TO BE ARGUED BY:
BRIAN D. NUGENT, ESQ.
TIME REQUESTED: 15 MINUTES

COURT OF APPEALS NO. APL-2022-00077

State of New York
Court of Appeals

In the Matter of
TEAMSTERS LOCAL 445,
Petitioner-Respondent,

-against-

TOWN OF MONROE,
Respondent-Appellant.

BRIEF FOR RESPONDENT-APPELLANT

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Appellate Division, Second Department Docket No. 2017-11372
Supreme Court, Dutchess County, Index No. 52247/17

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I
Preliminary Statement

This case asks whether, under New York State's Taylor Law, a town can do by contract what it cannot do by resolution or local law. Civil Service Law ("CSL") § 41(1) is mandatory, not permissive, it places one secretary of each municipal board in the exempt class. If the Town of Monroe (the "Town") passed a resolution or local law reclassifying the position of Secretary of the Planning Board from the exempt class, in contravention of, and without following the procedures outlined in the CSL, it would be a void act. The collective bargaining agreement ("CBA") before the Court seeks to do just that by a labor contract provision.

Based on the Opinion and Order ("Opinion") of the Appellate Division, Second Department ("Second Department"), the CBA affords the exempt Secretary of the Planning Board the right to: [1] a notice of discipline, [2] protection from termination without just cause, and [3] a hearing under CSL § 75 and [4] an appeal under CSL § 76 before removal and discipline from the position (collectively, "Tenure Protections");[1] the equivalent of reclassifying the position to a protected position. Contrary to the Opinion of the Second Department, these Tenure

[1] Although no tenure is required under the CBA for the Secretary of the Planning Board to receive Tenure Protections under Teamsters' reading of the CBA, the rights afforded to the Planning Board Secretary under their interpretation are essentially the same rights that the CBA would offer to competitive employees immediately and non-competitive employees after six calendar months of continuous employment and to co. (R. 124).

Protections for an exempt position cannot be bargained-for under the Taylor law without violating public policy and statutes derived from the Constitution. The Second Department erred in holding, in the face of clearly expressed public policies, that the Teamsters Local 445 ("Teamsters") could pursue a grievance regarding the termination of the exempt Secretary of the Planning Board, essentially sanctioning the *de facto* reclassification of the position through the collective bargaining process. The Second Department's Opinion and Order ("Opinion") should be reversed.

The implicated public policies flow from a roster of constitutional, statutory, and decisional law, including the New York Constitution ("Constitution") Articles V, § 6, and XIII, § 2, and CSL §§ 20, 41(1)(c), 75, and 76 (collectively, the "Statutes").

To confer Tenure Protections on an appointed and exempt employee essentially reclassifies them inconsistent with CSL § 41(1), affording the exempt employee protections under CSL §§ 75 and 76 without meeting Article V, § 6 merit and fitness requirements, and simultaneously skirting the statutory requirements enacted via CSL § 20. Further, providing Tenure Protections to the appointed Secretary of the Planning Board impermissibly delegates the powers of the appointing authority enshrined in Constitution Article XIII, § 2.

Disregarding the significance of the public policy embedded in the constitution and these statutes, the Second Department, without explanation, and

citing CSL § 41, erred in holding, "[T]here is no statutory constitutional, or public policy prohibition against arbitrating this dispute regarding termination of an employee in an "exempt class" under the Civil Service Law."

The CBA itself acknowledges that disputes regarding the termination of exempt employees under CSL § 41 should not be arbitrated. For example, the CBA expressly recognizes that the Bookkeeper of the Town Supervisor, "as an exempt position[,] … serves at the sole discretion of the Town Supervisor…" The CBA's language correctly states the rule that appointed exempt class civil service employees serve at-will and at the pleasure of the appointing authority. Yet, the Supreme Court, perhaps overlooking the implication that the union agreed that it cannot challenge the termination of an exempt employee under CSL § 41, inexplicably held, "[T]hat section expressly exempts the bookkeeper to the Town Supervisor from such procedures, stating that the union may not challenge the termination of the bookkeeper under the circumstances." The Second Department did not address this inherent conflict in the CBA in its opinion, nor the underlying constitutional, statutory, and public policy prohibitions on such Tenure Protections for exempt employees. The CBA treats exempt employees like the bookkeeper differently than other employees in the classified service but, without explanation, purportedly does not expressly apply the same treatment to the statutorily exempt Secretary of the Planning Board.

The Courts retain authority to determine whether the issues to be presented in arbitration are within the lawfully permissible scope of arbitration. Courts will intervene where public policy considerations dictate that an arbitrator is prohibited from deciding certain matters. Two important considerations are preserving the government's ultimate decision-making prerogatives, and inalienability of sovereign authority. Both considerations are implicated here.

This Court need not look far to determine that public policy dictates that an appointed and exempt class employee, such as the Secretary of the Planning Board, cannot, via a collective bargaining agreement provision, achieve Tenure Protections requiring the Town to establish just cause for termination in an arbitration proceeding or to pursue termination through CSL §§ 75 and 76. Any relief in favor of the Secretary of the Planning Board would violate public policy by [1] contravening the legislature's decision-making when enacting CSL §§ 41(1), 75, and 76 into law, [2] impermissibly conflicting with the purposes of the merit and fitness requirements of Article V, § 6, [3] essentially reclassifying a position without following the requirements of CSL § 20, and [4] stripping the appointing authority of its power to remove in contravention of the policy expressed in Article XIII § 2 and delegating the appointing power embodied in Article XIII § 2.

An act that would be void by resolution or local law cannot be made valid by instead insulating the act within a labor contract. While acknowledging that the

Taylor Law requires collective bargaining on terms and conditions of employment, its broad scope does not extend to matters prohibited by constitutional law, statutory law, or public policy. The Taylor Law does not permit *de facto* reclassification of the exempt position of Secretary of the Planning Board by a labor contract provision. Accordingly, the grievance is not arbitrable, and the Opinion of the Second Department should be reversed**.**

II
Questions Presented

Question 1: Whether requiring arbitration on the issue of a termination of the exempt class position of Secretary of the Planning Board violates the Constitution, Statutory Law, or public policy embedded in the merit and fitness clause of the constitution where the collective bargaining agreement purports to afford Tenure Protections to such employee?

Answer: Yes, the Second Department erred in holding that there was no constitutional, statutory or public policy prohibition against arbitrating the removal of the exempt Secretary of the Planning Board because requiring "Notice of Discipline" and establishment of a "Just Cause Termination" of an appointed, exempt class civil service employee violates public policy.

