

New York towns may discipline cops outside terms of union contract

A recent New York Court of Appeals decision gives New York municipalities the right to discipline police officers outside of the collective bargaining framework.

The decision stated that the New York State Town Law (known as the Taylor Law) governs police discipline regardless of any existing collective bargaining agreement (CBA). That means critical issues involving the manner in which police disciplinary investigations, charges and hearings are conducted may not be subject to either the negotiation process or, perhaps more importantly, interest arbitration—but only if towns move to enact their own program.

Local process vs. arbitration

In 2007, the town of Wallkill passed Local Law No. 2, which created a framework under which the town could discipline members of the Wallkill Police Department. The new framework differed from the existing collective bargaining agreement with the Wallkill Police Officers Benevolent Association (PBA). Unlike the CBA, the local law lacks any arbitration feature.

It does, however, require a town board member or other designated town representative to conduct a hearing whenever a police officer faces possible discipline. Then the representative is to issue a decision with “recommended finding of facts and a suggested disciplinary penalty.” The Town Board then reviews the recommendation, rules on the charges and, if necessary, imposes a penalty “consistent with New York State Town Law.”

Conflict with CBA

The local law was adopted without the agreement of the PBA, which preferred maintaining a neutral arbitrator disciplinary process that had been in its collective bargaining agreement since 1995.

Shortly after the town passed Local

Law No. 2, Wallkill initiated disciplinary procedures against two police officers. The PBA sued, requesting arbitration consistent with the CBA.

The Supreme Court sided with the union and declared Local Law No. 2 invalid “insofar as [it was] inconsistent with the disciplinary provisions” of the CBA. The decision ordered the parties to go to arbitration.

Earlier precedent

The town appealed and the Court of Appeals ruled in its favor.

The court found its 2006 decision in *Matter of Patrolmen’s Benevolent Association of City of New York v. New York State Public Employment Relations Board* applied to the Wallkill case. In the 2006 case, the Court of Appeals held that “police discipline may not be a subject of collective bargaining under the Taylor Law when the Legislature has expressly committed disciplinary authority over a police department to local officials.”

Before the Wallkill case, the Court of Appeals’ 2006 decision had been mainly applied to special state law disciplinary constructs that pre-dated the enactment of New York Civil Service Law Sections 75 and 76—the general statutory mechanism for public employee discipline.

In *Town of Wallkill*, however, the Court of Appeals looked to its rationale from *Matter of Patrolmen’s Benevolent Association*, as well as statutory language found in Civil Service Law Section 76(4), to hold that New York Town Law Section 155 (a general state law that was enacted prior to Civil Service Law Sections 75 and 76) gives towns “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.”

Thus, where a town enacts a local

law that sets forth disciplinary procedures for members of its police force, such enactment can take place without negotiation with the local union and without regard to procedures that may already exist in a collective bargaining agreement.

Note: It is not clear whether *Town of Wallkill* applies to New York State villages. However, New York Village Law Section 8-804 is nearly identical to New York Town Law Section 155.

What’s a town to do?

Towns covered by the New York State Town Law are free to implement disciplinary policies and procedures for their police officers without regard to any existing CBA. When existing CBAs expire, towns need not negotiate any disciplinary procedures, assuming the town has established a disciplinary process. It isn’t clear whether towns must use existing CBA procedures if they have not enacted their own.

While towns do not have to consult with police unions when crafting disciplinary procedures, it may be beneficial to get union input when devising a program. Doing so will help get union buy-in even though it will not be part of the CBA.

Any disciplinary process must allow the town sufficient flexibility to terminate officers in case of severe infractions. Similarly, the process must not be so flexible that it results in different employees receiving different punishments when they have committed similar infractions.

Before creating a disciplinary process outside a CBA, towns should consult with an attorney who has experience in drafting these policies and who understands Section 155’s requirements.

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