To be argued by:
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(Time requested: 20 minutes)

APL No. APL-2022-00045
Appellate Division, Fourth Department Docket No. CA 20-00739
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Court of Appeals

of the

State of New York

PAUL MOTONDO, as President of The Syracuse Fire Fighters Association, IAFF Local 280,

Plaintiff-Respondent,

– against –

CITY OF SYRACUSE,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

This case, and the corresponding case involving the City of Syracuse (the "City") police department (APL-2022-00046), address the City's ability to collectively bargain regarding police and firefighter discipline.

There is no dispute that the City is a "city of the second class" as that term is defined by the New York State Second Class Cities Law ("SCCL"). There is also no dispute that because the City is a city of the second class, it is subject to the provisions of the SCCL, including the SCCL provisions relating to police and fire discipline, *unless and until* those provisions are superseded. See Matter of City of Schenectady v. N.Y. State Pub. Empl. Relations Bd., 30 N.Y.3d 109 (2017).

The only issue presented for this Court's consideration is whether the SCCL's provisions regarding police and firefighter discipline have been superseded by the City. The trial court held (and the Appellate Court affirmed) that the SCCL's provisions regarding police and fire discipline were superseded when the City enacted its 1960 charter (the "1960 Charter"). The trial court reasoned that changes to the City's charter, and specifically provisions relating to police and fire discipline, demonstrated the City's intent to supersede the SCCL.

As discussed in detail below, the lower court decisions were in error and should be reversed for several reasons. First, the City did not expressly supersede the SCCL's provisions regarding police and fire discipline when it enacted

the 1960 Charter. According to the City Home Rule Law, which was in effect at the time the 1960 Charter was adopted, if a municipality intended to supersede a provision of a State statute, it was required to explicitly identify with specificity the State statute that it intended to supersede. The City did not state any intention to supersede the SCCL's provisions regarding police or firefighter discipline when it enacted the 1960 Charter. Further, historically, when the City has intended to supersede a specific provision of the SCCL, as is required by the City Home Rule Law, it has stated its intention with requisite specificity in the superseding legislation.

Second, this Court has already analyzed a nearly identical issue. In City of Schenectady, the Court considered whether similar changes to the City of Schenectady's charter superseded the SCCL's police disciplinary provisions. 30 N.Y.3d at 115, n. 1. The Court held that extensive changes to the structure of Schenectady's government, including adoption of an entirely new form of government and abolishment of the "commissioner of public safety" position, as well as changes to the authority to promulgate disciplinary rules, were not sufficient to supersede the SCCL provisions regarding police discipline and were in fact irrelevant to whether the City of Schenectady was precluded from bargaining over discipline.

Third, the 1960 Charter's reference to the New York Civil Service Law, which was relied on almost exclusively by the trial court to support its decision, has no impact on whether the City superseded the SCCL and agreed to collectively bargain over police and firefighter discipline. Indeed, the Taylor Law, which is the section of the Civil Service Law addressing a municipality's obligation to collectively bargain, was not adopted until 1967, well after the 1960 Charter was adopted. The 1960 Charter's reference to the Civil Service Law therefore could not have demonstrated the City's intention to bargain over police and fire discipline.

Accordingly, this Court should reverse the lower court decisions and declare that firefighter discipline in the City is governed by the SCCL.

QUESTIONS PRESENTED

1. Is firefighter discipline in the City of Syracuse governed by the Second Class Cities Law?

Answer: The lower court held that it was not.

2. Is the City prohibited from bargaining issues related to firefighter discipline?

Answer: The lower court held that it was not.

3. Are the provisions in the current collective bargaining agreement (the "CBA") between the City and the Syracuse Firefighters Association IAFF Local 280 (the "Union") relating to discipline still valid?

Answer: The lower court held they are.

STATEMENT OF THE CASE

A. The Current Collective Bargaining Agreement

The City and the Syracuse Firefighters Association, IAFF Local 280 (the "Union") are parties to a collective bargaining agreement ("CBA") effective from January 1, 2018 through December 31, 2020. (R. 40). Article 20 of the CBA, titled "Disciplinary Disputes," includes terms detailing the procedures for resolving disputes related to firefighter discipline. (R. 79 – 83). Under Article 20, the process for challenging disciplinary decisions involves several steps, which ultimately culminate in arbitration. (R. 80).

Article 20 of the current CBA also includes the following clause:

> 20.8 Abidance to Existing Procedures
>
> Consistent with §209-a.1(e) of the Civil Service Law, the City agrees that until such time as a 2011 (or 2011 and beyond) collective bargaining agreement is reached either through negotiations, or imposition, it will abide by the disciplinary procedures set forth in the existing collective bargaining agreement, notwithstanding any court cases or decisions such as In the Matter of Town of Orangetown, and In the Matter of Patrolmen's Benevolent Association of the City of New York, 6 N.Y.3d 563 (2006), it being understood and agreed that the parties reserve their respective rights and arguments relating to the applicability of the arguments and holdings provided for In the Matter of Town of Orangetown, and In the Matter of Patrolmen's Benevolent Association of the City of New York, after such time. (R. 82 – 83).

This reservation of rights clause was first included in the parties' 2006 CBA, immediately after the Court of Appeals decision in Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. v. N.Y. State Pub. Empl. Relations Bd., 6 N.Y.3d 563 (2006), and it has been included in the various iterations of the parties' collective bargaining agreements since, including in the current CBA. (R. 1069).

