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To be Argued by:
ADAM P. MASTROLEO
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New York Supreme Court

Appellate Division—Fourth Department

Docket No.: CA 20-00745

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.

BRIEF FOR PETITIONER-APPELLANT

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PRELIMINARY STATEMENT

Petitioner-Appellant, City of Syracuse (the "City") submits this brief in support of its appeal from the Order of the New York State Supreme Court, Onondaga County (Honorable Deborah H. Karalunas, J.S.C.), dated June 4, 2020, and entered on June 5, 2020 (the "Order"), which denied the City's petition to permanently stay arbitrations and granted Respondent-Appellee Syracuse Police Benevolent Association, Inc.'s (the "Union") cross-motion to dismiss the petition and compel arbitration.

This case, and the corresponding case involving the City's fire department (CA 20-00739), address the applicable procedures for police and firefighter discipline in the City. As explained in detail below, the City is a "city of the second class" as that term is defined by the New York State Second Class Cities Law ("SCCL"). As such, 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the SCCL, including the SCCL provisions relating to police and fire discipline, *unless and until* those provisions are superseded.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 (N.Y. 2017).

The only issue presented for this Court's consideration is whether the SCCL's provisions regarding police discipline have been superseded by the City. The lower court held that the SCCL was superseded when the City enacted its 1960 charter (the "1960 Charter"). The lower 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's decision was in error and should be reversed for several reasons. First, the Court of Appeals has already analyzed this issue. In City of Schenectady, the Court of Appeals considered similar changes to the City of Schenectady charter and held that they were irrelevant to whether the SCCL controlled discipline.

Second, the City did not expressly supersede the SCCL's provisions regarding police discipline when it enacted the 1960 Charter. According to the Municipal Home Rule Law, if a municipality intends to change or supersede a provision of a state statute, it must explicitly identify the state statute which it is intending to change or supersede. Historically, when the City has intended to supersede a provision of the SCCL, it has stated its intention in the superseding legislation. The City did not state any intention to supersede the SCCL's provisions regarding police or firefighter discipline when it enacted the 1960 Charter.

Third, the 1960 Charter's reference to the New York Civil Service Law, which was relied on by the lower court, has no impact on whether the City intended to supersede the SCCL provisions regarding 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. 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's decision, follow the clear direction of the Court of Appeals, declare that police discipline in the City is governed by the SCCL, and grant the City's petition.

QUESTIONS PRESENTED

1. Is police 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 police 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 Union relating to discipline still valid?

Answer: The lower court held that they are.

4. Should the specific arbitration requests filed by the Union be permanently stayed?

Answer: The lower court held that they should not be stayed.

STATEMENT OF THE CASE

A. The current collective bargaining agreement

The City and the PBA are parties to a collective bargaining agreement effective from December 31, 1998 through December 31, 1999 (the "CBA"); Interest Arbitration Awards for the period of January 1, 2000 through December 31, 2005; a Memorandum of Agreement dated April 17, 2007, covering the period of January 1, 2006 through December 31, 2007 (the "2006 Memorandum of Agreement"); a Memorandum of Agreement dated May 27, 2009, for the period of January 1, 2008 through December 31, 2010 (the "2008 Memorandum of Agreement"); a Memorandum of Agreement for the period of January 1, 2011 through December 31, 2015 (the "2011 Memorandum of Agreement"); and a Memorandum of Agreement dated June 29, 2018 for the period from January 1, 2016 through December 31, 2017 (the "2016 Memorandum of Agreement"). (R. 38 – 120).

At the present time, the City and the PBA have not reached an agreement on a collective bargaining agreement for the period after December 31, 2017, and, as a result, the terms of the expired Agreement remain in effect pursuant to Section 209-a(1)(e) of the New York Public Employees' Fair Employment Act. (R. 35).

The CBA provides a detailed procedure for the administration of police discipline, which includes arbitration of certain disputes. (R. 35, 59 – 60).

Importantly, the 2006 Memorandum of Agreement, includes the following provision:

> 5. Consistent with § 209-a.1(e) of the Civil Service Law, the City agrees that until such time as a 2008 (or 2008 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. (R. 92).

This reservation of rights clause was first included in the 2006 Memorandum of Agreement, 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 (N.Y. 2006). (R. 92).

B. The City charter provisions regarding police 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. 179).

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. 180). 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. 218). 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. 268, 272, 276).

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. 228).

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. 219).

With respect to the Department of Police, the 1935 charter provided that the powers previously possessed by the commissioner of public safety were transferred to the Chief of Police. (R. 268 – 69). Section 202 states in relevant part, "[The Chief of Police] 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 Police Department . . ." (R. 269).

The City again amended its charter in 1960, and again kept the power to promulgate disciplinary procedures with the Chief of Police. (R. 787). The 1960 Charter is the current, operative charter.

