

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CHICAGO JOHN DINEEN LODGE # 7,

Plaintiff,

v.

CITY OF CHICAGO, DEPARTMENT OF
POLICE, BRANDON JOHNSON, in his
official capacity as Mayor, and LARRY
SNELLING, in his official capacity as
Superintendent of the Chicago Police
Department, and the CHICAGO CITY
COUNCIL,

Defendants

Case No. 2024CH00093

Hon. Michael T. Mullen

**CITY OF CHICAGO’S RESPONSE IN OPPOSITION TO PLAINTIFF-
COUNTERDEFENDANT’S MOTION TO DISMISS THE CITY’S COUNTERCLAIM**

Plaintiff-Counterdefendant the Chicago John Dineen Lodge # 7 asks the Court to dismiss the City’s counterclaim as untimely because it was filed more than 90 days after the Neutral Chair’s October 19, 2024 award was issued. This argument is baseless. The parties and the Neutral Chair agreed and understood that the October 19, 2024 award could be rejected by the City Council and in that event would be subject to further proceedings before the Dispute Resolution Board to determine whether the award should be modified. The 90-day period for the City to file its petition under Section 14(k) of the Illinois Public Labor Relations Act (“Labor Act”) started on January 4, 2024, when the Neutral Chair declined to modify the original award. The City timely filed its counterclaim within 90 days after the January 4, 2024 award. Accordingly, the Lodge’s Motion to Dismiss must be denied.

I. Background

The factual background relevant to the Lodge’s motion to dismiss is not disputed. Proceedings to resolve a bargaining impasse between the parties are governed by Section 28.3(b) of the parties’

2012-2017 Agreement. Counterclaim, ¶ 5, 31; Def. Ex. 2.¹ Section 28.3(b)(8) of that agreement provides that contract terms decided upon by Dispute Resolution Board “shall be included in an agreement to be submitted to the City Council for adoption,” and that the terms of the predecessor agreement “shall continue to bind the parties hereto during all negotiations and impasse resolution procedures.” Counterclaim, ¶ 35. Section 28.3(b)(9) specifies that, should the City Council reject the arbitrated agreement, the parties would meet again within ten days to “determine whether any modifications can be made to deal with the problems” leading to the rejection, but that “either party may thereafter terminate this Agreement upon ten (10) days’ written notice to the other.” Counterclaim, ¶ 35. Section 28.3(b)(10) provides “There shall be no implementation of any provisions of a successor agreement without Council ratification and adoption in ordinance form of the agreement; except, however, that the terms of this Agreement shall remain in full force and effect until a successor agreement is adopted in ordinance form or this Agreement is terminated pursuant to subparagraph 28.3(B)(9).” Counterclaim, ¶ 36.

The Neutral Chair issued an award entitled “Final Opinion and Award” on October 19, 2023. Counterclaim, ¶ 63; Ex. 21. In accordance with Section 28.3(b)(9) and (b)(10), that award clearly contemplated that the award would be subject to review and ratification or rejection by the Chicago City Council. *See* Ex. 21 at 6, 26-27. If rejected, the award further made clear that the City Council’s objections would be subject to further consideration by the Dispute Resolution Board. *Id.*

The City Council considered the award and rejected the provisions pertaining to arbitration of serious police disciplinary cases on December 13, 2023. Counterclaim, ¶ 64; Def. Ex. 1, ¶ 39. The parties understood and agreed that the October 19, 2023 award would be returned to the Dispute

¹ To avoid duplication of exhibits in the record, the exhibits referenced herein are the exhibits submitted in support of Defendants’ Cross-Motion for Summary Judgment.

Resolution Board for further consideration and issuance of a further award if rejected by the City Council. Counterclaim, ¶ 65. In accordance with the contract, the Dispute Resolution Board again met on December 21, 2023 to further consider the matter, and the Neutral Chair issued an award on January 4, 2024 affirming the earlier award. Counterclaim, ¶ 66; Def. Ex. 1, ¶ 41. The Lodge then filed this lawsuit to enforce that award. On February 15, 2024, the Chicago City Council took up the January 4, 2024 award and again voted to reject the award. Ex. 1, ¶ 43. Counterclaim, ¶ 78. The City then filed its counterclaim on February 16, 2024.

II. Argument

The City addressed the Lodge’s timeliness argument in its Memorandum of Law In Support of Defendants’ Cross-Motion For Summary Judgment And Response In Opposition To Plaintiff’s Motion For Summary Judgment, in Section III.B.1, at pages 15-17. The City incorporates the arguments set forth there by reference.