B. The City Charter Provisions Regarding Firefighter Discipline in 1915, 1935 and 1960

In 1915, the City adopted a charter that provided for several governmental departments, including a "Department of Public Safety." The Department of Public Safety was headed by a "commissioner of public safety," who had "cognizance, jurisdiction, supervision and control of the government, administration, disposition and discipline of the police department, fire department, buildings department and health department." (R. 208).

The 1915 charter authorized the commissioner of public safety "to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the police and fire departments . . ." (R. 208). The City's 1915 charter provisions relating to police and fire discipline mirrored the SCCL provisions regarding discipline. See SCCL § 133.

In 1935, the City adopted a new charter pursuant to the City Home Rule Law. As part of the new charter, the City transferred the disciplinary powers of the

commissioner of public safety to others within the government. (R. 246). Among other changes, the 1935 charter split the Department of Public Safety into a Department of Police, Department of Fire, and Department of Public Health. (R. 296, 300, 304).

The 1935 charter explicitly transferred the powers of the commissioner of public safety to the commissioners of these new departments. Section 26 of that charter stated,

> All authorities, rights, powers, duties and obligations enjoyed or possessed by or devolved upon any officer, department, commission, board or other city agency, or employee, as of the time when this Charter shall take effect, shall continue and be preserved except where inconsistent with the provisions of this Charter. (R. 256).

The 1935 charter also explicitly stated that "all property, rights and interests now possessed or enjoyed by the City of Syracuse, shall continue to be possessed and enjoyed by it. The City, and all officers, departments, commissions, boards and other agencies thereof, shall have, enjoy and be subject to all authority, rights and powers now possessed by it or them, and all obligations or duties now owed by it or them." (R. 247).

With respect to discipline in the Department of Fire, the 1935 charter specifically provided that the powers previously possessed by the commissioner of public safety were transferred to the Chief of Fire. (R. 301). Section 222 states in relevant part, "[The Chief of Fire] is authorized and empowered with the approval

of the Mayor, to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the . . . discipline . . . of the officers and members of the Fire Department . . .” (R. 301).

The City again amended its Charter in 1960 pursuant to the City Home Rule Law, and again kept the power to promulgate disciplinary procedures with the Chief of Fire. (R. 377). The 1960 Charter is the current, operative charter.

Section 5-908 of the 1960 Charter states, “The chief of fire, with the approval of the mayor, shall make, adopt, promulgate and enforce such reasonable rules, orders and regulations for the . . . discipline . . . of the officers and members of the department of fire as may be necessary to carry out the functions of the department. Disciplinary proceedings against any member of the department shall be conducted in accordance with the rules and regulations of the department and the provisions of law applicable thereto, including the Civil Service Law.” (R. 377).

Just as the 1935 charter stated, the 1960 Charter also states that “all property, rights and interests now possessed or enjoyed by the city of Syracuse, shall continue to be possessed and enjoyed by it. The city, and all officers, departments, commissions, boards and other agencies thereof, shall have, enjoy and be subject to all authority, rights and powers now possessed by it or them . . . .” (R. 326).

Accordingly, the power and authority of the commissioner of public safety, including his power to promulgate rules regarding firefighter discipline, was

transferred to the Chief of Fire as part of the 1935 charter and continues to the present date through the 1960 Charter. These powers have not been explicitly superseded by any change in law or charter at any time.

C. The City has Explicitly Stated When its Laws are Intended to Supersede the SCCL

Both the former City Home Rule Law and now the Municipal Home Rule Law specifically contemplate that a local law could supersede a state statute such as the SCCL. Former City Home Rule Law Section 12.1 stated, "Any local law adopted pursuant to this chapter may specify any provision of an act of the legislature . . . which it is intended to supersede by local law."

Similarly, Section 22 of the Municipal Home Rule Law states,

> "In adopting a local law changing or superseding any provision of a state statute or of a prior local law or ordinance, the legislative body shall specify the chapter or local law or ordinance, number and year of enactment, section, subsection or subdivision, which it is intended to change or supersede, but the failure so to specify shall not affect the validity of such local law." N.Y. MUN. HOME RULE LAW § 22.

The City has followed the provisions of the City Home Rule Law and the Municipal Home Rule Law and explicitly stated when it intended to supersede a specific provision of the SCCL. For example, in 1927, the City enacted Local Law 5-1927, which stated, "A local law of the city of Syracuse to amend and supersede section ninety-five of chapter fifty-five of the laws of nineteen hundred and nine

known as second class cities law, in relation to collection of water rents." (emphasis added). (R. 1086).

Similarly, in 1998, the City passed Local Law 11-1998, which states, "A local law of the city of Syracuse superseding the New York State Second Class Cities Law to increase the minimum level of fines from $150.00 to $1,000.00 for violations of the City's local laws and general ordinances." (emphasis added). (R. 1088 – 1089).

Importantly, the provisions of the City's 1960 Charter and/or local laws addressing police and fire discipline do not contain any statement that they are intended to supersede the disciplinary provisions of the SCCL. Moreover, each charter references the retention of powers by the applicable commissioners and/or department heads.

D. Procedural History

Shortly after the City filed a Petition seeking to permanently stay the arbitration of several police disciplinary grievances filed by the City of Syracuse Police Benevolent Association (the "PBA"), the Union filed the original Complaint in this case, seeking a declaratory judgment. (R. 1005). In so doing, the Union sought to bring its own action to determine the same issue that was raised in the PBA

case – namely, whether the disciplinary provisions contained in the SCCL control the discipline of firefighters in the City.[1]

After limited discovery, the Union filed a motion for summary judgment, seeking, among other things, a declaration that the SCCL provisions regarding firefighter discipline do not apply to the Union and its bargaining unit members. (R. 1000). The City then cross-moved for summary judgment, seeking, among other things, a declaration that the SCCL controls firefighter discipline in the City. (R. 1002).

