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COURT OF APPEALS

STATE OF NEW YORK

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MATTER OF CITY OF SCHENECTADY,

Appellant,

-against-

No. 93

NYS PUBLIC EMPLOYMENT RELATIONS  
BOARD,

Respondent.

-----

20 Eagle Street  
Albany, New York  
September 6, 2017

Before:

CHIEF JUDGE JANET DIFIORE  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE PAUL G. FEINMAN

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Sara Winkeljohn  
Official Court Transcriber

1 CHIEF JUDGE DIFIORE: The first matter on this  
2 afternoon's calendar is number 93, Matter of the City of  
3 Schenectady v. Public Relations Board.

4 Counsel.

5 MR. LANGLOIS: Good afternoon; may it please the  
6 court, Christopher Langlois on behalf of the appellant,  
7 City of Schenectady. With the court's permission, I'd like  
8 to reserve two minutes of my time for rebuttal?

9 CHIEF JUDGE DIFIORE: You may, sir.

10 MR. LANGLOIS: Thank you. The first conclusion  
11 that the enactment of the Taylor Law in 1967 superseded the  
12 Second Class Cities Law by requiring police discipline to  
13 be the subject of collective bargaining lacks a rational  
14 basis and is at odds with this court's prior decisions in  
15 Patrolmen's Benevolent Association, generally referred to  
16 as PBA, and its decision in Town of Wallkill.

17 CHIEF JUDGE DIFIORE: Counsel, what's the  
18 standard of review that we apply here?

19 MR. LANGLOIS: As in any Article 78 proceeding,  
20 which this is, you're looking to see whether or not PERB's  
21 determination was affected by an error of law, is arbitrary  
22 and capricious, or lacks a rational basis.

23 CHIEF JUDGE DIFIORE: And do we apply deference  
24 to the agency?

25 MR. LANGLOIS: In some circumstances, you do, but

1 not in this circumstance, Your Honor, because the questions  
2 that were resolved by PERB involve pure matters of  
3 statutory interpretation and construction to which this  
4 court owes PERB no deference.

5 CHIEF JUDGE DIFIORE: Thank you, counsel.

6 MR. LANGLOIS: The difficulty with the conclusion  
7 reached by PERB is this: If, as PERB concluded, the  
8 enactment of the Taylor Law superseded the Second Class  
9 Cities Law, then it should logically follow that the  
10 enactment of the Taylor Law also would have superseded the  
11 legislation previously considered by this court in PBA and  
12 Town of Wallkill, that is the New York City Charter  
13 Administrative Code, the Rockland County Police Act, and  
14 Town Law Section 155.

15 JUDGE GARCIA: Counsel?

16 MR. LANGLOIS: Yes, sir.

17 JUDGE GARCIA: It seems that the Appellate  
18 Division, and - - - and I think what's before us is whether  
19 or not, given those cases you cite, Wallkill, PBA, this  
20 language that you find in the Second Class Cities Law:  
21 "That until such provision superseded pursuant to,"  
22 whatever, "or otherwise changed, appealed, or superseded  
23 pursuant to the law changes the legal analysis of this  
24 court's decisions."

25 MR. LANGLOIS: It does not, Your Honor.

1 JUDGE GARCIA: But then what does that language  
2 mean?

3 MR. LANGLOIS: My view is that that language is  
4 simply restating a self-evident proposition, that any  
5 legislation enacted by the state legislature is always  
6 going to be subject to either being changed, repealed, or  
7 superseded pursuant to - - -

8 JUDGE GARCIA: Then why say it?

9 MR. LANGLOIS: If I could go back to 1909 and ask  
10 the drafters of the Second Class Cities Law why they chose  
11 to include that language, I - - -

12 JUDGE GARCIA: Do you know of any other statutes  
13 that have that language in it?

14 MR. LANGLOIS: I searched electronically all the  
15 statutes in the State of New York to find out if there was  
16 a comparable language provided anywhere else, and there was  
17 not.

