BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTERS OF CHARGES FILED AGAINST	**)**	
	)	
POLICE OFFICER THERON JONES,	**)**	**No. 14 PB 2870**
STAR No. 13248, DEPARTMENT OF POLICE,	**)**	
CITY OF CHICAGO,	**)**	
	)	
AND	**)**	
	)	
POLICE OFFICER MARIA FREGOSO-HEIN,	**)**	**No. 14 PB 2871**
STAR No. 19498, DEPARTMENT OF POLICE,	**)**	
CITY OF CHICAGO,	**)**	
	)	**(CR No. 1025073)**
RESPONDENTS.	**)**	

FINDINGS AND DECISIONS

On August 21, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Theron Jones, Star No. 13248, and Police Officer Maria Fregoso-Hein, Star No. 19498, (hereinafter sometimes referred to as "Respondents"), recommending that each Respondent be discharged from the Chicago Police Department 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 6: Disobedience of an order or directive, whether written or oral.

Rule 8: Disrespect to or maltreatment of any person, while on or off duty. (Only Respondent Jones is charged with violating this Rule.)

Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty. (Only Respondent Jones is charged with violating this Rule.)

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

The specific charges brought by the Superintendent are as follows:

Jones Rule 1 Charge (Count I): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham[1] Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones knowingly and without legal authority detained Jeremy Augustus, in violation of 720 ILCS 5/10-3 ("unlawful restraint"), thereby violating a law or ordinance.

Jones Rule 1 Charge (Count II): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones detained and/or falsely arrested Jeremy Augustus, in violation of the Fourth Amendment of the Constitution of the United States of America, thereby violating a law or ordinance.

Jones Rule 2 Charge (Count I): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones pushed and/or conducted a takedown on Jeremy Augustus without justification, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Jones Rule 2 Charge (Count II): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones knowingly and without legal authority detained Jeremy Augustus, and/or falsely arrested Jeremy Augustus, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Jones Rule 2 Charge (Count III): On or about March 26, 2009, Officer Jones falsified an arrest report by falsely stating that an employee of the Burnham Quick Food Mart informed him that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in presents [*sic*] of other customers," or used words to that effect, and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Jones Rule 2 Charge (Count IV): On or about February 24, 2011, at approximately 12:30 PM, during a statement with the Independent Police Review Authority, Officer Jones made one or more of the following false statements: that he initially stopped Jeremy Augustus because he had double parked his car, or used words to that effect; and/or that Jeremy Augustus was bouncing off the walls and/or hitting his head against the wall, or used words to that effect; and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect; and/or that he did not falsify the arrest report of Jeremy Augustus, or used words to that effect; thereby impeding the Department's efforts to achieve its policy and goals, and/or

[1] The name of the store is misspelled "Burham" in the charges.

bringing discredit upon the Department.

Jones Rule 2 Charge (Count V): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones pushed and/or conducted a takedown on Jeremy Augustus and failed to complete a Tactical Response Report, in violation of General Order G03-02-05 ("Incidents Requiring the Completion of a Tactical Response Report," formerly General Order 02-08-05), thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Jones Rule 6 Charge: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones pushed and/or conducted a takedown on Jeremy Augustus and failed to complete a Tactical Response Report, in violation of General Order G03-02-05 ("Incidents Requiring the Completion of a Tactical Response Report," formerly General Order 02-08-05), thereby disobeying an order or directive, whether written or oral.

Jones Rule 8 Charge: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones pushed and/or conducted a takedown on Jeremy Augustus without justification and/or knowingly and without legal authority detained and/or falsely arrested Jeremy Augustus, thereby disrespecting or maltreating any person, while on or off duty.

Jones Rule 9 Charge: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones pushed and/or conducted a takedown on Jeremy Augustus without justification, thereby engaging in an unjustified verbal or physical altercation with any person, while on or off duty.

