

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER HAVEN MATTHEWS,) **No. 13 PB 2829**
STAR No. 3698, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1020562)**
RESPONDENT.)

FINDINGS AND DECISION

On January 22, 2013, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Haven Matthews, Star No. 3698 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- 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.
- 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.
- Rule 38: Unlawful or unnecessary use or display of a weapon.

The Police Board caused a hearing on these charges against the Respondent to be had before Thomas E. Johnson, Hearing Officer of the Police Board, on April 17, April 18, May 7, and May 9, 2013.

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 Johnson made an oral report to and conferred with the Police Board before it rendered its findings and decision. (Board members Scott J. Davis, Rita A. Fry, and Johnny L. Miller recused themselves from this case pursuant to §2-57-060(c) of the Municipal Code of Chicago.)

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 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) the investigation by the Independent Police Review Authority (IPRA) failed to follow Chicago Police Department General Orders; and (d) the IPRA investigation violated Section 2-57-070 of the Municipal Code of Chicago. The Respondent's Motion to Strike and Dismiss is **denied** for the reasons set forth below.

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a. Due Process. Citing *Morgan v. Department of Financial and Professional Regulation*, 374 Ill.App.3d 275, 871 NE2d 178 (1st Dist 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 and he was 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 name. Here, the Respondent was working and was being paid his full salary and benefits during the entire period of the investigation and 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 Respondent was not suspended without pay from his job until *after* the charges against him were filed. Therefore, the Respondent was *not*

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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 (5th Dist. 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 (2nd Dist. 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

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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 in losing his employment and in hampering his ability to locate witnesses and counter evidence years after the incident 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, 630 NE2d 830 (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 (1st Dist. 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*,

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.

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656 F.3d. 646 (7th Cir. 2011).

The Respondent has made no specific showing of any prejudice that resulted from a delay in bringing charges before the Police Board. He argues only that witnesses' memories have faded over time. In fact, however, witnesses provided statements close in time to the events in question. The Respondent made no specific showing that he attempted to locate further witnesses or evidence but was unable to do so because of the passage of time. Consequently, any argument that there may be other witnesses out there, or that material evidence was overlooked and is now unavailable, is speculative.

The Respondent therefore has not demonstrated any "compelling" or "extraordinary" circumstances warranting a dismissal of this case, and has not carried the burden of proving that he was prejudiced by a delay in the bringing of charges.

c. General Order 93-03. The Respondent argues that the Police Department's own General Order requires a prompt and thorough investigation, and that the Department failed to fully comply with the provisions of this General Order.

In fact, the General Order 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 did regularly seek, and was granted, extensions of time, in compliance with the General Order.

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

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General Order.

There was no substantial 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.

d. Municipal Code Section 2-57-070. The Code 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. The Respondent argues that IPRA did not comply with this provision of the Code.

In letters dated April 30, 2009, IPRA provided notification to the Respondent and the complainant. There is no evidence in the record as to whether IPRA made the required notifications to 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.

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5. The Respondent, Police Officer Haven Matthews, Star No. 3698, 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 October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews kicked Danny Armstrong on or near the ribs and/or the head, and/or stepped on or near Danny Armstrong's head, and/or struck Danny Armstrong on or near the head with his gun, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Board finds that Danny Armstrong was part of a group of young people who were throwing rocks at passing cars and hit Officer Matthews's car. When Officer Matthews pursued the group of young people, they fled. The Board finds that Officer Matthews chased Mr. Armstrong and eventually had to tackle him in order to subdue him. While Mr. Armstrong testified that Officer Matthews beat him savagely while on the ground, the Board does not believe Mr. Armstrong. In addition to Officer Matthews's denial, three civilian witnesses testified that they observed some or all of the encounter between Officer Matthews and Mr. Armstrong on South Saginaw at the end of the chase. Mr. Eddie Daniel, Ms. Mary Daniel, and Ms. Iris Sifuentes all testified that Officer Matthews did not beat or punch Mr. Armstrong, or otherwise mistreat him. Their account was that Officer Matthews acted in a professional manner in subduing Mr. Armstrong.

