

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER MAURICE ANDERSON,) **No. 14 PB 2856**
STAR No. 11348, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1020690)**
RESPONDENT.)

FINDINGS AND DECISION

On March 28, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Maurice Anderson, Star No. 11348 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be suspended from the Chicago Police Department for a period of forty-five (45) days for violating the following Rules of Conduct:

- Rule 1: Violation of any law or ordinance.
- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 8: Disrespect to or maltreatment of any person, on or off duty.
- Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 14: Making a false report, written or oral.

The Police Board caused a hearing on these charges against the Respondent to be had before Fredrick H. Bates, Hearing Officer of the Police Board, on July 28 and October 20, 2014.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing Officer Bates made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were personally served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. Throughout the hearing on the charges the Respondent appeared in person and was represented by legal counsel.

4. The Respondent filed a Motion to Strike and Dismiss requesting that the charges filed against him be stricken and the case dismissed for the following reasons: (a) the failure to bring timely charges violates the due process rights of the Respondent; (b) the charges should be barred by laches; (c) Section 6.1D of the Collective Bargaining Agreement between the City of Chicago and the Fraternal Order of Police Lodge 7 (“CBA”) was violated; (d) Section 8.4 of the CBA was violated; and (e) the investigation by the Independent Police Review Authority failed to follow General Order 93-03.

The Illinois Appellate Court has recently affirmed the Board’s decision denying a motion to dismiss that makes essentially the same arguments as (a), (b), and (e) above. In that case, the Appellate Court found the Board’s reasoning and result consistent with the law. *Chisem v. McCarthy*, 2014 IL App (1st) 132389 (December 23, 2014). Based on *Chisem* and for the reasons set forth below, the Respondent’s Motion to Strike and Dismiss is **denied**.

a. **Due Process**. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill. App. 3d 275 (2007), and *Lyon v. Department of Children and Family Services*, 209 Ill.2d 264 (2004), the Respondent claims that the Constitution precludes such a lengthy delay in the investigation of the Respondent's alleged misconduct. *Morgan* and *Lyon*, however, involved a delay in *adjudication* of allegations of misconduct after the respective plaintiffs had been suspended from their jobs—not delay in the *investigation* leading to the initial suspensions. *Morgan* involved a clinical psychologist accused of sexually abusing a patient, where the state took fifteen months to decide the case after the suspension. *Lyon* involved a teacher accused of abusing students where the director of DCFS failed to honor specific regulatory time limits for decision-making.

The Respondent's case before the Police Board is different from *Morgan* and *Lyon*, as the Respondent in his Motion is complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try him once the charges were filed. This difference is important because the due-process analysis in *Morgan* and *Lyon* is triggered by the state's decision to deprive the psychologist and teacher of their jobs, thus preventing them from working for prolonged periods of time before they were accorded the opportunity to have a hearing and decision to clear their names. Here, the Respondent was working and was being paid his full salary and benefits during the entire period from the time of the incident up to the filing of charges with the Police Board, and also while this case was pending before the Board. The Due Process clause precludes a state or local government from "depriving any person of life, liberty or property [i.e. a public job] without due process of law." Here, the Respondent has not been suspended without pay from his job. Therefore, the Respondent was *not* deprived of his job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of

the Respondent's due process rights.