Jones Rule 14 Charge (Count I): On or about March 26, 2009, Officer Jones falsified an arrest report by falsely stating that an employee of the Burnham Quick Food Mart informed him that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in presents [*sic*] of other customers," or used words to that effect, and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby making a false report, written or oral.

Jones Rule 14 Charge (Count II): On or about February 24, 2011, at approximately 12:30 PM, during a statement with the Independent Police Review Authority, Officer Jones made one or more of the following false statements: that he initially stopped Jeremy Augustus because he had double parked his car, or used words to that effect; and/or that Jeremy Augustus was bouncing off the walls and/or hitting his head against the wall, or used words to that effect; and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect; and/or that he did not falsify the arrest report of Jeremy Augustus, or used words to that effect; thereby making a false report, written or oral.

Fregoso-Hein Rule 1 Charge (Count I): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein knowingly and without legal authority detained Jeremy Augustus, in violation of 720 ILCS 5/10-3 ("unlawful restraint"), thereby violating a law or ordinance.

Fregoso-Hein Rule 1 Charge (Count II): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein detained and/or falsely arrested Jeremy Augustus, in violation of the Fourth Amendment of the Constitution of the United States of America, thereby violating a law or ordinance.

Fregoso-Hein Rule 2 Charge (Count I): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein knowingly and without legal authority detained Jeremy Augustus, and/or falsely arrested Jeremy Augustus, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Fregoso-Hein Rule 2 Charge (Count II): On or about March 26, 2009, Officer Fregoso-Hein falsified an original case incident report by falsely stating that an employee of the Burnham Quick Food Mart informed her that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in present [*sic*] of other customers," or used words to that effect, and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Fregoso-Hein Rule 2 Charge (Count III): On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein observed and/or was aware that Officer Theron Jones shoved and/or conducted a takedown on Jeremy Augustus without justification, and/or that Officer Jones failed to complete a Tactical Response Report, and Officer Fregoso-Hein failed to immediately notify a supervising member and/or prepare a written report to the commanding officer, in violation of General Order 93-03-02B, Section II-B-1 ("Specific Responsibilities Regarding Allegations of Misconduct"), thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

Fregoso-Hein Rule 6 Charge: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein observed and/or was aware that Officer Theron Jones shoved and/or conducted a takedown on Jeremy Augustus without justification, and/or that Officer Jones failed to complete a Tactical Response Report, and Officer Fregoso-Hein failed to immediately notify a supervising member and/or prepare a written report to the

commanding officer, in violation of General Order 93-03-02B, Section II-B-1 ("Specific Responsibilities Regarding Allegations of Misconduct"), thereby disobeying an order or directive, whether written or oral.

Fregoso-Hein Rule 14 Charge: On or about March 26, 2009, Officer Fregoso-Hein falsified an original case incident report by falsely stating that an employee of the Burnham Quick Food Mart informed her that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in present [*sic*] of other customers," or used words to that effect, and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby making a false report, written or oral.

The Police Board caused a hearing on these charges against the Respondents to be had before Jacqueline A. Walker, Hearing Officer of the Police Board, on January 6, January 8, and January 20, 2015.

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 Walker 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. Each 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 each Respondent more than five (5) days prior to the hearing on the charges.

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

Motions to Dismiss

4. The Respondents filed motions to dismiss the charges for the following reasons: (a) the charges are time-barred by the statute of limitations set forth in the Illinois Municipal Code (65 ILCS 5/10-1-18.1); (b) the failure to bring timely charges violates the due process rights of the Respondents; (c) the charges should be barred by laches; and (d) the investigation by the Independent Police Review Authority (IPRA) violated a Chicago Police Department General Order and the Municipal Code of Chicago. For the reasons set forth below, the Respondents' motions are **granted in part and denied in part**.

