APL-2021-00184

Court of Appeals
State of New York

In the Matter of the Application of

ROCHESTER POLICE LOCUST CLUB, INC., MICHAEL MAZZEO and KEVIN SIZER,

Petitioners-Respondents,

against

CITY OF ROCHESTER and LOVELY A. WARREN, as Mayor of the City of Rochester,

Respondents-Respondents,

and

COUNCIL OF THE CITY OF ROCHESTER,

Respondent-Appellant,

and

THE MONROE COUNTY BOARD OF ELECTIONS,

Respondent.

[*caption continued on inside cover*]

BRIEF FOR THE CITY OF NEW YORK AS AMICUS CURIAE

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[*continued caption*]

APL-2022-00046

CITY OF SYRACUSE,

Petitioner-Appellant,

For a Decision and Order Pursuant to Article 75
of the Civil Practice Law and Rules

against

SYRACUSE POLICE BENEVOLENT ASSOCIATION, INC.,

Respondent-Respondent.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS (cont'd)

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES (cont'd)

Page(s)

TABLE OF AUTHORITIES (cont'd)

Page(s)

Statutes

TABLE OF AUTHORITIES (cont'd)

Page(s)

Other Authorities

PRELIMINARY STATEMENT AND INTEREST OF AMICUS CURIAE

This Court confirmed in *Matter of Patrolmen's Benevolent Association of City of New York, Inc. v. New York State Public Employment Relations Board*, 6 N.Y.3d 563 (2006) (*"PBA v. PERB"*), that New York City is among the local jurisdictions that are exempt from the requirement to collectively bargain over police discipline under the Taylor Law. The Court held that a provision of the New York City Charter enacted by the State Legislature in 1897, vesting authority over discipline in the Police Commissioner, expresses a state policy favoring "local control" that takes precedence over the Taylor Law's preference for collective bargaining.

The cases now before the Court raise important questions, including whether and how local legislative action may cause a locality to lose its exemption from collective bargaining. The City urges the Court to resolve those questions, to the extent they are reached, so as to preserve municipal home rule authority and give municipalities leeway to revise their approach to police discipline without affecting their Taylor Law exemption, provided that they maintain the core policy of local control animating the exemption.

First, the Court should clarify that an exempt jurisdiction may exercise its home-rule powers to amend the charter provisions or other provisions of law that create its exemption from collective bargaining. The State Constitution and the Municipal Home Rule Law empower local governments to supersede "special laws," such as state-enacted charter provisions. Exempt localities may use this power to modify the provisions in question—or even to repeal them and thereby make police discipline subject to bargaining. There should be no police-discipline carve-out from municipalities' broad home-rule powers to structure their workforces.

Second, the Court should confirm that a locality may modify its charter provisions to adjust how it administers police discipline without forfeiting its exemption, so long as it maintains the core policy of local control. In the City's view, there should be no serious question that a local government will not lose its exemption, so long as ultimate decision-making authority over police discipline is kept within the chain of command, such that it is reposed in local officials who exercise authority over the police force more generally.

There remains a question whether decision-making authority over discipline may be transferred to local officials outside the chain of command, such as specialized boards constituted for that purpose, without causing the locality to forfeit its exemption. The City, which has maintained final decision-making authority in its Police Commissioner, as provided in its 1897 charter provision, takes no position on that question.

ARGUMENT

PBA v. PERB, and two decisions that followed on its heels, *Matter of Town of Wallkill v. Civil Service Employees Association, Inc.*, 19 N.Y.3d 1066 (2012), and *Matter of City of Schenectady v. New York State Public Employment Relations Board*, 30 N.Y.3d 109 (2017), made clear that some localities, including the City, retain control over disciplining their police officers, notwithstanding the sweeping policy of the Taylor Law that otherwise requires public employers to collectively bargain with their employees' unions over matters of discipline.[1] Local control, in this context, means that

[1] Local control is exercised by jurisdictions—large and small—across the state and is vested in a variety of government officials and bodies. *See, e.g.,* Town of

(cont'd on next page)

disciplinary decisions are "specifically commit[ted] … to the discretion of local officials," *PBA v. PERB*, 6 N.Y.3d at 571, and thus are not dictated by procedures and limitations derived through collective bargaining.

