STATE OF NEW YORK
SUPREME COURT COUNTY OF ONONDAGA

PAUL MOTONDO, as President of the Syracuse Fire Fighters Association, IAFF Local 280,

Plaintiff,

Index No.: 008031/2019

v.

CITY OF SYRACUSE,

Defendant.

DECISION

APPEARANCES:

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Karalunas, J.:

This constitutes the Court's decision regarding the competing motions of plaintiff Paul Motondo, as President of the Syracuse Fire Fighters Association, IAFF Local 280 ("plaintiff" or "Union") and defendant City of Syracuse ("defendant" or "City") for declaratory relief concerning disciplinary procedures for firefighters in the City of Syracuse.

By amended verified complaint filed September 17, 2019, the Union sued the City seeking a declaration that "the Second Class Cities Law does not apply to discipline involving bargaining unit members that make-up the Union and instead discipline must be administered pursuant to the [2018-2020] Collective Bargaining Agreement agreed to by the City and the Union." Amd. Ver. Compl. ¶ 4. Thereafter, the City filed a verified answer with counterclaim seeking a declaration 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with the Union; (b) the provisions of the current CBA between the City and the Union relating to discipline are no longer valid; and (c) . . . the disciplinary procedures set forth in the Second Class Cities Law applies to the Fire Department." Ans. ¶ 52.

The Union and City are parties to a CBA for the period January 1, 2018 to December 31, 2020. Amd. Ver. Compl., Exh. A. Pursuant to the terms of the CBA, the City recognized the Union "as the sole and exclusive bargaining agent for Civil Service Firefighters employed in the Fire Department of the City of Syracuse, excluding the Fire Chief, the First Deputy Fire Chief and Deputy Chiefs and all civilian employees of the department." CBA, § 1.1. The 2018-2020 CBA was not the first collectively bargained agreement between the parties; indeed, the parties collectively bargained the issue of discipline for decades, beginning with their first collective bargaining agreement in 1968. Smith Aff. ¶ 6.

Article 20 of the CBA, titled "Disciplinary Disputes," in pertinent part, provides as follows:

> 20.1 Procedure in Disciplinary Disputes
>
> Firefighters who have completed the 12-month probationary period pursuant to Civil Service Law, shall have any dispute involving discharge or discipline resolved pursuant to the procedures of Article 20.2 through 20.6.
>
> * * *
>
> 20.2 Procedures in Disciplinary Disputes
>
> In the event of a dispute concerning the discipline or discharge imposed upon a Firefighter, the following procedures shall be followed:
>
> Step 1: Within ten calendar days after presentment of disciplinary charges upon the Firefighter, the Firefighter must serve written notice as described in Section 20.3, if he desires to elect to follow the Step 2 and Step 3 procedures of this Section. Failure to make a timely election shall automatically mean that the procedures of Section 75 of the Civil Service Law shall be followed, and there shall be no right to arbitration under the provisions of this Agreement. If the Firefighter waives his Section 75 rights and makes a timely election for arbitration, then the remaining Steps will be followed.
>
> * * *
>
> Step 3: The parties shall utilize panels designated by PERB or the American Arbitration Association in arbitrating matters of discharge and discipline under this Article. If an Agreement is not reached in Step 2, the [Union] . . . may file in writing (copy to the City) a demand for arbitration with PERB or the American Arbitration Association. The finding of the arbitrator shall be final and binding upon the parties. If such written request for arbitration is not served on the City within 30 calendar days . . . the dispute shall be deemed waived, and there shall be no right to arbitration or recourse to Section 75 proceedings.

CBA, §§ 20.1 and 20.2.

The CBA (and all of the parties' collective bargaining agreements subsequent to 2006) also included a reservation of rights following the Court of Appeals decision in Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc., 6 N.Y.3d 563 (2006). Smith Aff. ¶ 8.

> 20.8 Abidance to Existing Procedures
>
> Consistent with § 209-a.1(e) of the Civil Service Law, the City agrees that until such time as a 2011 (or 2011 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 any court cases or decisions such as In the Matter of the 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 the arguments and holdings provided for 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.

CBA, § 20.8.

Statutory Background

In 1906, the New York State Legislature enacted the Second Class Cities Law ("SCCL") to provide a standard uniform city charter for all cities of the "Second Class," defined as a city with a population, as of the end of 1923, of between 50,000 and 175,000. As set forth in the current version of the SCCL, each of its provisions "shall apply, according to its terms, "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.

