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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF ROCHESTER POLICE LOCUST
CLUB, INC.,

Appellant,

-against-

No. 81

CITY OF ROCHESTER,

Respondent.

20 Eagle Street
Albany, New York
October 18, 2023

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE CAITLIN J. HALLIGAN
ASSOCIATE JUSTICE JOHN C. EGAN, JR.

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE WILSON: The next case on the
2 calendar is Number 81, Matter of Rochester Police Locust
3 Club v. City of Rochester.

4 MR. CELLI: And may it please the court. Andy
5 Celli for the City of Rochester, counsel. I'd like to
6 reserve three minutes for - - - for rebuttal.

7 CHIEF JUDGE WILSON: Yes.

8 MR. CELLI: Your Honors, the 1907 - - - in 1907,
9 the state legislature expressed the policy of the State of
10 New York. The disciplinary authority over police officers
11 in Rochester needs to remain in the hands of local
12 officials.

13 JUDGE GARCIA: Counsel, I'm sorry, is it your
14 position that you can never permanently give that up or
15 that what Rochester did here didn't have that effect?

16 MR. CELLI: Well, it's both, but - - - but it
17 seems to me that the state legislature has to repeal what
18 the state legislature gave. That the setting of policy in
19 this extremely sensitive area of policing is done at the
20 state level. And obviously there were different ways of -
21 - -

22 JUDGE GARCIA: The argument being they did give
23 that up. I mean, they passed the Taylor Law, and now you
24 bargain that. So this is a grandfather situation, and I
25 guess I'm - - - I'm struggling a little bit with the

1 argument that you can give that up. And again, I'm not
2 saying it was done here, but if you did, and then you can
3 say, no, no, no, no, we want to grandfather again.

4 MR. CELLI: Well, I think part of the problem is
5 the characterization of this as a grandfather. What this
6 court has held on numerous occasions is that in passing the
7 Taylor Law, it wasn't as if the state legislature said, we
8 have a general rule, and anybody who doesn't - - - who that
9 doesn't apply to for now is grandfathered. But later on,
10 if they change their behavior, they lose the grandfather,
11 they lose the exemption. That's not what the Taylor Law
12 said, according to this court.

13 What the Taylor Law said is there are two kinds
14 of municipalities in the State of New York, those that are
15 required to collectively bargain over police discipline,
16 and those that are prohibited from collectively bargaining
17 on the same topic, that both of those policies are
18 extremely important to the State. And that the second one,
19 the idea that there are - - - there are communities and
20 municipalities that are prohibited from bargaining, that
21 that is equal in value to the state as a policy, as the
22 general policy that applies where the state has said
23 nothing. So - - -

24 JUDGE HALLIGAN: What about - - - what about the
25 policy interests at play with the Municipal Home Rule Law?

1 Could you respond to this New York City amicus brief on
2 that point, which I think suggests a different position?

3 MR. CELLI: Sure. I mean, look, I think we have
4 to wrestle with the Municipal Home Rule Law, obviously. I
5 think that's essentially what the Rochester Police Locust
6 Club is relying on. And they're saying that Rochester was
7 allowed to overrule the state policy set forth in 1907 and
8 that that's what they intended to do. And - - - and it's
9 true that the Municipal Home Rule Law does permit the
10 overruling of some state laws in very specific ways. But
11 it doesn't - - -

12 CHIEF JUDGE WILSON: Let's answer the question.
13 You said two different things. One was overrule the state
14 policy, and the second was overrule the state law. And
15 that may make a difference.

16 MR. CELLI: Well, the state law that the
17 Rochester Police Locust Club is saying was overruled - - -
18 there are two - - - one is the Taylor Law, and I think
19 that's extremely important - - -

20 CHIEF JUDGE WILSON: Right. No. No. No. My
21 question is whether you think the Municipal Home Rule Law
22 gave municipalities the ability to overrule state laws or
23 to overrule state policy?