The City submits this brief to address two important questions about the vesting of local control over police discipline that are raised by the parties' arguments in these appeals: (1) whether local governments can use their home-rule powers to alter or even repeal the provisions that resulted in an exemption from collective bargaining, and (2) to what extent altering those

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Tonawanda (through its Town Board under Town Law § 155, *see Matter of Tonawanda Police Club v. Town of Tonawanda*, 194 A.D.3d 1462 (4th Dep't 2021) (upholding police disciplinary procedures set out in Town Board's police manual)); City of Middletown (through its Board of Police Commissioners under the Middletown City Charter (1902), amended (1942), *see Matter of City of Middletown v. City of Middletown Police Benevolent Ass'n*, 81 A.D.3d 1238, 1240 (3rd Dep't 2021)); Town of Orangetown (through its Town Board under Rockland County Police Act, L. 1936, ch. 526, *see PBA v. PERB*, 6 N.Y.3d at 576); Town of Southold (through its Town Board under Town Law § 155, *see Wysocki v. Town of Southold*, 204 A.D.3d 811, 811 (2d Dep't 2022)); City of Mount Vernon (Mount Vernon City Charter (1922), *see City of Mount Vernon v. Cuevas*, 289 A.D.2d 674 (3d Dep't 2001)); *see also* City of Kingston Charter (1896); *Matter of Greenburgh*, 94 A.D.2d 771, 771-72 (2d Dep't 1983) (explaining that the "Westchester County Police Act provides that disciplinary matters involving members of town police departments must be heard by the town board or the board of police commissioners" (citing Westchester County Police Act, § 7, L. 1936, ch. 104, as amd. by L. 1941, ch. 812)).

provisions to adjust how police discipline is administered, short of outright repeal, may effectively relinquish the exemption.

POINT I

EXEMPT JURISDICTIONS HAVE HOME-RULE AUTHORITY TO MODIFY OR REPEAL CHARTER PROVISIONS CONCERNING LOCAL CONTROL OVER POLICE DISCIPLINE

A threshold question presented by the *Rochester* appeal is whether exempt jurisdictions may exercise their home-rule authority to modify the provisions of law creating their exemption from collective bargaining, including in a manner that results in loss of a jurisdiction's Taylor Law exemption, notwithstanding the State Legislature's policy choice to vest authority over police discipline in local officials. Fundamental principles of home rule confirm that a locality has the power to alter those provisions of law up to and including repealing them.

A. Local governments have broad home-rule authority to supersede "special" state laws.

Broadly speaking, the question whether a local government may supersede a state enactment turns on whether the state act is a general law or a special law. Local governments ordinarily cannot

enact local laws that directly conflict with a generally applicable state law or that enter a field fully occupied by the State. *Jancyn Mfg. Corp. v. Ctny. of Suffolk*, 71 N.Y.2d 91, 97 (1987); *DJL Rest. Corp. v. City of N.Y.*, 96 N.Y.2d 91, 93 (2001). But "[t]here is no similar requirement that a local law be consistent with a 'special law' enacted by the Legislature." *Matter of Gizzo v. Town of Mamaroneck*, 36 A.D.3d 162, 165 (2d Dep't 2006); *accord Holland v. Bankson*, 290 N.Y. 267, 270-71 (1943).

Under Article IX, § 2(c)(ii) of the State Constitution, as implemented by Municipal Home Rule Law § 22, local governments may supersede special state laws—that is, laws that do not apply alike to all municipalities in the same category—in the exercise of their home-rule powers, except when the laws address matters of substantial state concern.[2] *Kamhi v. Town of Yorktown*, 74 N.Y.2d

[2] The distinction between general and special laws turns on the extent of their application. A law that applies "in terms and in effect" alike to all counties, cities, towns, or villages is a general law, N.Y. Const., art. IX, § 3(d)(1), while a law that applies "to one or more, but not all" local governments of the same type is a "special law," *id., art. IX*, § 3(d)(4); *see Kittinger v. Buffalo Traction Co.*, 160 N.Y. 377, 395 (1899); *see also Patrolmen's Benevolent Ass'n of N.Y., Inc. v. City of N.Y.*, 97 N.Y.2d 378, 385 (2001) (distinguishing between special and general laws for purposes of home-rule authority).