The trial court granted the Union's motion and held that the City had superseded the SCCL provisions regarding firefighter discipline when it enacted the 1960 Charter. (R. 20). The trial court reasoned that it believed the City intended to supersede the SCCL's provisions regarding police and firefighter discipline based on changes to the police and firefighter discipline language in the 1960 Charter, as bolstered by the parties' history of collective bargaining. (R. 18 – 19).

The City appealed the trial court decision to the Appellate Division, Fourth Department. (R. 1). On or about October 1, 2021, the Fourth Department issued an Order affirming the trial court decision. (R. 1180). The Fourth Department did not provide any analysis, but rather adopted the trial court's rationale. *Id*. On or

[1] The PBA matter, and the lower court's decision in that case, is also currently on appeal before this Court as APL-2022-00046.

about April 26, 2022, this Court granted the City's motion for permission for leave to appeal the Fourth Department's decision. (R. 1177). For the reasons stated below, the lower courts' decisions should be reversed.

ARGUMENT

THE SCCL GOVERNS POLICE AND FIRE DISCIPLINE IN THE CITY

A. The Court of Appeals has Expressed a Clear Preference for Municipal Control Over Police and Fire Discipline

This case arises in the context of several Court of Appeals decisions addressing the scope of a public employer's obligation under the Taylor Law to engage in collective bargaining where the subject of discipline is concerned. These decisions provide a framework for this Court to analyze whether the SCCL provisions regarding firefighter discipline have been superseded by the City.

The Taylor Law generally requires public employers to bargain in good faith concerning all terms and conditions of employment. N.Y. CIV. SERV. LAW § 204(2); Matter of City of Watertown v. State of N.Y. Pub. Empl. Relations Bd., 95 N.Y.2d 73, 78 (2000). However, the presumption in favor of collective bargaining may be overcome by, among other things, "plain and clear, rather than express, prohibitions in the statute or decisional law." Matter of Cohoes City School Dist. v. Cohoes Teachers Assn., 40 N.Y.2d 774, 778 (1976).

Since 2006, this Court has consistently expressed a clear preference for local control over police discipline. This preference has been articulated through a

series of cases, beginning with Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. v. N.Y. State Pub. Empl. Relations Bd., 6 N.Y.3d 563 (2006), extending to Matter of Town of Wallkill v. Civil Serv. Empls. Assn., Inc., 19 N.Y.3d 1066 (2012), and culminating most relevantly in Matter of the City of Schenectady v. N.Y. State Pub. Empl. Relations Bd., 30 N.Y.3d 109 (2017).

In Patrolmen's Benevolent Assn., the Court considered whether the Rockland County Police Act, New York City Administrative Code and New York City Charter, which all provided for local control of police discipline, negated the Taylor Law's collective bargaining requirements and made police discipline a prohibited subject of bargaining in those jurisdictions. 6 N.Y.3d at 571-72. After comparing the competing policy considerations, the Court held that the local statutes, and not the Taylor Law, controlled because the legislatures specifically granted local officials the authority to administer police discipline, and the laws in question were enacted prior to the Taylor Law. Id., at 570, 576. As a result, the Court held that the municipalities at issue were prohibited from collectively bargaining regarding police discipline and that the provisions of the local statutes regarding discipline controlled the disciplinary procedures. Id., at 575-77.

Recognizing the potential significance of the Patrolmen's Benevolent Assn. decision, the City and the Union added language to their 2006-2007 collective

bargaining agreement that reserved each party's rights relating to the applicability of that decision, (R. 1069). As stated in section 20.8 of the current CBA:

> Consistent with § 209a.1(e) of the Civil Service Law, the City agrees that until such time as a 2011 (or 2011 and beyond) collective bargaining agreement is reached either through negotiations, or imposition, it will abide by the disciplinary procedures set forth in the existing collective bargaining agreement, notwithstanding the decision in In the Matter of Town of Orangetown, and In the Matter of Patrolmen's Benevolent Association of the City of New York, 6 N.Y.3d 563 (2006), *it being understood and agreed that the parties reserve their respective rights and arguments relating to the applicability of In the Matter of Town of Orangetown, and In the Matter of Patrolmen's Benevolent Association of the City of New York*, after such time. (emphasis added). (R. 82 – 83).

The City and the Union included the same language in each of their subsequent collective bargaining agreements, and it is currently memorialized in Article 20, Section 20.8, "Abidance to Existing Procedures," in the current CBA. (R. 82 – 83).

Next, in 2012, the Court decided Town of Wallkill, 19 N.Y.3d 1066 (N.Y. 2012), which expanded the scope of its holding in Patrolmen's Benevolent Assn. In Town of Wallkill, the Court held that a provision in an existing collective bargaining agreement between the Town of Wallkill and the Town of Wallkill Police Officers' Benevolent Association requiring arbitration of disputes regarding police discipline was invalid. Id., at 1069. The Court reasoned that New York Town Law § 155, which was enacted prior to the Taylor Law, expressly committed to the Town

of Wallkill "the power and authority to adopt and make rules and regulations" for police discipline. Id. Therefore, the Town Law negated the Taylor Law's collective bargaining obligation and the authority to administer police discipline resided solely with the Wallkill Town Board.

