Appellate Division, Fourth Department Docket No. CA 20-00745
Onondaga County Clerk's Index No. 006869/19

Court of Appeals
of the
State of New York

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.

ASSOCIATION'S MEMORANDUM OF LAW IN OPPOSITION TO CITY OF SYRACUSE'S MOTION FOR LEAVE TO APPEAL

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STATEMENT OF THE CASE

This proceeding was commenced in 2019 in Supreme Court, Onondaga County, by the City of Syracuse's ("City") filing a verified petition to stay arbitration of disciplinary grievances submitted by the Syracuse Police Benevolent Association, Inc. ("Association"),[1] pursuant to Section 7503 of the Civil Practice Law and Rules ("CPLR") [R. 23].[2] The Association cross-moved to dismiss the petition, to compel arbitration of the pending disciplinary grievances, and for a declaration regarding future disciplinary disputes [R. 297]. *Id*.

By decision dated May 11, 2020, Supreme Court (Hon. Deborah Karalunas, Justice) granted the Association's cross-motion to dismiss the petition and to compel arbitration and denied it with respect to future disciplinary disputes and an attorney's fees request [R. 6-22].[3]

The City appealed the matter to the Appellate Division. By order dated October 1, 2021, the Fourth Department unanimously affirmed Supreme Court's order and judgment for the reasons stated by Justice Karalunas.[4]

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[1]In accordance with § 500.1(f) of the Court's Rules, the Association discloses that it is a not-for-profit corporation and no parents, subsidiaries, or affiliates exist.

[2]References to this form are to the record on appeal.

[3]*City of Syracuse v. Syracuse Police Benevolent Ass'n, Inc.*, 68 Misc. 3d 412 (Sup. Ct., Onon. Cty. 2020).

[4]*City of Syracuse v. Syracuse Police Benevolent Ass'n, Inc.* (App. Div., 4th Dep't CA 20-00745).

The City served its motion for leave to appeal to this Court on November 4, 2021. This memorandum of law is submitted in opposition to the City's motion. 22 NYCRR § 500.22(d).

QUESTIONS PRESENTED BY THE CITY'S MOTION

The City's motion presents two questions for review[5] on the proposed appeal:

1. Does the Second Class Cities Law govern police and fire discipline in the cities of the second class, such as the City of Syracuse, as indicated in *Matter of the City of Schenectady v. New York State Pub. Emp. Relations Bd.*, 30 N.Y.3d 109 (2017)?

2. What changes to police and fire disciplinary decisions in the charter of a second class city will supersede the Second Class Cities Law provisions relating to police and fire discipline?

STANDARD FOR REVIEW

As stated in the Court's Rules of Practice, a decision of law merits review only if the issues presented "are novel or of public importance, present a conflict with prior decisions of this Court, or involve a conflict among the department of the appellate division." 22 NYCRR § 500.22(b)(4).

[5]City's Statement in Support of Motion for Leave to Appeal ("City's Statement") ¶ 9.

STATEMENT OF FACTS

The Association has been the exclusive bargaining representative of the unit of sworn officers of the Syracuse Police Department for decades. The City and the Association are party to a collective bargaining agreement covering 1998-1999 ("CBA"), which was followed by a series of interest arbitration awards and memoranda of agreement [R. 34, 35, 305]. *Syracuse PBA*, 68 Misc. 3d at 413.

The CBA sets forth a procedure for the discipline and the discharge of officers [R. 59-64]. *Id*. Absent a voluntary resolution, a charged officer may elect to challenge the issued discipline or discharge under either Section 75 of the Civil Service Law or the arbitration provisions of the CBA [R. 60-62]. *Id*. at 414.

In April 2019, the Association demanded arbitration of disciplinary grievances submitted by four officers [R. 35, 311-312]. *Id*. at 413, 415. This proceeding followed.

LEGAL FRAMEWORK

In 2006, the Court issued the first of three decisions addressing the balance of competing public policies, as reflected in the governing statutes, variously favoring collective bargaining over public employee discipline and local managerial control over police discipline. In *Matter of Patrolmen's Benevolent Ass'n of City of New York, Inc. v. New York State Public Employment Relations Board*, 6 N.Y.3d 563 (2006), the Court reconciled the contradiction between the

State's policy — as reflected in the at-issue statutes and local laws — "favoring strong disciplinary authority for those in charge of police forces" and the "strong and sweeping policy of the state to support collective bargaining under the Taylor Law." *Id*. at 571.

