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| Matter of Fridley v Ciminelli |
| 2017 NY Slip Op 31065(U) |
| May 4, 2017 |
| Supreme Court, Monroe County |
| Docket Number: 17-160 |
| Judge: William K. Taylor |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the Matter of the Application of:
CHERYL FRIDLEY, CURTIS CUNNINGHAM
and ROCHESTER POLICE LOCUST CLUB, INC.,

Petitioners,

DECISION & ORDER
Index #17-160

vs.

MICHAEL CIMINELLI, Chief of Police of
the ROCHESTER CITY POLICE DEPARTMENT, the
ROCHESTER CITY POLICE DEPARTMENT and the
CITY OF ROCHESTER,

Respondents.

Special Term April 13, 2017

Appearances:

Daniel P. DeBolt, Esq. for Petitioners
Yvette C. Green, Esq. for Respondents

Taylor, J.,

This case deals with the validity of a Rochester Police Department General Order that sets forth reasons to deny outside employment requests by police officers. Specifically, Petitioners bring this combined Article 78 proceeding and declaratory judgment action challenging Rochester Police Department's General Order 245(VI)(B)(7) and (9), and seeking a monetary award to Petitioner Cheryl Fridley for unearned wages

from denied outside employment.¹ The central issue before this Court is whether these General Order sections are invalid and unenforceable because they are inconsistent and conflict with New York General Municipal Law § 208-d. For the reasons that follow, this Court answers that question in the affirmative.

General Municipal Law § 208-d states that police officers “may engage in extra work for another employer outside his [or her] regular hours of duty for not exceeding twenty hours a week...” After establishing this right to outside employment, the law then goes on to provide narrow prohibitions on such employment: it may not interfere or conflict with his or her regular duties; the officer must remain available for emergency duty; and finally the work cannot affect his or her physical condition such that it impairs the ability to efficiently perform his or her police officer duties. See id. General Order 245(VI)(B), challenged here, provides that outside employment request by police officers may be denied based on “poor on-duty performance, tardiness, or non-compliance to Departmental guidelines” as well as “[a]ny other reasonable cause.” See Verified Petition at Exhibit C, General Order 245(VI)(B)(7) and (9).

¹ Petitioners’ application for a judgment compelling Respondents to grant permission to Fridley and Cunningham to engage in outside employment is moot because such permission has been granted during the pendency of this matter. Both parties agree, however, that the remaining claims may be adjudicated by this Court.

The General Order at issue here was enacted via authority given to the Chief of Police by a local law - the Charter of the City of Rochester, Article VIII A, Chapter C, §8A-1. A regulation such as this General Order enacted under the authority of "[a] local law may be ruled invalid as inconsistent with state law not only where an express conflict exists between the state and local laws, but also where the state has clearly evinced a desire to preempt an entire field thereby precluding any further local regulation." Hertz Corp. v City of N.Y., 80 NY2d 565, 567 (1992). Because of the broad nature of the permitted grounds for denying outside employment set forth in General Municipal Law § 208-d, it would not appear that this law is intended to preempt the field and prohibit local regulation. Indeed, it has been held that "nothing in th[is] statute expressly precludes local government authority from enacting local rules and regulations to effect the consideration based concerns expressed in the statute." Syracuse Police Benevolent Ass'n v Young, 156 Misc2d 513, 520-521 (Sup Ct Onondaga Cty 1992). Moreover, "the broadly written conditions" in General Municipal Law § 208-d are susceptible to "further specificity through the enactment of local administrative rules pertaining to them." Id. at 521.

Consequently, because the field has not been preempted and the statute appears to invite specific local regulations, they will be deemed invalid if "inconsistent with state law" or if "an

express conflict exists between the state and local laws." Hertz Corp, 80 NY2d at 567. Thus, local regulations must hew to the broadly written conditions to deny outside employment set forth in General Municipal Law § 208-d. For example, a court reviewing this same issue pointed out that "[n]o city regulation which evinces a blanket prohibition against off-duty employment would be valid under this law." Syracuse Police Benevolent Ass'n, 156 Misc2d at 519. This Court agrees that such a broad regulation would be clearly inconsistent with state law. However, that court went on to hold that the "broadly worded conditions" in the statute "allow a certain degree of flexibility with the needs and requirements of individual city police forces." Id. at 521. And that court further held that where General Municipal Law § 208-d furnishes police departments "with a broad outline within which to operate, those administrative regulations will be upheld only if they have a rational basis and are not unreasonable, arbitrary or capricious." Id. at 520.