Question 2: Whether a contract provision requiring arbitration of such termination violates the Constitution, Statutory Law, or public policy when a collective bargaining agreement creates job protections for an appointed, exempt class civil service position thereby stripping from the appointing body, and consequently the electorate, the power to appoint or the power to remove?

Answer: Yes, the Second Department erred in holding that the removal of the exempt Secretary of the Planning Board was arbitrable because an appointee serves at the pleasure of the appointing body, and the appointing body's power to remove is inalienable, thus it cannot be contracted away without violating public policy.

III
Statement of The Case

This case involves the interplay between the Constitution of the State of New York, New York Civil Service Law, public policy derived from the Constitution and CSL and grievance arbitration sought on behalf of an exempt Secretary of the Planning Board of the Town under a public sector collective bargaining agreement.

A. New York's Constitution and Civil Service Law Set Forth New York's Public Policies Relating to the Arbitration of this Matter.

Public Policies enshrined in the Constitution and the CSL regarding appointed, exempt employees are relevant here.

New York Constitution Article V, § 6 provides in relevant part: "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive..."

New York Constitution Article XIII, § 2 provides: "When the duration of any office is not provided by this constitution it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment."

CSL § 20 provides the process for reclassifying civil service employees and requires a public hearing and notice. *See* CSL § 20(2). It also states in relevant part:

(2) "The rules and any modifications thereof adopted by a county civil service commission or county personnel officer or by a regional civil service commission or regional personnel officer shall be valid and take effect only upon approval of the state civil service commission."

CSL § 41(1) provides in relevant part: "The following offices and positions shall be in the exempt class: (c) one secretary of each municipal board or commission authorized by law to appoint a secretary." As relevant here, CSL § 75 provides the Legislature's determination on which positions are entitled to hearing regarding discipline and removal. CSL § 76 provides the appeals process and how determinations of appeals are to be made.

B. The Termination of the Secretary of the Planning Board, the CBA and the Grievance Lead the Parties Down a Path Towards Litigation.

During a Town administration prior to her termination, Katheryn Troiano was appointed as Secretary of the Planning Board of the Town of Monroe. (R. 103 ¶ 12, 134). The Secretary position is an exempt class civil service position under the CSL. (R. 103 ¶ 14, 139); *see also* CSL 41(1)(c). The Orange County Department of Human Resources Position Control Report for the Town of Monroe also confirms that Secretary of the Planning Board is an exempt class position under the CSL. (R. 103, 139). On February 6, 2012, the Town adopted a resolution "to revise the position of the Planning Board Secretary from part-time to full time exempt with

expanded duties…" (R. 101-02 ¶ 5, 131). The approval of expanded duties and conversion to a full-time position pre-dated the Collective Bargaining Agreement that was entered into in 2016. (R. 28).[2]

1. The Town Board Enters into a Collective Bargaining Agreement Purporting to Provide Tenure Protections.

On December 28, 2015, the then Town Board of the Town of Monroe entered into the new CBA for Town Hall Bargaining Unit. (R. 107-25). Contained within the "Management Rights" clause in the CBA was a reference concerning the right of the Town to terminate and discipline employees for "just cause." (R. 110).

With respect to discipline and termination, the CBA required application of the CSL §§ 75 and 76 to employees other than exempt Bookkeeper to the Town Supervisor, and stated:

> Discipline shall be in accordance with the statutory provisions set forth in Section 75 and Section 76 of the New York State Civil Service Law, except that all non-competitive Civil Service Employees shall be eligible for Section 75 and Section 76 coverage after six calendar months of continuous employment from the date of hire.

(R. 124). The Notice of Discipline clause provided: "The Town shall provide the employee with written Notice of Discipline, which shall contain all charges and

[2] In the instant case, there was no issue raised about the status of the Planning Board Secretary being exempt nor any issues raised concerning the appropriateness of that designation. Accordingly, no argument is presented concerning the duties, confidentiality or related questions concerning the duties of the Planning Board Secretary since her designation as exempt is a statutory one imposed by the State Legislature via CSL 41(1)(c).

specifications and the penalty. Simultaneously, a copy of the notice shall be sent to the designated representative of the Union." (*Id.*). The grievance submitted by Teamsters on behalf of the exempt Planning Board Secretary under CSL § 41 asserted that the Town could only terminate the employee for just cause and by providing notice of discipline. (R. 126).

The CBA omitted the title of the exempt Secretary to the Town Supervisor (N.Y. Civ. Serv. Law § 41(a)) and the exempt Deputy Town Clerk (N.Y. Civ. Serv. Law § 41(b)). (R. 111). The CBA included the title of Bookkeeper to the Town Supervisor but acknowledged that Bookkeeper to the Town Supervisor is an exempt position and "serves at the sole discretion of Town Supervisor, and, as such, the Union may not challenge such appointment or termination of such appointment through any administrative or legal proceeding." (R. 124).

However, for reasons that are unclear, the CBA neglected to include a similar carveout for the exempt position of Secretary of the Planning Board, although the Planning Board Secretary was not covered under Civil Service Section 75 and 76 and was not a non-competitive employee. *See* (R. 107-25).[3] According, the Planning

[3] There is no indication in the Record as to whether the parties entering the CBA knew that the Secretary to the Planning Board was an exempt class title when the CBA was put in place. There is also no fact in the Record supporting that the Planning Board Secretary was an honorably discharged veteran or exempt volunteer firefighter under CSL § 75(1)(b).

Board Secretary does not appear to have been protected by the express CBA language regarding discipline and termination.

2. Troiano's Employment is Terminated at the Recommendation of the Planning Board.

On February 27, 2017, the Town adopted a resolution terminating Troiano's employment as the Secretary (the "Resolution"). (R. 102 ¶ 6, 132). The Resolution provides in relevant part: "[T]he Town of Monroe Town Board approves to accept the recommendation from the Town of Monroe Planning Board to replace its current Planning Board secretary in the current holdover secretary position." *Id*.

3. Teamsters File a Grievance.

On March 1, 2017, Town Clerk Mary Ellen Beams received a grievance from Teamsters on behalf of the Planning Board Secretary. (R. 102 ¶ 7, 126). The grievance alleged that the Town violated Sections 2.1.1 and 11.2.2 of the CBA. (R. 126). It also alleged that "just cause" was required for the termination of the Planning Board Secretary as well as CSL § 75 charges. (R. 48).

C. <u>This Case Methodically Proceeds to the Court of Appeals.</u>

The instant litigation to compel arbitration was commenced by Teamsters in the Supreme Court of the State of New York, County of Orange and transferred to the Dutchess County Supreme Court. (R. 16-78). Following the Supreme Court's denial of the Town's Motion to Dismiss, the Town appealed to the Second

Department, which affirmed the lower court. (R. 9-12, 162-64.) The Town later appealed to this Court as of right, which appeal was dismissed.