The City Home Rule Law, which was adopted in 1924, provided:

> Any local law adopted pursuant to this chapter may specify any provision of any act of the Legislature by reference to chapter number, year or enactment, title of statute, section, subsection or subdivision, which provision relates to the subject matter of such local law and does not in terms and in effect apply alike to all cities, and which it is intended to supersede by such local law; and upon the taking effect of such local law, such provision of any such act of the Legislature so specified shall cease to have any force or effect in such city.

City Home Rule L. § 12.1.

Thereafter, in 1965, the City Home Rule Law was replaced by the Municipal Home Rule Law. In pertinent part, the Municipal Home Rule Law provides:

> 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.

Mun. Home Rule L. § 22.

Turning to the substance of the SCCL, relevant here, the commissioner of public safety is granted "cognizance, jurisdiction, supervision and control of the government, administration, disposition and discipline of the . . . fire department, . . . and of the officers and members of [that] . . . department[ ]. He shall possess such other powers and perform such other duties as may be prescribed by the law or by ordinance of the common council." SCCL § 131.

Expanding on that authorization, section 133 of the SCCL provides that the commissioner of public safety shall:

> make, adopt, promulgate and enforce such reasonable rules, orders and regulations, not inconsistent with law, as may be reasonably

> necessary to effect a prompt and efficient exercise of all the powers conferred and the performance of all duties imposed by law upon him or the department under his jurisdiction. He is authorized and empowered to make, adopt, promulgate and enforce reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the police and fire departments, and for the hearing, examination, investigation, trial and determination of charges made or prepared against any officer or member of said departments; . . . but no officer or member of said departments shall be removed or otherwise punished for any other cause, nor until specific charges in writing have been preferred against and served upon him, and he shall have been
> found guilty thereof, after reasonable notice and upon due trial before said commissioner in the form and manner prescribed by law and the rules and regulations of the department.

SCCL § 133; see also SCCL § 137 (setting forth specific procedures for discipline).

In 1958, after adoption of the SCCL, the New York State legislature passed Civil Service Law sections 75 and 76 governing disciplinary proceedings concerning civil service employees. Notably, in Matter of City of Schenectady v. New York State Pub. Empl Relations Bd., 30 N.Y.3d 109 (2017), the Court held that while "Civil Service Law §§ 75 and 76 generally govern [firefighters'][1] disciplinary procedures, pre-existing laws that expressly provided for control of [firefighters'] discipline were "grandfathered" under Civil Service Law § 76(4), which provides that nothing in sections 75 and 76 shall be construed to repeal or modify any general, special or local laws or charters." Id. at 114.

Almost one decade later, in 1967, the New York State legislature added Article 14 to New York's Civil Service Law. Commonly known as the Taylor Law, that statute provides in pertinent part:

[1] While Matter of City of Schenectady involved police disciplinary procedures, the quote is equally applicable to firefighters.

> Where an employee organization has been certified or recognized . . . the appropriate public employer shall be, and hereby is, required to negotiate collectively with such employee organization in the determination of, and administration of grievances arising under, the terms and conditions of employment of the public employees.

NY Civ. Serv. L. § 204(2). As the Court of Appeals has acknowledged, "the Taylor Law represents a strong and sweeping policy of the State to support collective bargaining." Matter of the City of Schenectady, 30 N.Y.3d at 114; Matter of Cohoes City Sch. Dist. v. Cohoes Teachers Assn., 40 N.Y.3d 744 (1976).

Relevant City Charters

Consistent with the SCCL, the City of Syracuse Charter of 1915 ("1915 City Charter") authorized appointment of a commissioner of public safety. 1915 City Charter, Art. 3, §17 and Art. 9. The 1915 City Charter mandated that the commissioner of public safety "make, adopt, promulgate and enforce reasonable rules, order and regulations for the government, discipline, administration and disposition of the officers and member of the police and fire departments." 1915 City Charter, Art. 9, § 133. The language of section 133 of the 1915 City Charter practically mirrored the language of section 133 of the SCCL.

In 1935, pursuant to the City Home Rule Law, the City of Syracuse adopted a new charter ("1935 City Charter") which, among other things, eliminated the position of commissioner of public safety, organized a Department of Police and a separate Department of Fire, and vested the powers previously held by the commissioner of public safety in a Chief of Police (section 202) and a Chief of Fire (section 222). 1935 City Charter, Arts. 12 and 13, §§ 200 - 230. The 1935 City Charter, in relevant part, provided: "The Chief of Fire . . . is authorized and empowered with approval of the Mayor, to make, adopt, promulgate and enforce reasonable rules, orders and

regulations for the . . . discipline . . . of officers and members of the Fire Department." Id. at § 222.

