

Appellate Division Docket No. CA 20-00739
Onondaga County Clerk's Index No. 008031/109

**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.

**AFFIDAVIT OF NATHANIEL G. LAMBRIGHT IN OPPOSITION TO THE
CITY'S MOTION FOR LEAVE TO APPEAL**

BLITMAN & KING LLP
Nathaniel G. Lambright
Attorneys for Plaintiff-Respondent
443 North Franklin Street, Ste. 300
Syracuse, NY 13204
Tel: (315) 422-7111
nglambright@bklawyers.com

November 18, 2021

STATE OF NEW YORK)
COUNTY OF ONONDAGA) ss.:

NATHANIEL G. LAMBRIGHT, an attorney duly licensed to practice law in the State of New York, affirms the following under the penalty of perjury:

1. I am a partner in the law firm of Blitman & King LLP, attorneys for the Plaintiff-Respondent Paul Motondo, as President of the Syracuse Fire Fighters Association, IAFF Local 280 (“Local 280” or the “Union”), and I am fully familiar with all the facts and circumstances set forth in this affidavit. This affidavit is submitted in Opposition to the Defendant-Appellant City of Syracuse’s (“City”) Motion for Leave to Appeal (“Motion”) the Order (“Order”) of the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department, dated October 1, 2021, a copy of which was attached to the City’s Motion as Exhibit “B”.

2. In accordance with this Court’s rules, 22 NYCRR § 500.1(f), Local 280 discloses that it is an unincorporated association. It is affiliated with the New York State Professional Fire Fighters Association and the International Association of Fire Fighters.

BRIEF FACTUAL BACKGROUND

3. In 1906, the New York State Legislature enacted the Second Class Cities Law (“SCCL”). Second Class Cities Law §§ 1-253, L. 1906 ch. 473, as

amended; R. at 474. This provided a standard uniform city charter for all cities of the “Second Class.” Syracuse is a “Second Class City.”

4. Section 131 of the SCCL gives the commissioner of public safety control over the discipline of the fire department. R. at 474. Section 133 authorizes the commissioner to “make, adopt, promulgate and enforce reasonable rules, orders and regulations for the . . . discipline . . . of [members of the fire department]. . . , and for the hearing, examination, investigation, trial and determination of charges made or prepared against any [member of the fire department]. . . and may, in his discretion, punish any such officer or member found guilty thereof.” R. at 474.

5. In 1915, the City adopted a charter that was consistent with the SCCL and which included the SCCL’s discipline procedures set forth in Sections 131 and 133. R. at 157-244.

6. In 1924, the New York State Legislature enacted the City Home Rule Law. L. 1924 ch. 363; R. at 475. The City Home Rule Law authorized New York State’s cities to adopt their own charters subject to their own needs and wants. R. at 474.

7. In 1925, the Legislature amended Section 4 of the SCCL to provide a supersession clause. R. at 475. This clause provided: “A provision of this chapter shall apply, according to its term, only 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 city home rule law* or was otherwise changed, repealed or superseded pursuant to law.” L. 1925 ch. 392 (emphasis added); R. at 475.

8. Section 36 of the City Home Rule Law provided that, “[a]ll existing charters and other laws relating to the property, affairs and government of cities, and other laws relating to the property, affairs and government of cities, and other laws which are subject to amendment or change . . . shall continue in force until repealed, amended, modified or superseded, in accordance with the provisions of this chapter and of the constitution.” Former City Home Rule Law § 36.

9. In 1935, pursuant to the 1924 City Home Rule Law, the City adopted a new charter replacing the City’s 1915 Charter (the “1935 Charter”). R. at 246-324, 475-476.

10. In 1958, the Legislature enacted Civil Service Law Sections 75 and 76, providing due process and other procedural rights to certain civil service employees in disciplinary matters. R. at 476-477. Preexisting laws that expressly provided for control of fire discipline were “grandfathered” under Civil Service Law Section 76(4). Section 76(4) provides that nothing in Sections 75 and 76 “shall be construed to repeal or modify any general, special or local laws or charters.” Civil Service Law § 76(4); L. 1958 ch. 790, as amended; R. at 476-477.

11. Pursuant to the City Home Rule Law, the City replaced the 1935 Charter with the 1960 Charter, which remains in effect. R. at 326-453, 477.

12. Section 5-908 of the 1960 Charter, “Chief of Fire,” details that firefighter discipline proceedings must be conducted in accordance with Civil Service Law. R. at 377, 478. Section 5-908 provides:

The chief of fire shall appoint a first deputy and such other deputies and subordinates as may be prescribed by the board of estimate, except as otherwise prescribed by law. In the case of absence or disability of the chief or a vacancy in the office, the first deputy chief shall discharge the duties of the office until the chief returns, his disability ceases or the vacancy is filled. The chief of fire, with the approval of the mayor, shall make, adopt, promulgate and enforce such reasonable rules, orders and regulations for the government, discipline, administration and disposition 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* (emphasis added).