1. Teamsters File a Petition to Compel Arbitration and the Town Moves to Dismiss.

On August 24, 2017, Teamsters filed a Verified Petition to Compel Arbitration. *Id*. By Notice of motion dated September 8, 2017, the Town moved to dismiss the Verified Petition. (R. 81-150). Teamsters filed opposition to the Town's motion to dismiss. (R. 151-56).

2. The Supreme Court's Decision.

By Decision and Order dated September 29, 2017, the Supreme Court held, in relevant part:

> [T]he mere fact that her position was classified as exempt under the Civil Service Law is not dispositive of whether she is entitled to grieve and arbitrate her termination under the CBA entered between the parties. If the CBA affords her such protections and requiring the Town to arbitrate would not violate a statute, decisional law or public policy, there is no bar to arbitration." (R. 10).

The lower court further held, "Because she worked in a position classified as exempt, this is not a situation where allowing her to pursue arbitration would undermine the public policy in the CSL designed to insure adherence to the constitutional preference of merit selection." (R. 10-11).

3. The Second Department's Decision and Order.

On November 12, 2020 on a prior appeal, the Appellate Division, Second Department held, among other things, "there is no statutory, constitutional, or public policy prohibition against arbitrating this dispute regarding the termination of an employee in an 'exempt class' under the Civil Service Law." (R. 163).

4. This Court Dismisses the Prior Appeal *Sua Sponte.*

By Order dated September 9, 2021, this Court, *sua sponte,* dismissed the Town's prior appeal holding, "the order appealed from does not finally determine the proceeding within the meaning of the constitution."

5. Judgment is Granted in Favor of Teamsters and This Court Grants Leave to Appeal.

By Decision, Order and Judgment, the Supreme Court granted final judgment for Petitioner, holding: "the Appellate Division, Second Department affirmed this Court's denial of the motion to dismiss. The Appellate Division noted that there is no statutory, constitutional or public policy prohibition against arbitration …" (R. 166).

The Town moved for leave to appeal and simultaneously filed a notice of appeal. By Order dated September 15, 2022, this Court dismissed the appeal *sua sponte* (R. 168) and granted the motion for leave to appeal. (*Id.*).

IV
Argument

This dispute focuses on whether Teamsters' grievance arbitration claim fails the "may-they-arbitrate"[4] prong of the *Liverpool/Watertown* test. *Acting Superintendent of Schools of Liverpool Cent. Sch. Dist. v. United Liverpool Faculty Ass'n*, 42 N.Y.2d 509, 510 (1977) ("*Liverpool*"); *In re Bd. of Educ. of Watertown City Sch. Dist. (Watertown Educ. Ass'n)*, 93 N.Y.2d 132, 137 (1999) ("*Watertown*"); *see Matter of Blackburne (Governor's Off. of Employee Rel.)*, 87 N.Y.2d 660, 665 (1996). This Court continues to apply the *Liverpool/Watertown* test to questions of public employer CBA arbitrability. *See, e.g., City of Long Beach v. New York State Pub. Empl. Rel. Bd.*, 39 N.Y.3d 17 (2022). The "may-they-arbitrate" prong of the *Liverpool/Watertown* test asks the Court to determine whether a claim related to a particular subject matter between government employer and government employee is arbitrable. *Id.*

A dispute is not arbitrable when the subject matter of the claim would violate a statute, decisional law, or public policy. *See City of Long Beach v Civ. Serv. Employees Ass'n, Inc.--Long Beach Unit*, 8 NY3d 465, 470 (2007) (holding that the claim was not arbitrable because granting any relief to the provisional civil service employees under the parties' CBA would have violated the CSL and public policy);

[4] Unless otherwise indicated, case quotations/citations omit all internal alterations, quotation marks, footnotes, and citations.

Cnty. of Chautauqua v. Civil Serv. Empl. Assn., 8 NY3d 513 (2007) (holding that CSL § 80 precluded arbitration of the termination of competitive class employees); *Cohoes City Sch. District v. Cohoes Teachers Ass'n*, 40 NY2d 774 (1976) (holding that a provision in a collective bargaining agreement by which a school board foregoes its right to make tenure determinations of probationary employees was void as against public policy); *Matter of Blackburne (Governor's Off. of Employee Rel.)*, 87 N.Y.2d at 665 (citing *Liverpool*, 42 N.Y.2d at 513). Here, the question is whether Teamsters can compel arbitration concerning a contract termination provision as it related to an exempt Secretary of the Planning Board.

Court intervention related to public policy is important in order to prevent the government from being deprived of its "ultimate decision-making prerogatives," and to prevent sovereign authority from being "delegated away." *Watertown* at 93 N.Y.2d at 138. When labor relations are between public employers and their employees, they affect the public interest and collective bargaining agreements are constrained by restrictive public policies reflective of the public interest and concern. *See Bd. of Ed., Great Neck Union Free Sch. Dist. v. Areman*, 41 N.Y.2d 527, 531 (1977) (holding that boards of education are "representatives of the public interest" and "existing statutes and public policy" – whether within or without statutory law – will "limit or restrict their power" to bind the public). The same consideration applies here to municipalities.

"Put differently, a court must stay arbitration where it can conclude, upon examining the parties' contract and the implicated statute on their face, 'that the granting of *any* relief would violate public policy.'" *Cnty. of Chautauqua v. Civ. Serv. Employees Ass'n*, 8 N.Y.3d at 519 (quoting *Matter of City of New York v. Uniformed Fire Officers Assn., Loc. 854, IAFF, AFL–CIO,* 95 N.Y.2d 273, 284 (2000)). If the claim fails the initial "may-they-arbitrate" prong, the Court need not reach the "did-they-agree-to-arbitrate prong. *Id.*

Each public policy raised by the Town has strong roots in the constitution, statutory and decisional law. The public policies are both strong and readily identifiable from the text of the source. This case is not one concerning a CBA implementing a bargained-for procedure before the ultimate decision-making authority of the government is exercised under a statute. *Cf. City of Long Beach v. New York State Pub. Empl. Rel. Bd.*, 39 N.Y.3d 17 (2022) (holding that CSL § 71 does not foreclose collective bargaining of procedure to be followed in the event of a CSL § 71 separation from service).

Rather, here, the power to terminate the exempt employee under CSL § 41(1) cannot be delegated or abnegated because the Constitution, statutory law, and public policy dictate that it is an at-will position serving at the pleasure of the appointing authority. *See Cohoes City Sch. Dist. v. Cohoes Teachers Ass'n*, 40 N.Y.2d 774, 778.