24 MR. CELLI: I - - - I think they're - - - they
25 are under very limited circumstances, permitted to overrule

1 either. But those circumstances don't apply here. And the
2 general rule of the Municipal Home Rule Law is that they
3 are not permitted to do anything at the local level that's
4 inconsistent with the general law or with state policy. I
5 think those - - -

6 JUDGE CANNATARO: That - - - that sounds to me
7 like an articulation of Dillon's Rule, which, you know, is
8 long gone at this point. And that's the problem with the
9 current state of the Municipal Home Rule Law, which is you
10 are - - - you - - - municipalities do have the discretion
11 to adjust their policy priorities in a way that they didn't
12 before. The only issue is - - - I know you don't like to
13 call it grandfathering, but the only issue is sometimes
14 these policy choices are meaningful and difficult to undo.

15 MR. CELLI: The - - - the Municipal Home Rule Law
16 as we see it - - - and this also goes to Judge Halligan's
17 question - - - is really about moving power within the
18 municipal structure. That's what it's designed to permit.
19 And that is, in fact, what Rochester has been doing every
20 ten years or so since the 1920s. They - - - one year it's
21 the public safety commissioner. They decide to transfer
22 the authority to the chief. Later on, they split the
23 authority. And now in 2019, after two years of debate and
24 a public referendum with seventy-five percent of
25 Rochester's voters - - - voters supporting it, they said,

1 we're going to have a new public agency, a new city agency
2 called the Police Accountability Board. All of that is
3 consistent with - - -

4 JUDGE RIVERA: But - - - but how is that a local
5 - - - how is that a governmental entity?

6 MR. CELLI: Well, it is by definition under - - -
7 under the charter. It's a city agency. Its employees are
8 city employees. It's appointed by public officials,
9 subject to nomination by a variety of different entities.
10 But in terms of the Municipal Home Rule Law - - -

11 JUDGE RIVERA: In terms of the chain of command
12 in the police department, aren't they independent?

13 MR. CELLI: Yes.

14 JUDGE RIVERA: Are they outside that chain of
15 command?

16 MR. CELLI: And that's - - - that - - -

17 JUDGE RIVERA: And isn't what the long - - - I
18 want to ask you about that long policy binary in a moment -
19 - - but isn't that what those laws are referring to, that
20 chain of command?

21 MR. CELLI: Well, this - - - this is a point that
22 was made in - - -

23 JUDGE RIVERA: Wasn't it external independent
24 entity?

25 MR. CELLI: Right. This was a point that was

1 made in the city's - - - the City of New York's amicus
2 brief to the court. And it's an interesting point, but it
3 is not really founded in this court's jurisprudence. What
4 the Municipal Home Rule Law is about is moving around power
5 within the structure, number one. And as I said, Rochester
6 has been doing that for decades.

7 Number two, we know that the State of New York
8 has blessed the moving of authority over discipline for
9 policing to civilians. It's happened - - - it happens
10 regularly in Orangetown and Wallkill. There's nothing that
11 you - - -

12 JUDGE SINGAS: But what you're missing is,
13 though, and what you skipped over was what happened in
14 1985.

15 MR. CELLI: So I think obviously we have to
16 wrestle with that. That's the core of the case. The 1985
17 amendment was, we contend, a housekeeping measure designed
18 to align the charter with what was already happening at the
19 time and to basically - - - and this is according to the
20 language, the legislative history that appears - - - to
21 make things more efficient and more productive. It was not
22 - - - and there's no words that reflect this anywhere, that
23 this was an attempt to surrender authority, which - - -

24 JUDGE HALLIGAN: But - - - but to that point,
25 right, what it - - - it says is, you know, it specifically

1 references the charges and trials, which I think was the
2 original provision which authorized local control over
3 police discipline. And it says for the reason that it's
4 covered by the Civil Service Law. So while it doesn't say
5 expressly, and we intend to surrender our pre-existing
6 control, can you tell us why it doesn't do that just on - -
7 - on the face of the text?

8 MR. CELLI: Well, I think that - - - I mean, if
9 one looks at the face of the text, one can say that the
10 city council, at the time, believed that they didn't have
11 the power one way or the other, that it's covered by the
12 Civil Service Law.

13 Which, by the way, I think it's very important to
14 pause on this. Covered by the Civil Service Law is an
15 incredibly vague statement. The Taylor Law is but one
16 article of the Civil Service Law. There are several
17 others, including Section 75 and 76, that don't apply at
18 all to Rochester by definition.