(a) Statute of Limitations

There is no dispute that the charges against the Respondents were filed more than five years after the incident that led to the charges—the incident occurred on March 26, 2009, and the Superintendent filed the charges on August 21, 2014. The first question is whether the charges are time-barred by the statute of limitations set forth in the Illinois Municipal Code (65 ILCS 5/10-1-18.1) ("Statute of Limitations"), which states in relevant part:

> Upon the filing of charges for which removal or discharge, or suspension of more than 30 days is recommended a hearing before the Police Board shall be held. If the charge is based upon an allegation of the use of unreasonable force by a police officer, the charge must be brought within 5 years after the commission of the act upon which the charge is based. The statute of limitations established in this Section 10-1-18.1 shall apply only to acts of unreasonable force occurring on or after the effective date of this amendatory Act of 1992.

Applicability of the Statute of Limitations. For the reasons stated in the Board's

Memorandum Opinion and Order issued in Police Board Case No. 11 PB 2776, Bruce Askew (affirmed by the Circuit Court of Cook County, Case No. 12 CH 23464), the Board unanimously determines that the Statute of Limitations applies to the City of Chicago.

The Superintendent does not challenge the applicability of the Statute of Limitations to the City of Chicago. However, the Superintendent does argue that the Statute of Limitations does not apply in these cases because the five-year time limit should only apply to when a civilian victim brings an allegation to the Independent Police Review Authority ("IPRA"), and not to when the Superintendent files charges with the Police Board. This argument is unpersuasive for several reasons.

First, the Illinois Municipal Code refers to the five-year period as a "statute of limitations." A statute of limitations is defined by the Illinois Supreme Court as "the time within which lawsuits may be commenced after a cause of action has accrued." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 61 (2006). In other words, according to the Illinois Supreme Court, a statute of limitations applies to the time in which legal proceedings ("lawsuits") must be initiated. As applied to the Police Board, legal proceedings are initiated by the filing of written charges. Police Board Rules of Procedure, Section I(A). Thus, applying the Illinois Supreme Court's definition of "statute of limitations" (and for that matter the universally recognized definition of the term), the five-year limitations period in the statute applies to the time within which written charges must be filed before the Board, not the time in which a citizen has to make a complaint.

Second, the Superintendent's argument would turn the Statute of Limitations on its head, by removing *any* limitation on the time within which the Superintendent must file written charges after an incident occurred. If the five-year limitation applies only to the citizen's complaint, then there is *no* limitation on the period of time the Superintendent can file charges,

and *no* limitation on the period of time IPRA or the Department has to investigate complaints. As a result, if the purpose of the Statute of Limitations is to ensure that proceedings are initiated on a timely basis, the whole purpose of the Statute of Limitations would be frustrated under the Superintendent's reading.

Third, the Superintendent is making the novel argument that the same word, "charge," means two different things within the same statutory provision, simply because the provision refers to a "filing" of charges in the first sentence and a charge being "brought" in the second. Nevertheless, there is no question that the General Assembly was using the word "charges" in the first sentence to refer to the filing of written charges before the Police Board. And there is no reason to believe that by changing the verb from "filing" to "brought" in the second sentence that the General Assembly meant to apply the limitations period to anything other than the filing of written charges, particularly because the phrases "filing" a lawsuit and "bringing" a lawsuit are interchangeable, and have the same meaning in common parlance. As a result, there is no "meaningful variation" between the words used in the statute, and in the absence of any meaningful variation, it is presumed that the General Assembly used the word "charge" consistently in the statute. In addition, the words "charge" or "charges" are used numerous times elsewhere in the statute and, with but one exception (in which the word "charge" refers to the cost of a transcript), each time the words are used in reference to the filing of written charges.

Fourth, that common-sense conclusion is confirmed by the Police Board's Rules of Procedure, which consistently refer to the "charges" as the written document which is filed with, and initiates proceedings before, the Police Board. See, Rules of Procedure Sections I(A), I(B), I(C), I(D), I(E), II(A), II(B), II(C), III(D), and III(J). That conclusion is also confirmed by the Police Board ordinance, which consistently uses the word "charges" in the context of the written

charges filed with the Board. (Section 2-84-030 of the Municipal Code of Chicago.) The Board's Rules of Procedure and the ordinance were in effect prior to enactment of the Statute of Limitations.