B. The Court of Appeals Expressly Held that the SCCL Governs Police and Firefighter Discipline in Cities of the Second Class

In October 2017, this Court decided Matter of City of Schenectady v. N.Y. State Pub. Empl. Relations Bd., 30 N.Y.3d 109 (2017). In that case, the Court considered whether the SCCL governed police discipline in the City of Schenectady (a city of the second class, like the City in this case), where the SCCL's disciplinary provisions conflicted with the parties' current and prior collective bargaining agreements.

In considering whether the SCCL controlled, the Court examined the language of Section 133 of the statute, which provides that the commissioner of public safety[2] is "authorized and empowered to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the . . . discipline . . . of the officers and members of the police and fire departments, and for the hearing, examination,

[2] Several years after the enactment of the SCCL, the City of Schenectady eliminated the position of "commissioner of public safety" through changes in its governmental structure. However, the City of Schenectady transferred that office's powers and responsibilities to others. The Court explicitly held that the changes in the City of Schenectady's governmental structure were irrelevant to its analysis. See City of Schenectady, 30 N.Y.3d at 116, n. 1.

investigation, trial and determination of charges made or prepared against any officer or member of said departments . . . ." (emphasis added). This language, as well as other sections of the SCCL, contradicted collective bargaining agreements between the City of Schenectady and the Schenectady PBA.

The City of Schenectady argued that because it was a "second class city" the SCCL negated the collective bargaining requirements in the Taylor Law and that, as a result, the City was permitted to promulgate its own police disciplinary procedures consistent with the SCCL. The City of Schenectady cited to the Court's decisions in Patrolmen's Benevolent Assn. and Town of Wallkill and argued that the Court's analysis in those cases controlled. The respondents, including the Schenectady PBA, argued, among other things, that the changes to Schenectady's governmental structure, such as the adoption of an entirely new form of government and the elimination of the "commissioner of public safety" position, as well as the parties' history of collective bargaining, required the Court to disregard the explicit provisions regarding police discipline found in the SCCL.

The Court agreed with the City of Schenectady and rejected the Schenectady PBA's arguments. The Court held that its analysis in Patrolmen's Benevolent Assn. and Town of Wallkill controlled and that the provisions in the SCCL regarding police discipline applied to the City of Schenectady. The Court also summarily rejected the Schenectady PBA's argument that the SCCL provisions

regarding police discipline had been superseded by changes in the City of Schenectady's governmental structure or by subsequent statutes, including the Taylor Law. Id., at 115. The Court held that "[t]he Taylor Law's general command regarding collective bargaining is not sufficient to displace the more specific authority granted by the Second Class Cities Law." Id., at 115.

As a result, the Court held that the SCCL controlled the administration of police discipline in the City of Schenectady and that collective bargaining regarding police discipline was prohibited. Id.

C. The SCCL Provisions Regarding Police and Firefighter Discipline Apply to the City

By its own terms, the provisions of the SCCL apply to "a city of the state which on the thirty-first day of December, nineteen hundred and twenty-three was a city of the second class, until such provision is superseded pursuant to the municipal home rule law, was superseded pursuant to the former city home rule law or is or was otherwise changed, repealed or superseded pursuant to law." SCCL § 4.

There can be no dispute that the City was a city of the second class as of December 31, 1923. At that time, a city of the second class was defined as a city that had a population of at least 50,000 but less than 175,000. According to the 1920 census, the City's population was 171,717, making it a city of the second class.

In addition, the fact that the City's population levels may have fluctuated since is irrelevant to whether it continues to be a second class city. See

Op. Atty. Gen. 1032, 45 St. Dep't 470 ("It will thus be seen that in 1920, and consequently in 1923 . . . Syracuse was a second class city, and still is for purposes of the SCCL, although its population now by census of 1930 is over 209,000").

Moreover, courts have consistently looked to the SCCL to determine the powers and obligations of the City. See Tupper v. City of Syracuse, 93 A.D.3d 1277 (4th Dep't 2012); Board of Educ. v. Common Council of City of Syracuse, 50 A.D.2d 138 (4th Dep't 1975); Berman v. City of Syracuse, 14 Misc. 2d 893 (N.Y. Sup. Ct. Onondaga Cty. 1958); Langan v. City of Syracuse, 12 Misc. 2d 392 (N.Y. Sup. Ct. Onondaga Cty. 1958).

In the courts below, the Union did not dispute that the City was and is a city of the second class that is subject to the SCCL. As a result, in accordance with City of Schenectady, Patrolmen's Benevolent Assn. and Town of Wallkill the SCCL's provisions regarding police and firefighter discipline apply to the City. The only way the SCCL's disciplinary provisions would not apply to the City is if they were superseded. See SCCL § 4.

D. The SCCL Provisions Regarding Police and Fire Discipline Have Not Been Superseded

The primary question for this Court's determination is whether the City superseded the SCCL provisions regarding police and fire discipline when it enacted the 1960 Charter. There is no dispute that the City's 1935 and 1960 Charters included provisions regarding police and fire discipline that were different from the

police and fire discipline provisions contained in the SCCL. However, as discussed below, these differences are not sufficient to establish that the City superseded the SCCL.

1. The City's 1935 and 1960 Charters Do Not State That They are Superseding the SCCL Provisions Regarding Police and Fire Discipline

Both the City Home Rule Law and the Municipal Home Rule Law specifically contemplate that a local law could supersede a state statute such as the SCCL. Former City Home Rule Law Section 12.1 stated, "Any local law adopted pursuant to this chapter may specify any provision of an act of the legislature . . . which it is intended to supersede by local law." (R. 1078).