19 JUSTICE EGAN: What - - - in 1985, was this also
20 at a time when the city had negotiated a contract with the
21 police union, which included a provision regarding police
22 discipline?

23 MR. CELLI: Exactly right, Judge Egan. And in
24 fact, had been doing it for a decade - - - had been doing
25 it for a decade. So the idea that this - - -

1 JUSTICE EGAN: What's the effect of that, if any?

2 MR. CELLI: Well, I think it contextualizes what
3 happened in 1985. What the Locust Club would have you
4 believe is that in 1985, the city council decided, now is
5 the time we're going to surrender our power, and that's
6 what the 1985 amendment means. That's ahistorical.

7 JUSTICE EGAN: Surrender the power to impose
8 police discipline?

9 MR. CELLI: Correct.

10 JUSTICE EGAN: Right.

11 MR. CELLI: Correct.

12 JUSTICE EGAN: And then the city thereafter
13 continues to periodically negotiate new contracts.

14 MR. CELLI: Exactly.

15 JUSTICE EGAN: And to - - -

16 MR. CELLI: Exactly.

17 JUSTICE EGAN: - - - setting forth - - -

18 MR. CELLI: But more importantly, in my view,
19 Your Honor, is that the city was doing it for a decade as
20 of that point.

21 JUDGE CANNATARO: So you're arg - - -

22 MR. CELLI: And as of 85 - - - excuse me. I'm
23 sorry.

24 JUDGE CANNATARO: No, no, no. Go ahead. Finish
25 your thought.

1 MR. CELLI: I was going to say, as of 85, this
2 court's critical ruling in the New York City PBA case was
3 still twenty-one years in the future. So there - - - they
4 want you to believe that there was an intent to surrender
5 with a twenty-one year for - - - foreshadowing, when - - -
6 when, in fact, the city had already been collectively
7 bargaining over discipline for at least a decade.

8 JUDGE CANNATARO: So counsel, what I get from
9 that statement is that in 1985, the city council made de
10 jure what was already happening for years, de facto. But I
11 don't understand - - - you know, the - - - the question
12 we're facing here - - - the - - - the balancing of rights
13 under the Taylor Law versus Municipal Home Rule doesn't
14 speak to what was actually going on. It just talks about
15 legislative enactments and localities passing laws.

16 I don't understand why, even if it had been going
17 on earlier, once that law gets passed, that's an
18 affirmative statement by the municipality that we have
19 opted to go with the Civil Service Law and the Taylor Law
20 provisions therein.

21 MR. CELLI: Well, I think that last piece,
22 respectfully, is not supported by the record, by - - - by
23 what we actually know Rochester was doing at the time,
24 because they don't make - - - mention the Taylor law, and
25 they don't mention collective bargaining, and they don't

1 mention any of those things.

2 JUDGE CANNATARO: They mention the Civil Service
3 Law, right?

4 MR. CELLI: The Civil Service Law. And I want to
5 say one word about that and then switch to - - - to Section
6 22 of the Municipal Home Rule Law.

7 The civil - - - the reference to the Civil
8 Service Law, we don't really know what Rochester intended
9 at the time. And I think my friend on the other side
10 agrees with that. It's an unknown. And that's devastating
11 to their position. Why? Because Section 22 of the
12 Municipal Home Rule Law says, if you want to overrule a
13 state law and you're acting under the Municipal Home Rule
14 Law, you have to identify it with specificity. And this
15 court's jurisprudence in the Turnpike Woods case says you
16 have to show it with definiteness and explicitness. And
17 that's not here because the reference to the Civil Service
18 Law is too broad.

19 Now, if we look historically at what happened in
20 '85, you had in the collective bargaining agreement at the
21 time, Section 75 and 76 of the Civil Service Law, which are
22 the procedural sections, were actually incorporated into
23 the CBA at that time. So one way to read the text - - -
24 again, to Judge Halligan's point - - - one way to read the
25 text is they were saying, look, we don't have to have

1 trials and charges as a separate provision of the charter
2 because it's already in the collective bargaining agreement
3 which incorporates Civil Service Law, Section 75 and 76.
4 Not Civil Service Law 200, which is the Taylor Law. That's
5 an invention, in my view, an invention that's been imposed
6 - - - I see my time is up - - - that's been imposed in
7 response to this lawsuit. I see my time is up. Thank you.