423, 434-35 (1989); *see also Murray v. Town of N. Castle*, 203 A.D.3d 150, 163 (2d Dep't 2022) (the Westchester County Police Act is a special law, which the town could supersede to vest disciplinary authority over police in the town's Chief of Police and Town Board); *Matter of Gizzo*, 36 A.D.3d at 165-66 (upholding local law regulating police discipline in Mamaroneck that superseded a special state law, but no general law).

While supersession may seem unusual at first blush, it is a deeply engrained and longstanding facet of New York law, which has long embraced broad home-rule authority. Over a century ago, this Court recognized that "[i]t would be of very little use to provide, as the Constitution of this state does, that local officers in cities must be either elected by the people or appointed by some local authority, if it still remained in the power of the legislature to … depriv[e] the officer of all judgment and discretion in regard to his duties." *Ryan v. New York*, 177 N.Y. 271, 284 (1904); *see also Johnson v. Etkin*, 279 N.Y. 1, 5 (1938) (Schenectady could supersede the Optional City Government Law, a special state law, to adopt a proportional-representation scheme for electing its officials);

Holland, 290 N.Y. at 270 (the City of New Rochelle could supersede the Hampton Act, a special state law, to dictate the tours of duty and off-duty hours of officers and firefighters).

The "comprehensive home rule amendments of 1963 (set forth as article IX of the Constitution) evince a recognition that essentially local problems should be dealt with locally and that effective local self-government is the desired objective." *Kelley v. McGee*, 57 N.Y.2d 522, 535-36 (1982). Given the significant authority that local governments enjoyed even before 1963, these additions further amplified local-government autonomy and supersession authority. In the home-rule context, "the powers the locality is seeking to protect are not suffered at the will of the State Legislature, but directly and specifically guaranteed by the Constitution." *Black Brook v. State*, 41 N.Y.2d 486, 489 (1977).

B. The supersession power extends to charter provisions conferring local control over police discipline.

Despite this sweeping supersession power, the Council of the City of Rochester urges this Court to hold that those cities that are vested with local control over police discipline are powerless ever to

cast off that authority because the State has prohibited them from bargaining with police unions over issues of discipline (Council of the City of Rochester Appellant's Brief ("*Rochester* App. Br.") 28-34, 44-46).

The City of New York disagrees with that contention. As they may do regarding other special laws, exempt jurisdictions may alter the charter provisions or other provisions of law that create their exemption from collective bargaining. This means that local governments may adjust how police discipline is administered in response to local needs and conditions, notwithstanding the State Legislature's choice to vest authority over police discipline in particular local officials. It also means local governments may repeal the state-enacted provisions altogether—an act that if validly executed would unquestionably result in loss of the government's Taylor Law exemption.

The starting point of the analysis is the general proposition that local governments have broad power to amend their charters. *See* Mun. Home Rule Law § 10(1)(ii). Although the charter provisions at issue here were enacted by the State Legislature, their

source in state law does not preclude local governments from altering them. "The power granted to counties over the nature and functions of its local offices is a significant one, extending even to the power to abolish those offices under certain circumstances." *Kelley*, 57 N.Y.2d at 536. Thus, a local government may "abdicate[] the powers granted to [it] under the [state] law." *Boening v. Nassau Cnty. Dep't of Assessment*, 157 A.D.3d 757, 763 (2d Dep't 2018).