We recognize that the Circuit Court of Cook County, in *Orsa v. City of Chicago Police Board*, 11 CH 08166 (March 1, 2012) found that the protections of the Due Process clause are triggered by an unreasonable delay in the investigation of a matter, even if the officer retains his job, salary and benefits during the investigation. The Court cited *Stull v. Department of Children and Family Services*, 239 Ill.App.3d 325 (1992). *Stull* involved a teacher accused of sexually abusing two of his students. The statute and regulations governing DCFS investigations of child abuse provided strict time limits on the length of any investigation and on the time within which a hearing must be conducted and a decision entered if the adult found to have abused children sought a hearing. The *Stull* court found that DCFS had grossly violated these time limits and required expungement of the adverse finding against the teacher, even though the administrative appeal found that he had been properly "indicated" as an abuser. The *Stull* court did find that the teacher's due process rights had been infringed, but it was not because of a delay in DCFS's investigation of the case. The court held that due process was violated by the more than one-year delay in adjudicating the teacher's appeal because during that period of time there was an indicated finding of child abuse lodged against the teacher and this finding prohibited him from working, *see* 239 Ill.App.3d at 335, thus triggering the kind of deprivation that is not present in the Respondent's case. *Cavaretta v. Department of Children and Family Services*, 277 Ill.App.3d 16 (1996), also cited by the Circuit Court, is identical to *Stull*, which it relies upon. The *Cavaretta* court was quite careful to find that due process was not implicated until DCFS (after its investigation was complete) "indicated" the teacher as a child abuser and placed the teacher's

name in the state's central registry, which directly deprived the teacher of the ability to work.¹

b. Laches. The Respondent argues that the doctrine of laches should apply here in supporting the dismissal of charges, for he argues that the delay in bringing the charges against him resulted in prejudice to him. He asserts that the “police reports in this case are so old that much of the report is illegible” and that “[m]any people involved in the arrest case in 2008 and members of CPD Personnel Department have long since forgotten about the arrest at issue.” Motion to Strike and Dismiss, pp. 3-4. He argues that the delay undermined his ability to locate counter evidence years after the fact to defend against the charges.

Laches is an equitable doctrine that is used to prevent a party in litigation from enforcing a right it otherwise has because it has not been diligent in asserting this right and the opposing party has been prejudiced by the delay. Private parties and public agencies are not on an equal footing when it comes to the application of the laches doctrine. Many cases, including *Van Milligan v Board of Fire and Police Commissioners of the Village of Glenview*, 158 Ill.2d 85 (1994), hold that laches can only be invoked against a municipality under “compelling” or “extraordinary” circumstances. In addition, the party that invokes the doctrine of laches has the burden of pleading and proving the delay and the prejudice. *Hannigan v. Hoffmeister*, 240 Ill. App. 3d 1065, 1074 (1992). Under Illinois law, the Respondent must demonstrate that the Superintendent's unreasonable delay caused material prejudice to the Respondent; the Respondent must submit evidence in support of his claims of prejudice (for example, testimony that witnesses could no longer recall what happened, or affidavits stating that records had been lost or destroyed during the intervening years). *Nature Conservancy v. Wilder*, 656 F.3d 646 (7th

¹The Circuit Court also cited *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), but only in general terms. There was no issue in *Loudermill* that a deprivation, for due process purposes, had occurred as it involved the discharge of school district employees.

Cir. 2011).

The Respondent's Motion does not delineate any actual prejudice. Mere general assertions as to how he might theoretically have been prejudiced are insufficient to trigger the doctrine of laches. Moreover, based upon the witnesses testimony at the hearing in this matter, no prejudice from this delay was apparent; there were very few instances in which any witness needed to have their recollection refreshed. This case involved one person's version of events against another person's version of events. Neither Police Officer Sharita Lewis-Anderson nor the Respondent had difficulty recalling their respective versions of the events of October 9, 2008.

For the reasons set forth above, the Respondent has not carried the burden of proving that he was prejudiced by a delay in the bringing of charges, nor has he demonstrated any "compelling" or "extraordinary" circumstances warranting a dismissal of this case due to laches.

c. Section 6.1D of the Collective Bargaining Agreement ("CBA"). Section 6.1D of the CBA states in relevant part:

Unless the Superintendent of Police specifically authorizes in writing, no complaint or allegation of any misconduct concerning any incident or event which occurred five (5) years prior to the date the complaint or allegation became known to the Department shall be made the subject of a Complaint Register investigation or be re-opened or re-investigated after five (5) years from the date the Compliant Register number was issued.