8 CHIEF JUDGE WILSON: Thank you.

9 MR. DEBOLT: Good afternoon. May it please the
10 court? Dan DeBolt for the respondents.

11 This court has repeatedly held in multiple cases
12 that where Section 75 and 76 of the Civil Service Law
13 apply, police discipline in that jurisdiction is a
14 mandatory subject under the Taylor Law. That's been the
15 case in Rochester since 1985. Whether - - - what Rochester
16 City council in 1985 had to be explicit about - - -

17 JUDGE RIVERA: Why - - - why isn't he right about
18 this last point he was making, which I understood him to
19 say - - - he can correct me, of course, when he gets back
20 up for rebuttal - - - that all that happened was that
21 Rochester adopted the - - - the procedural aspects of these
22 two sections, not that it was giving up its local control
23 of discipline. Why isn't he right about that?

24 MR. DEBOLT: I think he's not right about that,
25 because what they expressly did - - - and in terms of the

1 Municipal Home Rule Law, what they had to be explicit with
2 is we hereby repeal sections 8 - - - Section 8A-7 of the
3 City Charter. That was the state law that they were
4 repealing. That's what they had to be explicit about.

5 JUDGE RIVERA: Okay.

6 MR. DEBOLT: The consequences that flow from that
7 of, okay, you're no longer - - - you no longer fall within
8 the grandfathering provision of Section 76, which is what
9 this court used to say, that's the expression of public
10 policy that favors local control over police discipline.
11 You - - - you don't get there because you're not getting
12 out of Section 75 in the first place anymore.

13 CHIEF JUDGE WILSON: So what prevents them from
14 re-adopting that charter provision?

15 MR. DEBOLT: Because the Municipal Home - - - the
16 - - - the 2019 legislation was not authorized under the
17 Municipal Home Rule Law because it did conflict with a
18 general law. Once the - - - once the earlier provisions of
19 the City Charter were gone and didn't exist anymore, now,
20 when they go to take action in 2019, state law, the general
21 law, the Taylor Law, requires bargaining over police
22 discipline in Rochester.

23 JUDGE HALLIGAN: With respect to the 1985 law, in
24 terms of understanding what - - - what Rochester meant by
25 it, are you relying only on the words of the provision, or

1 is there any other evidence you think is relevant as to
2 understanding the intent?

3 MR. DEBOLT: No, I - - - I think it's the words
4 of the provision is really all that we have. We don't - -
5 - anything related to what city council's understanding of
6 the law at the time, their understanding of the purpose for
7 repealing those earlier City Charter provisions, that - - -
8 that's just speculation at this point. There's nothing in
9 the record that would allow a determination one way or the
10 other about what they meant, and certainly not enough to
11 overcome the presumption that a legislator is aware of the
12 status of the law at the time to take - - - and takes
13 actions.

14 And while the city council repeatedly says that
15 the PBA case didn't come until 2006, that was not breaking
16 new law. That was affirming two decades of decisions from
17 the Appellate Division, which had held the same thing, the
18 first one coming from the Second Department in 1983.

19 So two years before city council took action
20 here, there was Appellate Division law that said, if you
21 have a pre-existing statute in place governing discipline
22 in your locality, you don't have to bargain under the
23 Taylor Law.

24 And with that in place, they said we're repealing
25 our pre-existing legislation that governed police

1 discipline. At that point, there is nothing other than
2 Section 75 and 6 of the Civil Service Law and Taylor Law -
3 - -

4 JUDGE CANNATARO: And Section 22 of the Municipal
5 Home Rule Law didn't create any sort of obligation or need
6 to articulate that they were, you know, bringing on or
7 invoking the obligations under the Taylor Law? That - - -
8 that wasn't part of the equation?

9 MR. DEBOLT: No, that was simply a consequence
10 that flowed from their repeal of the existing City Charter
11 provisions by virtue of - - - of the line of cases from
12 this court.

13 JUDGE CANNATARO: So it's possible that they may
14 legitimately have not been aware of the consequence of the
15 decision about revoking the local - - - local authority
16 rule, right?

