To be argued by:
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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.

REPLY BRIEF FOR PETITIONER-APPELLANT

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PRELIMINARY STATEMENT

As discussed in Petitioner-Appellant City of Syracuse's (the "City") original brief, the primary issue for this Court's determination is whether the City superseded the Second Class Cities Law ("SCCL") provisions relating to police and fire discipline when it enacted its 1960 Charter. Respondent-Respondent Syracuse Police Benevolent Association, Inc. (the "Union") fails to establish that supersession was achieved.

ARGUMENT

POINT I

THE SCCL PROVISIONS REGARDING POLICE AND FIRE DISCIPLINE HAVE NOT BEEN SUPERSEDED

A. The Union concedes that the City did not supersede the SCCL provisions relating to police and fire discipline in accordance with the City Home Rule Law

In its brief, the Union concedes that the City did not supersede the provisions of the SCCL relating to police and fire discipline under the City Home Rule Law, which was in effect when the 1960 Charter was enacted. (Union Brief, p. 24, n. 7). Indeed, the Union cannot dispute that the 1960 Charter does not include any specific statement that the SCCL provisions relating to police and fire discipline were superseded.

Instead, the Union argues that the provisions of the City Home Rule Law addressing when and how a local law can supersede a State statute are irrelevant. Id. The Union claims that this Court should analyze supersession under the standard contained in the Municipal Home Rule Law, which was not in effect until January 1, 1964, several years after the 1960 Charter was adopted.

In support of this argument, the Union claims that it would be "nonsensical" to apply the supersession standard articulated in the statute that was in effect at the time the 1960 Charter was adopted. Notably, the Union fails to provide any rational for this claim. Despite the Union's rhetoric, it is clear that analyzing whether the SCCL was superseded in 1960 using the supersession statute that was in effect in 1960, is not nonsensical.

In addition, the Union cites to several cases articulating the principle that a court must decide a case "upon the law as it exists at the time of the decision." Id., p. 24, n. 7 (citing, e.g., Matter of Pokoik v. Silsdorf, 40 N.Y.2d 769, 772 (1976)). However, these cases do not support the Union's arguments.

Each of the cases cited addresses a specific situation where, at the time a zoning application was made there was one set of rules, and at the time the zoning application was decided, the rules had changed. The courts in these cases were determining whether the municipalities should have considered the zoning application under the rules in effect at the time of the application, or at the time of

the decision. The general rule, as stated in those cases, is that the municipalities should have considered the applications in question under the rules in effect at the time of the decision. See Pokoik, 40 N.Y.2d at 772; Demisay, Inc. v. Petito, 31 N.Y.2d 896, 897 (1972); Boardwalk & Seashore Corp. v. Murdock, 286 N.Y. 494 (1941); see also Rocky Point Drive-In, L.P. v. Town of Brookhaven, 21 N.Y.3d 729, 736 – 37 (2013) (generally explaining decision rule).

These cases are clearly distinguishable based upon their factual circumstances. However, even if appropriately analogous, the cases would in fact support the City's position. Indeed, the municipal decision at issue here – whether or not to supersede the SCCL – was made in 1960. As such, the Court should analyze the issue utilizing the supersession rule that was in effect at the time the decision was made. Here, that rule is contained in the City Home Rule Law.

As discussed in detail in the City's original brief, if analyzed under the City Home Rule Law, there is no dispute that the City did not supersede the police and fire disciplinary provisions contained in the SCCL.

B. A general statement that the 1960 Charter supersedes prior charters is not sufficient to supersede the SCCL's specific provisions regarding police and fire discipline

In its brief, the Union repeatedly argues that the 1960 Charter's general statement that it supersedes laws that are "inconsistent" is sufficient to satisfy the

City Home Rule Law (or Municipal Home Rule Law) requirements regarding supersession (Union Brief, pp. 17 – 18, 21).

This Court has made it clear that general statements regarding supersession are not sufficient. For example, in Turnpike Woods, Inc. v. Town of Stony Point, 70 N.Y.2d 735, 737 (1987), this Court held that a local law did not supersede N.Y. Town Law Section 276(4). In its analysis of supersession, the Court explained,

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

Similarly, 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 *not inconsistent herewith* shall continue to be in full force and effect." (emphasis added). The City of Schenectady charter therefore also contained general language stating that any law inconsistent with the charter was superseded.

Just as the general statement in Turnpike Woods was insufficient to achieve supersession, the City of Schenectady's general statement in its charter was likewise not sufficient for the Court to find supersession in the City of Schenectady case. See also Rensselaer County v. City of Troy, 102 A.D.2d 976 (3d Dep't 1984) (holding that general provision entitled "Former Charter Superseded" not sufficient to effect supersession of specific statute).