In interpreting Section 12.1 of the City Home Rule Law, this Court stated, "The effect of local law on acts of the Legislature is defined (§ 12, sub. 1) in substance as follows: If it is intended to supersede by a local law a provision of an act of the Legislature . . . such local law shall specify any provision of such act of the Legislature by chapter number, year of enactment, title of statute, section, subsection or subdivision which it is intended to supersede by a local law." McCabe v. Voorhis, 243 N.Y. 401, 414-15 (N.Y. 1926) (emphasis added).

The Court explained the purpose for this rule as follows: "The existence of a duty to keep a local law free from ambiguity cannot be denied. Confusion would be intolerable if, in the case of every local law adopted throughout the cities of the State, no one could feel confident that local legislators had intended

to supersede an entire statute or only part of it. If a part, which part? The purpose of section 12, subdivision 1, of the City Home Rule Law is to compel definiteness and explicitness in order that clarity shall result." Bareham v. City of Rochester, 246 N.Y. 140, 150 (1927).

Accordingly, if a municipality intended to supersede a State statute under the City Home Rule Law, it was required to specifically state its intention to do so. For example, in Bareham, this Court considered whether a local law enacted by the City of Rochester superseded the New York Election Law. Although the Court noted that "[a]n earnest and attentive comparison of the Election Law with the Rochester charter and with the local law might result in knowledge respecting the sections of the Election Law intended to be superseded," the Court did not find that the local law superseded the State statute because the local law did not specify any provision of State law by chapter number, year of enactment, title of statute, section, subsection or subdivision, which it was intended to supersede. 246 N.Y. at 150.

Here, the City's 1935 and 1960 Charters were both enacted pursuant to the City Home Rule Law. (R. 247, 326-27). Importantly, the provisions of those charters addressing police and fire discipline do not contain any statement that they are intended to supersede the disciplinary provisions of the SCCL. (R. 1073). As a result, under the City Home Rule Law, which was the statute under which the 1935

and 1960 Charters were enacted, the SCCL provisions regarding police and fire discipline have not been superseded.

Although the City's1935 and 1960 Charters were both enacted pursuant to the City Home Rule Law, the trial court held, without explanation, that it was appropriate to analyze whether the police and fire disciplinary provisions in those charters superseded the SCCL utilizing the standard established by the current Municipal Home Rule Law. (R. 20).[3] It is unclear the basis for this determination, but the City respectfully submits that it was inappropriate. Indeed, the Municipal Home Rule Law did not become effective until January 1, 1964, which is after both the 1935 and 1960 Charters were enacted.

Further, the Municipal Home Rule Law does not include any language indicating that it would be retroactively applied to local laws already in existence at the time of its effective date. See, e.g., McMillen v. Browne, 14 N.Y.2d 326, n.1 (1964) ("Article IX of the Constitution was revised, effective January 1, 1964, and the City Home Rule Law was repealed and its provisions re-enacted as part of the Municipal Home Rule Law, effective January 1, 1964. Since the local law under consideration was enacted prior to that date, references herein are to the Constitution and City Home Rule Law provisions in effect at that time."). As such, it is the City's

[3] The trial court seemed to acknowledge that if analyzed under the City Home Rule Law, the 1960 Charter would not have superseded the SCCL provisions relating to police and fire discipline. (R. 20).

contention that the analysis of supersession here should be guided solely by the City Home Rule Law in effect at the time of the 1935 and 1960 Charter amendments.

Notwithstanding, even if supersession is analyzed under the Municipal Home Rule Law, it is clear that the City did not supersede the police and fire disciplinary provisions contained in the SCCL.

Municipal Home Rule Law Section 22 permits a local law to supersede a State statute "if 'the chapter or local law or ordinance, number and year of enactment, section subsection or subdivision, which it is intended to change or superseded,' is specified." Viscio v. Town of Wright, 42 A.D.3d 728, 730 (3d Dep't 2007) (quoting Municipal Home Rule Law § 22(1)). Unlike the City Home Rule Law, however, the Municipal Home Rule Law also states that "the failure so to specify shall not affect the validity of such local law." Id.

Although the Municipal Home Rule Law contains this proviso, it does not eliminate the need for a municipality to clearly state its intention to supersede a State statute. In fact, this Court has interpreted Section 22 as requiring, "substantial adherence to the statutory methods to evidence a legislative intent to amend or supersede those provisions of a State law sought to be amended or superseded." Turnpike Woods, Inc. v. Town of Stony Point, 70 N.Y.2d 735, 737 (1987). The Court explained that Section 22 "requires a municipality invoking its supersession authority to state its intention with definiteness and explicitness – hardly an

insignificant matter." Kamhi v. Town of Yorktown, 74 N.Y.2d 423, 434-35 (1989) (citing Turnpike Woods, 70 N.Y.2d at 738).

Further, "[t]he purpose of section 22 is to compel definiteness and explicitness, to avoid the confusion that would result if one could not discern whether the local legislature intended to supersede an entire State statute, or only part of one – and if only a part, which part." Id., p. 738 (citing Bareham v. City of Rochester, 246 N.Y. 140, 150 (1927)).