Under the provisions of such law and policy, the Court need not reach the second level of inquiry under the *Liverpool/Watertown* test.

A. New York's Public Policy in Relation to the Secretary of the Planning Board is set forth in CSL §§ 41(1)(c), 75, and 76, it Forecloses an Arbitration Claim Related to Termination of the Statutorily Exempt Secretary of the Planning Board.

By purporting to achieve a *de facto* reclassification of the position of Secretary of the Planning Board and provide Tenure Protections, the CBA contravenes the Legislature's decision to place one secretary of each municipal board within the exempt class. The statutory classification by the Legislature of exempt positions has long been a part of the CSL:

> The classification made by the Legislature in Section 13(1) of the Civil Service Law placing in the exempt class 'the deputies of principal executive officers authorized by law to act generally for and in place of their principals' is a reasonable exercise of its powers under the Civil Service provision of the Constitution and cannot be disturbed by the courts.

Bergerman v. Byrnes, 114 N.Y.S.2d 416, 421–22 (N.Y. Sup. Ct. 1952), *aff'd,* 280 A.D. 884 (1st Dept. 1952), *aff'd,* 305 N.Y. 811, 113 N.E.2d 557 (1953). There is no room for the courts to sanction Tenure Protections for exempt employees under CSL § 41(1), simply based on the generally broad scope of the Taylor Law, and without any clear legislative intent to allow *de facto* reclassification of the positions set forth in CSL § 41(1).

CSL § 41(1) provides in relevant part: "The following offices and positions shall be in the exempt class: (c) one secretary of each municipal board or commission authorized by law to appoint a secretary." The wording of CSL § 41 is mandatory and not permissive, the employees: "shall be in the exempt class." To broadly expand access of exempt class civil service employees to CSL §§ 75 and 76 constitutes circumvention of the decision-making of the legislature. Under Teamsters' reading of the CBA, the CBA purports to essentially remove the Secretary of the Planning Board from the exempt class by providing Tenure Protections. Requiring arbitration related to the termination of an exempt class employee that is derived from a contract provision and which contravenes the legislature's decision-making in CSL § 41(1) violates public policy.

1. Exempt Employees under CSL § 41(1) Hold an Important Place in the CSL Statutory Scheme Requiring that They Serve At-Will and At the Pleasure of the Appointing Authority.

New York's public policy in relation to the exempt class is best expressed in *People ex rel. Garvey v. Prendergast*, 148 A.D. 129, 130–35 (1st Dept. 1911):

> In a government by parties, it is to be expected that the principal executive officers, the heads of departments, whether appointed or elected, and their deputies and secretaries, will be selected with some reference at least to the political opinions and affiliations of the appointees, and it is plain that the Legislature did not intend to direct otherwise. The purpose of creating an exempt class would be defeated if the motives of the appointing officer could be inquired into. The Legislature recognized that it was not practicable to prescribe rules for appointments to, or removals from, certain positions or to determine the

> qualifications of candidates for such positions by examinations, competitive or otherwise, and so it provided for the creation of an exempt class, specifying certain positions to be included therein and leaving it to the civil service commission to include others. The use of the word "exempt" is significant of an intention that appointments to, or removals from, positions in that class should be exempt from restrictions or limitations, and, when the nature of the positions specifically included is considered, it appears reasonably plain that the purpose was to confer unrestricted authority and to fix unlimited responsibility for appointments to positions in that class upon the officer exercising the power of appointment.

Exempt employees under CSL § 41 are distinct from permanent employees in that exempt employees typically serve at-will and at the pleasure of the appointing authority unless they can show "entitlement to the protections of CSL § 75(1)(b)." *See Voorhis v. Warwick Valley C. Sch. Dist.*, 92 A.D.2d 571, 572 (2d Dept. 1983) (holding that a permanent employee in the noncompetitive class failed to show entitlement to CSL § 75(1)(b) protections); *de Zarate v. Thompson*, 213 A.D.2d 713, 713–14 (2d Dept. 1995) (Superintendent of Buildings classified as exempt properly terminated by appointing authority and not entitled to protection of CSL § 75 absent a showing that he was a permanent employee). As this Court has reasoned in *Meenagh v. Dewey*, 286 N.Y. 292, 301, 36 N.E.2d 211, 216 (1941), exempt employees under CSL § 41 are essentially treated as private employees:

> Private employers are free to choose their employees as they please. Usually they seek to ascertain the merit and fitness of an applicant for a vacant position by consideration of the applicant's previous experience and training and his proven ability in positions with similar duties. Private employers are free to reject objective tests of merit and fitness. Some may, indeed, find the unvarying and obtrusive efficiency

> of a particular employee irritating and may prefer an employee who works with less machine-like precision and efficiency but who has a more complaisant temperament. Not so heads of departments or officers vested with power to appoint or employ persons in the civil service, except where appointment or employment is in a position which has been placed in the exempt class by the Legislature, itself, or some other body to whom the power has been delegated.

State-wide labor unions in New York also recognize and acknowledge that exempt class employees are at-will employees. The New York State Civil Service Employees Association (CSEA), in its publication entitled "A Civil Service Primer" states:

> Tenure for non-competitive and labor class employees who have not served in their position for 5 continuous years can be negotiated. Exempt class employees are at will employees and, as such, have no tenure in their current position.

A Civil Service Primer at p. 30.[5] It bears repeating that, given the widespread use of collective bargaining by public employers and employees as required under the Taylor Law, the Opinion of the Second Department renders meaningless any distinction that the exempt class previously held.

This case differs from the line of Appellate Division cases upholding collective bargaining agreements affording supplemental protections to non-competitive class employees. *Cf. Ruiz v. County of Rockland*, 138 A.D.3d 999 (2d

[5] *A Civil Service Primer*, CSEA Legal Department & Research Department, March 2019, reprinted November 2019, available at https://cseany.org/wp-content/uploads/2020/10/Civil-Service-Primer-1_UP-2019.pdf (last accessed December 1, 2022).

Dept. 2016) (non-competitive class); *In re State Unified Ct. System v. Assn. of Surrog'te's and S. Ct. Reporters Within City of New York*, 104 A.D.3d 621, 621 (1st Dept. 2013) (non-competitive class); *Inc. Vill. of Lake Grove v. Civ. Serv. Employees Ass'n, Inc., Long Island Region No. 1,* 118 A.D.2d 781, 782 (2d Dept. 1986) ("noncompetitive class").

