

**City of Middletown v City of Middletown Police
Benevolent Assn.**

2010 NY Slip Op 30388(U)

March 2, 2010

Supreme Court, Albany County

Docket Number: 8975/09

Judge: Joseph C. Teresi

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of
CITY OF MIDDLETOWN,

Petitioner,

For a Judgment Pursuant to Article 78
of the Civil Practice Law and Rules

DECISION and ORDER
INDEX NO. 8975-09
RJI NO. 01-09-ST0808

-against-

CITY OF MIDDLETOWN POLICE BENEVOLENT
ASSOCIATION and the STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondents.

Supreme Court Albany County All Purpose Term, February 5, 2010
Assigned to Justice Joseph C. Teresi

APPEARANCES:

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TERESI, J.:

On or before February 20, 2007, the City of Middletown Police Benevolent Association's (hereinafter "MPBA") collective bargaining negotiations with Petitioner reached an impasse. As a result, MPBA submitted a petition for compulsory interest arbitration including demands for a "Bill of Rights... [and] a Disciplinary Procedure". Petitioner filed an amended improper practice charge objecting to MPBA's petition, and MPBA answered. The parties' dispute was resolved by the Public Employment Relations Board's (hereinafter "PERB") Decision and Order, dated September 17, 2009 (hereinafter "Decision and Order"). PERB held, as is relevant to this proceeding, that MPBA's "proposals for disciplinary procedures and a bill of rights are not prohibited [from collective bargaining for]... honorably discharged veterans and volunteer firefighters." Petitioner commenced this proceeding specifically challenging only that portion of PERB's Decision and Order. Both Respondents answered, neither set forth crossclaims or counter claims, and both seek denial of the petition. Because PERB's Decision and Order was affected by an error of law, the petition is granted.

"It is well settled that [PERB's] determination will not be disturbed unless it is affected by an error of law, is arbitrary and capricious or constitutes an abuse of discretion." (Uniform Firefighters of Cohoes, Local 2562, IAFF, AFL-CIO v. Cuevas, 276 AD2d 184 [3d Dept. 2000]). Here, "collective bargaining [is required]... where no legislation specifically commits police discipline to the discretion of local officials... [however] where such legislation is in force, the policy favoring control over the police prevails, and collective bargaining over disciplinary matters is prohibited." (Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. v New York State Pub. Empl. Relations Bd., 6 NY3d 563 [2006]). While PERB's determination is

entitled to deference if it is within its area of expertise; it is not entitled to any deference where, as is the case here, it analyzes the “relative weight to be given to competing policies.” (*Id.* at 575, see also City of Mount Vernon v. Cuevas, 289 AD2d 674 [3d Dept. 2001])

As found by PERB in its Decision and Order, the Petitioner’s City Charter¹ provides a specific disciplinary structure applicable to its police force. Where this type of “legislation specifically commits police discipline to the discretion of local officials... the policy favoring [local] control over the police prevails, and collective bargaining over disciplinary matters is prohibited.” (Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc., *supra* at 571-72). Because MPBA’s “Bill of Rights” and “Disciplinary Procedure” demands both seek “collective bargaining over disciplinary matters” they are prohibited. (*Id.*). MPBA’s argument to the contrary relies on a narrow reading of Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc., which is not warranted by such Decision’s broad applicability and policy analysis.

PERB’s Decision and Order, however, excluded from the general prohibition of collective bargaining a subset of police officers, “honorably discharged veterans and volunteer firefighters.” This portion of PERB’s Decision and Order is affected by an error of law.

Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc.’s prohibition precludes collective bargaining of police disciplinary matters where the legislature has vested such authority with local officials. Such holding was based upon the Court’s finding that laws granting local authority “expressed a policy so important that the policy favoring collective bargaining should give way.” (*Id.* at 576). While Petitioner demonstrated the applicability of

¹ Adopted by state statute in 1902 (L 1902, c 572) and amended by state statute in 1942 (L 1942, c 339).

Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc.'s prohibition, neither Respondent demonstrated that the above policy analysis should not apply equally to the entire Middletown police force. Nor did they demonstrate that the policy favoring collective bargaining for "discharged veterans and volunteer firefighters" outweighs the policy inherent in the law granting local control over police discipline. Importantly, the Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. decision includes no exceptions to its general applicability, although the same exclusions sought here could have applied in that case. Additionally, Respondents' claim that Petitioner recognized Civil Service Law §75's applicability to some members of MPBA under the collective bargaining agreement is unavailing, because Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc. prohibits its bargaining on such subject. That Petitioner chose to employ Civil Service Law §75 in part of its disciplinary process does not overturn the prohibition on collective bargaining set forth in Matter of Patrolmen's Benevolent Assn. of City of N.Y., Inc.

The parties' remaining contentions have been examined and found to be lacking in merit.

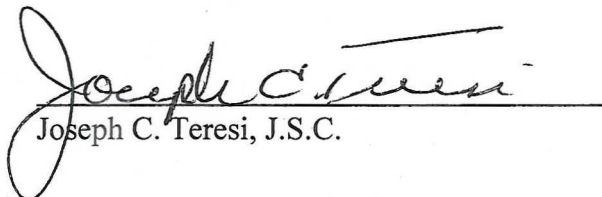
Accordingly, the petition is granted without costs. That portion of PERB's Decision and Order, dated September 17, 2009, which held that MPBA's "proposals for disciplinary procedures and a bill of rights are not prohibited... [for] honorably discharged veterans and volunteer firefighters" is reversed. Otherwise, PERB's Decision and Order, dated September 17, 2009, is affirmed.

This Decision and Order is being returned to the attorneys for the Petitioner. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall

not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: March 2, 2010
Albany, New York


Joseph C. Teresi, J.S.C.

PAPERS CONSIDERED:

1. Notice of Petition, dated October 20, 2009, Verified Petition, dated October 20, 2009, with, attached Exhibits "A" - "J".
2. Verified Answer, dated January 8, 2010.
3. Verified Answer, dated December 29, 2009; Certification of Record, dated December 29, 2009, with unnumbered exhibits.