Nor do the medical records support Mr. Armstrong's account of the beating to which he testified. Rather, his injuries (fractured ribs and bruising to the face) are consistent with being

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tackled and subdued with an open hand slap and a knee to the back, as Officer Matthews testified. Further, the Board does not find it believable that Officer Matthews would strike Mr. Armstrong with his holstered weapon where the barrel of the gun was pointed at Officer Matthews, as doing so would present an immediate danger to the officer. Mr. Armstrong's testimony that the officer pointed a gun at him with his left hand is also incredible, as Officer Matthews is right-handed.

Finally, the Board finds that Officer Matthews was not armed when he chased and subdued Mr. Armstrong. It is undisputed that Officer Matthews owns only a single Smith & Wesson 9 mm. semi-automatic weapon, which was recovered by police at his home after Officer Matthews was at the station (and had not been home). Further, it is undisputed that Sgt. Adams searched Officer Matthews, his vehicle and his girlfriend's purse at the scene where he tackled Mr. Armstrong, and found no weapon. Though Officer Matthews's hands were swabbed for gunshot residue, the City offered no evidence that such residue was present on Officer Matthews' hands. Moreover, in addition to Officer Mathews and his girlfriend, Vanessa Saldana, testifying that he was unarmed, civilian witnesses Eddie Daniel and Mary Daniel testified that they did not see a weapon. Instead, Mr. Daniel testified that Officer Matthews used a cell phone he was carrying to call the police after he had tackled Mr. Armstrong. Civilian witnesses Rhonda Hunt (who saw Officer Matthews chase after the boys) and Iris Sifuentes testified that they could not be sure whether Officer Matthews was carrying a weapon or only a cell phone. Among the civilian witnesses who observed the chase, only Allen Creasy testified that he saw Officer Matthews with a gun, but he described it as a .38 revolver, which Officer Matthews does not own. He also did not mention that Officer Mathews had a gun when he made his 911 call at the

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scene, but only at the hearing. In addition to the fact that his testimony runs contrary to that of most other witnesses, Mr. Creasy's testimony is further undermined by his felony convictions, and the Board does not credit his testimony.

6. The Respondent, Police Officer Haven Matthews, Star No. 3698, 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 October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews struck Christopher Pegues on or near the head with a gun, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Board finds that Officer Matthews was not armed as he chased the young men who had been throwing rocks at cars, including his car. See the discussion in paragraph no. 5 above. As such, the Board finds that Officer Matthews did not strike Mr. Pegues with a weapon. Further, Mr. Pegues identified the gun as a revolver, which Officer Matthews does not own, and more importantly, Mr. Pegues testified that Officer Matthews hit him with the gun while holding the barrel of the gun in his hand with his finger on the trigger. This account of the manner in which Officer Matthews was holding the gun is incredible, as the gun could have gone off when it was used supposedly to strike Mr. Pegues, causing serious injury to Officer Matthews. Finally, the evidence shows that the police took DNA samples from Mr. Pegues and inventoried Officer Matthews's sole weapon. The city offered no evidence to link the weapon, by DNA, to Mr.

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Pegues.

7. The Respondent, Police Officer Haven Matthews, Star No. 3698, 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 October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews discharged a gun in the direction of Danny Armstrong and/or Christopher Pegues without justification, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

The Board finds that Officer Matthews was not armed as he chased Mr. Armstrong and Mr. Pegues. Therefore, the Board finds there is no evidence to support the allegation that Officer Matthews fired a gun in the direction either of Mr. Armstrong or Mr. Pegues. Further, there is no eyewitness testimony from anyone, including Mr. Armstrong and Mr. Pegues, in which they claim to have seen Officer Matthews fire a weapon at these young men.

8. The Respondent, Police Officer Haven Matthews, Star No. 3698, 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:

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Count IV: On or about February 25, 2011, Officer Matthews impeded the Department's efforts to achieve its policy and goals and/or brought discredit upon the Department when he made one or more of the following false statements to Investigator Tiffany Williams of the Independent Police Review Authority: that he did not have a gun on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago; and/or that he did not discharge a firearm on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago; and/or that he did not strike Christopher Pegues in the head on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago; and/or that he did not kick Danny Armstrong on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago.