18 JUDGE STEIN: What about "Except as otherwise  
19 provided by law"? Is that comparable?

20 MR. LANGLOIS: That language, Judge Stein, that  
21 you're referencing is found in two of the laws previously  
22 considered by this court, Town Law Section 155 and the  
23 Rockland County Police Act. My view is that that language  
24 is and should be interpreted exactly the same as the  
25 language in Second Class Cities Section 4, and I'm not the

1           only one who thinks that. In my - - - my brief in a  
2           footnote, I point out that a previous PERB decision  
3           involving the Town of Wallkill, I think it was 2009 - - -  
4           it was 2009. PERB looked at that language, "Except as  
5           otherwise provided by law," and concluded that it meant  
6           essentially the same thing as the language that was cited  
7           in the Second Class Cities Law. In other words, that it  
8           could be superseded by a subsequent enactment.

9                         If those - - - if either the language in Second  
10           Class Cities Law Section 4 is simply a self-evident legal  
11           proposition, which is equally true for the other laws, or  
12           if the language means exactly the same thing as "except as  
13           otherwise provided by law," as used in the other laws, that  
14           language does not provide a rational basis to treat the  
15           Second Class Cities Law any differently than this court  
16           treated the Rockland County Police Act or the Town of  
17           Wallkill decision. And - - -

18                         JUDGE WILSON: When you searched other statutes,  
19           did you happen to search the Constitution?

20                         MR. LANGLOIS: I do not believe I did. I  
21           searched - - -

22                         JUDGE WILSON: Did you notice that Article IX  
23           Section(3)(b) of the Constitution has the exact same  
24           language?

25                         MR. LANGLOIS: State of federal, Your Honor?

1 JUDGE WILSON: State.

2 MR. LANGLOIS: I'll take your word that.

3 JUDGE WILSON: All right.

4 MR. LANGLOIS: But no. I did not. I searched  
5 the statutes of the legislature, not specifically the  
6 Constitution. If you remove the basis relied upon by PERB,  
7 the language in Section 4 of the Second Class Cities Law  
8 from the analysis, what you're left with is a pure question  
9 of statutory construction and the question of whether the  
10 Taylor Law has a subsequently - - - has a subsequently  
11 enacted law effected a repeal by implication of the Second  
12 Class Cities Law. And applying very well-established rules  
13 regarding repeal by the implication, the answer should be  
14 no. And by the way, it's not an analysis that PERB used or  
15 went through in its - - - in reaching its decision. Repeal  
16 by implication is greatly disfavored. It's found in only  
17 the clearest of cases and only where the two provisions are  
18 in such irreconcilable conflict that they cannot coexist.

19 JUDGE STEIN: The Taylor Law also has a  
20 grandfathering provision. How did - - - how does that play  
21 into this, or - - - or does it?

22 MR. LANGLOIS: The Taylor Law has grandfathering  
23 or Civil Service Section 75, Your Honor?

24 JUDGE STEIN: Sorry, Civil Service Law. Yes.

25 MR. LANGLOIS: This court's decision in PBA was

1 based on the fact that while a public employer under the  
2 Taylor Law has an obligation to negotiate where discipline  
3 is controlled by Civil Service Law Section 75, not all  
4 discipline is governed by 75 because, as you point out,  
5 there is a grandfathering section that preserves  
6 preexisting laws. And the court concluded that legislation  
7 like the Rockland County Police Act, Town Law Section 155,  
8 and as the City would argue, the Second Class Cities Law,  
9 are preexisting laws enacted prior to Section 75 that were  
10 grandfather and therefore, still have control and effect.

11 JUDGE FAHEY: So you're saying there's no  
12 conflict with this supersession of law of the Second Class  
13 Cities Law Article 4 and 76(4), is it, of the Civil Service  
14 Law?