However, the Second Department below relied solely on the above line of cases and erroneously treated the law applicable to non-competitive class positions as being the law also applicable to exempt class positions. (R. 163). The Second Department failed to recognize the distinguishing characteristics between non-competitive employees and exempt employees under CSL § 41(1). *Id*. The CBA itself recognized this distinction excluding the termination of exempt employees from arbitration:

> **Bookkeeper to Town Supervisor**: Notwithstanding the above, it is understood that the position of Bookkeeper to Supervisor is classified as an exempt position by the Orange County civil service agency and serves at the sole discretion of the Town Supervisor and, as such, the Union may not challenge such appointment or termination of such appointment through any administrative or legal proceeding.

(Emphasis added). (R. 45).

Long Beach, like this case, hinged on whether a CBA provision that purported to afford Tenure Protections to a position that was statutorily lacking tenure under

the CSL violated public policy. *Long Beach* at 469. The Second Department, in its *Long Beach* decision that this Court ultimately affirmed held that:

> The Supreme Court properly, inter alia, stayed the arbitrations. Because the provisions of the parties' collective bargaining agreement upon which the appellant relies have the effect of limiting the petitioner's ability to discharge provisional employees, those provisions are against public policy and unenforceable as a matter of law (*see* Civil Service Law § 65 [2]; *Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. of City School Dist. of City of N.Y.,* 1 NY3d 72, 78-81 [2003]; *Matter of Preddice v Callanan,* 69 NY2d 812 [1987]; *Edelman v Israel,* 208 AD2d 1104 [1994]; *Matter of Hartley v Human Resources Admin. of City of N.Y.,* 132 AD2d 699 [1987]; *Matter of City of Binghamton [Binghamton Civ. Serv. Forum],* 63 AD2d 790 [1978]; *see generally Matter of Buffalo Police Benevolent Assn. [City of Buffalo],* 4 NY3d 660 [2005]).

City of Long Beach v Civ. Serv. Employees Ass'n, Inc.,--Long Beach Unit, 29 AD3d 789, 789–90 (2d Dept 2006).

Accordingly, even if the CBA unequivocally provided Tenure Protection to the Secretary of the Planning Board, the proper inquiry would not be concerned with whether the Secretary of the Planning Board was a provisional employee, as the Supreme Court opined. Rather the inquiry would be whether the CBA, based on Teamsters' interpretation, violates public policy as such interpretation would permanently limit the Town's right to terminate the Secretary of the Planning Board - a statutorily exempt employee under CSL § 41(1) who is excluded from protections of CSL §§ 75 and 76. Employees who are in the exempt class as well as provisional employees, while occupying such positions, are not subject to the State

Constitutional mandate of an appointment based upon merit and fitness. *See* Const. Art. 5, Section 6.

The Opinion of the Second Department improperly sanctions conversion of the Secretary of the Planning Board's legislatively determined at-will, exempt class position into a permanent, tenured position with CSL § 75 protections, contrary to the provisions of CSL and the Constitution.

New York Courts have uniformly rejected the proposition that exempt employees receive the protections of the CSL without establishing some other ground for entitlement to its protections. *See O'Day v. Yeager*, 308 N.Y. 580, 588, 127 N.E.2d 585, 588 (1955); *Kilcoyne v. Lohr*, 226 A.D. 218, 219 (4th Dept. 1929), *aff'd*, 252 N.Y. 526, 170 N.E. 129 (1929); *Bass v. Bragalini*, 286 A.D. 944, 944 (3d Dept. 1955); *People ex rel. Garvey v. Prendergast*, 148 A.D. 129, 130–35 (1st Dept. 1911); *de Zarate v. Thompson*, 213 A.D.2d 713, 714 (2d Dept. 1995); *Carfora v. City of New York*, 705 F. Supp. 1007, 1009 (S.D.N.Y. 1989) (exempt employees are "terminable at will under New York law without a hearing and without cause").

There is no basis in law for the *de facto* reclassification of exempt employees under CSL § 41(1) by labor contract. Reclassification violates public policy by contravening the Legislature's decision-making in relation to CSL § 41 and the CSL in general. *See Metro. Life Ins. Co. v. Boland*, 281 N.Y. 357, 361 (1939) (holding

that the Court's lack power to change classification by judicial construction). Accordingly, the Opinion of the Second Department must be reversed.

2. Exempt Positions under CSL § 41(1) Cannot be Reclassified by Resolution or Contract Without Violating Public Policy.

Municipalities only possess authority to act when such authority is conferred upon them by the Legislature. *Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 427 (1989). "Without legislative grant, an attempt to exercise such authority is *ultra vires* and void." *Id.* "The creation of an obligation against a municipality by way of contract can only result from an affirmative determination to create the obligation in the form and manner provided by statute." *City of Zanesville, Ohio v. Mohawk Data Scis. Corp.*, 97 A.D.2d 64, 66 (4th Dept. 1983). When faced with an effort of the New York State Thruway Authority to afford CSL § 75 protections to statutorily exempt managerial employees by resolution, analogous to what occurred here, the Appellate Division, Third Department held:

> Simply stated, respondent's effort to afford its exempt management/confidential employees job tenure that is expressly withheld from them by statute (*see,* Civil Service Law § 75[1]) was a misguided attempt to circumvent the law. We conclude, therefore, that Resolution No. 1746 is void as an attempt to reclassify the position of Executive Director from the exempt class to one of the classes that are afforded the protection of Civil Service Law § 75(1) without following the requisite procedures of Civil Service Law § 20.

Martin v. Hennessy, 147 A.D.2d 800 (3d Dept. 1989). The same considerations apply here. The CBA provision in this case purports to do, by contract, what the New

York State Thruway Authority improperly sought to do by resolution. Both acts violate public policy by seeking to reclassify a statutorily exempt position without following the procedures required under CSL § 20. As exempt class employees are not subject to merit and fitness requirements, there are safeguards in place that address reclassification. Those safeguards are set forth in CSL § 20. CSL § 20 requires approval of reclassification by the New York State Civil Service Commission, following notice and hearing. It does not permit a collective bargaining agreement provision to essentially reclassify an exempt employee outside of the statutory process. Therefore, reclassification without compliance with the Legislature's statutory scheme on the subject violates public policy.

