SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONTARIO

NEW YORK STATE LAW ENFORCEMENT OFFICERS UNION, COUNCIL 82, AFSCME, AFL-CIO, LOCAL 3471, STEVE VINE as President of Local 3471, RANDALL GRENIER, JR. and DANIEL HICKEY,

Plaintiffs,

vs.

DECISION & ORDER
Index #129650-2021

CITY OF GENEVA, NEW YORK, STEVE VALENTINO, as Mayor of the City of Geneva, COUNCIL OF THE CITY OF GENEVA, SAGE GERLING, as City Manager of the City of Geneva, and MICHAEL PASSALACQUA, as Chief of Police,

Defendants.

Doran, J.,

Before this Court is Defendants' motion for summary judgment filed on November 12, 2021 and Plaintiffs' cross-motion for summary judgment filed on December 30, 2021. Both motions were heard before this Court on January 26, 2022 and this Court reserved decision. Thereafter, on February 15, 2022, this Court requested that both parties submit additional memoranda of law by March 7, 2022. Both parties have timely filed additional submissions.

At issue in this case is Local Law 1-2021, adopted by Defendant Council of the City of Geneva ("City Council") on February 3, 2021. The Local Law is described as a "Local Law Amending the Geneva City Charter to Establish a Police Review Board" and adds a new Article XV to the City Charter to establish the Police Review Board ("PRB"). Plaintiffs contend that the Local Law is invalid as it conflicts with Civil Service Law §§ 75 and 76, the Taylor Law, and the City Charter. Plaintiffs also contend that the Local Law violates the disciplinary provisions of the Collective Bargaining Agreement and that the Local Law should have been subject to a

mandatory referendum. Defendants contend that the Local Law is consistent with all applicable laws and with the Collective Bargaining Agreement. Defendants further contend that the City of Geneva was prohibited from holding a referendum on the Local Law.

Procedural History of the Case

This action was commenced on June 1, 2021 with the filing of a Summons and Complaint. On August 19, 2021, Plaintiffs, by way of Order to Show Cause, filed a request for a temporary restraining order and a preliminary injunction. After providing both parties an opportunity to be heard pursuant to 22 NYCRR 202.8-e, this Court granted Plaintiffs' request for a temporary restraining order to the extent of enjoining Defendants "from entertaining or reviewing any specific complaint or proceeding with any investigation thereon involving Local Law No. 1-2021." Oral argument on the request for a preliminary injunction was set for September 2, 2021.

Immediately following oral argument, this Court denied, without prejudice, Plaintiffs' request for a preliminary injunction and determined that the temporary restraining order was no longer in effect. The parties were directed to establish a schedule for discovery. Ultimately, the parties were unable to agree upon a discovery schedule and on September 27, 2021, the Court *sua sponte* issued a Scheduling Order requiring that discovery be completed by February 2, 2022. The Court also provided that Plaintiffs "may apply to this Court for further temporary or injunctive relief should the need arise during the pendency of this action." The two pending motions were filed as stated above[1].

[1] Plaintiffs have waived their right to conduct discovery, and both sides agree that the matter is ripe for judicial review.

Local Law 1-2021

A copy of the Local Law was attached as Exhibit B to the Complaint (NYSCEF No. 3). As noted above, the Local Law amended the City Charter by adding Article XV. The purpose of the Local Law is to establish "a PRB with authority to review GPD investigations of public complaints of Officer misconduct and to engage in other activities set forth in this Chapter" (Local Law 1-2021 § 15-2[1]). Specific authority was given to the PRB to "create and employ a disciplinary matrix in making recommendations to the Chief for discipline subject to the applicable collective bargaining agreements and New York State Law" (Local Law 1-2021 § 15-2[4]). The Local Law was filed on February 16, 2021 and became effective twenty days thereafter (Local Law 1-2021 § 15-18).

The Local Law established the procedure to compose and operate the PRB including the qualifications, appointment process, removal process and term of the members of the PRB (Local Law 1-2021 § 15-3). The PRB is required to file annual reports which include a "comparison of the PRB's findings with the final determination of the GPD" (Local Law 1-2021 § 15-6[3][A]) and to publish monthly data on the receipt and disposition of complaints (Local Law § 15-14[1]). The PRB is given the authority to send policy recommendations to the Chief, the City Manager and City Council (Local Law 1-2021 § 15-13).