15 MR. LANGLOIS: That's not the conflict that we're  
16 talking about. We're talking about, as framed by PERB in  
17 its decision, a conflict between the Taylor Law enacted in  
18 1967 - - -

19 JUDGE FAHEY: Right. Right.

20 MR. LANGLOIS: - - - and the Second Class Cities  
21 Law enacted in 1909, which has very specific provisions for  
22 the local control of police discipline. Because the two  
23 laws occupy completely different fields of operation, the  
24 Taylor Law has nothing to do with police discipline. It  
25 talks generally about an obligation to negotiate. Second

1 Class Cities Law has nothing to do with negotiation. It  
2 talks only about police discipline. There is no conflict  
3 between the two. The only conflict you have is this  
4 tension that was resolved in PBA between the policy  
5 supporting collective bargaining and the policy supporting  
6 local control over police discipline. And that conflict  
7 was resolved with this court concluding that - - -  
8 essentially resolving the conflict by saying where you have  
9 a preexisting law enacted prior to Civil Service Law  
10 Section 75, which governs police discipline, there is no  
11 obligation to bargain under the Taylor Law, and therefore,  
12 there is no conflict.

13 JUDGE WILSON: What do you make of the - - -

14 CHIEF JUDGE DIFIORE: Counsel, for years the City  
15 abided by the Collective Bargaining Agreement with respect  
16 to police disciplinary matters, correct?

17 MR. LANGLOIS: Correct.

18 CHIEF JUDGE DIFIORE: So - - - and then they  
19 announced the new procedures. Are there any principles of  
20 waiver of their posi- - - - that operate here?

21 MR. LANGLOIS: No, Your Honor.

22 CHIEF JUDGE DIFIORE: They waived their position?  
23 No.

24 MR. LANGLOIS: No. I mean - - -

25 CHIEF JUDGE DIFIORE: And why is that?

1 MR. LANGLOIS: - - - the City of Schenectady did  
2 nothing differently than Rockland County and the Town of  
3 Wallkill had done in terms of entering the collective  
4 bargaining agreements based on a mistaken belief that they  
5 were under affirmative obligation to do so under the Taylor  
6 Law only to learn, through this court's decision in PBA,  
7 that those collective bargaining agreements are essentially  
8 void as far as police discipline is concerned because not  
9 only is police discipline in these circumstances not a  
10 permissible subject of collective bargaining, the court  
11 ruled it's a prohibited matter of bargaining. So the fact,  
12 Your Honor, that the City and the PBA entered into  
13 collective bargaining agreements, the fact that discipline  
14 was resolved through the provisions of the CBA up until the  
15 announcement does not foreclose the City from reverting  
16 back to the Second Class Cities Law.

17 JUDGE WILSON: And how do you reconcile our  
18 affirmance of the Third department's decision in the Auburn  
19 case with PBA and Wallkill?

20 MR. LANGLOIS: Fairly easily, Your Honor. Auburn  
21 established the principle which was recognized, again, in  
22 your PBA decision, that court's decision, that where  
23 Section 75 of the Civil Service Law is the governing  
24 statute for police discipline, the Taylor Law applies, and  
25 then a public employer has an obligation to negotiate

1 regarding police discipline. PBA said that's true as far  
2 as that goes and Auburn still remains true, but only where  
3 Section 75 controls. Where you have a preexisting law  
4 enacted prior to Section 75, which is maintained pursuant  
5 to the grandfathering provision set forth in Section 75,  
6 Civil Service Law does not apply. The preexisting statute  
7 controls discipline, and there is no obligation to engage  
8 in collective bargaining.

9 JUDGE STEIN: So what you're saying is is that in  
10 Auburn there was no - - - there was no preexisting specific  
11 law giving an alternative method of police - - -

12 MR. LANGLOIS: That's correct.

13 JUDGE STEIN: - - - discipline?

14 MR. LANGLOIS: I - - - I believe everybody  
15 conceded that Section 75 was the operative statute and the  
16 only question was, given that being the case, is a public  
17 employer obligated to negotiate regarding alternatives to  
18 the Section 75 procedure, and this court said yes, you are.  
19 These species of cases, PBA, Town of Wallkill, and now  
20 involving the Second Class Cities Law are different than  
21 Helsby. We're talking about not Section 75 but preexisting  
22 laws which express a policy vesting local control over  
23 police discipline.