Fifth, under general principles of statutory construction, one only refers to legislative history if there is an ambiguity in the statutory provision at issue. Since there is no ambiguity in the statute, there is no reason to look to the legislative history.

Sixth, even if one concludes that there is an ambiguity, the legislative history is hardly as clear as the Superintendent suggests. The Superintendent relies heavily on answers the bill's sponsor gave to certain questions on the Senate floor, but the questions and answers are far from clear, and it appears that the bill sponsor's answers were based not on his own understanding of the bill but on that of an unidentified attorney. Nevertheless, the answers which appear to have been given by the bill sponsor's do not square with the Governor's understanding of the bill, as set forth in his amendatory veto, or the plain language of the statute. Nor does the Senate legislative history explicitly support the Superintendent's theory that the General Assembly intended the word "charge" to have a different meaning depending on whether the charges were "filed" or "brought."

When read in its entirety, Governor Edgar's September 3, 1992, amendatory veto letter would appear to put to rest the Superintendent's claim that the limitation period was meant to apply to a citizen's complaint. Referring to the statutory provision the Governor wished to amend by extending the period from three to five years, the Governor stated that: "Senate Bill 1789 would amend the Illinois Municipal Code to establish a three-year statute of limitations *for bringing disciplinary charges before police merit boards* against officers accused of using unreasonable force." (Emphasis added.) In addition, the Governor noted that the legislature's

concern in passing the limitation was that it is "neither fair nor reasonable for police officers to be subject to brutality charges for an unlimited time after an incident occurs," a concern that would be circumvented by the Superintendent's interpretation of the statute.

The Governor used his amendatory veto to propose a five-year limitation "in line with that established for Illinois police officers under federal civil rights law that provides for civil complaints against police officers.…The better approach is to incorporate the limitations period already in place for civil rights actions against police officers…." It seems clear from this language that the Governor believed that the five-year limitations period would operate, like its civil rights counterpart, as a five-year period in which an action, or written charge, must be filed before a police merit board.

It appears from his letter that the Governor wished to extend the time from three to five years to give additional time to citizens to complain about incidents of unreasonable force. Thus, the Governor appears to have extended the limitation period from three to five years to allow for sufficient time for the citizen to make his or her complaint *and* for the Department to bring charges, contrary to the Superintendent's theory, which is that the limitations period only applies to the citizen's complaint. (The Governor's concern that it might take more time for citizens to complain about complaints of unreasonable force was not an issue in this case, where the citizen complained two days after the incident occurred.)

In conclusion, the only basis for the Superintendent's unpersuasive argument is the answers given by the bill's sponsor on the Senate floor, although neither the answers nor the questions are altogether clear. On the other hand, the well-recognized statute of limitations definition, the statute of limitations language in the statute, and the legislative history in the form of the Governor's amendatory veto, all consistently apply the statute's limitations period to the

time in which the Superintendent has to file written charges before the Board. That conclusion is further supported by the Police Board's Rules of Procedure and the Police Board ordinance, which refer to "charges" as the filing of written charges before the Board, not the citizen's complaint. In these cases, the written charges against Respondents Jones and Fregoso-Hein were filed more than five years from the date of the incident, and the statute of limitations therefore applies.

Applying the Statute of Limitations to the Charges Against the Respondents. The next question is whether the Statute of Limitations applies to *all* of the charges filed by the Superintendent, as the Respondents argue. It does not. As the Police Board has recognized in past cases, and as the Circuit Court of Cook County has stated, the Illinois Municipal Code "explicitly limits the five-year statute of limitations to charges involving allegations of unreasonable force by a police officer and does not expand it to any and all charges arising from the same incident." (*Vigueras v. McCarthy*, 12 CH 39387, 2013, at 22.) Adopting the Respondents' interpretation of the statute of limitations that all of the charges are barred "would be to read into the statute a condition that does not exist." (*Vigueras*, at 23)

The next step is to apply the statute of limitations to each specific charge filed against the Respondents. The Board has done so, and finds that the charges that Officer Jones violated Rule 2 (Counts I and V only), Rule 6, Rule 8, and Rule 9, and the charges that Officer Fregoso-Hein violated Rule 2 (Count III only) and Rule 6 are based upon an allegation of the use of unreasonable force by a police officer, and shall therefore be dismissed as time-barred ("Dismissed Charges"). The Board finds that the remaining charges against the Respondents do not fall within the ambit of the Statute of Limitations, and therefore shall not be dismissed on these grounds.