Section 5-1409 of that charter states, "The chief of police, 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 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).

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. 740).

Accordingly, the power and authority of the commissioner of public safety, including his power to promulgate rules regarding police discipline, was transferred to the Chief of Police as part of the 1935 charter and continues to the present date. 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 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 this provision 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." (R. 833) (emphasis added).

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 maximum level of fines from $150.00 to $1,000.00 for violations of the City's local laws and general ordinances." (R. 835 – 836).

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.

D. Procedural history

Between September 2018 and January 2019, PBA bargaining unit members Joseph Moran, Mark Shea, Patrick Moore, and David Craw (the "Bargaining Unit Members") were disciplined by the City for conduct infractions. (R. 35). At various times in February 2019, the PBA issued grievances relating to this discipline. (R. 35).

On April 16, 2019, counsel for the PBA sent letters to Hon. Douglas J. Bantle, Esq., Hon. Thomas N. Rinaldo, Esq., Hon. Michael S. Lewandowski, and Hon. Jeffrey M. Selchick, Esq. requesting that they arbitrate issues related to the City's discipline of the Bargaining Unit Members. (R. 35, 122 – 127). These requests are presumably based upon the language in the CBA cited above. Corporation Counsel for the City, Kristen E. Smith, Esq., was carbon copied on these letters. Id. The City has not been provided or served with demands for arbitration that comply with the requirements of CPLR § 7503(c). (R. 36).

On July 30, 2019, the City filed a Verified Petition to Stay Arbitration pursuant to Section 7503 of the Civil Practice Law and Rules. (R. 23). The Union filed a cross-motion to dismiss the Petition, and for a declaration regarding future disciplinary disputes. (R. 297).

The lower court denied the City's petition, granted the Union's cross-motion, and denied the Union's request for a declaration regarding future

disciplinary disputes. (R. 21 – 22). The lower court's decision held that the City had superseded the SCCL provisions regarding police and firefighter discipline when it enacted the 1960 Charter. (R. 20). The lower 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. 19 – 22). For the reasons stated below, the lower court's decision 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 police 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 (N.Y. 2000). However, the presumption in favor 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 (N.Y. 1976).

Since 2006, the Court of Appeals 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 (N.Y. 2006), extending to Matter of Town of Wallkill v. Civil Serv. Empls. Assn., Inc., 19 N.Y.3d 1066 (N.Y. 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 (N.Y. 2017).

In Patrolmen's Benevolent Assn., the Court of Appeals 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 the 2006 Memorandum of Agreement that reserved each party's rights relating to the applicability of that decision. (R. 92). As stated in the 2006 Memorandum of Agreement:

> 5. Consistent with § 209-a.1(e) of the Civil Service Law, the City agrees that until such time as a 2008 (or 2008 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. (R. 92).

Next, in 2012, the Court of Appeals 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, the Court of Appeals decided Matter of City of Schenectady v. N.Y. State Pub. Empl. Relations Bd., 30 N.Y.3d 109 (N.Y. 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 statute'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[1] is "authorized and empowered to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the . . . discipline . . . of the officers and

[1] 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 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.

members of the police and fire departments, and for the hearing, examination, investigation, trial and determination of charges made or prepared against any officer of member of said departments . . . ." SCCL § 133 (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. City of Schenectady, 30 N.Y.3d at 114. The City of Schenectady cited to the Court of Appeals decisions in Patrolmen's Benevolent Assn. and Town of Wallkill and argued that the Court's analysis in those cases controlled. Id., at 114-15. The respondents, including the Schenectady PBA, argued, among other things, that the changes to Schenectady's governmental structure and the parties' history of collective bargaining required the Court to disregard the explicit provisions regarding police discipline found in the SCCL. Id., at 115, n. 1.

The Court of Appeals agreed with the City of Schenectady and rejected the Schenectady PBA's arguments. Id., at 117. 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. Id., at 115-16. 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, n. 1. 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.

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 Court 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, 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

Although the lower court essentially conceded that police and fire discipline in the City were at one time governed by the SCCL, it held that the City superseded the disciplinary provisions of the SCCL when it adopted the 1960 Charter. (R. 19 – 20). The lower court's decision was in error and should be reversed, for several reasons.

1. The Court of Appeals held that similar changes to the governmental structure of the City of Schenectady were irrelevant to whether the SCCL controlled discipline

The lower court's decision primarily relied on changes to police and fire discipline provisions in the 1960 Charter to justify its holding that the City superseded the SCCL. (R. 19 – 20). However, the lower court's decision wholly ignored the fact that in City of Schenectady, the Court of Appeals considered similar changes to the City of Schenectady's charter and held that those changes were "irrelevant" to whether the SCCL applied. 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. 843). However, in 1934, the City of Schenectady adopted a new form of government pursuant to the Optional City Government Law. (R. 846). 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. 846).