24 CHIEF JUDGE DIFIORE: Thank you, counsel.

25 MR. LANGLOIS: Thank you, Your Honor.

1 CHIEF JUDGE DIFIORE: Counsel.

2 MR. QUINN: Good afternoon; David Quinn from  
3 PERB. First, the Taylor Law does not repeal the Second  
4 Class Cities Law at all. The Second Class Cities Law  
5 remains fully operative and in full force and effect. What  
6 the Taylor Law does is it overlays the bargaining  
7 obligation concerning alternatives to the Second Class  
8 Cities Law and so that the Second Class Cities Law remains  
9 in effect except where the parties mutually agree to some  
10 different procedure. The Second Class Cities Law contains  
11 that specific language. Who knows what they were saying  
12 and why they put it in there in 1906. I do not know. But  
13 it's in there, and it says that the provisions contained in  
14 the Second Class Cities Law may be repealed, modified, or  
15 changed pursuant to law.

16 JUDGE GARCIA: But isn't that the question we're  
17 looking at now?

18 MR. QUINN: Yes.

19 JUDGE GARCIA: Whether they have been? But to go  
20 back to a point Judge Stein just raised, doesn't the Civil  
21 Service Law itself say: "It's not to be construed to  
22 repeal or modify preexisting laws"? So if you read this  
23 language from the Second Class Cities Law in conjunction  
24 with the Civil Service Law, isn't that the answer to the  
25 question? I mean yes, it could be. We're deciding was it.

1 And the Civil Service Law is saying don't read it that way.  
2 Why isn't that the answer here?

3 MR. QUINN: I want to make sure I understand it.  
4 It is true that the Second Class Cities Law is the  
5 operative law notwithstanding the subsequent enactment of  
6 Section 75 of the Civil Service Law. That is true. And so  
7 what we have, then, is on the - - - on the landscape is the  
8 Second Class Cities Law. And the question is - - - as you  
9 - - - as you pose it and as Judge Stein posed it, does the  
10 Second Class Cities Law permit negotiations under the  
11 Taylor Law. And I think that the Second Class Cities Law,  
12 as the Appellate Division held, is plainly and clearly  
13 unambiguously says that its provisions may be modified,  
14 changed, or superseded pursuant to law, and that pursuant  
15 to law is - - -

16 JUDGE WILSON: But isn't that true of every  
17 statute? I mean what does that add?

18 MR. QUINN: I'm sorry?

19 JUDGE WILSON: Isn't that true of every statute,  
20 that it may be changed by law?

21 MR. QUINN: Certainly that's true it can be  
22 changed by law. But under - - -

23 JUDGE WILSON: So what does that - - - what does  
24 that language add if you, as you already said, don't know  
25 why it was included by the 1906 legislature anyway?

1 MR. QUINN: It adds this. It - - - it adds - - -  
2 it's - - - for purposes of statutory construction and  
3 specifically this case, it adds that it's - - - the law  
4 itself on its face contemplates the establishment of  
5 different provisions pursuant to law. Now - - -

6 JUDGE GARCIA: But what if the different - - -  
7 provision itself says don't read this to supersede any  
8 earlier laws? Wouldn't that affect the broad supersession  
9 clause of the Second Cities - - - Second Class Cities Law?

10 MR. QUINN: If the law said that - - -

11 JUDGE GARCIA: I mean if the Civil Service Law  
12 says don't read this to supersede then why would we read it  
13 to supersede?

14 MR. QUINN: Oh. I just want to make sure that  
15 we're clear on this point. The Civil Service Law Section  
16 75 is not the Taylor Law. The Civil Service Law 75 is its  
17 own freestanding disciplinary procedure. So if the Civil  
18 Service Law said, listen, it - - - our - - - the Civil  
19 Service Law Section 75 does not apply to Cities of the  
20 Second Class, it would not affect this decision - - - this  
21 case at all.

22 JUDGE FAHEY: You know, in a different - - - in a  
23 different area, Mr. Quinn, I'm wondering a more basic  
24 question, I guess. How can the PERB decision be reconciled  
25 with, which what I read is our clear precedent, that the

1 Court of Appeals did not say that the Taylor Law superseded  
2 preexisting laws. I'm wondering do - - - if we were to  
3 agree with you do we have to overturn the New York City PBA  
4 and Wallkill?