Dismissed Charges. The Board finds that the charges that Officer Jones pushed and/or conducted a takedown on Jeremy Augustus without justification are based upon an allegation of the use of unreasonable force by a police officer. Pushing or conducting a takedown is clearly a use of force, which in this case Augustus alleged was unreasonable. The Superintendent concedes that the charges that Jones took Augustus to the ground are based on unreasonable force.

In addition, the charges that Officer Jones "pushed and/or conducted a takedown on Jeremy Augustus and failed to complete a Tactical Response Report," and that Officer Fregoso-Hein failed to report Jones's alleged unjustified takedown and failure to complete a TRR, are also, by the plain language of the charges, based upon an allegation of the use of unreasonable force. As a result, these charges fall within the ambit of the Statute of Limitations and therefore are time-barred.

Remaining Charges. The Board finds that the remaining charges against the Respondent are not based upon an allegation of the use of unreasonable force by a police officer. The charges that Officers Jones and Fregoso-Hein unlawfully detained and falsely arrested Augustus[2] and made false reports[3] are separate and apart from Augustus's allegation of the use of unreasonable force, and the Statute of Limitations therefore does not apply to these charges.

(b) Due Process, (c) Laches, and (d) the General Order and the Municipal Code

The Illinois Appellate Court has recently affirmed the Board's decision denying a motion to dismiss that makes essentially the same arguments as the Respondents make here with regard

[2] The charges that Officer Jones violated Rule 1 and Rule 2 (Count II), and that Officer Fregoso-Hein violated Rule 1 and Rule 2 (Count I).
[3] The charges that Officer Jones violated Rule 2 (Counts III and IV) and Rule 14, and that Officer Fregoso-Hein violated Rule 2 (Count II) and Rule 14.

to due process, laches, and the General Order and the Municipal Code. 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). *Chisem* requires denial of the present motions on these grounds as well.

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 Respondents claim that the Constitution precludes such a lengthy delay in the investigation of the Respondents' 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 Respondents' cases before the Police Board are different from *Morgan* and *Lyon*, as the Respondents in their motions are complaining about the delay from the time of the incident to the bringing of charges, not the time it took to try them once the charges were filed and they were suspended without pay. 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 Respondents were working and were being paid a full salary and benefits during the entire period from the time of the incident up to the filing of charges with the Police 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 Respondents were not suspended without pay from their jobs until *after* the charges against them were filed. Therefore, the Respondents were *not* deprived of a job prior to the filing of charges, and any delay in bringing the charges is therefore *not* a violation of the Respondents' due process rights.

The Board recognizes 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 Respondents' cases. *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.[4]

Laches. The Respondents argue that the doctrine of laches should apply here in supporting the dismissal of charges, for they argue that the delay in bringing the charges against them resulted in prejudice to them.

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 her 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 Cir. 2011).

[4] The 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.

The Respondents in their motions do not assert any specific prejudice. Mere general assertions as to how they might theoretically have been prejudiced are insufficient to dismiss charges on the basis of laches. Moreover, there is in evidence a video-recording that memorialized the incident in question. Finally, based upon the witnesses' testimony at the hearing in this matter, no prejudice to the Respondents from the delay is apparent; on the contrary, the inability of certain witnesses to recall the incident worked to the detriment of the Superintendent.

Therefore, the Respondents have not carried their burden of proving that they were prejudiced by a delay in the bringing of charges, nor have they demonstrated any "compelling" or "extraordinary" circumstances warranting a dismissal of their cases due to laches.