17 MR. DEBOLT: That's certainly a possibility.
18 They might just - - -

19 JUDGE CANNATARO: That just doesn't matter?

20 MR. DEBOLT: It just doesn't matter. It can't -
21 - - it certainly cannot be the rule that twenty, thirty,
22 forty years down the road, a legislature realizes there was
23 some unintended consequences of something we did decades
24 ago. So we now get to treat that as if - - - as a nullity,
25 as if it never happened.

1 JUDGE RIVERA: But isn't that different from - -
2 - I - - - I'm certain I want to make this decision, but I
3 don't have the foresight to see fully what will be the
4 consequences of that, versus I'm making this decision
5 because I believe it's the only option I have. And then
6 down the road you discover that you do have options.

7 MR. DEBOLT: No - - -

8 JUDGE RIVERA: Are those two different things, or
9 am I misunderstanding your argument?

10 MR. DEBOLT: No, I - - - I don't - - - I don't
11 think that matters for the purposes that we're looking at
12 here. I don't think either one of those provides a ground
13 to go back and nullify, you know, a decade old legislation,
14 whether it was because you thought there was no choice, or
15 you thought you had a choice and you made one choice over
16 the other. I think the decision is made, and you have to
17 live with the consequences. And in many cases - - -

18 JUDGE RIVERA: But isn't the point of the state
19 law and the state policy that it has to be a conscious
20 decision? It can't be a mistaken decision that the
21 localities make? It has to be the affirmative choice?

22 MR. DEBOLT: No, it has to be an affirmative
23 choice to repeal the charter provisions that they did. I
24 don't think it necessarily - - - if they - - -

25 JUDGE CANNATARO: They don't have to list all the

1 consequences.

2 MR. DEBOLT: Right. They - - - if they didn't
3 realize the - - -

4 JUDGE RIVERA: Still the consequences, but about
5 the - - - we in this moment think this is the right thing
6 to do. Fully aware of all of the options. But if one is
7 not fully aware of the options, are you really making a
8 choice which is in line with what the state policy is?
9 That's - - - that was my question.

10 MR. DEBOLT: No. And I don't think there's a
11 distinction between the two for - - - for these purposes.

12 JUDGE RIVERA: Okay. All right.

13 JUSTICE EGAN: And - - - and the fact remains
14 that prior to whatever the city did in 1985, and after
15 whatever it did in 1985, it continued to negotiate with the
16 police union, collective bargaining agreements containing
17 provisions relating to police discipline.

18 MR. DEBOLT: Correct. And they continued
19 throughout that period to utilize Section 75 as explicitly
20 the basis for the disciplinary action and conducted the
21 hearings pursuant to the procedures negotiated in the
22 collective bargaining agreement, which just slightly
23 modified Section 75 by providing for a neutral hearing
24 officer.

25 JUDGE RIVERA: Could - - - could - - - could they

1 have done - - - so let's say they - - - that you would
2 agree that some action in the past did not cede this
3 control. Let's say you agreed with that. Could they then
4 decide, you know, we're going to try out negotiations.
5 We're going to see how that works, and then decide, you
6 know, we're not so happy with that. We're not going to
7 agree to that in the future. Could they have done that?

8 MR. DEBOLT: No - - - I - - - I don't think they
9 - - - I think they could have done that up until 1985.
10 They could have engaged in the bargaining, even though it
11 wasn't technically permitted under the statutory framework.
12 That - - - that's the Schenectady case.

13 JUDGE RIVERA: Okay.

14 MR. DEBOLT: They were for years doing it, even
15 though they didn't realize they didn't have to be. But
16 once that preexisting legislation is gone, I mean, that - -
17 - that is the - - - the crux of what the court used in the
18 PBA, Wallkill, Schenectady, to find a public policy that
19 trumped the Taylor Law's policy in favor of bargaining. So
20 once that is gone, that's it. Nothing else matters.

21 JUDGE RIVERA: Well, I think I was - - - I'm
22 sorry. I was trying to ask something different. Let's say
23 they never - - - they never made that choice. They were
24 merely trying out - - - I think in some - - - in some way,
25 it's - - - it's what counsel was suggesting with the

1 briefing - - - experimenting with different ways of
2 properly effectuating discipline. Right? And so for a
3 period of time, they decided, let's try and bargain. Let's
4 - - - let's see if that is something that we find is
5 effective, efficient, works for us, ensures public safety,
6 and so forth, and then they've changed their minds.