The Respondent states that he has not seen anything to indicate that the Superintendent gave written authorization. However, Section 6.1D does not apply to this case, for the complaint became known to the Department or about October 10, 2008, two days after the incident.

d. Section 8.4 of the Collective Bargaining Agreement ("CBA"). Section 8.4 of the CBA states in relevant part:

All disciplinary investigation files, disciplinary history card entries, Independent Police Review Authority and Internal Affairs Division disciplinary records, and any other disciplinary record or summary of such record other than records relating to Police Board

cases, will be destroyed five (5) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, except that not sustained files alleging criminal conduct or excessive force shall be retained for a period of seven (7) years after the date of the incident or the date upon which the violation is discovered, whichever is longer, and thereafter, cannot be used against the officer in any future proceedings in any other forum, except as specified below, unless the investigation relates to a matter which has been subject to either civil or criminal court litigation or arbitration prior to the expiration of the five- (5-) year period. In such instances, the Complaint Register case files normally will be destroyed immediately after the date of the final arbitration award or the final adjudication, unless a pattern of sustained infractions exists.

The Respondent argues that the investigation file and records pertaining to the incident in question should have been destroyed prior to the charges being filed against the Respondent, and therefore the use of this material to bring charges was unlawful and, consequently, the charges should be dismissed.

The Respondent's reading of Section 8.4 of the CBA is incorrect. Section 8.4 does not bring to a halt an open investigation of a disciplinary matter that ultimately becomes a Police Board case, nor does Section 8.4 regulate the amount of time allowed for the filing of charges with the Police Board. Rather, Section 8.4 governs the use in future proceedings of material and records of a disciplinary matter that has been concluded and closed.

In addition, applying Section 8.4 in the way the Respondent argues would regulate the amount of time allowed for the filing of any charge with the Police Board, including a charge based upon an allegation of the use of unreasonable force by a police officer. However, applying Section 8.4 in this way is prohibited by the state statute that establishes a five-year Statute of Limitations, for this statute contains a home rule preemption (65 ILCS 5/10-1-18.2):

No municipality, including a municipality that is a home rule unit, may regulate the period of time or establish or enforce a statute of limitations relating to charges brought against a police officer before a Police Board, Civil Service Commission, or other board or officer empowered by law or ordinance to investigate police misconduct if the charge is based upon an allegation of the use of unreasonable force by a police officer. The statute of limitations established in Sections 10-1-18 and 10-1-18.1 for those charges are an exclusive exercise of

powers and functions by the State under paragraph (h) of Section 6 of Article VII of the Illinois Constitution.

e. **General Order 93-03**. The Respondent argues that the investigation by the Police Department failed to follow Chicago Police Department General Order 93-03, which requires a prompt and thorough investigation.

General Order 93-03 does not set an absolute deadline within which investigations must be completed, but provides that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation. Here, the investigator regularly requested, and was granted, extensions of time, although, as the Superintendent concedes, extensions were not requested for each and every thirty-day period.

Once the investigator completes the process of gathering evidence, the matter is reviewed at several levels to ensure that a thorough investigation was conducted, as required by the General Order.

It appears that there was a minor violation of the General Order in this case. Even if, however, the General Order was violated, there is no provision in the General Order requiring the extraordinary remedy of dismissal of the case as a sanction for such a violation. The Board declines to extend the reach of the General Order in this manner.

5. The Respondent, Police Officer Maurice Anderson, Star No. 11348, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 9, 2008, at approximately 2015 hours, at or near xxxx South Cregier

Avenue, in Chicago, Illinois, Officer Anderson, while off duty, knowingly, without legal justification, caused bodily harm to Police Officer Sharita Lewis-Anderson, his wife, and/or made physical contact of an insulting or provoking nature with her, to wit: he pushed her, and/or caused her to fall to the floor, and/or punched her in the stomach and/or about the head and/or the face, and/or struck her in the face and/or head, and/or grabbed her neck, and/or choked her, in violation of 720 ILCS 5/12-3.2(a).