As with the 1915 City Charter, language in the 1935 City Charter nearly mirrored the language of section 133 of the SCCL. The only changes of any relevant significance were: (1) elimination of the phrase that purported to limit designation of power to that which was "not inconsistent with law;" (2) addition of a requirement that the Mayor approve adoption of rules, orders and regulations concerning discipline of officers and members; and (3) designation of the Mayor as the trier of fact in disciplinary proceedings against officers and members. 1935 City Charter, § 222.

The 1935 City Charter specified that: [a]ll authorities, rights, powers, duties and obligations enjoyed or possessed by or devolved upon an 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;" and "[s]ubject to the provisions of the City Home Rule Law, any provisions of law, local law or ordinance including all laws, local laws or ordinances creating, providing for or continuing any office, officer, department, board, body, commission or other city agency, inconsistent with this Charter are hereby repealed." 1935 City Charter, §§ 2 and 26.

A new Syracuse City Charter was enacted in 1960 ("1960 City Charter"). Also known as Local Law No. 13, the 1960 City Charter expressly provides that it is "a new charter for the City of Syracuse, and generally supersed[es] acts and local laws inconsistent therewith." 1960 City Charter, Preamble; see also 1960 City Charter, § 9-106 ("[a]ll laws and parts of law in force when this charter shall take effect are hereby superseded so far as they affect the city of

Syracuse, to the extent that same are inconsistent with the provisions of this charter, and no further").

To make the point abundantly clear, the 1960 City Charter further provides:

> [A]ll 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, and shall perform all duties devolved upon it or them under and by virtue of all existing general or special laws of the state of New York or hereafter devolved upon the city of Syracuse, or upon such officers, departments, commissions, boards, or agencies, by any general or special laws hereafter enacted, except insofar as such authority, rights, powers, obligations or duties are and shall be lawfully governed, modified, or affected by the provisions of this charter. Subject to the provisions of the City Home Rule Law, any provisions of law, local law or ordinance including all laws, local laws or ordinances creating, providing for or continuing any office, officer, department, board, body, commission or other city agency, inconsistent with this charter are hereby repealed.

Id. at § 1-102.

With specific respect to the fire department, the 1960 City Charter provides:

> The chief of fire, with the approval of the mayor, shall make, adopt, promulgate and enforce such reasonable rules, orders and regulations for the government, discipline, administration and disposition of the officers and members of the department of fire 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.

Id. at § 5-908.

Discussion

As a preliminary matter, the parties agree Syracuse was, and still is, a city of the second class. Pet. ¶ 25, Resp. MOL p. 4. They disagree on whether the SCCL provisions regarding discipline of firefighters were superseded by Civil Service Law, local law, the CBA and the parties' custom and practice.

The City argues the trilogy of Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. v. New York State Pub. Empl. Relations Bd., 6 N.Y.3d 563 (2006); Matter of Wallkill v. Civil Serv. Empls. Assn., Inc., 19 N.Y.3d 1066 (2012); and Matter of City of Schenectady v. New York State Pub. Empl. Relations Bd., 30 N.Y.3d 109 (2017) is dispositive. This Court disagrees.

In Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. v. New York State Pub. Empl. Relations Bd., 6 N.Y.3d 563 (2006), the Court of Appeals considered whether the New York City Charter and the Rockland County Police Act eradicated any right police officers in those jurisdictions had to collectively bargain issues of discipline. The New York City Charter committed matters of police discipline to the police commissioner; the Rockland County Police Act committed matters of police discipline to a local town board. In deciding the issue, the Court confronted the "tension between the strong and sweeping policy of the State to support collective bargaining under the Taylor Law and . . . the [competing] policy favoring strong disciplinary authority for those in charge of police forces."[2] Id. at 571. While confirming that "the policy of the Taylor Law prevails, and collective bargaining is required where no legislation specifically commits police discipline to the discretion of local officials," the Court explicated that where such legislation is in force, *i.e.*, where local law has expressly committed police

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[2] The Union argues there is no corresponding policy favoring strong disciplinary authority for those in charge of firefighters. That issue is unnecessary to resolve in this action, and the Court declines to do so.

discipline to local officials, "the policy favoring control over the police prevails, and collective bargaining over disciplinary matters is prohibited." Id. at 570-71. Examining the applicable New York City and Rockland County local laws, the Court concluded that those laws expressed in clear terms a policy favoring management authority over police disciplinary matters such that "the policy favoring collective bargaining should give way." Id. at 576.