Accordingly, it is clear and well-established that general statements regarding supersession are not sufficient, and the Union's argument on this point should be rejected.

C. The power to promulgate disciplinary rules for the police department has remained with the Chief of Police since 1935

In its brief, the Union also argues that the 1960 Charter's reference to the Civil Service Law, together with minutes from the Common Council, indicate that the City intended to supersede the SCCL's provisions regarding police and fire discipline (Union Brief, pp. 18 – 19). As discussed above, because the City did not specifically and unequivocally state that those provisions of the SCCL were being superseded within the text of the statute, there was no supersession under the City Home Rule Law (or Municipal Home Rule Law). But even assuming the Union could avoid the City Home Rule Law or Municipal Home Rule Law requirements, its arguments relating to the Civil Service Law and Common Council minutes are inapposite.

Indeed, the Union ignores the fact that the ultimate power to promulgate disciplinary rules has, at all times, remained with the Chief of Police. The crucial, common thread that runs through the various iterations of the City's charters as they relate to police discipline is that the Chief of Police retains the authority to promulgate disciplinary rules. This has not changed since 1935 when the City split the Department of Public Safety into the Department of Police, Department of Fire, and Department of Public Health.[1] The 1960 Charter's reference to the Civil Service Law does not change this fact. Under the 1960 Charter, the Chief of Police is responsible for promulgating disciplinary rules and the Union cannot argue otherwise. (R. 787). This critical fact was overlooked by both the Union and the lower courts and demonstrates that the City did not intend to supersede the SCCL.

When the City adopted its 1935 Charter, it eliminated the Department of Public Safety and created separate Departments of Police, Fire, and Public Health. In so doing, the City eliminated the "commissioner of public safety" position that was prescribed by the SCCL, and transferred the powers of that office to, among others, the Chief of Police. (R. 268 – 269). According to the 1935 Charter, the Chief

[1] It is important to note that neither the Union, nor the Courts below, claim that the City's 1935 Charter, which eliminated the Department of Public Safety and created separate Departments of Police, Fire, and Public Health, superseded the SCCL. The Union's (and lower courts') focus is solely on the changes to the City Charter in 1960. This reasoning is inconsistent and contradictory. If any change to the terms of the 1960 Charter's provisions regarding police or fire discipline superseded the SCCL, then the SCCL should have been superseded in 1935. However, this argument is not made by either the Union or the lower courts because it is clear that this rationale fails.

of Police (like the commissioner of public safety before) possessed the power to promulgate rules relating to the discipline of the members of the police department. (R. 269).

When the City adopted the 1960 Charter, it did not modify the authority of the Chief of Police to promulgate disciplinary rules, and in fact confirmed this power. In relevant part, the 1960 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).

It is apparent from the plain text of the 1960 Charter that the Chief of Police has, at all times, retained the power to promulgate disciplinary rules, and the 1960 Charter's reference to the Civil Service Law does not change this fact.

D. The City did not agree to bargain over police discipline when it enacted the 1960 Charter

Ultimately, the question in this case, like the question in Matter of Patrolmen's Benevolent Ass'n, Town of Wallkill, and City of Schenectady, is whether the City is able to bargain over police discipline. See 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); Matter of Town of Wallkill v. Civil Serv. Empls. Assn., Inc., 19 N.Y.3d 1066 (N.Y. 2012); Matter of the City of Schenectady v. N.Y. State Pub. Empl. Relations Bd., 30 N.Y.3d 109 (N.Y. 2017). Following the City of Schenectady case, it is now clear that the SCCL prohibits bargaining over police and fire discipline in cities of the second class, like the City in this case.

The Union argues that the City superseded the SCCL's provisions regarding police discipline when it enacted the 1960 Charter, thereby implicitly agreeing to bargain over police discipline into the future. However, the 1960 Charter does not reference bargaining over police discipline nor does it acknowledge any agreement by the City to bargain over police discipline.

In fact, the Taylor Law, which creates an obligation for public entities to bargain over certain subjects, and on which the Union relies for its authority to bargain, was not enacted until 1967. The City's reference to the Civil Service Law in the 1960 Charter did not, and could not, contemplate any obligation to bargain, because the Taylor Law was not yet in effect. As a result, it is clear that the City did not agree to bargain over police discipline when it enacted the 1960 Charter. The lower courts' conclusion that the City somehow agreed to abide by a law that had not yet been enacted is erroneous and should be overturned.