That is because, as discussed, local governments are authorized to supersede special state laws in the exercise of their home-rule powers, except on matters of substantial state concern. The state-enacted, locality-specific charters conferring local disciplinary control—like Rochester's 1907 Charter—are "special" state laws. *See Murray*, 203 A.D.3d at 165 (observing that Westchester's charter, which confers local control over police discipline, "is a special law that has the force and effect of a statute" (cleaned up));[3] *Matter of N.Y.*, 158 A.D. 319, 321 (3d Dep't 1913) (holding that the Greater New York City Charter is a special law).

[3] This brief uses "(cleaned up)" to indicate that internal quotation marks, alterations, or citations have been omitted from quotations.

And while the Town Law and Second Class Cities Law may be general laws, local governments may in most instances adopt locality-specific laws to supersede them. Mun. Home Rule Law §§ 10, 22; *see Kamhi*, 74 N.Y.2d at 430 (towns may "amend and even override provisions of the Town Law in their local applicability" because the local law should be "appropriately tailored by municipalities to fit their own peculiarly local needs"). Thus, the locality-specific grant of control over police discipline for select towns, villages, and cities—like Syracuse's 1915 Charter—gives the relevant state laws a status akin to special laws.

Indeed, this Court has implicitly confirmed that the several state enactments granting local control over police discipline to various municipalities are special laws. The Court rejected the argument that police discipline can never be the subject of bargaining as a general matter. *Matter of Auburn Police Local 195 v. Helsby*, 62 A.D.2d 12, 17 (3d Dep't 1978), *aff'd on decision below*, 46 N.Y.2d 1034 (1979). The Court instead has held that only those select local governments that had preexisting control over police discipline are carved out of the Taylor Law's presumption of

mandatory bargaining. *See Wallkill,* 19 N.Y.3d at 1069; *see PBA v. PERB*, 6 N.Y.3d at 571-72 (where "legislation specifically commits police discipline to the discretion of local officials … collective bargaining over disciplinary matters is prohibited").

Put differently, this Court's divergent holdings in *Auburn* and *PBA v. PERB* establish that there is no general law holding that matters of police discipline are unsuitable for collective bargaining. And, for the same reason, the question of whether any specific local government bargains over police discipline should not be considered an issue of substantial state concern, given that different rules apply in the cities of Auburn and Middletown, for example, and in other comparably sized towns and cities across the state (*see supra* n.1). *See Cohen v. Bd. of Appeals*, 100 N.Y.2d 395, 401-02 (2003) (local supersession of state law is impermissible where the State intends to "occupy the field and bring a measure of statewide consistency"); *Gizzo*, 36 A.D.3d at 165-66 (upholding supersession

of special law, because, among other things, local discipline of police is not a "special state concern").[4]

It follows, then, that local governments operating under a special carve-out from the Taylor Law are free to amend the relevant provisions of their charters or other laws. Indeed, they may even repeal their charter provisions, with the potential effect of casting off the carve-out. *See Matter of Holland*, 290 N.Y. at 271 (state statute granting firefighters days off that exempted preexisting local laws "was clearly never intended to be a general law applicable alike to all cities," so could be amended locally by the fourteen exempt localities).[5]

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[4] We note that the Legislature has chosen not to override the multiple carve-outs for police discipline from collective bargaining identified by this Court, while also legislating specifically on the subject of police discipline, with increasing focus on demanding that local governments enact police reforms to increase transparency and accountability on issues of police discipline. Some might argue that these acts collectively evidence a general state-level public policy prohibiting collective bargaining over police discipline. In the City's view, however the Court's affirmance without decision in *Matter of Auburn Police Local 195* stands in the way of the Court recognizing police discipline as a prohibited subject of bargaining statewide. The City takes no position on whether the Court should reconsider that decision in an appropriate case.

[5] *See also Etkin*, 279 N.Y. at 6 (upholding "the attempted amendment of the charter of the city of Schenectady by local law" because it does not conflict with a general law "immediately effective and operative in all cities alike," but only with a special law that applies in eight cities that have chosen to opt in); *Matter*

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This home-rule freedom is fully compatible with the fact that the Taylor Law exemptions derive from a state-level enactment. An important policy of local control, originally embodied in enactments by the State Legislature in the pre-home-rule era, may preclude bargaining without also constituting a matter of substantial state concern. This is clear from this Court's reasoning in *Schenectady*, which specifically rejected the argument that the city's power to supersede the cited provision of the Second Class Cities Law meant that the provision could not establish an exemption from the Taylor Law. 30 N.Y.3d at 116. The Court turned back that argument without questioning the premise that Schenectady could supersede the provision at issue.