7 MR. DEBOLT: I - - - I think it depends on how
8 they went about going to do that. If they just left the
9 pre-1985 legislation fully in effect.

10 JUDGE RIVERA: Yes.

11 MR. DEBOLT: And in practice went on to
12 collectively - - -

13 JUDGE RIVERA: Yes.

14 MR. DEBOLT: - - - bargain, they may have
15 reserved their right to - - -

16 JUDGE RIVERA: Okay.

17 MR. DEBOLT: - - - pull back on that. If they
18 accomplished it through legislative changes - - - and I
19 think that's an important distinction, because the public
20 policy here was that, under the Taylor law, collective
21 bargaining is done by the chief executive officer. In this
22 - - - in the case of Rochester, it's the mayor. The line
23 of cases was really saying, where you have this particular
24 statutory framework in place, we are not going to let the
25 executive of a municipality usurp the legislative

1 designation for police discipline.

2 It's - - - it's different here where you had the
3 legislative body changing that legislative structure. Now
4 there is no usurping of authority by the executive. The
5 legislature gave - - - made the choice to give that
6 authority to the executive.

7 If there's nothing further, I'll rest. Thank
8 you.

9 CHIEF JUDGE WILSON: Thank you.

10 MR. CELLI: I'd like to pick up on Judge Rivera's
11 questions and - - - and my adversary's response. The idea
12 that it just doesn't matter whether the City Council of
13 Rochester knew that they were surrendering rights - - -
14 this - - - this is the position of the Rochester Police
15 Locust Club - - - leads them to the place where Rochester
16 cannot change its mind. It's the most anti-Democratic
17 position that one can take in this case. It's a remarkable
18 and breathtaking, in my view, position, and it violates
19 every principle and every idea that we have coming down
20 from Holmes, who said that government has to respond to the
21 felt necessities of the times. We have exactly that here.

22 JUDGE HALLIGAN: But isn't - - - isn't that
23 really a little bit different here because of the overlay
24 of the Taylor Law? In other words, it's not simply a
25 notion that you abdicate power into a vacuum, but that

1 there is a separate state law which imposes a policy
2 preference.

3 MR. CELLI: But there are two policy preferences.
4 That's, I think, so critical to this case.

5 JUDGE HALLIGAN: So to go back to the Home Rule
6 issue for a minute, I think Judge Cannataro asked you why -
7 - - what I'll call the one-way ratchet theory - - - is not
8 essentially Dillon's Rule. Can you - - - I'm not sure I -
9 - - I followed that. Could you respond to that?

10 MR. CELLI: I mean, look, Dillon's Rule was the
11 idea that every time a municipality wanted to do anything,
12 essentially, that tinkered with the charter, they had to
13 run to the legislature and get approval of the state
14 legislature. It's - - - it's - - - it's very inefficient.
15 It's very 19th century.

16 And so in the early twenties, we had a
17 constitutional amendment and legislation that followed that
18 said, we're going to allow local legislatures and local
19 leaders to do certain things, not anything, but certain
20 things. And the things that they permit, if you look
21 carefully at the Municipal Home Rule Law, are really about
22 tinkering about who within the structure that's been
23 created by state law, who within that structure is going to
24 exercise certain kinds of power.

25 JUDGE HALLIGAN: But what do you do about the

1 Taylor Law then coming in and - - - and saying something
2 arguably different with respect to this specific question?

3 MR. CELLI: I - - - I don't think it says
4 anything different. I think the Taylor Law, and this is
5 this court's own words in the three cases, and even going
6 back to the 1970s to the Cohoes School District case and
7 the Great Neck Union Free School District case, what - - -
8 what - - - what it's really saying is there are two kinds
9 of municipalities in the state, those that are required to
10 collectively bargain, and those that are forbidden from
11 collective bargaining. It just doesn't contemplate - - -

12 JUDGE CANNATARO: Counsel, can I get back to your
13 policy argument that you made when you first stood up for
14 rebuttal? Because I was thinking the same thing that a - -
15 - a policy choice made by the state legislator - - -
16 legislature in 1967 is, you know, when I was just learning
17 how to walk, basically, is now binding a municipality in
18 2023, when they may have a very different set of
19 priorities.