Sections 15-7, 15-8, 15-9, 15-10, 15-11, and 15-12 of Local Law 1-2021 address the procedure for initiating, reviewing, investigating (by both the Chief of Police and the PRB), and determining (by both the Chief of Police and the PRB) complaints of misconduct. Local Law 1-2021 § 15-11(5) specifically provides, "PRB determinations may include disciplinary recommendations to the Chief, including but not limited to counseling, reprimand, retraining,

suspension, demotion, or dismissal." The Local Law also specifically provides for a mandatory procedure for the Chief to "provide the PRB with a written explanation of his or her decision to discipline or not discipline any Officer(s) and a description of the discipline imposed, if any, and shall explain why, including how it may differ from the PRB recommendation" (Local Law 1-2021 § 15-11[8]).

Timeline of the City of Geneva Charter, Relevant Statutory Law and the Collective Bargaining Agreements

- 1951 City of Geneva Charter

  The 1951 Charter provided for a board of police commissioners which had "the custody and management of the police department" (Article IX § 90). Article IX section 92 of the 1951 Charter provided the process for establishing the rules and regulations of the Police Department and process for discipline. The commissioners were required to "make, modify and repeal rules and regulations not inconsistent with the ordinances of the common council of the city of Geneva or with the laws or constitution of the state of New York, or of the United States for the government, direction, management and discipline of the police force…". The commissioners were also given the authority to "reprimand, fine, suspend without pay, lower in rank or compensation any member of the police force or employee of the department for any violation or infraction of the rules and regulations". Additionally, upon a finding that "a member of the police force or an employee of the department is incompetent or has been guilty of neglect of duty, misconduct in his office or of conduct unbecoming a police officer, of such a nature as to warrant more than disciplinary action" the commissioners were required to "recommend to the mayor the dismissal of such member or employee". It was the duty of the mayor "to hear, try and determine the charge or charges

according to the rules of the police department". Section 92 of Article IX on the 1951 Charter specifically provided that "[a]ll proceedings relating to the dismissal of a member of the police force shall be taken in accordance with the applicable provisions of the Civil Service Law and with the laws of the State of New York."

- 1958 Passage of Civil Service Law §§ 75 and 76

  Civil Service Law §§ 75 and 76 set forth the structure for removal and discipline of several classes of civil servants, including police officers. Civil Service Law § 76(4) specifically provides, "Nothing contained in section seventy-five or seventy-six of this chapter shall be construed to repeal or modify any general, special or local law or charter provision relating to the removal or suspension of officers or employees in the competitive class of the civil service of the state or any civil division."

- 1962 City of Geneva Charter

  The 1962 Charter provided that the Chief of Police "shall appoint and remove all other officers and employees of the department subject to the provisions of the civil service law and rules and regulations thereunder. * * * He shall make rules and regulations concerning the operation of the department, and the conduct, duties, and assignments of all officers and employees, which rules, shall first be approved by the city manager. He shall be responsible for the efficiency, discipline, and good conduct of the department and for the case and custody of all property used by the department" (1962 City of Geneva Charter § 114).

- 1967 Passage of the Taylor Law

  Civil Service Law § 200 et seq. (Article 14 of the Civil Service Law - Public Employees' Fair Employment Act, known as the "Taylor Law") requires public employers to collectively

bargain with their employee organizations, including police officer unions.

- 1974 City of Geneva Charter

  The 1974 City Charter, while repealing prior City charters, did not make any changes to the Chief's authority to appoint, remove and discipline police officers (1974 City of Geneva Charter § 9.2).