Rochester's City Council argues that an exempt jurisdiction lacks authority to countermand the State Legislature's choice to grant it local control over police discipline (*Rochester* App. Br. 28). It seeks support in a line of cases starting with *Cohoes City School District v. Cohoes Teachers Association*, in which this Court

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of Ricket v. Mahan, 97 A.D.3d 1062, 1065 (3d Dep't 2012) (upholding Town of Colonie's local law superseding a special law on residency of local officials).

reasoned that by empowering local boards of education to make certain decisions, such as concerning teacher tenure, the State imposed a "responsibility, with the accompanying grant of enabling authority, to select and screen the teaching personnel" that "*must* be exercised by the board for the benefit of the pupils and the school district and cannot be delegated or abnegated." 40 N.Y.2d 774, 777-78 (1976) (emphasis added).

Rochester suggests that this Court's finding that police discipline is a "prohibited subject of collective bargaining" for some local jurisdictions represents a comparable fundamental state policy that overrides the Taylor Law in a manner that those local jurisdictions are powerless to alter. But this argument ignores the key distinction between a general state law, as was addressed in *Cohoes*, and a special law, as is at issue in the local charters that include state-conferred provisions establishing local government control over matters of police discipline.[6]

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[6] *Cohoes* may also present a different question for an additional reason relating to the particular form of public employment involved. Education-related provisions of state law may be protected from local supersession by the constitutional protection from local interference in the subject matter of administration of the public-school system. N.Y. Const. Art. IX, § 3(a)(1).

The Rochester City Council's argument also relies on a mistaken understanding of this Court's statements describing police discipline as a "prohibited" subject of collective bargaining for certain local jurisdictions. The subject is a prohibited topic of bargaining for such jurisdictions because a provision of state special law adopts a policy of local control for them. If an act of local lawmaking supersedes the pertinent special law in a manner that abandons the core policy of local control, then the matter is no longer a prohibited subject for bargaining for that jurisdiction. The "prohibition" on bargaining doesn't bar local legislative alteration of the pertinent state special laws under fundamental home-rule principles. Rather, it precludes bargaining by local officials while the state-derived policy of local control that is the prohibition's predicate remains in place for the jurisdiction in question.[7]

[7] The City of New York disagrees with any implication in the briefing that the policy of local control may somehow survive for a jurisdiction even if the jurisdiction has actually repealed the state-enacted provisions originally adopting the policy, without enacting a successor that maintains its core elements. The policy of local control cannot live on as a ghost after the provision of law embodying it has been repealed.

Recognizing local authority to modify or repeal the state-enacted provisions of law that create the exemption from collective bargaining is consistent with the Municipal Home Rule Law's ultimate purpose: "to enable local governments to adopt and amend local laws for the purpose of *fully and completely* exercising the powers granted to them under the terms and spirit of [the Constitution]." Mun. Home Rule Law § 50(1) (emphasis added). Indeed, it would be unprecedented to hold that a provision in a century-old charter vesting a jurisdiction with authority over police discipline will preempt that jurisdiction, in perpetuity, from deciding that a different approach to police discipline, including collective bargaining, better suits its local interests and concerns. Nor would that approach reflect the reality that the State has *expressly* authorized local charter revisions in its Constitution and in a general law.[8]

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[8] The Rochester City Council itself argues that the locality may alter the relevant provision of its charter—indeed that position is critical to its argument that its recent charter amendments are valid and effective. But home-rule principles do not typically recognize any distinction between amendments of that nature and outright repeal of a charter provision—both actions lie along the continuum of options for local supersession.