Likewise, CSL § 75 sets forth which public employees "may not be discharged without just cause." *Voorhis v. Warwick Valley C. Sch. Dist.*, 92 A.D.2d at 572; *see also Civ. Serv § 75(1)*. As reflected in the cases cited by the Second Department, in 1965, the legislature decided to expand access to CSL § 75 to employees in the non-competitive class. *See Russell v. Hodges*, 470 F.2d 212, 218–19 (2d Cir. 1972).[6] The legislature also provided protections to classified service employees who qualified as honorably discharged veterans or exempt volunteer firefighters. *See* CSL § 75(1)(b). But the same statutory expansion of protections

[6] This legislative expansion of CSL § 75 is also reflected in Section 11.2.1 of the CBA, which does not mention exempt employees at all, but lessens the amount of time for non-competitive employees to achieve CSL § 75 protections.

were not afforded to the CSL § 41 exempt class employees, as such. *See* CSL § 75. Without some enactment of the legislature changing the relationship of CSL § 41(1) employees, similar to the one made in relation to non-competitive employees in relation to CSL § 75, an arbitration grieving the termination of an exempt employee under CSL § 75 violates public policy. It ignores the clear public policy expressed in CSL §§ 41(1), 75, and 76, which provide that the Secretary of the Planning Board is not afforded CSL §§ 75, and 76 protections or other Tenure Protections. If the CBA purports to provide for such protections, it is void as a matter of public policy as well as statutorily and constitutionally void.

In sum, the Legislature declined to extend CSL § 75 protections to the positions set forth in CSL § 41(1). *See* CSL § 75. Rather, by classifying the position of Secretary of the Planning Board as exempt and not providing any protections to such exempt employees, the legislature determined that the position would not receive the statutory protections of CSL § 75. To contract away the legislature's decision-making in relation to CSL §§ 41(1), 75, and 76 would violate public policy.

The Legislature has the power to reclassify the positions set forth in CSL § 41 in order to provide job protections upon certain considerations. It has not chosen to do so. The Taylor Law could have explicitly provided that exempt CSL § 41 employees may bargain-for CSL § 75 protections, but it does not. There is no room for municipal officials to contravene the public policies that are expressed in CSL

§§ 41, 75, and 76, by contract, nor is there room for the Court to require arbitration of such claims based on those same violative clauses.

It bears repeating that, as an exempt employee, the Secretary of the Planning Board was subject to termination at-will. *See Bergamini v. Manhattan & Bronx Surface Transit Operating Auth.*, 62 N.Y.2d 897, 899 (1984). The Second Department overlooked this distinction in its decision and cited only to cases involving the non-competitive class of employees, a different civil service class of positions that is expressly included, as such, within the provisions of CSL §§ 75 and 76. (R. 163).

The unprecedented Opinion below now stands for the holding that Tenure Protections can be afforded to exempt employees through collective bargaining agreements without violating the Constitution, Statutes, or Public Policy. (R. 163). The Opinion upsets the very framework of the CSL by removing the significance of the Legislature's decision to place certain positions within the exempt class. It renders the Legislature's decision-making in relation to CSL § 41 meaningless. It also now allows local governments to provide Tenure Protections to exempt class positions without considering merit and fitness and without regard for the appointing authority's power to remove. If the Second Department's opinion stands, it paves the way for elected officials and appointed leadership officials to hand-pick exempt employees (who require no qualifications or examination) for positions and then

arrange for Tenure Protections to be conveyed upon those exempt employees via a collective bargaining agreement. These acts would bind their successors in office and confer permanency on employment positions that are intended to be at-will and are not otherwise entitled to any Tenure Protections. Accordingly, the Opinion of the Second Department must be reversed.

B. The *De Facto* Reclassification of an Exempt Position under CSL § 41 Necessarily Violates the Merit and Fitness Clause of the Constitution.

Article V, Section 6 of the Constitution provides in relevant part: "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive…" NY Const., Art. V § 6. "The purpose of this provision was to replace the spoils system with a system of merit selection and to protect the public as well as the individual employee." *Montero v. Lum*, 68 N.Y.2d 253, 258 (1986).

Article V, Section 6 does several things, including: (1) announcing New York's public policy favoring merit and fitness and competitive examination when it comes to appointment of civil service employees; (2) creating a requirement that appointment of its civil service employees must be according merit and fitness and competitive examination as far as practicable; and (3) permitting the legislature to

create classes of appointments which would not be subject to such a requirement. *See Wood v. Irving*, 85 N.Y.2d 238, 242–43 (1995) (Article 6 "articulates long-standing, well-settled State policy that appointments and promotions within the civil service system must be merit-based and, when "practicable," determined by competitive examination"):

> The constitutional dictate does not create an absolute bar to civil service appointments and promotions without competitive examinations. An untested appointment or promotion, however, must rest on (1) a legislative determination that ascertaining fitness by competitive examination is "impracticable; and (2) a sound, discernible basis supporting the Legislature's determination of impracticability.

"The constitutional mandate that appointments to civil service positions be based on merit and fitness, to be ascertained by competitive examination where 'practicable,' may not be blinked or avoided." *Bd. of Ed. of City of New York v. Nyquist*, 31 N.Y.2d 468, 472 (1973). "Even in instances where a competitive examination is not 'practicable,' appointments to classified civil service positions outside the exempt and labor classes may be made only 'after such non-competitive examination as is prescribed by the state civil service department or municipal commission having jurisdiction.'" *City of Long Beach v. Civ. Serv. Employees Ass'n, Inc.--Long Beach Unit*, 8 N.Y.3d at 470 (citing CSL § 42 (1)). The language in CSL § 42(1) reiterates New York's public policy in relation to Merit and Fitness. Appointments, outside the exempt class must be made in accordance with Article V,

§ 6. As this Court held in *Long Beach*, providing Tenure Protections to employees without complying with the Merit and Fitness requirements of Article V, § 6 violates public policy.

The Courts, even in equity, cannot sanction an employment or contract which violates the Constitution's Merit and Fitness Clause:

> By placing this provision in the Constitution the People of the State have declared in unmistakable terms that merit, ascertained as therein provided, shall govern appointments and promotions in the public service, and have thus formulated and announced the public policy of the State… [N]o court may sanction a violation … When redress is sought in the courts for an alleged wrongful discharge or removal of an employee of the State or one of its civil divisions, the court, too, may fail to note that the employment was illegal from its inception, unless the legality of the employment is challenged by the defendant. An employment which in its inception violates the provisions of the Constitution is illegal and against public policy, regardless of the good faith of the parties.
>
> * * *
>
> [R]egardless of whether the legality is challenged or not, a court must refuse to sanction such an employment which violates the mandate of the Constitution whenever the illegality becomes apparent to it. In such case the defense cannot be waived by the defendant. The defense is allowed, not for the sake of the defendant, but of the law itself. It will not enforce what it has forbidden and denounced.