- 1987 Collective Bargaining Agreement between the City of Geneva and Local 2841 [the predecessor to Local 3471]

  The 1987 Collective Bargaining Agreement between GPD officers and the City of Geneva contained a provision regarding officer discipline and set forth disciplinary procedures. The agreement provides, "Formal discipline shall be subject to applicable Civil Service Law procedures unless the officer, with the consent of AFSCME, and the City agree to make a binding election to use the arbitration provisions contained in Section 5 of the greivance [sic] procedure" and further provided that if the City was seeking to terminate the officer, the officer had the right to elect binding arbitration (1987-1988 Collective Bargaining Agreement, Article XIX § 3). Section 4 of Article XIX provided, "Nothing contained in this procedure shall be construed to limit the rights of the City to correct the actions of officers, to counsel them without imposing discipline, or to take corrective measures to improve conduct and performance which does not constitute discipline."

- 2018 Collective Bargaining Agreement (CBA) between the City of Geneva and Local 3471

  The 2018 CBA, which, through the application Civil Service Law § 209-a(1)(e), was in effect at the time the Local Law was enacted and at the time this action was commenced, retains the provisions regarding officer discipline from the 1987 agreement as discussed

above, as well as provisions that were added in subsequent contracts, including the right to union representation before any officer is interviewed (Section 19.1) and a provision regarding time limitations for discipline (Section 19.3).

- Local Law 1-2021

  Local law 1-2021 amended the Geneva City Charter as discussed above.

Discussion

The ability of the City of Geneva to enact local laws is established in the New York Constitution which provides, "In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government" (NY Const art. IX, § 2[c]) and in Municipal Home Rule Law § 10(1)(a) which provides, "every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government." The ability to adopt a local law is limited; as stated in the Constitution and in Municipal Home Rule Law § 10, a local law cannot violate the Constitution or any general law. The question presented to this Court is whether Local Law 1-2021 violates the New York Constitution or any general law of the State.

I. Was the City of Geneva required to hold a referendum?

Municipal Home Rule Law § 23(2) provides, "Except as otherwise provided by or under authority of a state statute, a local law shall be subject to mandatory referendum if it: * * * f. Abolishes, transfers or curtails any power of an elective officer." Plaintiffs contend that the Local Law curtails the power of the City to engage in collective bargaining regarding police discipline

as a term and condition of police officer employment and by curtailing City Council's power of appointment. Defendants contend that the Local Law did not curtail any functions of any elected officer and the City was prohibited from holding a referendum.

Regarding the issue of the curtailment of the City's ability to engage in collective bargaining, this issue was squarely addressed by the Court of Appeals in *Mayor of City of New York v Council of City of New York*, 9 NY3d 23, 33 [2007] [hereinafter *Mayor I*). In that case, the Court of Appeals upheld a local law that affected the terms of collective bargaining with fire department employees. The Court rejected the argument that the Local Law was improperly enacted without referendum because it afforded the mayor less flexibility in bargaining with unions than the mayor would have if the local law had not been enacted. The Court noted, "A great many local laws limit the actions the Mayor or another elected official may take * * * [b]ut the Municipal Home Rule Law and the City Charter cannot sensibly be read to subject all local laws of this kind to a mandatory referendum. If they were, there would be more referendums than any community could well manage" (*Mayor I, supra* at 32-33). The Court went on to hold that "The requirement of a referendum for legislation that 'curtails any power of an elective officer' must be read as applying only to legislation that impairs a power conferred on the officer as part of the framework of local government. * * * But, as a general rule, a law that merely regulates the operations of city government, in collective bargaining or in some other area, is not a curtailment of an officer's power (*Mayor I, supra* at 33). This Court finds that any restrictions on the City's ability to engage in collective bargaining in the future do not constitute a curtailment of the power of an elective official pursuant to Municipal Home Rule Law § 23(2)(f).

Plaintiffs also contend that the City's powers of appointment have been impermissibly

limited by the local law. The City Charter gives City Council the authority to appoint "such other appointive officers as may be required of the City Council or by law" (1974 Geneva City Charter § 2.2). However, the Local Law provides very specific requirements for the makeup of the PRB and purports to limit who City Council may appoint. "Members of the Board shall be residents of the City of Geneva for a minimum of twelve (12) months at the time of appointment to the Board" (Local Law 1-2021 § 15-3[1][A])[2]. "The Board shall have no members who are current or former employees of any law enforcement agency, or their immediate family members" (Local Law 1-2021 § 15-3[1][C]). "Board members shall not be current (or within the immediately preceding three (3) year period) City elected officials or immediate family of any incumbent elected official representing/serving any district or municipality in the State of New York. No practicing attorney or their immediate family who represents or has represented a plaintiff or defendant in a police misconduct lawsuit initiated against the GPD within the past ten (10) years shall be a member of the Board" (Local Law 1-2021 § 15-3[1][D]).