To be clear, there is a separate, fact-specific question presented in each of these appeals about whether the cities did, in fact, give up their local authority through supersession. The answer to this question will turn, in each case, on whether the local government intended to supersede state law. *Tpk. Woods, Inc. v. Stony Point*, 70 N.Y.2d 735, 738 (1987). While this Court has held that intent to supersede must be clearly discernible, it has not required magic words or held local governments to stringent standards of specificity as a precondition to valid supersession. *Id.*; *see also* Mun. Home Rule Law § 22(1) (providing that failure to specify superseded state law "shall not affect the validity of such local law").

Ordinarily, the plain language of a local law is the determinant of legislative intent to supersede state law, and there is no need to probe legislative intent beyond it. In particular, the Council of the City of Rochester is incorrect in its fallback argument asserting that legislators' subjective states of mind bear on whether their actions were "knowing, voluntary, and intentional" (*Rochester* App. Br. 37). Nor is it correct to question whether legislators

subjectively understood all of the implications that follow from the legislation that they enacted. Those are not appropriate frameworks for assessing legislative action. *Citi Bank N.A. v. Schiffman*, 36 N.Y.3d 550, 559 (2021).

All that said, there may be a narrow basis for concluding that "housekeeping" charter revisions such as those made by Rochester or Syracuse are not valid acts of supersession. If the text and structure of the enactments or authoritative legislative history suggests that the local legislatures amended their jurisdictions' charters on the belief, albeit mistaken, that they were constrained to do so by state law, the intent to supersede may be absent. It might be inappropriate to conclude that a local legislature intended to *supersede* state law when reliable and objective evidence shows that it in fact intended to *conform* to state law, but was reasonably mistaken about what state law required. The City takes no position on the ultimate answer to that narrow question in the two appeals before the Court.

POINT II

THE QUESTION WHETHER A LOCAL LAW FORFEITS A JURISDICTION'S EXEMPTION TURNS ON WHETHER IT RETAINS THE KEY ELEMENTS OF LOCAL CONTROL

A second question in these appeals asks to what degree an exempt jurisdiction may exercise its authority to amend the charter provisions that created its exemption from collective bargaining before forfeiting that exemption. In the case of a valid outright repeal of the charter provision, the answer is easy: the exemption is lost. But in assessing changes short of repeal, a guidepost is needed. In the City's view, the determining factor in answering whether the exemption has been lost should be whether the locality has preserved the core elements of the policy of local control over police discipline that, under the Court's decisions, animate the Taylor Law exemption.

The City urges the Court to confirm that the state policy of local control affords exempt jurisdictions latitude to modify their approach to police discipline, consistent with their home-rule authority to respond to local concerns and conditions. Changes that

maintain final decision-making authority within the chain of command, such as those the City has implemented over the years, should not jeopardize a locality's exemption. The City takes no position on whether transferring final decision-making authority out of the chain of command would go beyond the limits of the policy of local control and thus operate to forfeit the exemption.[9]

A. The state policy of local control affords exempt jurisdictions latitude to alter the administration of police discipline.

The degree of discretion afforded to local governments to modify police-discipline schemes without losing their exemption from mandatory bargaining should reflect the evolution of legislatively conferred home-rule powers since the relevant charter provisions were enacted. As explained (*see supra* Point I), the State Constitution and the Municipal Home Rule Law give local governments authority to supersede special laws, including state-

[9] A fundamental transfer by local law of final decision-making authority over police discipline would in many instances curtail or transfer structural powers of elected officials so as to require a referendum. See Mun. Home Rule Law § 23(2)(f); *Mayor of City of N.Y. v. Council of the City of N.Y.*, 9 N.Y.3d 23, 33 (2007).

enacted charter provisions. Mun. Home Rule Law § 50(1). Localities did not possess such powers when the Legislature enacted the relevant provisions of the New York City, Rochester, or Syracuse charters.