R. at 377, 478.

13. It was the City’s intent to replace all pre-existing laws, including the SCCL’s discipline procedures, with the procedures set forth in the Civil Service Law. R. at 1096. The Common Council minutes describing the 1960 Charter indicate: “The charter eliminates special disciplinary provisions for all Departments of Police and Fire. All employees will be disciplined in accordance with the procedures prescribed by the State Civil Service Law. The city will thereby operate under a uniform disciplinary policy for all departments.” R. at

1096. Thus, in adopting the Civil Service Law through the 1960 Charter for firefighter discipline, the City successfully granted bargaining unit members Civil Service Law Section 75 and 76 rights.

14. In 1965, the Legislature again amended Section 4 of the SCCL after the Municipal Home Rule Law replaced the City Home Rule Law. L. 1965 ch. 755; R. at 479. The amended Section 4 provided:

A provision of this chapter shall apply, according to its term, only 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 is or was otherwise changed, repealed or superseded pursuant to law. *Id.*; R. at 479.

15. The Syracuse Fire Department provides firefighting, fire prevention and emergency medical services to Syracuse. R. at 468-469. For decades, the City has recognized the Union, and the parties have negotiated and entered into successive collective bargaining agreements which were lawful pursuant to Article 14 of the Civil Service Law (the “Taylor Law”). R. at 39-145, 455-467, 469-472, 479-481, 509-905. When the parties have not reached an agreement, wages and other terms and conditions have been specified in compulsory interest arbitration awards issued pursuant to the dispute resolution procedures of the Taylor Law. R. at 39-145, 455-467, 480-481, 509-905.

16. For the past 50 years, the parties have followed their negotiated discipline procedures which allow for discipline disputes to be resolved through the grievance and arbitration process. R. at 39-145, 455-467, 480-481, 509-905. Article 20 of the CBA, “Disciplinary Disputes,” currently secures for the Union the right to resolve disciplinary disputes involving its members either through Section 75 of the Civil Service Law or through arbitration before a mutually selected neutral arbitrator. R. at 39-145, 481.

PROCEDURAL HISTORY

17. The Union petitioned in Supreme Court, Onondaga County, for a declaratory judgment that “the Second Class Cities Law does not apply to discipline involving bargaining unit members that make up the Union and instead discipline must be administered pursuant to the [2018-2020] Collective Bargaining Agreement agreed to by the City and the Union.” *Motondo v. City of Syracuse*, 68 Misc. 3d 398 (2019).

18. By decision dated May 11, 2020, Supreme Court granted summary judgment to the Union, concluding:

the Second Class Cities Law does not apply to discipline involving firefighters in the City of Syracuse and instead discipline must be administered consistent with the Municipal Home Rule Law, the 1960 City Charter and the [2018-2020] Collective Bargaining Agreement agreed to by the City and the Union, including the right to arbitration.

Id. at 411.

19. The Appellate Division, Fourth Department, affirmed the decision.

20. The City’s Motion now argues that leave to appeal is warranted because: (1) the 1960 Charter did not supersede the SCCL in accordance with the Municipal Home Rule Law; and (2) the Appellate Division’s decision conflicts with *Matter of City of Schenectady v. PERB*, 30 N.Y.3d 109 (2017) and therefore it did not follow this Court’s precedent. Perplexingly, the City contends that this firefighter discipline matter is of state-wide importance because the Order “will impact every second class city within the State that is seeking clarity on whether the SCCL controls *police* discipline and whether collective bargaining over discipline is prohibited” (emphasis added). Cty. Motion ¶ 45. Even more strangely given the City’s main argument is that the Fourth Department failed to follow *City of Schenectady*, the City argues that the matters at issue have not been considered by this Court before. For the reasons set forth below, each of these arguments are without merit.

**THE APPELLATE DIVISION CORRECTLY FOUND THAT THE SCCL
HAD BEEN SUPERSEDED BY THE 1960 CHARTER AND IT PROPERLY
APPLIED THIS COURT’S PRECEDENT**

21. The City contends that the SCCL has not been superseded by the 1960 Charter. However, the City of Schenectady’s Charter, unlike the 1960 Charter at issue in this case, does not materially deviate from the SCCL’s discipline

procedures and does not purport to supersede the SCCL pursuant to either the City Home Rule Law or the Municipal Home Rule Law. R. 906-1000.