Palmer v. Board of Educ. of Union Free Sch. Dist., 276 N.Y. 222, 226 (1937); *See also, Civil Service Employees,* at 74 ("the public policy manifested in the Civil

Service Law is very strong"). Here, any relief in favor of the Secretary of the Planning Board would violate the policy expressed in the Merit and Fitness Clause.

1. Civil Service Employees are Subject to Merit and Fitness Unless That is Found to be Impractical by The Legislature, and Thus, the CBA Cannot Create a New *De Facto* Class of Permanent Employee under the Constitution without Violating Public Policy.

It bears repeating that there is no challenge raised before the court to the classification of the Secretary of the Planning Board position under CSL § 41. Despite the clear constitutional edict of the Merit and Fitness Clause, Teamsters and the Courts below assert that the CBA includes the Secretary of the Planning Board within the agreement's job protection provisions. The management rights provision of the CBA provides that the rights and responsibilities of management include the ability to "terminate employees for just cause." (R. 31). The CBA, if interpreted as applying the "just cause" provision and the CSL §§ 75 and 76 hearing and appeal provisions to the exempt Secretary of the Planning Board, would unconstitutionally provide Tenure Protections to the Secretary of the Planning Board, thereby converting the position into a permanent position within the Civil Service, without any qualifications or examination being required. The CBA would therefore unconstitutionally create a new class of employee outside the bounds of Article V, Section 6. Essentially, a CSL § 42 appointment would be created without meeting the constitutional dictates of Article V, § 6.

2. Exempt Employees Under CSL § 41 are Exempt from the Civil Service Law, but Cannot be Given Tenure and Simultaneously Avoid the Merit and Fitness Clause of the Constitution.

Exempt class employees differ from non-competitive class employees in how and why they need not comply with the merit and fitness requirements of the New York Constitution:

> The criteria necessary ... to permit exempt classifications[ ] are the confidential nature of the position, the performance of duties which require the exercise of authority or discretion at a high level[ ] or the need for the appointee to have some expertise or personal qualities which cannot be measured by a competitive examination.
>
> The Commission may ... place a title in the noncompetitive class where 'it is impracticable to determine merit and fitness for the berth by competitive examination. Such impracticability may arise " 'due to either the confidential nature of the position or because the character of the position renders an examination inadequate to measure the qualifications of the prospective employee.'

Spence v. New York State Dept. of Civ. Serv., 197 A.D.3d 1396, 1397 (3d Dept. 2021).

The distinction between exempt employees and non-exempt classified employees under CSL § 41 is analogous to temporary employees. Providing Tenure Protections to either without considerations of merit and fitness violates public policy. This was expressed by this Court in *Koso v. Greene*, 260 N.Y. 491, 494–95 (1933):

> With certain exceptions not here important, provisional and temporary appointments may be terminated at any time. Temporary or provisional appointees, though in a sense holding positions in the competitive class, are, for reasons of necessity, exempt from the civil service requirements for appointment; and, similarly, so long as they hold such positions, they are entitled to none of the advantages secured by period of tenure under the civil service rules …While such appointments may on occasion be succeeded by a permanent appointment, this may only be by virtue of examination and eligibility under the civil service laws, and not by reason of any ripening of the temporary or provisional appointment into a permanent appointment.
>
> * * *
>
> He has no competitive tenure of position in that class (People ex rel. Rosenthal v. Travis, 169 App. Div. 203, 154 N. Y. S. 403) and, as the noncompetitive appointment secures him no preference of permanent appointment, neither does it give him preference of retention over those higher in eligibility for original permanent appointment.
>
> We think the spirit and the reason inherent in article 5, section 6, of the Constitution require a holding that the words 'original appointment' as used in section 31 of the Civil Service Law mean an appointment from an eligible list for a probationary term ripening at the end of three months' satisfactory service into a permanent appointment.

The same reasoning was recently applied to collective bargaining for Tenure Protections of temporary or provisional employees:

> We therefore conclude that the terms of the CBA that afford tenure rights to provisional employees after one year of service are contrary to statute and decisional law and therefore any relief pursuant to those terms may not be granted by an arbitrator. Accordingly, the order of the Appellate Division should be affirmed, with costs.

City of Long Beach v. Civ. Serv. Employees Ass'n, Inc.--Long Beach Unit, 8 N.Y.3d at 472 ("*Long Beach*"). In its Opinion, the Second Department distinguished *Long*

Beach using a citation signal without any analysis. (R. 163). But the same considerations apply and require reversal. An exempt employee under CSL § 41 obtains their position without any examination and obtains no tenure.

Thus, this Court's precedent holding that appointments for permanent positions without a legislative determination regarding merit and fitness and examination violate the New York State Constitution and the CSL which were enacted to carry Article V, Section 6 of the New York State Constitution into effect. The same analysis applies here and requires reversal.

In *People ex rel. Campbell v. Partridge*, 89 A.D. 497, 498–99 (2d Dept. 1903), *aff'd,* 179 N.Y. 530 (1904), the designation or appointment of a relator as a telegraph operator was held to be the equivalent of a promotion which the Second Department held requires under the Constitution that the employee to undergo an examination. This Court affirmed the Appellate Division, Second Department's holding:

> Under the provisions of the Constitution and the civil service law, therefore, the relator's promotion could not be effected without an examination; and as there is no claim that his name was ever upon an eligible list, or any of the civil service rules complied with in his designation, we think that the order was properly denied, and should be affirmed, with costs."

Id. at *499*.

In *Wood v. Irving*, 85 N.Y.2d 238, this Court struck down CSL § 58(4)(c), which bestowed on a police officer temporarily assigned detective work, a permanent detective position solely through the passage of time, without meeting a merit and fitness requirement. This Court held that because there was no evidence of a legislative consideration or determination of impracticability of testing for the detective rank, the enactment fails its constitutional threshold. *Id.* at 243. For the same reasons, the CBA here, which purports to provide job protections to an appointed, exempt class employee, is unconstitutional. *See Kearns v. Bd. of Educ. of City of New York*, 279 N.Y. 61, 65–66 (1938) (holding that appointments to permanent positions in the CSL must be from lists of eligible persons and to allow otherwise would sanction evasion of the CSL).

Here, there was no legislative effort used to determine whether, if the Secretary of the Planning Board were a permanent position, it would be impracticable to base the appointment on merit and fitness and competitive examination. That consideration does not apply to an exempt class employee. *See Spence v. New York State Dept. of Civ. Serv.*, 189 A.D.3d 1785, 1786 (3d Dept. 2020).

Here, the CBA's provision purports to provide Tenure Protections to an employee not otherwise entitled to protections under CSL § 75, et seq. By comparison, CSL § 76(4) allows modification of job protections for other classes

of employees included within CSL § 75. However, that provision has not been applied to allow the exempt civil service class to be afforded job protections since the exempt class, as such, is not entitled to the protections afforded under CSL § 75.