In adopting the home-rule constitutional amendment and enacting the Municipal Home Rule Law, the State recognized the importance of empowering local governments to respond to modern concerns in their respective jurisdictions. *See Resnick v. Ulster County*, 44 N.Y.2d 279, 288 (1978). Thus, this Court has reiterated that local governments have "considerable latitude" to experiment, given "the deeply felt belief that local problems should, so long as they do not impinge on affairs of the people of the State as a whole, be solved locally." *Id.* The state policy of expanded home rule counsels in favor of granting local governments room to adapt how police discipline is administered while retaining their exemption from collective bargaining.

Moreover, current state policy regarding police discipline presumes that local governments have the authority to implement changes to how they administer police discipline. In 2020, the

Legislature required the creation of new positions within the Office of the Attorney General to conduct investigations and make recommendations with respect to police misconduct. 2020 Laws of N.Y., chs. 95, 104. The recommendations will encourage local jurisdictions to make changes to their own approaches to police discipline.[10] Similarly, in 2021, then-Governor Cuomo issued Executive Order 203, directing "every local government entity which has a police agency" across the state to perform a comprehensive review of current police practices and to adopt a local police department reform plan, as a condition of eligibility for future state funding.[11] The state policy of local control should be understood to grant localities room to respond to these pressures for reform without putting their exemption from collective bargaining at risk.

References in the *PBA v. PERB* trilogy of cases to a "grandfathered" exemption from collective bargaining have led

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[10] New York Attorney General, Law Enforcement Misconduct Investigative Office Homepage, https://perma.cc/A8EU-GS62.

[11] *See* New York State Executive Order No. 203 "New York State Police Reform and Reinvention Collaborative" (June 12, 2022), https://perma.cc/J2WL-U9FA.

some to mistakenly conclude that exempt jurisdictions have little room to modify their approach to police discipline. And to be sure, grandfathering in some contexts—such as land use—adopts the stance that a preexisting use is disfavored and thus that an exemption for a non-conforming use can readily be lost if the use is materially altered. *See Toys "R" Us v. Silva,* 89 N.Y.2d 411, 417 (1996).

But that type of framework is not appropriate here, and the better understanding is that the Taylor Law exemption does not function so rigidly. In *PBA v. PERB* itself, the Court spoke of a "tension between the strong and sweeping policy of the State to support collective bargaining under the Taylor Law and a competing policy … favoring strong disciplinary authority for those in charge of police forces." 6 N.Y.3d at 571 (cleaned up). Unlike the strict grandfathering view, this framing does not imply a narrow exemption that is grudgingly tolerated despite its inconsistency with current state policy. Rather, it suggests that local control for certain jurisdictions remains a vital part of the State's nuanced policy. That policy—as articulated in charter provisions predating

the Taylor Law and subsequent enactments regarding local control, including decades of legislative expansion of municipal home rule—embraces both strong local control over police and room for police reform for qualifying jurisdictions.

B. Changes that maintain final decision-making authority in the chain of command do not jeopardize the exemption from collective bargaining.

Nonetheless, it may be that some changes to the allocation of authority over police discipline abandon the essence of the State Legislature's grant of local control for the purpose of the Taylor Law exemption and thus relinquish that exemption. This Court has not had occasion to explain whether local authority may be lost in this way. But the Court's case law does confirm that changes which keep final decision-making authority within the chain of command will not affect the exemption.

For example, the Court has made clear that a change merely to the identity of the law-enforcement official who is vested with final disciplinary authority does not implicate the essence of the policy of local control. As the City of Syracuse explains in its

appellant's brief (at 28-31), the Court in *Schenectady* squarely rejected the argument that amending a charter to place a different official atop the chain of command—say, for example, moving from a commissioner of public safety to a chief of police—is enough to lose local control, *see* 30 N.Y.3d at 116 n.1. Thus, changes to the chain of command itself do not implicate the essence of the state policy of local control.

But beyond that point, the limits on a locality's ability to alter its disciplinary structures without losing its exemption are not clear. The Court has said that the state policy of local control means that disciplinary decisions are "specifically commit[ted] … to the discretion of local officials." *PBA v. PERB*, 6 N.Y.3d at 571. Elsewhere in the same decision, the Court suggested that the policy turns on "strong disciplinary authority for those in charge of police forces." *Id.* The key question may be whether the essence of the state policy of local control is that decision-making authority be reposed in some local official, or whether the state policy requires that such authority be vested in an official who also has authority over the police force more broadly.