This Court's analysis of supersession under the Municipal Home Rule Law in Turnpike Woods is instructive. There, the Court considered whether a local law, enacted by the Town of Stony Point, superseded New York Town Law § 276(4). After reciting the standard set forth above, the Court concluded that the local law did not supersede the State law because it "[did] not expressly amend or superseded Town Law § 276(4), nor [did] it contain any declaration of intent to do so." Id., p. 738. In addition, the Court stated,

> Nowhere does [the local law] define by reference to chapter and section number, or by reference to title, or by replication of actual text, the particular provisions of the Town Law to which it purports to apply. Notably, while section VII of Local Law 7 – entitled "Repeal of Other Laws" – declares the supersession of all prior ordinances in conflict with the moratorium, any reference to the Town Law, or more specifically to Town Law § 276(4) is conspicuously absent. Indeed, one reading the entire text of Local Law No. 7 is unable to perceive with reasonable certainty which provisions of the Town Law, if any, it seeks to supersede." Id.

Stated differently, the standard for supersession under the Municipal Home Rule Law Section 22 is substantial. It is not enough that the local law simply conflicts with the State law. Rather, there must be a clear and definite statement of intent to supersede within the text of the local law.

As stated above, here, the provisions of the City's 1935 and 1960 Charters addressing police and fire discipline do not contain any statement that they are intended to supersede the disciplinary provisions of the SCCL. (R. 1073). Pursuant to Municipal Home Rule Law Section 22 and the cases interpreting that statute, the City has therefore not superseded the SCCL provisions relating to police and fire discipline. Rather, the City, like the City of Schenectady, transferred the power to promulgate disciplinary procedures, which were articulated in the SCCL, to the Chief of Fire.

At best, the 1960 Charter, adopted prior to the enactment of the Municipal Home Rule Law, contains a general statement that prior charters are superseded to the extent they are in conflict with the 1960 Charter. However, general statements do not satisfy a municipality's obligation to "substantially adhere" to the requirements of Municipal Home Rule Law Section 22. The Third Department explicitly rejected this argument in Rensselaer County v. City of Troy, 102 A.D.2d 976 (3d Dep't 1984). There, the municipality contended that a general provision in its charter, entitled "Former Charter Superseded," impliedly superseded a specific

State law. The Third Department rejected this rationale, noting that "[r]epeal by implication is not favored by the courts." Id, p. 976.

Moreover, the City's prior conduct also provides support for the conclusion that the SCCL was not superseded. In fact, the City has followed the direction of the City Home Rule Law (and Municipal Home Rule Law) and explicitly stated when it intended to supersede a provision of the SCCL. For example, in 1927, the City enacted Local Law 5-1927, which specifically stated, "A local law of the city of Syracuse to amend and supersede section ninety-five of chapter fifty-five of the laws of nineteen hundred and nine known as second class cities law, in relation to collection of water rents." (emphasis added). (R. 1086). Similarly, in 1998 the City adopted Local Law 11-1998, which states, "A local law of the city of Syracuse superseding the New York State Second Class Cities Law to increase the minimum level of fines from $150.00 to $1,000.00 for violations of the City's local laws and general ordinances." (emphasis added). (R. 1088 – 1089). See Rensselaer County v. City of Troy, 102 A.D.2d 976 (3d Dep't 1984) (holding, "the fact that the city complied with [Municipal Home Rule Law section 22] as to other laws but not as to section 9 of chapter 209 would indicate that it was not repealed. Repeal by implication is not favored by the courts.").

2. The Trial Court's Analysis of Supersession Was Flawed

It is clear that the trial court's analysis of supersession was flawed. In holding that the City superseded the SCCL, the trial court ignored the text of the City Home Rule Law, this Court's interpretation of that law, and the intentional and substantial burden placed on municipalities wishing to supersede a State statute. Instead, ignoring applicable precedent, the trial court held that the City superseded the SCCL even though the City did not include *any* statement in the text of the 1960 Charter that it intended to supersede the SCCL provisions relating to police and fire discipline.

The trial court cited to two cases to support its holding on this point: Henderson Taxpayers Assn. v. Town of Henderson, 283 A.D.2d 940 (4th Dep't 2001) and Miller v. City of Albany, 278 A.D.2d 647 (3d Dep't 2000). However, both of these cases are easily distinguished because in each case the municipality clearly stated its intention to supersede a State statute. In Henderson, the local law expressly stated that it was intended to supersede Town Law § 263. 283 A.D.2d at 941. Similarly, in Miller, the court stated that there could be "no reasonable doubt" as to what statute was intended to be superseded. 278 A.D.2d at 648. Here, there is no such clear indication in the text of the 1960 Charter. In fact, as discussed above, under the 1960 Charter, the Chief of Fire retains the authority to promulgate disciplinary rules.

Interestingly, the trial court did not find that the 1935 Charter superseded the SCCL provisions regarding police and fire discipline. (R. 6 – 21). This holding is clearly inconsistent with the trial court's conclusion that the 1960 Charter did supersede the SCCL. There is no dispute that the 1935 Charter, like the 1960 Charter, significantly altered the police and fire disciplinary provisions contained in the SCCL. In fact, the 1935 Charter eliminated the "commissioner of public safety" position and created Departments of Police and Fire. (R. 296, 300). In addition, the 1935 Charter includes the Mayor in the police and fire disciplinary process.

Notwithstanding this apparent contradiction in its own decision, the trial court failed to properly follow the applicable law. Substantial compliance with the Municipal Home Rule Law requires more than implied supersession. There is no dispute that the disciplinary provisions contained in the 1935 and 1960 Charters do not state they are superseding the SCCL. They do not even mention the SCCL. The trial court relied exclusively on a perceived conflict between the SCCL and 1960 Charter to find supersession. However, conflict between a local law and State statute is simply not enough and in fact is why affirmative declaration as to supersession is required. See Bareham, supra. The trial court's analysis of whether the City superseded the SCCL provisions regarding police and fire discipline is therefore in error and should be reversed.

