

To Be Argued By:  
Louis D. Stober, Jr.  
Time Requested: 15 Minutes

APL-2021-00078

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Appellate Division, Second Department Docket No. 2018-10975

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# Court of Appeals

STATE OF NEW YORK



In the Matter of  
CITY OF LONG BEACH,

*Petitioner-Respondent,*

*against*

THE NEW YORK STATE EMPLOYMENT RELATIONS BOARD and  
LONG BEACH PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF, LOCAL 287,

*Respondents-Appellants.*

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**BRIEF FOR RESPONDENT-APPELLANT  
LONG BEACH PROFESSIONAL FIREFIGHTERS  
ASSOCIATION, IAFF, LOCAL 287**

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## **PRELIMINARY STATEMENT**

This brief is respectively submitted on behalf of the Appellant, Long Beach Professional Firefighters Association, IAFF, Local 287 (“LBPFPA”) in support of its Appeal of the Decision and Order of the Appellate Division, Second Department reversing the Supreme Court, Nassau County’s Order confirming the final administrative decision and order of the New York State Public Employment Relations Board (“PERB”) R-259<sup>1</sup>. In order to exercise judicial economy, the LBPFPA adopts the PERB Preliminary Statement to this Court as if fully set forth herein.

## **QUESTION PRESENTED**

1. PERB proposed the Question presented as: “Did the Second Department err by holding that all pre-termination procedures to implement CSL § 71 are prohibited subjects of negotiation?

Answer: Yes.”

The LBPFPA agrees this is the issue for the Court of Appeals.

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<sup>1</sup> R- refers to Joint Record on Appeal

## **STATEMENT OF FACTS**

The factual background giving rise to this matter is fully explained in the PERB brief to this Court so we shall adopt same as if fully set forth herein. The only additions the LBPFPA makes is that after the City filed the Article 78 proceeding initiating this court proceeding, the LBPFPA filed and served its Answer to the Supreme Court, Nassau County (R-219) on February 15, 2018 and filed and served its Memorandum of Law in Opposition to the Petition (R-223) on February 15, 2018.

## **JURISDICTIONAL STATEMENT**

The LBPFPA agrees with PERB that “this Court has jurisdiction because the Decision was an order from the Appellate Division that finally determined the action by reversing the order and judgment of the Supreme Court in *City of Long Beach*, 51 PERB ¶ 7002, 2018 WL 4483105 (R. 4); granted the City’s petition; denied PERB’s motion to dismiss the petition; declared the determination of PERB in *City of Long Beach*, 50 PERB ¶ 3036 (R. 159), null and void; and dismissed with prejudice the improper practice charge filed by the Union against City. *See* CPLR § 5602(a)(1)(i).”

## **ARGUMENT**

The LBPFPA agrees with all of the arguments set forth by PERB in its brief to this Court as if set forth fully herein, so we will not waste this Court’s valuable time by reiterating them herein. The decision and order of the Second Department

was not supported by any caselaw and indeed, the only cases cited by the Second Department were cited with a “cf’’: “Therefore the presumption in favor of collective bargaining is overcome (*cf.* [*Watertown*, 95 NY2d at 78–79; *Bd. of Educ.*, 75 NY2d 660]). The petitioner’s remaining contentions are without merit.” Appellate Decision, 187 A.D.3d at 747-48.

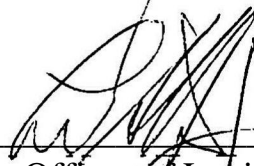
In rendering its decision, the Appellate Division, Second Department has destroyed decades of precedent, even from this court (*Watertown*) and has thrown labor relations throughout the State in flux. There is a genuine conflict of decisions from the other departments and this very Court with the Second Department. This now creates uncertainty among public employers and public sector unions on the issue of whether pre-termination procedures must be negotiated in the context of Section 71 CSL.

We are asking this Court to restore the balance previously enjoyed throughout the state prior to this aberrant decision, unsupported by any caselaw, from the Second Department and reverse the decision of the Appellate Division, Second Department, 187 A.D. 3d 745 and reinstate the Judgment of the Supreme Court, Nassau County, 51 PERB ¶ 7002, 2018 WL 4483105 which confirmed the final administrative decision and order of PERB, *City of Long Beach*, 50 PERB ¶ 3036.

## **CONCLUSION**

For all of the foregoing reasons, the LBPFPA respectfully submits that Justice R. Bruce Cozzen's Short Form Order be upheld in its entirety, that the final administrative decision of PERB be upheld in its entirety, and that the LBPFPA be awarded costs, disbursements, and such other and further relief in connection with this proceeding as this court deems just and proper.

Respectfully submitted,



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## **PRINTING SPECIFICATIONS STATEMENT**

Pursuant to 22 NYCRR § 1250.8(j) the foregoing brief was prepared on a computer.

*Type:* A proportionally spaced typeface was used as follows:

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*Word Count:* The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, proof of service, printing specifications statement, or any authorized addendum containing statutes, rules, regulations, etc. is 669.