In *Matter of Auburn Police Local 195, Council 82, AFSCME, AFL-CIO v. Helsby*, 46 N.Y.2d 1034 (1979) (affirming, for reasons stated below, 62 A.D.2d 12 (3rd Dep't 1978)), the Court had found that "where Civil Service Law §§ 75 and 76 apply, police discipline may be the subject of collective bargaining," 6 N.Y.2d at 573, and further that "the policy of the Taylor Law prevails, and collective bargaining is required, where no legislation specifically commits police discipline to the discretion of local officials." *Id*. at 571. In the interim, however, three departments of the Appellate Division had held that "where such legislation is in force, the policy favoring control over the police prevails, and collective bargaining over disciplinary matters is prohibited." *Id*. at 571-572.

Patrolmen's Benevolent Association dealt with such laws in two jurisdictions. First, the New York City Charter vests the police commissioner with the "cognizance and control of the government, administration, disposition and discipline of the department, and of the police force of the department" and the New York City Administrative Code grants the commissioner the discretionary power to issue punishment. 6 N.Y.3d at 573-574. Although these are local laws,

both were originally enacted by the State Legislature and thus "reflect the policy of the State that police discipline in New York City is subject to the Commissioner's authority." *Id*. at 574. Second, the Town of Orangetown relied on the Rockland County Police Act, in which the Legislature had similarly given the town board "the power and authority to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police department." *Id*.

The decisive point was the clear, statutory language mandating local management to have the power to determine discipline. The Court explained:

> These legislative commands are to be obeyed even where the result is to limit the scope of collective bargaining. The issue is not, as the unions argue, whether these enactments were intended by their authors to create an exception to the Taylor Law; obviously they were not, since they were passed decades before the Taylor Law existed. The issue is whether these enactments express a policy so important that the policy favoring collective bargaining should give way, and we conclude that they do.

6 N.Y.2d at 576.

The Court underscored, however, that it is careful statutory analysis which determines the outcome in particular cases and thus local control of police discipline will not necessarily predominate: "as *Auburn* demonstrates, the need for authority over police officers will sometimes yield to the claims of collective bargaining." *Id*.

The Court next took up the topic in a different context in *Matter of Town of Wallkill v. CSEA*, 19 N.Y.3d 1066 (2012), where the town had adopted a law setting forth disciplinary procedures for police that differed from those contained in the labor agreement between it and the police officers union. Local Law 2 purported to replace the contractual arbitration process with the right to a hearing before a management-selected hearing officer whose recommended decision on the misconduct charges and any penalty was subject to review and final determination by the town board. 19 N.Y.3d at 1068.

Finding *Patrolmen's Benevolent Association* dispositive, the Court held the town had properly exercised its authority under Section 155 of the Town Law, which commits to towns "the power and authority to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police department." *Id*. at 1069.

Five years later, in *Matter of City of Schenectady v. New York State Public Employment Relations Board*, 30 N.Y.3d 109 (2017), the Court again considered the issue, this time under the Second Class Cities Law ("SCCL"), §§ 1-253, L. 1906 ch. 473, as amended. The SCCL, enacted in 1906, provides a standard uniform city charter for all cities of the "second class" which are those that had a population between 50,000 and 175,000, as of December 31, 1923. *Syracuse PBA*,

68 Misc. 3d at 420; *House v. Bodour*, 256 A.D. 1037 (4th Dep't 1939), *aff'd mem.,* 281 N.Y. 749 (1939).

The SCCL contains detailed provisions governing the authority and procedures for issuing police discipline. Section 131 provides that "[t]he commissioner of public safety shall have cognizance, jurisdiction, supervision and control of the government administration, disposition and discipline of the police department, fire department, buildings department and health department . . . ." The SCCL further provides:

> The commissioner of public safety shall make, adopt and enforce such reasonable rules, orders and regulations, not inconsistent with law, as may be reasonably necessary to effect a prompt and efficient exercise of all the powers conferred and the performance of all duties imposed by law upon him or the department under his jurisdiction. He is authorized and empowered 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, and for the hearing, examination, investigation, trial and determination of charges made or prepared against any officer or member of said departments . . . .

SCCL § 133 (the remainder of section 133 outlines the types of punishment and due process requirements).