Police Officer Sharita Lewis-Anderson testified that on October 9, 2008, while celebrating one of her three son's birthdays at their home located at xxxx South Cregier Avenue in Chicago, Police Officer Maurice Anderson was in the basement talking on his cellular phone in the dark. She confronted him and told him to get his things and leave her home. She testified that he proceeded to get up and walk past her, and in the process of doing so caused her to fall to the ground. She further testified that a loud argument ensued in which she began screaming because he hit her in her stomach, and that he then proceeded to strike her about the face and neck, and choked her. No one else in the home witnessed this event, although one of Police Officer Sharita Lewis-Anderson's three sons called 911 from upstairs in the home, and said: "my stepdad is hitting my mom." (Superintendent Group Exhibit 5B.) She then ran upstairs in their home, and locked herself in a bedroom with her three sons and their sitter. Ultimately, Police Officer Maurice Anderson left the home.

Thereafter, a Chicago Police Department evidence technician came to her home and photographed her face and neck. Those pictures clearly depict an abrasion on her neck, and bruising and swelling on her face, all injuries that are consistent with Police Officer Sharita Lewis-Anderson's testimony regarding this altercation.

Police Officer Maurice Anderson admits that there was a heated argument in the basement that evening in which they were yelling at one another, using profanity and calling each other names, but he denied that there was ever any physical altercation between them, and

specifically denied hitting her or pushing her to the floor.

Although Police Officer Maurice Anderson denied that he hit his wife, Police Officer Sharita Lewis-Anderson, the Board finds that denial to be not credible, and specifically finds Police Officer Sharita Lewis-Anderson's version of the events to be credible. Although there were no eyewitnesses to this altercation, the photographic evidence and the 911 call buttress Sharita Lewis-Anderson's testimony. Accordingly, the Superintendent established by a preponderance of the evidence that Police Officer Maurice Anderson committed the criminal offense of domestic battery² against his wife, Police Officer Sharita Lewis-Anderson, in violation of 720 ILCS 5/12-3.2(a), and he therefore violated Rule 1 as charged.

6. The Respondent, Police Officer Maurice Anderson, Star No. 11348, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about October 9, 2008, at approximately 2015 hours, at or near xxxx South Cregier Avenue, in Chicago, Illinois, Officer Anderson, while off duty, pushed his wife, Police Officer Sharita Lewis-Anderson, and/or caused her to fall to the floor, and/or punched her in the stomach and/or about the head and/or the face, and/or struck her in the face and/or head, and/or grabbed her neck, and/or choked her, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

² (720 ILCS 5/12-3.2) (from Ch. 38, par. 12-3.2)
Sec. 12-3.2. Domestic battery.

- (a) A person commits domestic battery if he or she knowingly without legal justification by any means:
- (1) Causes bodily harm to any family or household member;
 - (2) Makes physical contact of an insulting or provoking nature with any family or household member.

7. The Respondent, Police Officer Maurice Anderson, Star No. 11348, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about May 7, 2009, and/or April 14, 2010, and/or April 26, 2010, during an interview(s) with the Independent Police Review Authority, Officer Anderson made one or more false statements, to wit: he denied that on October 9, 2008, he pushed his wife to the floor and/or punched her in the stomach and/or grabbed her by the neck and/or choked her and/or had any type of physical contact with her, or made statements to that effect, when in fact he had done one or more of the above, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference. Police Officer Maurice Anderson acknowledged that he gave statements to the Independent Police Review Authority on three separate occasions – May 7, 2009, April 14, 2010, and April 26, 2010 – in which he denied that he had any physical altercation with Police Officer Sharita Lewis-Anderson. As stated above, the Board finds Officer Maurice Anderson's denial to be not credible, and his denial is belied by the photographic evidence in this case. Accordingly, the Superintendent established by a preponderance of the evidence that Police Officer Maurice Anderson impeded the Department's efforts to achieve its policies and goals by repeatedly lying during the investigation in this case. Therefore, Police Officer Maurice Anderson violated Rule 2 as charged.

