose of treating both litigants and victims fairly

and with respect. The Board did not err in denying the stays, and there is no basis to retroactively grant them.

Denial of the Stay Requests is Properly Within the Board's Discretion

Finally, both the Board's original decision to deny the stays, and the Board's current decision as to whether to reconsider that decision, are matters properly within the Board's discretion. *See, e.g.*, *Enadeghe v. Dahms*, 2014 IL App (1st) 142193-U ("Ultimately, the decision whether to grant a stay is within the trial court's discretion."); *Control New MLSS, LLC v. Timpone*, 2023 IL App (1st) 221638-U, ¶ 15 ("[T]rial courts are afforded discretion in issuing stay orders."); *Kenny v. Kenny Indus., Inc.*, 406 Ill. App. 3d 56, 65 (2010) ("We review a trial court's decision to deny a request to stay the proceedings for an abuse of discretion. An abuse of discretion occurs only where 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.'" (cleaned up)); *see also Stringer v. Packaging Corp. of Am.*, 351 Ill. App. 3d 1135, 1140 (2004) ("The decision to grant or deny a motion to reconsider lies within the trial court's discretion."); *Landeros v. Equity Prop. & Dev.*, 321 Ill. App. 3d 57, 65 (2001) ("The decision to grant or deny a motion for reconsideration lies within the discretion of the circuit court."). Thus, even if the Board erred in originally deciding to deny the stays (which, as discussed above, it did not), such error would not be grounds to retroactively grant the stays absent an abuse of discretion.

* * *

For the foregoing reasons, the Board denies Respondents' Motions. There are no grounds to retroactively grant Respondents' stay requests or vacate Respondents' evidentiary hearings.

POLICE BOARD ORDER

IT IS HEREBY ORDERED that, for the reasons set forth above:

Respondent Barona's Motion in Response to the Memorandum Opinion and Order Entered In Case No. 2024 CH 00093 is **denied**;

Respondent Bryant's Motion in Response to the Memorandum Opinion and Order Entered In Case No. 2024 CH 00093 is **denied**; and

Respondent Oppedisano-Caputo's Motion in Response to the Memorandum Opinion and Order Entered In Case No. 2024 CH 00093 is **denied**.

This Memorandum and Order is adopted and entered by a majority of the members of the Police Board: Kyle Cooper, Paula Wolff, Steven Block, Nanette Doorley, Kathryn Liss, Andreas Safakas, and Justin Terry.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 18th DAY OF JULY 2024.

Attested by:

/s/ KYLE COOPER
President

/s/ MAX A. CAPRONI
Executive Director