In Matter of Wallkill v. Civil Serv. Empls. Assn., Inc., 19 N.Y.3d 1066 (2012), the applicable collective bargaining agreement gave the Town of Wallkill police officers the right to a disciplinary hearing before a neutral arbitrator. The Town of Wallkill later adopted a local law which included disciplinary procedures for police officers different from those outlined in the collective bargaining agreement. When the Wallkill PBA filed requests for arbitration consistent with the collective bargaining agreement, the Town responded with a CPLR Article 75 proceeding seeking to permanently stay arbitration and a declaration regarding the validity of the local law. The trial court ruled in favor of the Wallkill PBA, declaring the local law invalid "insofar as inconsistent with the disciplinary provisions of the CBA." Id. at 1068. The Appellate Division reversed, and the Court of Appeals affirmed stating:

> [T]he Town properly exercised its authority to adopt Local Law No. 2 pursuant to Town Law § 155. Town Law § 155, a general law enacted prior to Civil Service Law §§ 75 and 76, commits to the Town the power and authority to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police department. Accordingly, the subject of police discipline resides with the Town Board and is a prohibited subject of collective bargaining between the Town and Wallkill PBA.

Id. at 1069.

More recently, in Matter of City of Schenectady v. New York State Pub. Empl. Relations Bd., 30 N.Y.3d 109 (2017), the Court of Appeals addressed the issue of whether article 14 of the

Civil Service Law superseded the provisions of the SCCL regarding police discipline in the city of Schenectady.

In that case, the city of Schenectady challenged a determination by the New York State Public Employment Relations Board ("PERB") that "the City committed an improper employer practice by [adopting] new police disciplinary procedures different from those contained in the parties' expired collective bargaining agreement." Id. at 112-13. The trial court held, with the Appellate Division affirming, that "the relevant provisions of the [SCCL] were superseded by the enactment of the Taylor Law, and thus collective bargaining applies to police discipline in Schenectady." Id. at 114. The Court of Appeals reversed.

The Court of Appeals acknowledged "that although Civil Service Law §§ 75 and 76 generally govern police disciplinary procedures, preexisting laws that expressly provide for control of police discipline were grandfathered under Civil Service Law § 76(4), which provides that nothing in sections 75 and 76 shall be construed to repeal or modify any general, special or local laws or charters." Id.

Specifically addressing the SCCL, the Court explained: "[t]he Taylor Law's general command regarding collective bargaining is not sufficient to displace the more specific authority granted by the [SCCL]." Id. at 115. In other words, in the absence of contrary local law, the SCCL, which commits [firefighters'] discipline to the discretion of local officials, trumps the Taylor Law, and collective bargaining of [firefighters'] discipline is prohibited. Id. However, the Court acknowledged that where the local government has expressed through legislation and other indicia its intent to supersede applicable parts of the SCCL and permit collective bargaining of [firefighters'] discipline, the Taylor Law prevails. Id. at 115; see Auburn Police Local 195, Council 82, AFSCMA v. Helsby, 62 A.D.2d 12 (3d Dep't 1978) *aff'd sub nom.* 46

N.Y.2d 1034 (1979) (disputes relating to police discipline "are terms and conditions of employment under the Taylor Law, and as such, may be agreed by a public employer and employee to be resolved by arbitration"). Against this background, on the specific facts and laws applicable in Schenectady, the Court concluded: "police discipline is a prohibited subject of bargaining in Schenectady." Matter of City of Schenectady, 30 N.Y.3d at 116.

So, where does that leave the firefighters in Syracuse under the relevant laws, contracts and rules? "It might be thought this question could be answered yes or no, but the relevant statutes and case law are not so simple." Matter of Patrolmen's Benevolent Assn., 6 N.Y.3d. at 573. As the Court of Appeals stated: what "is quite clear, from the different results in Matter of Patrolmen's Benevolent Assn., Matter of Town of Wallkill, and Matter of Auburn Police, some local counterparts have the right to bargain about [firefighters] discipline, and some do not." Matter of City of Schenectady, 30 N.Y.3d at 118. The answer turns on the expressed intent of the local body. Has the City of Syracuse clearly expressed a specific intent "strong enough to justify excluding discipline of [firefighters] from collective bargaining?" Matter of Patrolmen's Benevolent Assn., 6 N.Y.3d. at 573, 576. The Court finds that the City of Syracuse has not expressed such an intent.