In *Mayor of City of New York v Council of City of New York* (280 AD2d 380, 380 [1st Dept 2001], *lv denied* 96 NY2d 713 [hereinafter *Mayor II*]), the issue was whether a local law violated the charter of the City of New York. There, the local law established an Independent Police Investigation and Audit Board and provided that the mayor appoint two of the members of the board from candidates that were designated by the city council. The charter gave the mayor the sole power to appoint all officers not elected by the people. The Court rejected the argument that the appointment provision of the Local Law did not impair the mayor's authority to make appointments because the mayor could refuse to make an appointment until the city council

[2] The Court notes that this particular requirement may also give rise to a claim under the equal protection clause (*Galbraith v New York Conservative Party*, 155 AD2d 183, 186 [3d Dept 1990]).

designated an appropriate candidate. In invalidating the law, the Court stated, "In the end, the Mayor's discretion to appoint board members is circumscribed to a limited universe of applicants designated by the Council, thereby curtailing his power of appointment" (*Mayor II, supra* at 381). In *Mayor I* (9 NY3d 23, *supra* at 33), in referring to the *Mayor II* case, the Court noted that a limitation on the Mayor's authority to appoint members of [the] police investigatory board" constituted a "limitation[] on an elected officer's structural authority."

Likewise, in the case here, City Council's authority to make appointments to the PRB is circumscribed by the Local Law itself as the language of the Local Law limits the pool of potential appointees (*see, Matter of Gizzo v Town of Mamaroneck*, 36 AD3d 162, 167 [2d Dept 2006]; *lv denied* 8 NY3d 806). The limitation on appointments contained in Local Law 1-2021 constitutes a curtailment of a power of the City Council and the Local Law should have been subject to a referendum pursuant to Municipal Home Rule Law § 23(2). A law that is impermissibly enacted without referendum is invalid (*Parker v Town of Alexandria*, 163 AD3d 55, 58 [4th Dept 2018]).

The issue then is whether any portion of the Local Law can be severed. Inasmuch as the Municipal Home Rule Law was violated by the establishment of the PRB itself, the entire Local Law must fail. In any event, this Court finds that severance, although provided for in the Local Law[3], is inappropriate. "Where, as here, a local law is subject to a mandatory referendum, the failure to enact it by referendum renders the entire law invalid [citations omitted]" (*Parker v*

[3] "If any clause, sentence, paragraph, section or part of this Article shall be adjudged by any court of competent jurisdiction to be invalid or otherwise unenforceable, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered" (Local Law 1-2021 § 15-17). In their papers, neither party has requested this Court sever any portion of the Local Law that may be valid from any portions that this Court finds invalid.

Town of Alexandria, supra at 58). In *Parker*, the Court went on to state that "we have no occasion to apply severability because there is no properly enacted local law from which to sever the modification clause" (*Parker v Town of Alexandria*, *supra* at 58).

In finding that Local Law § 1-2021 should have been the subject of a referendum, this Court grants Plaintiffs' motion and finds that the Local Law is invalid. Although in light of this holding it is unnecessary to address the remainder of the issues raised by the parties, the Court will do so.

II. Does the Local Law violate the Taylor Law?

Plaintiffs contend that because the Local Law affects the police disciplinary process it was required to be the subject of collective bargaining pursuant to the Taylor Law. Defendants contend that the issue of police discipline in the City of Geneva is not a mandatory subject of collective bargaining.