While it is well-settled that "an administrative regulation will be upheld only if it has a rational basis, and is not unreasonable, arbitrary or capricious," New York State Assn. Of Counties v Axelrod, 78 NY2d 158, 166 (1991), this Court views the resolution of this case somewhat differently. The question before this Court is not whether the General Order here is "unreasonable, arbitrary or capricious," but rather whether it is

inconsistent with state law. Indeed, there is nothing unreasonable, arbitrary, or capricious for a police department to want to regulate outside employment requests by its officers. That, in and of itself, appears quite rational. State law, however, has curtailed that power and protected the rights of police officers to outside employment via General Municipal Law § 208-d. Thus, any regulations that expand the reasons to deny outside employment requests beyond the conditions for doing so set forth in General Municipal Law § 208-d are invalid. Regulations allowing outside employment to be denied for reasons not within those permitted in General Municipal Law § 208-d suffer the same infirmity as a blanket prohibition - overbreadth in the face of statutory boundaries.² Put simply, General Municipal Law § 208-d protects a police officer's right to outside employment by allowing it while prohibiting it under certain circumstances; this prohibition may not be expanded willy-nilly via regulation. To hold otherwise would ignore the words of the statute.

² Any "flexibility" to address this issue is fenced by state law. Where "the Legislature ha[s] not pre-empted the field..., [the] authority to enact local laws under the Constitution or the Municipal Home Rule Law is conditioned on the exercise of such authority not being inconsistent with any State enactment." Consolidated Edison Co. of New York, Inc. v Town of Red Hook, 60 NY2d 99, 107 (1983). And such "[i]nconsistency is not limited to cases of express conflict between State and local laws." Id. at 108. Indeed, "where local laws prohibit what would be permissible under State law...or impose 'prerequisite additional restrictions' on rights under State law...so as to inhibit the operation of the State's general laws...[they will be deemed] inconsistent...and therefore invalid." Id. (internal citations omitted).

Here, General Order 245(VI)(B)(9) allows for outside employment to be denied for any "reasonable cause." This provision is similar to a blanket prohibition in that it completely ignores the conditions set forth in the statute. Moreover, its clear overbreadth looks only to general reasonableness and is therefore inconsistent with the broad but still delineated categorical reasons to deny outside employment allowable under General Municipal Law § 208-d. General Order 245(VI)(B)(7), which provides for denial of outside employment for "poor on-duty performance, tardiness, or non-compliance to Departmental guidelines[,]'" contains a similar infirmity. This provision extends far beyond the limited scope of allowable reasons to deny outside employment contained in General Municipal Law § 208-d and also appears to be disciplinary in nature. Both General Order 245(VI)(B)(7) and (9) are "invalid as inconsistent with state law" because "an express conflict exists between the state and local laws" Hertz Corp., 80 NY2d at 567. Consequently, this Court rules that General Order 245(VI)(B)(7) and (9) are inconsistent with General Municipal Law § 208-d and accordingly are hereby adjudged, declared and decreed to be null, void, and unenforceable.³

³ Although more illustrative than determinative here, it would appear that on this record the challenged portions of the General Order were used to deny outside employment as a punitive measure. See Verified Petition at Exhibit A and Exhibit B. To do so is clearly inconsistent with the intent of General Municipal Law § 208-d, and finds no textual support in the statute to allow outside employment of a police officer to be denied on that basis.

Accordingly, it is ORDERED AND ADJUDGED, that the portion of the petition seeking relief pursuant to CPLR Article 78 compelling Respondent to allow Petitioners to obtain outside employment is DISMISSED as moot because Petitioners have been approved for outside employment.

It is further ORDERED, ADJUDGED AND DECLARED that General Order 245(VI)(B)(7) and (9) conflict with General Municipal Law § 208-d and said provisions are hereby invalid and unenforceable.

And it is further ORDERED that, in light of this declaration and finding, damages incidental to the primary relief sought by Petitioner Cheryl Fridley's claim of unearned wages caused by Respondents' unlawful denial of her request to engage in outside employment in the amount of \$2,400.00 are hereby awarded. In the event Respondents seek to challenge the incidental damages award, they must notify the Court in writing no later than May 19, 2017. Any relief requested by the parties but not specifically addressed herein is DENIED.

This constitutes the Decision and Order of the Court.

/s/ William K. Taylor
Honorable William K. Taylor
Supreme Court Justice
Dated: May 4, 2017