In 2008, the City of Schenectady enacted new police disciplinary procedures different from those contained in the parties' expired collective bargaining agreement, which changes PERB determined violated the employer's bargaining

obligations under the Taylor Law. Following *Patrolmen's Benevolent Association* and *Town of Wallkill*, *the City of Schenectady* Court held that the SCCL "specifically commits police discipline to the commissioner and details the relevant procedures . . . . The Taylor Law's general command regarding collective bargaining is not sufficient to displace the more specific authority granted by the Second Class Cities Law . . . [and thus] police disciple is a prohibited subject of bargaining in Schenectady." 30 N.Y.3d at 115-116.

ARGUMENT

THE CITY'S MOTION FOR LEAVE TO APPEAL SHOULD BE DENIED

The City asserts that the case is leaveworthy because the Fourth Department's holding conflicts with the Court's decision in *City of Schenectady*, "the issues raised are of statewide importance to all cities of the second class insofar as they implicate the public policy in favor of local control over police and fire discipline," and the Court has not previously considered the issue. However, none of these assertions is true to a degree that merits review.

First, the decisions below are legally correct and fully consistent with this Court's precedents. Second, there has been no showing that the dispositive provisions of the 1960 Syracuse City Charter appear in any other second class city charter. And third, relatedly, the uniqueness of the City of Syracuse Charter provisions does not in itself render the case leaveworthy.

POINT I

THE FOURTH DEPARTMENT'S ORDER DOES NOT CONFLICT WITH THIS COURT'S DECISION IN *CITY OF SCHENECTADY*

There is no dispute that *City of Schenectady* is the most directly relevant governing precedent in evaluating whether the City of Syracuse must continue to bargain over and comply with its long standing agreements concerning police discipline policy and procedure. Unquestionably, the Court's decision sets the framework and method for appropriately applying the SCCL and the Taylor Law to covered cities. Contrary to the City's protestations, however, the operative charter provisions of the two cities are dispositively different. While police discipline is a *prohibited* subject of bargaining in Schenectady, it is, as the lower courts correctly decided, a *mandatory* subject in Syracuse. The motion should therefore be denied.

In 1958, the Legislature enacted Civil Service Law §§ 75 and 76, which generally govern disciplinary proceedings involving civil service employees, including police officers. But, as the Court held in *Patrolmen's Benevolent Association* and has continued to apply, preexisting laws that specifically provide for local control of discipline of police, where "grandfathered" pursuant to section 76(4), which provides that: nothing in sections 75 and 76 "shall be construed to repeal or modify" preexisting laws (including charters) concerning discipline of covered employees. *Patrolmen's Benevolent Association*, 6 N.Y.3d at 573; *Town*

of Wallkill, 19 N.Y.3d at 1069; *City of Schenectady*, 30 N.Y.3d at 114. It is only because the statutes providing for unilateral local control thus remained in full force and were unaffected by Sections 75 and 76 that the subsequent enactment in 1967 of the Taylor Law, with its attendant bargaining obligations, did not alter the municipalities' preexisting control over police discipline.

But the SCCL contains another provision that must be applied to reach the legally correct outcome here. Thus, the SCCL provides that it "shall apply, according to its term . . . 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. Both the City Home Rule Law, enacted in 1924, and its successor, the Municipal Home Rule Law, enacted in 1965, provide that local laws may supersede specified provisions of state statutes. As the lower courts found, that is precisely what the City of Syracuse did with respect to Section 131 and 133 of the SCCL, when it adopted the 1960 Charter, which remains in effect [R. 402]. 68 Misc. 3d at 425.

First, the 1960 Charter unequivocally supersedes the City's prior charters, including the 1915 Charter (which had essentially mirrored the SCCL's provisions concerning police discipline) and the 1935 Charter (which replaced the public

safety commissioner with a chief of police and otherwise largely tracked the SCCL). 68 Misc. 3d at 418-419.

Second, the 1960 Charter preliminary 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. 402]. The intent to supersede inconsistent laws is repeatedly indicated. Thus, Section 1-102 states: "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. 402 (emphasis added)]. Just to be sure, Section 9-106 likewise 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" [R. 473 (emphasis added)]. 68 Misc. 3d at 419-420.

Third, section 5-1409, "Chief of police," details that disciplinary proceedings must be conducted in accordance with Civil Service Law. In relevant part, that section provides:

> The chief of police, 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 police 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. 787 (emphasis added)]. 68 Misc. 3d at 424.