In 1967 the State Legislature enacted the Taylor Law (Civil Service Law Section 200 *et seq.*) requiring local public employers to engage in collective bargaining over all "terms and conditions of employment". The requirement is not absolute; the Taylor Law requires collective bargaining *unless* there exists legislation that specifically commits police discipline to the discretion of local officials (*Matter of Patrolmen's Benevolent Ass'n of City of New York, Inc. v New York State Pub. Empl. Relations Bd.*, 6 NY3d 563, 571 [2006][hereinafter *PBA*]). As the Appellate Division recently noted, "Such 'preexisting laws' are 'grandfathered,' * * *; consequently, in any municipality with such a 'grandfathered' law, the subject of police discipline is exempt from the presumption of collective bargaining that would otherwise prevail by virtue of Civil Service Law § 204(2)" (*Rochester Police Locust Club, Inc. v City of Rochester*,

196 AD3d 74, 81 [4th Dept 2021], *lv granted,* 37 NY3d 915 [2021] [hereinafter *Rochester*]). In fact, "where such legislation is in force, the policy favoring control over the police prevails, and collective bargaining over disciplinary matters is prohibited" (*PBA,* 6 NY3d 563 at 571-572).

In *PBA*, the Court of Appeals explained the interplay between the Taylor Law and Civil Service Law §§ 75 and 76. "In general, the procedures for disciplining public employees, including police officers, are governed by Civil Service Law §§ 75 and 76, which provide for a hearing and an appeal. In *Auburn* [*Matter of Auburn Police Local 195, Council 82, Am. Fedn. of State, County & Mun. Empls., AFL-CIO v Helsby,* 46 NY2d 1034 (1979), *affg for reasons stated below* 62 AD2d 12 (3d Dept 1978)], a case involving police discipline, the Appellate Division rejected the argument that these statutes should be interpreted to prohibit collective bargaining agreements 'that would supplement, modify or replace' their provisions (62 AD2d at 15), and we adopted the Appellate Division's opinion (46 NY2d at 1035–1036). Thus, where Civil Service Law §§ 75 and 76 apply, police discipline may be the subject of collective bargaining" (*PBA,* supra at 753).

Therefore, in determining whether police discipline is a permissive subject of collective bargaining, the Court must first determine whether Civil Service Law §§ 75 and 76 apply to police disciplinary issues in the City of Geneva. In *PBA,* the Court of Appeals went on to explain that "Civil Service Law § 76(4) says that sections 75 and 76 shall not 'be construed to repeal or modify' preexisting laws, and among the laws thus grandfathered are several that, in contrast to sections 75 and 76, provide expressly for the control of police discipline by local officials in certain communities" (*PBA*, 6 NY3d 563, *supra* at 573). Thus, a law that pre-dated the passage of Sections 75 and 76 that provided for local control over police discipline was not nullified by

the passage of Sections 75 and 76, leaving Sections 75 and 76 inapplicable. In those jurisdictions where Sections 75 and 76 do not apply, collective bargaining on the issue of police discipline becomes prohibited (*PBA,* 6 NY3d 563 at 571-572).

Defendants contend that *City of Schenectady v NY State Pub. Emp. Rels. Bd.* (30 NY3d 109 [2017] [hereinafter *Schenectady*]) and *Matter of Town of Wallkill v Civ. Serv. Employees Ass'n, Inc.* (19 NY3d 1066 [2012] [hereinafter *Wallkill*]) compel this Court to find that the subject of police discipline in the City of Geneva was a prohibited subject of collective bargaining. In both of those cases, the fact pattern/timeline followed somewhat the same path as the facts in the present case: 1) enactment of a "general, special or local law" providing for local control of police discipline; 2) the subsequent enactment of Civil Service Law §§ 75 and 76; 3) the existence of a collective bargaining agreement that provided a process for police discipline; and 4) the enactment of a local law or order that was contradictory to the terms of the collective bargaining agreement. In both *Wallkill* and *Schenectady*, the Court of Appeals held that the subject of police discipline was a prohibited subject of collective bargaining and upheld the provisions of the local law/order that contradicted the applicable collective bargaining agreement.

Likewise, in the present case, this Court agrees that the issue of police discipline was vested in local control as far back as the 1951 Charter, prior to the time that Civil Service Law §§ 75 and 76 were enacted in 1958. This Court notes that clearly the 1951 Charter was a "general, special or local law or charter provision" within the meaning of Civil Service Law § 76(4)[4].