General Order G08-01 and the Municipal Code. The Respondents argue that the investigation by IPRA failed to follow Chicago Police Department General Order G08-01 and provisions of the Municipal Code of Chicago (Sections 2-84-430 and 2-57-160), which require a prompt and thorough investigation.

General Order G08-01 and the Municipal Code do not set an absolute deadline within which investigations must be completed, but provide that if they last more than 30 days, the investigator must seek and obtain an extension of time within which to complete the investigation.

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.

There is no evidence of any substantial violation of the General Order or the above sections of the Municipal Code here. Even if, however, they were violated, there is no provision

in them 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 and the Code in this manner.

Officer Fregoso-Hein further argues that IPRA did not comply with Section 2-57-070 of the Municipal Code. This section provides that if the Chief Administrator of the Independent Police Review Authority (IPRA) does not conclude an investigation within six months after its initiation, the Chief Administrator shall notify the Mayor, the City Council, the complainant, and the accused officer.

In letters dated September 29, 2009, IPRA provided notification to Officer Jones and the complainant. There is no evidence in the record as to whether IPRA made the required notifications to Officer Fregoso-Hein, the Mayor, and the City Council. Even if, however, the required notifications were untimely or not made and this provision of the Code was violated, neither Section 2-57-070 nor anything else in the Code states that dismissal of a Police Board case is the sanction for failing to make timely reports to the Mayor, the City Council, the accused officer, and the complainant. It is unpersuasive that such an extreme sanction would automatically follow, particularly where the alleged misconduct under investigation is as serious as it is here. There is no basis for the Board to dismiss the charges pursuant to Section 2-57-070, and the Board declines to extend the reach of the Code in this manner.

Remaining Charges Against the Respondents

5. The Respondent, Police Officer Theron Jones, Star No. 13248, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

> Count I: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones knowingly and without legal authority detained Jeremy Augustus, in violation of 720 ILCS 5/10-3 ("unlawful restraint"), thereby violating a law or ordinance.

See the findings set forth in paragraph no. 6 below, which are incorporated here by reference.

6. The Respondent, Police Officer Theron Jones, Star No. 13248, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

> Count II: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones detained and/or falsely arrested Jeremy Augustus, in violation of the Fourth Amendment of the Constitution of the United States of America, thereby violating a law or ordinance.

Convincing evidence was obtained from Officer Jones that he lawfully stopped Jeremy Augustus, and detained and arrested Augustus for good cause. Officer Jones's testimony further supported that he stopped Augustus because he smelled the odor of marijuana on Augustus, along with Officer Jones's observance of Augustus' parking illegally in the alley adjacent to the Burnham Quick Food Mart. Officer Jones testified that Augustus did not produce a driver's license at the scene of the incident, and that he and his partner arrested Augustus and brought him to the police station as a traffic violator.

Augustus admitted to parking illegally. Augustus further testified that he does not remember what Officer Jones said as to why he was being detained or placed in handcuffs.

7. The Respondent, Police Officer Theron Jones, Star No. 13248, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

> Count II: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Jones knowingly and without legal authority detained Jeremy Augustus, and/or falsely arrested Jeremy Augustus, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

8. The Respondent, Police Officer Theron Jones, Star No. 13248, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

> Count III: On or about March 26, 2009, Officer Jones falsified an arrest report by falsely stating that an employee of the Burnham Quick Food Mart informed him that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in presents [*sic*] of other customers," or used words to that effect, and/or that

> Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

The Superintendent failed to present competent testimony from any witnesses that the report of Officer Jones that an employee of the Burnham Quick Food Mart informed Officer Jones that Augustus was given notice and asked not to return to the store was false. Furthermore, the Superintendent also failed to present any convincing testimony that any further portion of Officer Jones's arrest report was false.