22. In City of Schenectady, the Court stated that the police discipline in Schenectady was governed by the SCCL because the law was enacted prior to both the Taylor Law and Civil Service Law Section 75. The Court rejected PERB's argument that Section 4 of the SCCL demonstrated the Legislature's "statutorily planned obsolescence" of that law and held that the SCCL in Schenectady had not been implicitly repealed or superseded by the Taylor Law. 30 N.Y.3d at 117.

23. Thus, because the SCCL was enacted prior to Section 75 of the Civil Service Law and Schenectady's Charter had not been superseded by the Taylor Law, the Court found the SCCL's discipline procedures were "grandfathered" and the parties' contract procedures did not apply.

24. The 1960 Charter unequivocally supersedes the City's prior charters, including the 1915 Charter which had incorporated the SCCL. R. 326-454. The 1960 Charter initially states that it is a "local law of the city of Syracuse providing a new charter for the city of Syracuse, and *generally superseding* acts and local laws inconsistent therewith" (emphasis added). R. at 326. Section 1-102 of the 1960 Charter goes on to state that: "Subject to the provisions of the City Home Rule Law, *any provisions of law*, local law or ordinance including all laws, local laws or ordinances creating, providing for or continuing any office, officer,

department, board, body, commission or other city agency, *inconsistent with this charter are hereby repealed.*” R. 327-328. Finally, Section 9-106 provides: “All laws and parts of laws in force when this charter shall take effect are hereby *superseded* so far as they affect the city of Syracuse, to the extent that the same are inconsistent with the provisions of this charter, and no further” (emphasis added). R. at 436.

25. The City nonetheless argues that because Section 5-908 of the 1960 Charter does not specifically state that it supersedes Section 133 of the SCCL, the SCCL’s procedures remain effective. The City’s argument ignores the essential point that the 1960 Charter repeatedly states that the *entire* charter supersedes previous inconsistent laws. And, given the 1960 Charter’s discipline language incorporating the Civil Service Law and the Common Council meeting minutes specifically stating that this was the City’s intent, there can be no reasonable doubt as to the SCCL’s discipline procedures being superseded. *Motondo*, 68 Misc. 3d at 409-410; *see also Miller v. City of Albany*, 278 A.D.2d 647, 648 (3d Dep’t 2000) (although local law failed to explicitly state which statute was being superseded, there could be “no reasonable doubt as to what statute was intended to be superseded”); *Taylor Tree, Inc. v. Town of Montgomery*, 251 A.D.2d 673 (2d Dep’t 1998) (absence of specific reference to superseded default provision was not fatal

because “a reading of the moratorium indicates that it satisfies the ‘reasonable certainty’ test”).

26. Further, even if the Court finds that the 1960 Charter’s discipline procedures found in Section 5-908 did not explicitly reference the discipline procedures found in the SCCL, Section 22 of the Municipal Home Rule Law provides that this does not affect the validity of Section 5-908. N.Y. Mun. Home Rule L. § 22. Municipal Home Rule Law Section 22 (1) expressly provides that a failure to specify that a former law has been superseded shall not affect the validity of a Local Law. *Turnpike Woods, Inc. v. Town of Stony Point*, 70 N.Y.2d 735, 738 (1987) (citing *Bareham v. City of Rochester*, 246 N.Y.2d 140, 150 (1927)).

27. The 1960 Charter’s repeated generalized supersession provisions and its particularized adoption of the Civil Service Law, which includes the inconsistent Sections 75 and 76, establishes beyond doubt the City’s intent in 1960 to replace Section 133 of the SCCL with Sections 75 and 76. Hence, Section 5-908 of the 1960 Charter continues to be part of the City’s discipline procedures, including its incorporation of the Civil Service Law. Thus, the City is not entitled to a wholesale reversion to the SCCL’s discipline procedures and it may not refuse to follow the CBA’s discipline procedures. *Miller*, 278 A.D.2d at 648.

28. The City next contends that it always provides explicit supersession language whenever it enacts a local law with the intent of superseding a provision

of the SCCL. This simply is not the case. The City offers this Court just two examples of it utilizing explicit supersession language. The first, Local Law 5-1927, was passed under the 1915 Charter, which, unlike the 1960 Charter, did not contain the repeated general expressions of supersession of the SCCL. While the second, Local Law 11-1998, did state that it was superseding the SCCL, it was in fact amending Section 8-118 of the 1960 Charter, not the SCCL. Since 1960, no other announcement of supersession of the SCCL has been made in any of the amendments to the 1960 Charter. R. 326-454. The obvious reason for this is the 1960 Charter's references to supersession are adequate to supersede the prior charters, including the SCCL.