[4] The *Rochester* case does not compel a finding that the City of Geneva Charter has lost its "grandfather" status. Although Section 14.8 of the 1974 City of Geneva Charter notes the formal repeal of the 1962 Charter, the intent of the City is clear from the language, "The repeal thereof is not intended, however, to abrogate, diminish or abolish any rights, authority, privileges or immunities accruing thereunder to the City of Geneva or any portion thereof or

Similar to the facts in *Wallkill* and *Schenectady*, the City of Geneva enacted a Local Law that contradicted the terms of the CBA. However, there has been further refinement of this issue since *Wallkill* and *Schenectady* were decided.

The fact pattern/timeline in *City of Syracuse v Syracuse Police Benevolent Assn., Inc.*, 68 Misc3d 412, 416 [Sup Ct 2020], *affd sub nom. Matter of Arbitration Between City of Syracuse and Syracuse Police Benevolent Assn., Inc.*, 198 AD3d 1322 [4th Dept 2021][hereinafter *Syracuse*]) is similar to both *Wallkill* and *Schenectady*, with one important distinction. In *Syracuse,* following the enactment of Civil Service Law §§ 75 and 76, the Syracuse City Charter was amended to, in part, change the way police were disciplined, including a provision specifically making disciplinary procedures subject to the Civil Service Law. After determining that *Wallkill* and *Schenectady* were not dispositive, the Supreme Court phrased the relevant issue as "Has the City of Syracuse clearly expressed a specific intent 'strong enough to justify excluding police discipline from collective bargaining?'" (*Syracuse*, 68 Misc3d 412, *supra* at 423). In answering that question in the negative, the Court noted that, among other factors, the city charter, while vesting police discipline to local officials, specifically required that disciplinary proceedings be conducted in accordance with the Civil Service Law. The court found, "Unlike the local legislative structure in *Matter of the Town of Wallkill* or *Matter of the City of Schenectady*, the City of Syracuse, through passage of its 1960 City Charter, as bolstered by the CBA and the Syracuse Police General Rules & Procedure Manual, evinced its intent to supersede the SCCL provisions regarding police discipline, and to require compliance with the

any of its inhabitants and any provisions of existing law incorporated into this new Charter shall not be deemed repealed but shall be construed as a continuation of such provisions, modified or amended as herein set forth, and not as new enactments." Furthermore, The provisions of Section 9.2 of the 1974 Charter are nearly identical to provisions of the 1962 Charter as they relate to police discipline.

Civil Service Law's collective bargaining provisions" (*Syracuse, supra* at 425). Thus, the court distinguished *Wallkill* and *Schenectady*.

In the present case, police disciplinary proceedings are likewise subject to the Civil Service Law and have been since the 1951 City Charter[5]. Although the 1951 Charter predates both the enactment of Sections 75 and 76 of the Civil Service Law and the enactment of the Taylor Law, the city charters issued in 1962 and 1974 maintained the reference to the Civil Service Law. In fact, while dramatically changing the structure of the Police Department (for example, from a board of police commissioners in 1951 to a Police Chief in 1963), the reference to the Civil Service Law was left undisturbed.

Additionally, the court in *Syracuse* addressed the issue of the enactment of a specific section of a law subsequent to a reference to the general law by stating, "The City's argument that the Taylor Law is not applicable because it was enacted after the 1960 City Charter is unpersuasive. The 1960 City Charter specifically requires disciplinary proceedings to be conducted in accordance with the Civil Service Law. The Taylor Law is part of the Civil Service Law, compliance with which the 1960 City Charter compels" (*Syracuse, supra* at 425).

Further evidence of the intent of the City of Geneva to subject police discipline to the provisions of the Civil Service Law can be found in Geneva Police Department General Orders 310[6] and the Local Law itself. "The establishment of a PRB in this Chapter notwithstanding, the sole authority to discipline Officers shall remain vested in the Chief or his or her delegates, under

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[5] This Court is not persuaded that the reference to the Civil Service Law in the City Charter is limited to proceedings to remove a police officer. Primarily, removal is the ultimate form of discipline and notably is an option available to the PRB as provided for in the Local Law. It would be nonsensical to find that two separate sets of rules are applicable in disciplinary proceedings, one if removal is sought, and another if removal is not.