The narrative section of the arrest report states in relevant part:

> This is an arrest by Beat 1563E on signed complaints. In summary, A/O was informed by victim (Sutherland, Henry) employee of Burnham Quick Food Mart that the above subject was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in presents [*sic*] of other customers. A/O observed a posted sign clear and unobstructed no loitering and no trespassing. Subject placed into custody, read rights and transported to 015 Dist for processing.

Officer Jones testified that he returned to the store after bringing Augustus to the station. Jones testified it was at that point that he received the above information and that Henry Sutherland signed a complaint against Augustus.

Sutherland confirmed that he signed the complaint against Augustus. Neither Sutherland nor Danny Patel, the store manager, provided any testimony that the information in the narrative or the charge of trespassing was false.

9. The Respondent, Police Officer Theron Jones, Star No. 13248, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

> Count IV: On or about February 24, 2011, at approximately 12:30 PM, during a statement with the Independent Police Review Authority, Officer Jones made one or more of the following false statements: that he initially stopped Jeremy Augustus because he had double parked his car, or used words to that effect; and/or that Jeremy Augustus was bouncing off the walls and/or hitting his head against the wall, or used words to that effect; and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect; and/or that he did not falsify the arrest report of Jeremy Augustus, or used words to that effect; thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department

The Superintendent failed to present credible and convincing testimony and/or evidence that Officer Jones made a false statement to the Independent Police Review Authority relating to the stop of Jeremy Augustus.

There is no evidence in the record that Officer Jones made the above statements to IPRA. There was no testimony from Officer Jones or any other witness that Officer Jones made these statements, and neither a written nor audio record of his IPRA statement was offered or received into evidence.

As noted in paragraph no. 6 above, Officer Jones testified that he initially stopped Augustus in part for illegal parking. Augustus admitted to parking illegally, and testified that he does not remember what Officer Jones said as to why he was being detained.

Officer Jones also testified that Augustus was trying to hit his own head against the wall, and Augustus admitted he attempted to hit his own head against the wall.

Further, as noted in paragraph no. 8 above, the Superintendent failed to present convincing testimony and/or evidence that the arrest report, including the charge of trespassing, completed by Officer Jones regarding Jeremy Augustus was false.

10. The Respondent, Police Officer Theron Jones, Star No. 13248, charged herein, is **not guilty** of violating, to wit:

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

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

> Count I: On or about March 26, 2009, Officer Jones falsified an arrest report by falsely stating that an employee of the Burnham Quick Food Mart informed him that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in presents [*sic*] of other customers," or used words to that effect, and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby making a false report, written or oral.

See the findings set forth in paragraph no. 8 above, which are incorporated here by reference.

11. The Respondent, Police Officer Theron Jones, Star No. 13248, charged herein, is **not guilty** of violating, to wit:

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

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

> Count II: On or about February 24, 2011, at approximately 12:30 PM, during a statement with the Independent Police Review Authority, Officer Jones made one or more of the following false statements: that he initially stopped Jeremy Augustus because he had double parked his car, or used words to that effect; and/or that Jeremy Augustus was bouncing off the walls and/or hitting his head against the wall, or used words to that effect; and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect; and/or that he did not falsify the arrest report of Jeremy Augustus, or used words to that effect; thereby making a false report, written or oral.

See the findings set forth in paragraph no. 9 above, which are incorporated here by

reference.

12. The Respondent, Police Officer Maria Fregoso-Hein, Star No. 19498, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

> Count I: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein knowingly and without legal authority detained Jeremy Augustus, in violation of 720 ILCS 5/10-3 ("unlawful restraint"), thereby violating a law or ordinance.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

13. The Respondent, Police Officer Maria Fregoso-Hein, Star No. 19498, charged herein, is **not guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

> Count II: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein detained and/or falsely arrested Jeremy Augustus, in violation of the Fourth Amendment of the Constitution of the United States of America, thereby violating a law or ordinance.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

14. The Respondent, Police Officer Maria Fregoso-Hein, Star No. 19498, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