E. This Court's analysis in City of Schenectady is directly applicable and cannot be distinguished

This Court's analysis in City of Schenectady is applicable and controlling in this case. 30 N.Y.3d 109 (N.Y. 2017). Notwithstanding the Union's attempts to distinguish City of Schenectady, the Union cannot dispute that in that case, the Court considered whether changes to the City of Schenectady charter impacted whether the SCCL governed police discipline in that city. Id. at 115, n.1. Those changes included the elimination of the "commissioner of public safety" position, and other transfers of disciplinary authority to various officials within the government. The City of Schenectady, like the City in this case, altered the provisions of its laws related to police discipline.

This Court considered these changes and held that they did not impact whether the SCCL controlled police discipline in the City of Schenectady. The Court explicitly stated, "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." Id.

In its brief, the Union attempts to distinguish the City of Schenectady decision by arguing: (1) the City of Schenectady's charter does not materially deviate from the SCCL's disciplinary procedures, and (2) the City of Schenectady's changes to its charter were merely "administrative" and therefore not analogous to the changes

to the City's charter in this case. The Union's attempts to distinguish City of Schenectady fail.

First, the City of Schenectady's charter does materially deviate from the SCCL. In fact, the City of Schenectady abolished the commissioner of public safety altogether in 1936 and then transferred that position's powers between several different offices before re-establishing it in 2002. (R. 847 - 850).

In addition, even as written today, the City of Schenectady's charter does not explicitly follow the SCCL. The current charter states, "The Public Safety Commissioner shall have the authority to discipline the officers and members of the Schenectady Police and Fire Departments." (R. 876 - 877). However, the SCCL provides a much different recitation of the public safety commissioner's authority, including his/her power to promulgate rules for discipline. See N.Y. SECOND CLASS CITIES LAW §§ 133 – 137. The SCCL also provides a specific and detailed recitation of the disciplinary procedures to be followed by the commissioner of public safety. Id. Those procedures are also not included in the City of Schenectady's Charter. The Union's argument that the City of Schenectady's charter does not materially deviate from the SCCL is simply wrong.

Second, as discussed in detail in the City's original brief, the SCCL contains specific and detailed disciplinary procedures for police and fire departments, and vests control over the disciplinary procedures in a local official – the commissioner

of public safety. The exact language of the SCCL as it related to discipline was initially incorporated in both the City of Syracuse and City of Schenectady charters.

The Union cannot dispute that in 1934, the City of Schenectady adopted a new form of government pursuant to the Optional City Government Law ("OCGL"). (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." Id. The City of Schenectady then made additional changes to its charter pursuant to the City Home Rule Law and Municipal Home Rule Law, which abolished departments and positions created by the SCCL relating to police and fire discipline. (R. 847 - 848).

The Union argues in its brief that these changes were simply "administrative" and distinguishable from the changes to the City's charter in this case. However, the Union ignores several key facts. First, the OCGL, like the City Home Rule Law and Municipal Home Rule Law, stated that "inconsistent" laws would be superseded. Specifically, section 8 of the OCGL stated, "*Except insofar as any of its provisions shall be inconsistent with this act*, the charter of the city, and all special or general laws applicable thereto, shall continue in full force and effect, until and unless superseded by the passing of ordinances regulating the matters therein provided for; *but to the extent that any provision thereof shall be inconsistent with this act, the*

same are hereby superseded." Id. (emphasis added). Accordingly, the OCGL contained the same type of "inconsistent" language as the City Home Rule Law and Municipal Home Rule Law, which the Union relies on in its brief.

Second, 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 *not inconsistent herewith* shall continue to be in full force and effect." (emphasis added). The City of Schenectady charter therefore also stated that any law that was inconsistent with the charter was superseded.

The basic core of the Union's argument is that the SCCL is "inconsistent" with the City's 1960 Charter and that this equates to the SCCL being "superseded." However, under the Union's definition of "inconsistent," this Court should have held that the City of Schenectady charter, which eliminated the position of commissioner of public safety altogether, deleted any reference to the SCCL provisions relating to discipline, and transferred the authority of the commissioner of public safety to others within the government, was also "inconsistent" with the SCCL and, therefore, superseded its provisions relating to discipline. But that is not what this Court did.

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 have not been superseded and therefore apply to the Union and its bargaining members.

CONCLUSION

For the reasons set forth herein, together with the reasons articulated in the City's original Brief, this Court should reverse the lower courts and issue an Order declaring that (a) the City is no longer permitted to collectively bargain issues of discipline with the Union, (b) the provisions of the current CBA between the City and the Union relating to discipline are no longer valid; and (c) pursuant to the Court of Appeals decision in City of Schenectady, the disciplinary procedures set forth in the SCCL apply to the Police Department.

Dated: August 26, 2022

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NEW YORK STATE COURT OF APPEALS
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Dated: August 25, 2022

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