5 MR. QUINN: No. I don't believe that's correct.

6 JUDGE FAHEY: No? Why not?

7 MR. QUINN: I'll tell you. Because neither New  
8 York City PBA nor Wallkill declare a carte blanche ban on  
9 collective negotiations. In NYC PBA, the court wrote if  
10 you have Civil Service Law 75, alternatives to that  
11 procedure are negotiable. The Taylor Law was enacted nine  
12 years after Civil Service Law 75. So when the Taylor Law  
13 was enacted it, too, overlaid 75. It simply said 75  
14 applies unless the parties mutually agree to something  
15 different, and in Auburn you held that that was a  
16 satisfactory conclusion. So again, NYC PBA and Wallkill do  
17 not declare a carte blanche ban on collective bargaining,  
18 and in NYC PBA you say that it's permissible under Section  
19 75. I don't think you have to repeal or reverse NYC PBA or  
20 Wallkill. There are - - - is legislative history that  
21 might support that proposition, but I'm not making that  
22 argument here today. I think my light is on. If I'm - - -  
23 if I'm due - - -

24 CHIEF JUDGE DIFIORE: Thank you, counsel.

25 MR. QUINN: Thank you all very much.

1 MR. RAVALLI: Good afternoon, Your Honors; may it  
2 please the court, my name is Michael Ravalli, and I  
3 represent the Schenectady PBA. First, I - - - as far as  
4 overturning Wallkill and New York City PBA, this is a  
5 different statutory scheme than the court was faced in both  
6 Wallkill and New York City PBA. The Second Class Cities  
7 Law simply doesn't evidence a strong public policy of this  
8 state to render police discipline, a brand subject of  
9 bargaining in Second Class City.

10 JUDGE WILSON: Well, how is it different from,  
11 let's say, the New York City legislation considering - - -  
12 concerning police discipline?

13 MR. RAVALLI: Because the Second Class Cities Law  
14 Section 4 contains a broad suppression clause. And - - -  
15 and a Second Class City can supersede any provision of the  
16 Second Class Cities Law by a local law pursuant to Section  
17 4 of the Second Class Cities Law and the municipal home  
18 rule Law. So if the legislature viewed the Second Class  
19 Cities Law as an expression of a strong public policy that  
20 police discipline should be prohibited in a Second Class  
21 City, then a city, a municipality, would not be allowed to  
22 supersede its provision by a local law. So - - -

23 JUDGE WILSON: Well, the - - - the legislation of  
24 New York City is a local law.

25 MR. RAVALLI: It's not a local law. It's a - - -

1 back when the New York City chartered an administrative  
2 code - - -

3 JUDGE WILSON: Right.

4 MR. RAVALLI: This is the tension between the  
5 state and municipalities back when - - - when the  
6 administrative code for the New York City was first  
7 enacted, it was pursuant to state law. Because  
8 municipalities weren't afforded the opportunity to enact  
9 their own charters. And that's what happened to Second  
10 Class Cities Law, as well. However, it - - - it was later  
11 in this tension between the state legislature and the local  
12 municipalities effectively resulted in a compromise. And  
13 that compromise is state legislature said here's your  
14 charter in the Second Class Cities Law, but you can change  
15 it pursuant to your municipal home rule law. And that's  
16 different. So because that language isn't contained in the  
17 New York City Charter, I'm not so sure that they could  
18 amend that portion of their local law because it may  
19 violate, as this court held, a public policy of the state.  
20 But - - - but here, the state legislature specifically said  
21 you can do it, municipality, and that's different. So they  
22 have discretion to do it, and because of that it doesn't  
23 make sense for them to have the ability to change that by  
24 local law and yet say that they can't negotiate with the  
25 police union pursuant to the Taylor Law. And that's an

1 important distinction. It is a different statutory scheme.