In 1939, the State Legislature repealed the Optional City Government Law. (R. 847). 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). 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. 847 – 848). 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. 869).

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." (R. 865) (emphasis added).

After other changes and transfers of power, the City of Schenectady ultimately reinstated the position of commissioner of public safety in 2002. (R. 849 - 850). 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. 876 – 877).

In the City of Schenectady decision, the Court of Appeals considered 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." City of Schenectady, 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 Police.

As of 1915, the City operated under a charter that provided for several governmental departments, including a "Department of Public Safety." (R. 179).

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. 179). 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. 180). 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. (R. 218 – 296). As part of the new charter, the City transferred the disciplinary powers of the commissioner of public safety to others within the government. (R. 218). 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. 268, 272, 276). 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. 228).

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. 219).

With respect to the Department of Police, the 1935 charter provided that the powers previously possessed by the commissioner of public safety were transferred to the Chief of Police. (R. 268 – 69). Section 202 states in relevant part, "[The Chief of Police] 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 Police Department . . ." (R. 269).

The City again amended its charter in 1960, and again kept the power to promulgate disciplinary procedures with the Chief of Police. (R. 787). Section 5-1409 of that charter states, "The chief of police, 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 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).

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. 740).

The lower court ignored the Court of Appeals' analysis in City of Schenectady. Instead, the 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, the Court of Appeals 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 the Court of Appeals did in City of Schenectady.

The Court of Appeals has already ruled 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. See 30 N.Y.3d at 115, n. 1.

Finally, the lower court stated that its decision was "bolstered" by the parties' long history of collective bargaining. (R. 20). 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.

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 City of Schenectady and hold that the SCCL provisions relating to discipline apply to the Union and its bargaining unit members.

2. The City charters do not state that they are superseding the SCCL, as required by the City Home Rule Law and Municipal Home Rule Law

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." The Court of Appeals interpreted

City Home Rule Section 12.1 as follows: "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).

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.

Stated differently, pursuant to the City Home Rule Law and Municipal Home Rule Law, if a municipality intends for a local law to supersede a state statute, it has to explicitly say so.

The Court of Appeals 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 (N.Y. 1927).

The City has followed this provision 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." (R. 833) (emphasis added). 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." (R. 835 – 836).

Importantly, the provisions of the City's charters 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. Pursuant to the terms of the City Home Rule Law and Municipal Home Rule Law, the City has not superseded the SCCL provisions relating to discipline. Rather, the City, like the City

of Schenectady, transferred the power to promulgate disciplinary procedures, which were articulated in the Second Class Cities law, to the Chief of Police.

The lower court rejected this argument, and pointed to the text of the Municipal Home Rule Law which states that a municipality's failure to specify that it intended to supersede a local law "shall not effect the validity of such local law." (R. 21).

The lower court cited to two cases to support its holding on this point. See Henderson Taxpayers Assn. v. Town of Henderson, 283 A.D.2d 940 (4th Dep't 2001); Miller v. City of Albany, 278 A.D.2d 647 (3d Dep't 2000). However, in both of these cases, the municipalities clearly stated their intent 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, 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 Police retains the authority to promulgate disciplinary rules.

The lower court misses the point. The City has specifically stated that the SCCL is superseded in prior local laws. See (R. 833, 835 – 836). Its failure to do so here indicates that it did not intend to supersede the SCCL's provisions regarding police and firefighter discipline when it enacted the 1960 Charter.

3. 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 Police's authority to issue discipline and promulgate disciplinary rules. The lower court found this fact persuasive and held that by referencing the Civil Service Law, the City was adopting the Civil Service Law and thereby 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 Police 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 Police 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, the Court of Appeals has clearly held that the Civil Service Law has no impact on the SCCL's provisions regarding discipline. In fact, the Court of Appeals has 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 Police. This Court should therefore follow the City of Schenectady decision, reverse the lower court, and issue an order declaring that, just like in the City of Schenectady, the SCCL governs police discipline in the City.

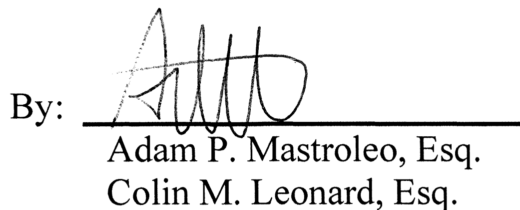
CONCLUSION

Based on the foregoing, this Court should reverse the lower court 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 the Court of Appeals decision in City of Schenectady, the disciplinary procedures set forth in the SCCL apply to the Police Department.

Dated: March 10, 2021

BOND, SCHOENECK & KING, PLLC

By: 

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