First, the SCCL specifically states that it "shall apply, according to its term. . . . until such provision is superseded pursuant to the municipal home rule law, was superseded pursuant to the former city home rule law or is or was otherwise changed, repealed or superseded pursuant to law." SCCL § 4. From this language, there can be no dispute "that the Legislature did not intend to put any of its provisions beyond supersession by city home rule." Fullerton v. Schenectady, 285 A.D. 545, 547 (3d Dep't 1955), *aff'd* 309 N.Y.701 (1955); Carlino v. Albany, 118 A.D2d 928, 929 (3d Dep't 1986); 1983 Ops. Atty Gen No. 83-84.

Second, the language of the 1960 City Charter makes clear that it intended to change the way firefighters were disciplined by requiring that: "[d]isciplinary proceedings. . . be conducted in accordance with the rules and regulations of the department and the provisions of law applicable thereto, *including the Civil Service Law*." 1960 City Charter § 5-908 (emphasis added). Unlike the City of Syracuse, specific compliance with Civil Service Law was not mandated by the municipalities in either Matter of Patrolmen's Benevolent Assn. of City of N.Y., Matter of Wallkill or Matter of City of Schenectady.

Third, the City's intent to supersede the SCCL's submission of firefighters' discipline to the Chief of Fire is further demonstrated by the language in the minutes of the proceeding at which the City's Charter Revision Committee submitted the then proposed 1960 City Charter to the City's Common Council. The City's Charter Revision Committee specifically stated:

> The charter eliminates special disciplinary provisions for the Departments of Police and Fire. All employees will be disciplined in accordance with the procedures prescribed by the State Civil Service Law. The city will finally be able to operate under a uniform disciplinary policy for all departments.

Lambright Reply Aff., ¶ 3 and Exh. A.

Unlike the local legislative structure in Matter of the Town of Wallkill or Matter of the City of Schenectady, the City of Syracuse, through passage of its 1960 City Charter, as bolstered by the CBA and the parties long history of collectively bargaining firefighters' discipline, evinced its intent to supersede the SCCL provisions regarding discipline of firefighters, and to require compliance with the Civil Service Law's collective bargaining provisions.

The City's argument that the Taylor Law is not applicable because it was enacted after the 1960 City Charter is unpersuasive. The 1960 City Charter specifically requires disciplinary

proceedings to be conducted in accordance with the Civil Service Law. The Taylor Law is part of the Civil Service Law, compliance with which the 1960 City Charter compels.

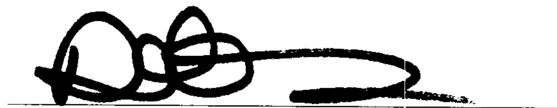
Equally unpersuasive is the City's argument that the 1960 City Charter did not supersede the SCCL because it was not in compliance with the specificity requirement of City Home Rule Law section 12.1. City Home Rule section 12.1 was replaced by the Municipal Home Rule Law section 22. Unlike the City Home Rule Law, the Municipal Home Rule Law expressly provides that any failure to specify by chapter, section, subdivision or year the state statute or prior local law which it is intended to change or supersede, "*shall not affect the validity of such local law.*" Mun. Home Rule L. § 22 (emphasis added). This principle has been confirmed by both the Fourth and Third Departments. See Henderson Taxpayers Assn. v. Town of Henderson, 283 A.D.2d 940, 941, 948 (4th Dep't 2001) (rejecting plaintiff's argument that local law did not supersede Town Law § 263 because it did not comply with specificity requirement of Municipal Home Rule L. § 22(1); "[s]o long as there is substantial adherence to the statutory methods to evidence a legislative intent to amend or supersede, a local law will be upheld"); see also, Miller v. City of Albany, 278 A.D.2d 647, 648 (3d Dep't 2000) (rejecting Albany's claim that local law could not supersede the SCCL "due to its failure to state what statute it was intended to supersede").

Although provisions of the SCCL regarding fire department discipline were not specifically mentioned in the 1960 City Charter, there can be no reasonable doubt as to the City of Syracuse's intent to supersede section 131 of the SCCL, mandate compliance with the Civil Service Law, and authorize arbitration as a means to resolve firefighters' disciplinary disputes.

Accordingly, this Court GRANTS plaintiff's motion for summary judgment declaring that the Second Class Cities Law does not apply to discipline involving firefighters in the City of

Syracuse and instead discipline must be administered consistent with the Municipal Home Rule Law, the 1960 City Charter and the [2018-2020] Collective Bargaining Agreement agreed to by the City and the Union, including the right to arbitration. Defendant's cross-motion is DENIED.

Plaintiff's attorney is directed to prepare an order and judgment consistent with this decision to be submitted to the Court within 15 days. The order and judgment must attach a copy of this decision and incorporate it therein.



Dated: May 11, 2020
Syracuse, New York

Deborah H. Karalunas
Justice of Supreme Court