Further, the lower court decisions authorize a CBA which usurps the constitution and the CSL and effectively converts the exempt position of Planning Board Secretary into a permanent position without any examination, qualifications or review by the appropriate civil service commission. The CBA creates a new class of employee by providing permanent job protection to an appointed, exempt class civil service position without any merit and fitness standard. Like *Wood v. Irving,* there has been no "legislative determination that ascertaining fitness by competitive examination is "impracticable." 85 N.Y.2d at 243. Nor was there any "sound, discernible basis supporting the Legislature's determination of impracticability." *Id.*

Thus, the Second Department erred in holding that there was no constitutional bar to arbitrating the termination of an exempt civil service employee. Such arbitration violates the merit and fitness clause of the New York State Constitution by enforcing a contract provision that improperly confers job protection on an exempt class employee who did not pass any examination and was not required to meet any qualifications for the position. Accordingly, the Judgment must be reversed.

C. Delegating the Power to Remove an Appointed Officer Violates the Appointing Power Set Forth in the Constitution.

"It is an elementary principle of law that an appointing authority possesses the power to remove an employee." *Waters v. City of Glen Cove*, 181 A.D.2d 783, 783 (2d Dept. 1992). This Court has long held that when the duration of a term is not set by the Legislature, the appointing party may remove at-will. *People ex rel. Corrigan v. City of Brooklyn*, 149 N.Y. 215, 227 (1896).

The exempt class Secretary of the Planning Board serves at-will under CSL § 41(1). Public policy prohibits the parties from making the position permanent by providing Tenure Protections within a CBA. By placing one secretary of each municipal board authorized to appoint a secretary in the exempt class, the legislature ensured that the power to remove would remain in the appointing body. Thus, Teamsters' claim is not arbitrable because any relief in favor of the Planning Board Secretary would abrogate the appointing body's power to remove, thereby violating public policy. *Palmer v. Board of Educ. of Union Free Sch. Dist*., 276 N.Y. 222, 229 (1937) ("There can be no right to make an appointment or contract which would create a legal right of tenure where the Constitution forbids such right").

As the Supreme Court of the United States held in, *In re Hennen*, 38 U.S. 230, 247 (1839): "Even at common law, a custom for the appointing power to remove ad libitum, where the term was not fixed, or the incumbent held at will, was always held to be a good custom."

> If a full expression of the legislature of the Union, on this important part of the American Constitution, is to be regarded by Courts of justice as an authority, we have that also deliberately given, fully sustaining the right of the appointing power to remove, where no express provision exists; and declaring that right to be incidental to the power of appointment. The debate in the House of Representatives, on the bill 'to establish the department of foreign affairs,' and the vote on 22d June, 1789, (Journal of Congress, vol. i. p. 50;) have always been regarded as conclusive in regard to the opinions of those who framed the Constitution.

Id.

The public policy of this state is consistent with Federal Law, and is embodied in Constitution, Article XIII, § 2:

> With respect to the tenure or duration of a public employment, such as the relator had at the time of his dismissal, the general rule is that where the power of appointment is conferred in general terms, and without restriction, the power of removal, in the discretion and at the will of the appointing power, is implied and always exists, unless restrained and limited by some other provisions of law.
>
> This general rule was embodied in the constitution of this state in the following language: 'When the duration of any office is not provided by the constitution, it may be declared by law, and, if not so declared, such office shall be held during the pleasure of the authority making the appointment.'

People ex rel. Cline v. Robb, 126 N.Y. 180 (1891) (distinguishing removal of New York City police officers whose removal was restrained by statute from removal of park police officers, whose removal was unrestrained by statute).

Thus, to provide an appointed and statutorily exempt employee with Tenure Protections via the CBA violates public policy by stripping the public of its appointing power. The CBA Tenure Protection provisions are far outside the bounds of the constitution and the CSL. They encroach on the merit and fitness requirements, the appointing power, and even manage to diminish the voting power of the People of the Town of Monroe who will no longer choose the elected official who will make the appointment, since the prior appointment will be made permanent. The mere fact that the labor contract was created and executed cannot cure the severe constitutional, statutory, and public policy infirmities. Accordingly, the Opinion of the Second Department must be reversed.

V
Conclusion

A statutorily exempt class civil service position may not properly be converted to a tenured, permanent position by inclusion of a job protection provision in a collective bargaining agreement. The breadth of the Taylor Law, while wide, is not limitless. Here, any relief granted in favor of the Secretary of the Planning Board would contravene the Constitution, public policy, the CSL, and Decisional Law. Accordingly, the Opinion of the Second Department must be reversed.

Dated: December 22, 2022
Nyack, New York

Respectfully Submitted,

By: 

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State of New York
Court of Appeals

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IN THE MATTER OF TEAMSTERS LOCAL 445,

Petitioner-Respondent,

-against-

TOWN OF MONROE,

Respondent-Appellant.

STATEMENT PURSUANT TO CPLR 5531

1. Supreme Court, Dutchess County, Index No. 52247/2017.

2. The full names of the original parties are the same; there has been no change.

3. Action commenced in Supreme Court, Orange County.

4. Action was commenced by the filing of the Notice of Verified Petition and Verified Petition, dated August 24, 2017.

5. Nature of action: CPLR 7503 to Compel Arbitration

6. This appeal is from the Appellate Division, Second Department Order, dated November 12, 2020.

7. Appeal is on the Record (reproduced) method.

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Affidavit of Service by Overnight Carrier

In the Matter of TEAMSTERS LOCAL 445 v. TOWN OF MONROE

17-11372

State of New York }
County of Kings }

Jonathan Didia , being duly sworn, deposes and says that he is over the age of 18 years of age, is not a party to the action and is employed by Dick Bailey Service, Inc. That in the above case on Friday, December 9, 2022 deponent served 1 copies of the within

Brief [X] Record [ ] Appendix [ ] Notice [ ] Other [ ]_____

upon

Lewis Clifton & Nikolaidis, P.C.
Attn: Louie Nikolaidis, 350 West 31st Street, Suite 401, New York, New York 10001

by dispatching the paper to the person(s) by overnight delivery service at the address(es) designated by the person(s) for that purpose, pursuant to CPLR 2103(b)(6).

Jonathan Didia

Sworn to before me
Friday, December 9, 2022

WILLIAM BAILEY
Notary Public, State of New York
No. 01BA6311581
Qualified in Richmond County
Commission Expires Sept. 15, 2026

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