2 I would also like to - - - to address the  
3 Optional City Government Law because, really, the question  
4 here is does Section 75 and 76 apply in the City of  
5 Schenectady? And - - -

6 JUDGE STEIN: Was that - - -

7 JUDGE GARCIA: Was that rejected?

8 JUDGE STEIN: Yeah. Was that addressed or - - -

9 MR. RAVALLI: That was addressed. And - - -

10 JUDGE STEIN: Sorry. Was it rejected?

11 JUDGE GARCIA: By PERB?

12 MR. RAVALLI: It was not rejected. And - - - and  
13 the PERB decision itself spent three pages on that  
14 argument. And if you look in the record page 41 to 44,  
15 here's what they had to say about it: "The subject of  
16 police discipline might also be a mandatorily negotiable  
17 under Auburn because Civil Service Law Section 75 and 76  
18 appear applicable to PBA Unit Members based upon the City's  
19 prior adoption of a form of government under the Optional  
20 City Government Law and precedent from the Appellate  
21 Division Third Department." That's at page 41. Then the  
22 PERB goes on at page 44 to say: "A final determination  
23 concerning whether Civil Service Law Section 75 and 76 is  
24 applicable to the entire PBA Unit will have to await  
25 judicial clarification of the relationship between the

1 Second Class Cities Law's Sections 137 and 138 and the  
2 Optional City Government Law Section 46.

3 JUDGE STEIN: So it didn't decide - - -

4 MR. RAVALLI: Well - - -

5 JUDGE STEIN: - - - applicability. It said it  
6 has to await interpretation, right? And it didn't make its  
7 own interpretation.

8 MR. RAVALLI: I think it did interpret it except  
9 it recognized, as we started this off with, that - - - that  
10 a court is not going to give deference to PERB's  
11 interpretation of a statutory construction. So I would  
12 just say that in Section 135 of the Second Class Cities  
13 Law, it specifically says that the - - - that the Civil  
14 Service Law shall apply except as otherwise provided  
15 herein. Which - - - which allowed the police commissioner  
16 or public safety commissioner to discipline pursuant to the  
17 further provisions of the Second Class Cities Law.

18 When the Optional City Government Law was  
19 enacted, it said pursuant to the Civil Service Law, period,  
20 and it did not include that exception. So - - - so that's  
21 a distinction. It was all-encompassing. The Civil Service  
22 Law applies to all changes in status and it added the word  
23 "removals," the Optional City Government Law did. So  
24 clearly, the Civil Service Law applies in the City of  
25 Schenectady, not the Second Class Cities Law, when it comes

1 to police discipline. And therefore, under Wallkill and  
2 New York City PBA, it's a mandatory subject of bargaining  
3 as they reaffirmed Auburn.

4 CHIEF JUDGE DIFIORE: Thank you, counsel.

5 Counsel.

6 MR. LANGLOIS: Thank you. Just responding to - -  
7 - to points raised during respondent's arguments in reverse  
8 order and responding to Judge Stein's comment and question  
9 about whether or not PERB actually made any decision about  
10 some of the alternative arguments that have been raised by  
11 PBA, the answer is no. They did not. They did spend some  
12 time discussing the issue but ultimately reached no  
13 conclusion. There was only one ground upon which PERB  
14 relied in reaching its determination. That's the ground  
15 that we've appealed. The conclusion that the enactment of  
16 the Taylor Law superseded the Second Class Cities Law,  
17 that's the only issue, in my view, that's before this court  
18 for determination. And PERB conceded - - - acknowledged  
19 maybe is the better word, that that was the sole ground and  
20 it decided none of these other issues in its briefing  
21 before the Third Department. I believe I referenced that  
22 in my brief.

23 With a last comment to your question about  
24 whether or not you could affirm PERB's determination in  
25 this case without overturning PBA and Town of Wallkill, in

1 my view, the answer is no. You have four statutes, Second  
2 Class Cities Law and the three collectively considered in  
3 PBA and Town of Wallkill that are basically - - - need to  
4 be treated the same way. Either they all stand or they all  
5 fall together. The only way that you could distinguish  
6 treating the Second Class Cities Law differently than these  
7 other three is if you somehow found that there was meaning  
8 behind that language in Second Class Cities Section 4 about  
9 otherwise changed, repealed, or superseded pursuant to law.  
10 I don't believe that that is a rational for this court to  
11 distinguish between the two. So either we need to - - -  
12 the court needs to affirm, essentially, its prior holdings  
13 and reverse the PERB in this case or affirm PERB and wipe  
14 out PBA and Town of Wallkill. Unless the court has any  
15 other questions, thank you.

16 CHIEF JUDGE DIFIORE: Thank you, counsel.

17 (Court is adjourned)

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