3. This Court held that Similar Changes to the Governmental Structure of the City of Schenectady were Irrelevant to Whether the SCCL Controlled Discipline

The trial court's decision relied on changes to police and fire discipline provisions in the 1960 Charter to justify its holding that the City superseded the SCCL. (R. 18 – 20). However, the trial court's decision wholly ignored the fact that in City of Schenectady, this Court considered similar changes to the City of Schenectady's charter and held that those changes were "irrelevant" to whether the SCCL controlled. 30 N.Y.3d at 116, n. 1.

As discussed above, the SCCL, as originally enacted in 1906, included specific provisions regarding the discipline of police and firefighters, and expressly vested the authority to make rules regarding such discipline in a local public official – the commissioner of public safety.

Prior to 1934, the City of Schenectady operated under a governmental structure that incorporated the SCCL (like the City in this case) and included a commissioner of public safety, who was vested with the authority to prescribe disciplinary procedures and discipline. (R. 1029). However, in 1934, the City of Schenectady adopted a new form of government pursuant to the Optional City Government Law. (R. 1032). In conjunction with this change in the form of its government, on January 4, 1936, the City of Schenectady adopted an ordinance that

expressly abolished the office of the commissioner of public safety and transferred the powers and duties of that office to a "City Manager." (R. 1032).

In 1939, the State Legislature repealed the Optional City Government Law. According to that repeal, any city government plan or change thereto following the repeal was to be made pursuant to the City Home Rule Law (and subsequently, the Municipal Home Rule Law). (R. 1049). In 1978, pursuant to the Municipal Home Rule Law, the City of Schenectady approved a change in governance from an appointed City Manager to an elected mayor. (R. 1033 – 1034). In 1986, the City of Schenectady again amended its Charter by, among other things, deleting its reference to a "Commissioner of Public Safety" and replacing it with "Police Department." (R. 1051 – 1055).

Importantly, amendments to the City of Schenectady charter, including the amendment in 1978 that eliminated the position of City Manager in favor of a mayor, stated, "[a]ll provisions of L. 1914, Ch. 444 [the Optional City Government Law] or any other law, charter provision, local law or ordinance ***no[t] inconsistent herewith*** shall continue to be in full force and effect." (emphasis added) (R. 1053).

After other changes and transfers of power, the City of Schenectady ultimately reinstated the position of commissioner of public safety in 2002. (R. 1034 – 1035). Although the position was reinstated, the City of Schenectady's charter does not mirror the SCCL as it relates to discipline and, in fact, fails to include any

of the disciplinary procedures stated in the statute that had been previously included in its charter prior to 1934. (R. 1064 – 1067).

In the City of Schenectady decision, this Court considered, among other things, whether these changes to the structure of the City of Schenectady's government, including the elimination of the "commissioner of public safety" position, had any impact on the applicability of the SCCL provisions regarding discipline. The Court held that they did not, and disposed of the issue in a footnote, stating, "Subsequent changes to Schenectady's form of government have eliminated the office of the commissioner and transferred that office's powers and responsibilities to others, which is irrelevant for the purpose of our decision in this case." 30 N.Y.3d at 116, n. 1.

Similarly, here, through changes in its organizational structure, the City has eliminated the position of commissioner of public safety, but transferred the disciplinary power of that position to others, including the Chief of Fire.

As of 1915, the City operated under a charter that provided for several governmental departments, including a "Department of Public Safety." (R. 206). The Department of Public Safety was headed by a "commissioner of public safety," who had "cognizance, jurisdiction, supervision and control of the government, administration, disposition and discipline of the police department, fire department, buildings department and health department." (R. 208). The 1915 charter

authorized the commissioner of public safety to "to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the police and fire departments . . ." (R. 208). The City's 1915 charter provisions relating to police and fire discipline mirrored the SCCL provisions regarding discipline.

In 1935, the City adopted a new charter pursuant to the City Home Rule Law. As part of the new charter, the City transferred the disciplinary powers of the commissioner of public safety to others within the government. (R. 256). Among other changes, the 1935 charter split the Department of Public Safety into a Department of Police, Department of Fire, and Department of Public Health. (R. 296, 300, 304). The 1935 charter explicitly transferred the powers of the commissioner of public safety to the commissioners of these new departments. Section 26 of that charter stated,

> All authorities, rights, powers, duties and obligations enjoyed or possessed by or devolved upon any officer, department, commission, board or other city agency, or employee, as of the time when this Charter shall take effect, shall continue and be preserved except where inconsistent with the provisions of this Charter. (R. 256).

The 1935 charter also explicitly stated,

> all property, rights and interests now possessed or enjoyed by the City of Syracuse, shall continue to be possessed and enjoyed by it. The City, and all officers, departments, commissions, boards and other agencies thereof, shall have, enjoy and be subject to all authority, rights and

> powers now possessed by it or them, and all obligations or duties now owed by it or them. (R. 247).

With respect to the Department of Fire, the 1935 charter specifically provided that the powers previously possessed by the commissioner of public safety were explicitly transferred to the Chief of Fire. (R. 301). Section 222 states in relevant part, "[The Chief of Fire] is authorized and empowered with the approval of the Mayor, to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the . . . discipline . . . of the officers and members of the Fire Department . . ." (R. 301).