In support of its Motion to Dismiss, the Lodge does not identify any cases in which a petition to vacate an impasse arbitration award under Section 14(k) of the Labor Act was deemed untimely because it was not filed within 90 days after issuance of an initial arbitration award that was subject to further arbitration proceedings under the controlling statute or contractual provisions. The Appellate Court has considered two other cases in which an interest arbitrator issued an award that was rejected by the employer’s governing body, conducted further proceedings, and then issued a second award affirming the original award. In both cases, the Appellate Court found that the 90-day period ran from the date of the second award – not the original award that was subject to further proceedings. *County of Peoria v. AFSCME Council 31*, 167 Ill. App. 3d 247, 249 (3rd Dist. 1988); *County of Cook v. Ill. Fraternal Order of Police Labor Council*, 358 Ill.App.3d. 667, 669 (1st Dist. 2005).

Although Section 12(b) of the Arbitration Act does not apply to this case, this approach is consistent with how the Appellate Court has construed the 90-day limitations period for actions to vacate an arbitration award under the Arbitration Act. Under the Arbitration Act, when a party files a timely application to modify an arbitration award, the party is allowed 90 days from delivery of the arbitrator's disposition of petition to modify the award to request vacatur of the award in circuit court, regardless of whether the modification was granted or denied. *Hough v. Howington*, 254 Ill. App. 3d 452, 457 (1st Dist. 1993). This rule exists because, were the limitations period to run from the date of the original award, a party could effectively lose its right to judicial review if the arbitrator failed to resolve the application to modify the award within the 90-day limitations period, and because extending the limitations period affords the arbitrator an opportunity to cure any error in the original award before placing the matter before another tribunal. *Id.*

The same reasoning applies here. The parties' contract expressly provided that if the City Council rejected the October 19, 2023 award, the Dispute Resolution Board would meet again to determine whether the award should be modified. The Lodge's own conduct in waiting to file this action until after the Neutral Chair issued the January 4, 2024 award confirms that the Lodge understood that the October 19, 2023 award remained before the Neutral Chair and subject to modification. If the Lodge's argument were correct, the City could have lost its opportunity to seek judicial review while waiting for the Neutral Chair to consider modifying the award, and the City *would* have been forced to seek judicial review before the City Council could exercise its responsibility to ratify or reject the Supplemental Award. Just as a the 90-day period to seek review of an arbitration award under Sections 12 and 13 of the Arbitration Act runs from the date that a timely petition to modify the award is decided, the parties' contractual agreement to consider modification of the October 19, 2023 agreement after rejection by the City Council meant that the

90-day period for the City to file a petition to vacate the award under Section 14(k) of the Labor Act commenced when the Neutral Chair issued his Supplemental Award on January 4, 2024.

III. Conclusion

The Lodge's statute of limitations argument is inconsistent with applicable case law and the parties' contract. The parties expressly agreed and understood that the October 19, 2023 award would be subject to further proceedings and possible modification by the Dispute Resolution Board if rejected by the City Council. Accordingly, the 90-day period for the City to file a petition to vacate the award under Section 14(k) of the Labor Act did not commence until the Neutral Chair issued his Supplemental Award on January 4, 2024. The City's counterclaim is therefore timely and the Lodge's Motion to Dismiss must be denied.

Dated: March 14, 2024

Respectfully Submitted,

**CITY OF CHICAGO,
Defendant / Counter-Plaintiff**

By: /s/ William R. Pokorny
One of their attorneys

James C. Franczek, Jr. (jcf@franczek.com)
William R. Pokorny (wrp@franczek.com)
Michael A. Warner, Jr. (maw@franczek.com)
David A. Johnson (daj@franczek.com)
Jennifer A. Dunn (jad@franczek.com)
Emily Tulloch (et@franczek.com)
FRANCZEK P.C.
300 S. Wacker Dr., Suite 3400
Chicago, IL 60606
(312) 986-0300

Firm No. 31593

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on March 14, 2024, he caused a true and correct copy of the foregoing **CITY OF CHICAGO'S RESPONSE IN OPPOSITION TO PLAINTIFF-COUNTERDEFENDANT'S MOTION TO DISMISS THE CITY'S COUNTERCLAIM** to be filed with the Clerk of the Circuit Court using the Odyssey E-Filing system which will electronically serve copies upon all counsel of record, namely:

Joel A. D'Alba
Margaret Angelucci
Matt Pierce
ASHER, GITTLER, & D'ALBA, LTD.
200 W. Jackson Blvd., Suite 720
Chicago, IL 60606
jad@ulaw.com
maa@ulaw.com
mjp@ulaw.com

/s/ William R. Pokorny