20 Clearly, you know, in '67, it was important for
21 public employees to have collective bargaining rights. In
22 2023, you know, how police are disciplined may be the
23 hotter issue. So it was kind of stunning to me that
24 they're stuck - - - or that there would be an argument that
25 they're stuck with that choice as a result of, you know,

1 amending their charter. But we have recognized that that
2 policy, and the state has said that that policy is
3 paramount in a way that they did not do so, you know,
4 anywhere else, or with - - - certainly not with anything
5 having to do with police discipline. So how do we just
6 escape the legislature's own priority of policy statement?

7 MR. CELLI: The critical difference here is that
8 in the case of the Taylor Law, the legislature can and most
9 recently did change it and has the power to do that.
10 That's Chapter 674 of last year's - - -

11 JUDGE CANNATARO: So should we be looking to them
12 to - - -

13 MR. CELLI: - - - section - - - no, no.

14 JUDGE CANNATARO: - - - to reorder the
15 priorities?

16 MR. CELLI: My point is that - - - that we are
17 not stuck with what 1967 said. If the legislature wants to
18 change it, the state legislature - - - what - - - what the
19 union is saying is that the city council itself cannot
20 change its own rule, cannot do anything. There's a big
21 difference. And I think the critical case, Your Honor, is
22 the Morin v. Foster case from 1978. And this court - - -

23 JUDGE GARCIA: Let - - - let me ask you some - -
24 - I'm sorry. Your light is on, if I could just - - -

25 MR. CELLI: Of course.



1 JUDGE GARCIA: So let's say two years from now,
2 new government, they pass a local law that says we're going
3 to collectively bargain with the police, we're going to
4 follow the civil service, we're giving up our charter
5 rights. Two years later, that government gets out. Can
6 they pull that law back then?

7 MR. CELLI: Our view is that, based on from
8 Cohoes School District up until the three case - - -

9 JUDGE GARCIA: But my question, can you pull that
10 law back and then say, you know, we negotiated with you
11 police union, but now we're not anymore because we've had a
12 change in government, and we're - - - you know, you can't
13 buy in the future here.

14 MR. CELLI: Right.

15 JUDGE GARCIA: Could you do it, yes or no?

16 MR. CELLI: I think yes. I think yes, but to get
17 there, you have to undermine three decades of precedent in
18 this court which says that municipalities cannot surrender
19 this particular power. That's the problem. But if you get
20 there, if this court reaches that point and says - - -

21 JUDGE GARCIA: But under our law as it currently
22 stands, if the fact pattern is as I gave it to you, could
23 Rochester go back to the union and say, we bargained with
24 you for these two years while this government was in place,
25 but they can't bind us now. We've issued a new law. Now,

1 we don't have to bargain with you anymore. It's over.
2 We're doing a new process.

3 MR. CELLI: If - - - if - - -

4 JUDGE GARCIA: Under the law that currently
5 stands, could you - - - do you believe you can do that?

6 MR. CELLI: No - - - no, not as it currently
7 stands. Only if this court changes its jurisprudence.

8 CHIEF JUDGE WILSON: But I want to understand the
9 answer.

10 MR. CELLI: Right.

11 CHIEF JUDGE WILSON: The reason that you're
12 saying, no, is because you think it's a prohibited subject
13 of bargaining about which they can't give - - - they can't
14 give that up at all. They can't collectively bargain.

15 MR. CELLI: Exactly.

16 CHIEF JUDGE WILSON: It's not that they can't
17 restore it, it's that they can't give it up in the first
18 place.

19 MR. CELLI: Exactly. Yes. You said it better
20 than me, Your Honor. Exactly. And that - - - that's
21 thirty years of jurisprudence. That's going back to 1976.

22 JUDGE GARCIA: So even under the Home Rule
23 provisions, they could never change the law?

24 MR. CELLI: That - - - the state legislature can
25 change the law, but the locality can only change who within

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the structure exercises the power that they have. That's -
- - that's the limitation of the Municipal Home Rule Law.

I see that my time is up. And thank you, Your
Honors.

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Christian C. Amis, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Rochester Police Locust Club, Inc. v. City of Rochester, No. 81 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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