Some language in *PBA v. PERB* could be read to go even further by linking the State's policy of local control to the quasi-military structure of a police force—in which discipline rests "wholly in the discretion of the commissioner[]." *Id.* at 576 (cleaned up). But the same decision, when resolving *PBA v. PERB*'s companion case, *Matter of Orangetown v. Orangetown Policemen's Benevolent Association*, suggested that the quasi-military structure is not the essence of "local control." In that case, the Court held that a locality whose state-enacted statute governing police discipline vested authority in its town board also benefitted from the exemption from collective bargaining. 6 N.Y.3d at 574. While the town board held general authority over the town's police force, it did not operate within a quasi-military structure.

Ultimately, the City of New York does not take a position on whether the essence of local control requires decision-making authority over police discipline to be maintained in an official who also has general authority over the police force, or rather requires only that disciplinary decision-making power be reposed in a local official of some stripe. While the City has adopted a number of

reforms to its system of police discipline, it has preserved the decision-making authority of the Police Commissioner, to whom the State Legislature gave that authority in the City's 1897 Charter. *See* N.Y.C. Charter § 434(a). Thus, however the ambiguity about the essence of local control were resolved, the City's reforms would not call into question its exemption.

For instance, in 1953, the City created a Civilian Complaint Review Board to investigate and recommend discipline to the Police Commissioner based on certain misconduct allegations. The CCRB, initially a part of the Police Department and later reconstituted by local legislation as a separate civilian-led agency, has been tasked with addressing allegations ranging from biased policing to improper uses of force. Since 2012, the CCRB has exercised prosecutorial authority over certain misconduct complaints under a Memorandum of Understanding with the Police Commissioner, who retains ultimate authority to impose discipline. 38 RCNY §§ 15-12 to -18.

Additionally, voters in 2019 approved, among other changes, a charter revision requiring the Police Commissioner to explain any

deviation from CCRB's recommended police discipline, expanding CCRB's mandate, and increasing its independence. *See* N.Y.C. Charter § 440(d)(3); L.L. 2019/215, 12/11/2019. And, in 2021, the commissioner and CCRB signed a second Memorandum of Understanding creating a "disciplinary matrix"—a set of guidelines to streamline and standardize police discipline and set presumptive penalties for categories of misconduct. All of these changes have maintained final decision-making authority within the chain of command—indeed have kept such authority in the hands of the Police Commissioner, as provided in the 1897 Charter itself.

As noted, the City takes no position on whether moving final decision-making authority out of the chain of command is a bridge too far. If the Court reaches this question, however, it should confirm that nothing along the lines of what New York City has already done departs from the core irreducible essence of state-conferred authority or in any way compromises its exemption from collective bargaining over matters of police discipline.

CONCLUSION

This Court should clarify that local governments have broad discretion to amend their charters pursuant to the Municipal Home Rule Law with respect to local control over police discipline, and should clarify whether, or to what extent, such amendments may result in a forfeiture of a local government's status as a jurisdiction prohibited from collectively bargaining over police discipline.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word 2010, and according to that software, it contains 5,681 words, not including the table of contents, the table of cases and authorities, the statement of questions presented, this certificate, and the cover.

ELINA DRUKER

22 NYCRR § 500.23(A)(4)(III) STATEMENT

In compliance with 22 NYCRR § 500.23(a)(4)(iii), ELINA DRUKER, an attorney admitted to practice in the courts of this state, affirms under the penalties of perjury as follows:

1. No counsel for the parties contributed to the content of the Brief for the City of New York as Amicus Curiae, or participated in the preparation of the brief in any other matter; and

2. No party or party's counsel contributed money that was intended to fund preparation or submission of the Brief for the City of New York as Amicus Curiae; and

3. No person or entity, other than movant or movant's counsel, contributed money that was intended to fund preparation or submission of the brief.

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