Fourth, it was undoubtedly the City's intent to replace all pre-existing laws dealing with discipline, including the SCCL, with the procedures set forth in the Civil Service Law. The Common Council minutes describing the 1960 Charter unambiguously indicate: "The charter eliminates special disciplinary provisions for the 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 be able to operate under a uniform disciplinary policy for all departments" [R. 886]. *See* 68 Misc. 2d at 424. Thus, in adopting the 1960 Charter, the City subjected itself to the Civil Service Law and granted all of its employees rights under sections 75 and 76.

Fifth, as Supreme Court noted, the City's own police manual "expressly authorizes arbitration of police disciplinary disputes." 68 Misc. 3 at 424-425 (citing Syracuse Police General Rules & Procedure Manual Art. 4, §§ 7.17, 8.22 and 10.00).

All of these factors led Justice Karalunas to conclude:

> Unlike the local legislative structure in *Matter of the Town of Wallkill* or *Matter of the City of Schenectady*, the City of Syracuse, through passage of its 1960 City Charter, as bolstered by the CBA and the Syracuse Police General Rules and Procedure Manual, evinced its intent to supersede the SCCL provisions regarding police discipline, and to require compliance with the Civil Service Law's collective bargaining provisions.

68 Misc. 3d at 425.

The holding of Supreme Court and the Fourth Department is a faithful adherence to, and is not in any way inconsistent with, *City of Schenectady*. This Court has repeatedly indicated that among municipalities differing results will obtain, depending on the particular facts and laws at issue. 30 N.Y.3d at 116 (SCCL "was intended to remain in force unless it is changed or repealed pursuant to law"); 30 N.Y.3d at 118 ("it is quite clear . . . that some local counterparts have the right to bargain about police, and some do not"); *Patrolmen's Benevolent Ass'n*, 6 N.Y.3d at 576 ("the need for authority over police officers will sometime yield to the claims of collective bargaining").[6]

[6]The City contends that the fact pattern here is just like the one in *City of Schenectady* [City's Statement ¶¶ 22-30], but this facile contention is simply not true. The critical distinction lies in the City of Syracuse's explicitly subjecting itself to the Civil Service Law in supersession of the SCCL; the essentially cosmetic changes at issue in *City of Schenectady* did nothing of the sort. 30 N.Y.3d at 115 n. 1.

POINT II

THE QUESTIONS PRESENTED ARE NEITHER NOVEL, NOR OF PUBLIC IMPORTANCE

The lower courts' holdings turn on the 1960 Charter's supersession of the SCCL in favor of the Civil Service Law. Because their application of law was both appropriate and unremarkable, there is no question of public importance or novelty for which the Court should grant leave.

The SCCL, the City Home Rule Law, and the Municipal Home Rule Law each contemplate that a city can opt to supersede provisions of the SCCL. As discussed above (pp. 10-12), the 1960 Charter repeatedly states the City's intent to supersede inconsistent laws, and section 5-1409 expressly states the intent to be bound by the Civil Service Law, which was, then and now, inconsistent with the SCCL provisions concerning police discipline.

Supreme Court properly rejected the City's contention repeated in the instant motion [City's Statement ¶¶ 33-44], that the 1960 Charter did not supersede the SCCL because of insufficient specificity. 68 Misc. 3d at 425-426. As Supreme Court noted, section 22 of the Municipal Home Rule Law expressly provides that a failure to specify that a former law has been superseded does not affect the validity of a local law. "The purpose of section 22 is to compel definiteness and explicitness, to avoid confusion that would result if one could not disclose whether the local legislature intended to supersede an entire State statute, or only part of

one—and, if only a part, which part[.]" *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)). There is no ambiguity here.

Justice Karalunas therefore found that "[a]lthough provisions of the SCCL regarding police discipline were not specifically mentioned in the 1960 Charter, there can be no reasonable doubt as to the City of Syracuse's intent to superseded Section 131 of the SCCL, mandate compliance with the Civil Service Law, and authorize arbitration as a means to resolve police disciplinary disputes." *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"). 68 Misc. 3d at 425-426.

This case is not leaveworthy. Although the City contends it involves "critical, statewide issues" [City Statement ¶ 45], there has been no showing of errant application of law by the lower courts, or even if there were error, that this Court's review of the particular phrasing used in the 1960 Charter would be

analogously instructive with respect to the handful of other cities of the second class.

CONCLUSION

For the reasons and authorities stated above, the Association respectfully urges the Court to deny the City's motion.

Dated: November 19, 2021

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