8. The Respondent, Police Officer Maurice Anderson, Star No. 11348, charged herein, is **guilty** of violating, to wit:

Rule 8: Disrespect to or maltreatment of any person, on or off duty,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 9, 2008, at approximately 2015 hours, at or near xxxx South Cregier Avenue, in Chicago, Illinois, Officer Anderson, while off duty, pushed his wife, Police Officer Sharita Lewis-Anderson, and/or caused her to fall to the floor, and/or punched her in the stomach and/or about the head and/or the face, and/or struck her in the face and/or head, and/or grabbed her neck, and/or choked her, thereby engaging in disrespect to or maltreatment of any person, while on or off duty.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

9. The Respondent, Police Officer Maurice Anderson, Star No. 11348, charged herein, is **guilty** of violating, to wit:

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about October 9, 2008, at approximately 2015 hours, at or near xxxx South Cregier Avenue, in Chicago, Illinois, Officer Anderson, while off duty, pushed his wife, Police Officer Sharita Lewis-Anderson, and/or caused her to fall to the floor, and/or punched her in the stomach and/or about the head and/or the face, and/or struck her in the face and/or head, and/or grabbed her neck, and/or choked her, thereby engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

10. The Respondent, Police Officer Maurice Anderson, Star No. 11348, charged herein, is **guilty** of violating, to wit:

Rule 14: Making a false report, written or oral,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about May 7, 2009, and/or April 14, 2010, and/or April 26, 2010, during an interview(s) with the Independent Police Review Authority, Officer Anderson made one or more false statements, to wit: he denied that on October 9, 2008, he pushed his wife to the floor and/or punched her in the stomach and/or grabbed her by the neck and/or choked her and/or had any type of physical contact with her, or made statements to that effect, when in fact he had done one or more of the above, thereby making a false report, written or oral.

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

11. The Police Board has considered the facts and circumstances of the Respondent's conduct, and the evidence presented in defense and mitigation.

The Respondent clearly mistreated his then-wife, Police Officer Sharita Lewis-Anderson, without justification, and made false statements to the Independent Police Review Authority when he denied doing so. Such misconduct warrants a significant penalty. Nonetheless, the Board finds that suspending the Respondent for forty-five days, as recommended by the Independent Police Review Authority and the Superintendent, is not warranted. The Respondent has more than 17 years on the job, during which time he has earned numerous awards (including a Life Saving Award, four Department Commendations, and 85 Honorable Mentions); his disciplinary history includes no prior sustained complaints, and one reprimand for a court appearance violation.

Based on the Respondent's record and years of service to the Department, the Board finds that a suspension of thirty days is a justified penalty on the facts of this particular case.

POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

By a vote of 8 in favor (Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Michael Eaddy, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board **denies** the Respondent's Motion to Strike and Dismiss; and

By votes of 8 in favor (Carney, Foreman, Ballate, Conlon, Eaddy, Fry, Rodriguez, and Sweeney) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 1, Rule 2, Rule 8, Rule 9, and Rule 14.

As a result of the foregoing, the Board, by a vote of 6 in favor (Carney, Foreman, Ballate, Eaddy, Fry, and Sweeney) to 2 opposed (Conlon and Rodriguez), hereby determines that cause exists for suspending the Respondent from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of thirty (30) days.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Maurice Anderson, Star No. 11348, as a result of having been found **guilty** of charges in Police Board Case No. 14 PB 2856, be and hereby is **suspended** from his position as a police officer with the Department of Police, and from the services of the City of Chicago, for a period of thirty (30) days.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, Michael Eaddy, Rita A. Fry, and Rhoda D. Sweeney.

Police Board Case No. 14 PB 2856
Police Officer Maurice Anderson

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY
OF FEBRUARY, 2015.

Attested by:

/s/ DEMETRIUS E. CARNEY
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

We hereby dissent from the Decision of the majority of the Board. Based on the serious nature of the Respondent's misconduct, we vote to impose a penalty greater than the 45-day suspension recommended by the Independent Police Review Authority and the Superintendent.

/s/ WILLIAM F. CONLON

/s/ ELISA RODRIGUEZ

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2015.

GARRY F. McCARTHY
Superintendent of Police