29. Finally, basing its argument on *City of Schenectady*, the City contends the SCCL discipline procedures are fully applicable in Syracuse because governmental changes were made in Schenectady that were similar to changes that were made to Syracuse's government structure under the 1960 Charter. In *City of Schenectady*, the Court of Appeals held that certain organizational changes to Schenectady's Charter alone did not cause this SCCL charter to be superseded.

30. While Schenectady's Charter has not mirrored the SCCL's standard charter since 1934, Schenectady's Charter and the SCCL were entirely consistent in the most important respect to this case, to wit, both gave authority to Schenectady to discipline police and firefighters without it being conducted in

accordance with the Civil Service Law. Further, Schenectady's charter makes no mention of its current charter superseding the SCCL pursuant to the City Home Rule Law or Municipal Home Rule Law. This is sharply contrasted with the 1960 Charter which specifically states that it was superseding all laws pursuant to the City Home Rule Law and which adopts the Civil Service Law for discipline matters. Thus, the changes to the 1960 Charter readily demonstrate that the SCCL is wholly inapplicable in the City and that the facts underlying *City of Schenectady* and which led to the Court's ruling that the SCCL was applicable to Schenectady, simply do not exist in this case.

**THE ISSUES HEREIN ARE NEITHER NOVEL
NOR OF PUBLIC IMPORTANCE**

31. As stated above, the City claims that this Court should hear this firefighter discipline case because the Order would impact every "Second Class City" that is seeking clarity on whether SCCL controls "*police*" discipline. Cty. Motion ¶ 45.

32. To begin, this Court should not take up a case dealing with firefighter discipline simply so the City can more easily discipline its police officers or to establish precedent on police discipline in the few Second Class Cities that exist.

33. Moreover, and contrary to the City's argument, this case does not establish any precedent for police or firefighter discipline in the other Second Class Cities. This is because each of these "Second Class Cities" (Albany, Troy,

Schenectady, Binghamton, Utica, Yonkers and Niagara Falls) have their own charters which would each have to be analyzed to determine if the SCCL had been superseded pursuant to the City Home Rule Law or Municipal Home Rule Law.

34. Further, this is not a novel case. Rather, the Fourth Department followed the law established by this Court in *Matter of Patrolmen's Benevolent Ass'n.*, 6 N.Y.3d 563 (2006), *Matter of Wallkill*, 19 N.Y.3d 1066 (2012), and *City of Schenectady*. Those cases, and all of the lower court cases that have followed them, stand for the proposition that police discipline is a prohibited subject of negotiations when a law gives a body of government the power to make rules and regulations to discipline and this law existed prior to the enactment of Civil Service Law Section 75 and this law *is still in effect*. The Appellate Division's Order was perfectly in line with this precedent and there is nothing new or groundbreaking by the facts of this matter and how the Court's existing precedent has been applied. In other words, because the Order applied existing precedent and this case presents absolutely nothing new or extraordinary, the Court should not waste its judicial resources on a review of this well-reasoned Order.

35. Finally, whether or not firefighters in Syracuse are obliged to follow the SCCL or its negotiated procedures is hardly a matter of State-wide public importance. It should be apparent to this Court that firefighter discipline is incredibly infrequent in the fire service. Indeed, this Court can also take judicial

notice of the fact that firefighter discipline cases simply do not involve interactions with the public involving alleged civil rights violations which would arguably be of higher public importance than what may happen in a fire house or on a fire scene.

THERE IS NO CONFLICT AMONGST THE APPELLATE DIVISIONS

36. There are no Appellate Division decisions which have found inapposite to the Fourth Department's Order. No Appellate Division has ruled that the SCCL, or any other preexisting law, applies to firefighter discipline where a "Second Class City," or other type of municipality, has superseded that law pursuant to the City Home Rule Law or Municipal Home Rule Law and replaced it with the Civil Service Law's disciplinary protections and obligations. Hence, further appellate review by this Court is unwarranted.

37. To conclude, and for all the foregoing reasons and legal authorities, there is no basis to overturn the Appellate Division's Order. Leave to appeal to the Court of Appeals is wholly unnecessary.

WHEREFORE, it is respectfully requested that the Court deny the City's Motion in its entirety, together with such other and further relief as the Court deems just and proper.

Dated: Syracuse, New York
November 18, 2021


Nathaniel G. Lambright

Sworn to before me on the
November 18, 2021.


Notary Public

JULIENNE A SCARAVILLO
Notary Public, State of New York
Qualified in Onondaga County No. 4766498
Commission Expires November 30, 20 22

TO: Adam P. Mastroleo, Esq. (*via overnight mail*)
Bond, Schoeneck & King, PLLC
Attorneys for Defendant-Appellant City of Syracuse
One Lincoln Center
Syracuse, New York 13202