The City amended its charter in 1960, and again kept the power to promulgate disciplinary procedures for the Fire Department with the Chief of Fire. Section 5-908 of the 1960 Charter states, "The chief of fire, with the approval of the mayor, shall make, adopt, promulgate and enforce such reasonable rules, orders and regulations for the . . . discipline . . . of the officers and members of the department of fire as may be necessary to carry out the functions of the department. Disciplinary proceedings against any member of the department shall be conducted in accordance with the rules and regulations of the department and the provisions of law applicable thereto, including the Civil Service Law." (R. 377).

Just as the 1935 Charter stated, the 1960 Charter also states that "all property, rights and interests now possessed or enjoyed by the City of Syracuse, shall continue to be possessed and enjoyed by it. The city, and all officers, departments,

commissions, boards and other agencies thereof, shall have, enjoy and be subject to all authority, rights and powers now possessed by it or them . . . ." (R. 326).

The trial court ignored this Court's analysis in City of Schenectady. Instead, the trial court reasoned that because the SCCL was "inconsistent" with the 1960 Charter, the City intended that it would be superseded. However, if the lower court were correct, this Court should have held that the City of Schenectady charter, which eliminated the position of commissioner of public safety altogether, deleted any reference to the SCCL provisions relating to discipline, and transferred the authority of the commissioner of public safety to others within the government, was also "inconsistent" with the SCCL and therefore superseded its provisions relating to discipline. But that is not what this Court did in City of Schenectady.

This Court has already held that extensive changes to the SCCL provisions regarding police discipline in the City of Schenectady were irrelevant to its determination as to whether the SCCL provisions regarding police and fire discipline prohibited bargaining over discipline in second class cities. The Court reasoned that in spite of these wholesale changes, the City of Schenectady transferred the local authority to control discipline from one official to another and did not supersede the SCCL. See 30 N.Y.3d at 115, n. 1.

Finally, the trial court stated that its decision was "bolstered" by the parties' long history of collective bargaining. (R. 19). However, history of

collective bargaining is not relevant where, as here, the SCCL prescribes the relevant disciplinary procedures. This argument was made, and rejected, in the City of Schenectady case. 30 N.Y.3d at 116. Furthermore, the parties preserved their rights in this regard by including specific language relative to these issues in the collective bargaining agreements.

Just as in the City of Schenectady, here, the powers granted to the commissioner of public safety in the SCCL have been transferred to the Chief of Police and Chief of Fire by the City's 1935 and 1960 Charters. This Court should therefore follow its holding in City of Schenectady and find that the SCCL provisions relating to discipline apply to the Union and its bargaining unit members.

4. The 1960 Charter's Reference to the Civil Service Law is Inapposite

As noted above, the City's 1960 Charter references the New York Civil Service Law when discussing the Chief of Fire's authority to issue discipline and promulgate disciplinary rules. The trial court found this fact persuasive and held that by referencing the Civil Service Law, the City was superseding the SCCL and granting the Union bargaining rights relating to discipline.

However, the clear language of the 1960 Charter indicates otherwise. The charter states that the Civil Service Law, along with other applicable laws, are to be used as guides for the Chief of Fire in promulgating disciplinary procedures. It does not remove or alter the authority of the Chief to issue discipline or promulgate

disciplinary procedures. It also does not even mention bargaining rights. The Chief of Fire clearly retains the authority, originally granted to the commissioner of public safety, to promulgate disciplinary rules.

In addition, the City's 1960 Charter was enacted before the Taylor Law, which was enacted in 1967. Accordingly, the 1960 charter's reference to the Civil Service Law was clearly unrelated to the Taylor Law's collective bargaining provisions.

Finally, the lower court's analysis is refuted by the fact that the SCCL also references the Civil Service Law in discussing the powers of the commissioner of public safety. Section 135 of the SCCL states, "The commissioner shall make all appointments, promotions and changes of status of the officers and members of the police and fire departments in accordance with the provisions of the civil service law of the state, except as otherwise provided herein." Even though the SCCL references the Civil Service Law, this Court has held that the Civil Service Law has no impact on the SCCL's provisions regarding discipline. In fact, the Court has explicitly held that the SCCL precludes collective bargaining relating to discipline. City of Schenectady, 30 N.Y.3d at 117. Similarly, here, the 1960 Charter's reference to the Civil Service Law is of no consequence.

It is clear from the record that the City, just like the City of Schenectady, transferred the powers of the commissioner of public safety to others within the

government, including the Chief of Fire. This Court should therefore follow the City of Schenectady decision, reverse the lower courts, and issue an order declaring that, just like in the City of Schenectady, the SCCL governs fire discipline in the City.

CONCLUSION

Based on the foregoing, this Court should reverse the lower courts and issue an Order declaring that (a) the City is no longer permitted to collectively bargain issues of discipline with the Union, (b) the provisions of the current CBA between the City and the Union relating to discipline are no longer valid; and (c) pursuant to this Court's decision in City of Schenectady, the disciplinary procedures set forth in the SCCL apply to the City's fire department.

Dated: June 24, 2022

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NEW YORK STATE COURT OF APPEALS
CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR PART 500.13 that the foregoing brief was prepared on a computer using Microsoft Word.

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I, **Jeremy Slyck**, of Rochester, New York, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at the address shown above.

On June 24, 2022

deponent served the within: **BRIEF FOR DEFENDANT-APPELLANT**

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the address(es) designated by said attorney(s) for that purpose by depositing **three (3)** true copy of same, enclosed in a properly addressed wrapper in an Overnight Next Day Air Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of New York.

Sworn to before me on June 24, 2022

Andrea P. Chamberlain
Notary Public, State of New York
No. 01CH6346502
Qualified in Monroe County
Commission Expires August 15, 2024

Jeremy Slyck

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