Count I: On or about March 26, 2009, at approximately 7:30 PM, at or near the M&M Mini Mart, A.K.A. the Burnham Quick Food Mart, located at 1201 North Austin Boulevard, Officer Fregoso-Hein knowingly and without legal authority detained Jeremy Augustus, and/or falsely arrested Jeremy Augustus, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

15. The Respondent, Police Officer Maria Fregoso-Hein, Star No. 19498, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

Count II: On or about March 26, 2009, Officer Fregoso-Hein falsified an original case incident report by falsely stating that an employee of the Burnham Quick Food Mart informed her that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in present [*sic*] of other customers," or used words to that effect, and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby impeding the Department's efforts to achieve its policy and goals, and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 8 above, which are incorporated here by

reference.

16. The Respondent, Police Officer Maria Fregoso-Hein, Star No. 19498, charged herein, is **not guilty** of violating, to wit:

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

in that the Superintendent did not prove by a preponderance of the evidence the following charge:

> On or about March 26, 2009, Officer Fregoso-Hein falsified an original case incident report by falsely stating that an employee of the Burnham Quick Food Mart informed her that Jeremy Augustus "was given notice and ask [*sic*] not to return to the store after he caused a disturbance being loud, disruptive, exhibited rude behavior using vulgar profanity while in the store and in present [*sic*] of other customers," or used words to that effect, and/or that Jeremy Augustus was arrested for trespassing, or used words to that effect, thereby making a false report, written or oral.

See the findings set forth in paragraph no. 8 above, which are incorporated here by reference.

POLICE BOARD DECISIONS

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in these cases, 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 **grants** Respondent Jones's motion to dismiss the charges that he violated Rule 2 (Counts I and V only), Rule 6, Rule 8, and Rule 9 based on the Statute of Limitations set forth in 65 ILCS 5/10-1-18.1, and **denies** his motion to dismiss the remaining charges;

By a vote of 8 in favor (Carney, Foreman, Ballate, Conlon, Eaddy, Fry, Rodriguez, and Sweeney) to 0 opposed, the Board **grants** Respondent Fregoso-Hein's motion to dismiss the charges that she violated Rule 2 (Count III only) and Rule 6 based on the Statute of Limitations set forth in 65 ILCS 5/10-1-18.1, and **denies** her motion to dismiss the remaining charges;

By votes of 8 in favor (Carney, Foreman, Ballate, Conlon, Eaddy, Fry, Rodriguez, and Sweeney) to 0 opposed, the Board finds Respondent Jones **not guilty** of violating Rule 1, Rule 2 (Counts II, III, and IV), and Rule 14; and

By votes of 8 in favor (Carney, Foreman, Ballate, Conlon, Eaddy, Fry, Rodriguez, and Sweeney) to 0 opposed, the Board finds Respondent Fregoso-Hein **not guilty** of violating Rule 1, Rule 2 (Counts I and II), and Rule 14.

As a result of the foregoing, the Board, by votes of 8 in favor (Carney, Foreman, Ballate, Conlon, Eaddy, Fry, Rodriguez, and Sweeney) to 0 opposed, hereby determines that cause exists for restoring Respondent Jones and Respondent Fregoso-Hein to his/her position as a police officer with the Department of Police, and to the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Theron Jones, Star No. 13248, as a result of having been found **not guilty** of charges in Police Board Case No. 14 PB 2870, be and hereby is **restored** to his position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective August 28, 2014.

IT IS FURTHER ORDERED that the Respondent, Maria Fregoso-Hein, Star No. 19498, as a result of having been found **not guilty** of charges in Police Board Case No. 14 PB 2871, be and hereby is **restored** to her position as a police officer with the Department of Police, and to the services of the City of Chicago, with all rights and benefits, effective August 28, 2014.

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, William F. Conlon, Michael Eaddy, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney.

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

Attested by:

/s/ DEMETRIUS E. CARNEY
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following members of the Police Board hereby dissent from the Findings and Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISIONS

THIS _____ DAY OF _____, 2015.

_____
GARRY F. McCARTHY
Superintendent of Police