The Board finds that Officer Matthews was truthful in his account of what transpired on October 5, 2008. The Board finds Officer Matthews did not have a gun as he chased the young men in question, and therefore did not discharge his weapon. The Board further finds that he did not strike Mr. Pegues in the head or kick Mr. Armstrong on October 5, 2008.

9. The Respondent, Police Officer Haven Matthews, Star No. 3698, charged herein, is **not guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,
in that the Superintendent did not prove by a preponderance of the evidence the following charge:

On or about October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews used deadly force without justification by discharging a firearm in the direction of Danny Armstrong and/or Christopher Pegues without justification, in violation of General Order 02-08-03 (now known as General Order G03-02-03).

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

10. The Respondent, Police Officer Haven Matthews, Star No. 3698, charged herein, is

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not guilty of violating, to wit:

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

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

Count I: On or about October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews kicked Danny Armstrong on or near the ribs and/or the head, and/or stepped on or near Danny Armstrong's head, and/or struck Danny Armstrong on or near the head with his gun, thereby disrespecting or maltreating any person, while on or off duty.

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

11. The Respondent, Police Officer Haven Matthews, Star No. 3698, charged herein, is

not guilty of violating, to wit:

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

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

Count II: On or about October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews struck Christopher Pegues on or near the head with a gun, thereby disrespecting or maltreating any person, while on or off duty.

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

12. The Respondent, Police Officer Haven Matthews, Star No. 3698, charged herein, is

not guilty of violating, to wit:

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

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

Count I: On or about October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews kicked Danny Armstrong on or near the ribs and/or the head, and/or stepped on or near Danny Armstrong's head, and/or struck Danny Armstrong on or near the head with his gun, 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.

13. The Respondent, Police Officer Haven Matthews, Star No. 3698, charged herein, is **not 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 did not prove by a preponderance of the evidence the following charge:

Count II: On or about October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews struck Christopher Pegues on or near the head with a gun, 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. 6 above, which are incorporated here by reference.

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14. The Respondent, Police Officer Haven Matthews, Star No. 3698, 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 February 25, 2011, Officer Matthews made one or more of the following false statements to Investigator Tiffany Williams of the Independent Police Review Authority: that he did not have a gun on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago; and/or that he did not discharge a firearm on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago; and/or that he did not strike Christopher Pegues in the head on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago; and/or that he did not kick Danny Armstrong on October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago.

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

15. The Respondent, Police Officer Haven Matthews, Star No. 3698, charged herein, is **not guilty** of violating, to wit:

Rule 38: Unlawful or unnecessary use or display of a weapon,

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

On or about October 5, 2008, in the vicinity of 7800 South Saginaw Avenue, in Chicago, while off duty, Officer Matthews discharged a firearm in the direction of Danny Armstrong and/or Christopher Pegues without justification, thereby unlawfully or unnecessarily using or displaying a weapon.

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

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 6 in favor (Carney, Ballate, Conlon, Foreman, McKeever, Rodriguez) to 0 opposed, the Board denies the Respondent's Motion to Strike and Dismiss; and

By votes of 6 in favor (Carney, Ballate, Conlon, Foreman, McKeever, Rodriguez) to 0 opposed, the Board finds the Respondent not guilty of violating Rule 2, Rule 6, Rule 8, Rule 9, Rule 14, and Rule 38.

As a result of the foregoing, the Board, by a vote of 6 in favor (Carney, Ballate, Conlon, Foreman, McKeever, Rodriguez) to 0 opposed, hereby determines that cause exists for restoring the Respondent 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 January 25, 2013.

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NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Haven Matthews, Star No. 3698, as a result of having been found **not guilty** of the charges in Police Board Case No. 13 PB 2829, 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 January 25, 2013.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 20th DAY OF JUNE, 2013.

/s/ Demetrius E. Carney

/s/ Melissa M. Ballate

/s/ William F. Conlon

/s/ Ghian Foreman

/s/ Susan L. McKeever

/s/ Elisa Rodriguez

Attested by:

/s/ Max A. Caproni
Executive Director
Police Board

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DISSENT

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

[None]

RECEIVED A COPY OF
THESE FINDINGS AND DECISION
THIS ____ DAY OF _____, 2013.

SUPERINTENDENT OF POLICE