[6] NYSCEF No. 23, Exhibit F - Definition of Discipline, "The pursuit of disciplinary action through the process mandated by Section 75 of the New York State Civil Service Law, City-Local Teamsters 118, and the City-Local 3471 AFSCME Contract."

the supervision of the City Manager pursuant to City Charter section 9.2 or amendments thereto, the New York State Constitution, *the New York State Civil Service Law*, Section 891 of the Unconsolidated Laws of the State of New York and applicable Collective Bargaining Agreements between the City and the Officers [emphasis added]" (Local Law 1-2021 § 15-2[6]). References to the Civil Service Law as it relates to police discipline procedures are made no fewer than eight times in the Local Law. Additionally, this Court takes note of the fact that each time the Civil Service Law is referenced, there is a corresponding reference to the Collective Bargaining Agreement.

Although this Court agrees with Defendants that certain portions of the Local Law constitute an appropriate exercise of the City's policy making powers that are appropriately excluded from mandatory collective bargaining (*PBA*, 6 NY3d 563, *supra* at 572), as noted in Section I, this Court is without jurisdiction to sever those portions of the Local Law which otherwise may be valid, as the failure to hold a referendum rendered the Local Law invalid.

Against the backdrop of the Court of Appeals' Decisions noting the importance of the policy codified in the Taylor Law (*see, Schenectady*, 30 NY3d 109, *supra* at 114; W*allkill* 19 NY3d 1066, *supra* at 1069; *Matter of City of New York v Patrolmen's Benev. Ass'n of City of New York, Inc.*, 14 NY3d 46, 58 [2009]; *PBA*, 6 NY3d 563, *supra* at 572; *Matter of City of Watertown v State of NY Pub. Empl. Relations Bd.*, 95 NY2d 73, 79 [2000]; *Matter of Board of Educ. of City School Dist. of City of NY v New York State Pub. Empl. Relations Bd.*, 75 NY2d 660, 667–668 [1990]; *Board of Educ. of Union Free School Dist. No. 3 of Town of Huntington v Associated Teachers of Huntington*, 30 NY2d 122, 129 [1972]), and relying upon the holding in *Syracuse* as affirmed by the Fourth Department, this Court finds that the City of Geneva

evidenced its intent to make police disciplinary issues subject to the Civil Service Law, including the collective bargaining provisions of the Civil Service Law, through its passage of the 1951, 1962 and 1974 City Charters, the over 30 years history of the inclusion of police disciplinary issues in the Collective Bargaining Agreements[7], and through references to the Civil Service Law and the Collective Bargaining Agreement in Local Law 1-2021 itself.

III. Does the Local Law conflict with the CBA?

Having found that within the City of Geneva, the city charter mandates compliance with the Civil Service Law, including its collective bargaining provisions (the Taylor Law), this Court now turns to whether any provisions of the Local Law conflict with the current Collective Bargaining Agreement[8].

Plaintiffs contend that despite the efforts of the Defendants to phrase the actions of the PRB in terms of "recommendations" regarding discipline, the Local Law is, in fact, in conflict with the CBA regarding police discipline and creates a structure whereby the Chief of Police is bound by the recommendations of the PRB. Plaintiffs also contend that the Local Law is in direct conflict with the CBA in that it fails to provide a police officer the right to counsel during questioning and that it changes the disciplinary procedure set forth in the CBA by requiring the Police Chief to await the PRB's recommendation before imposing discipline.

Defendants contend that that the Local Law is not in conflict with the CBA and that the City of Geneva was free to enact a Local Law that is consistent with the CBA. The Defendants contend that it is Plaintiffs' burden to show that there is no set of circumstances under which the

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[7] Notably, the 2018 agreement was negotiated after the Court of Appeals decided *PBA* (*see, Matter of City of Schenectady v New York State Pub. Empl. Relations Bd.*, 30 NY3d 109, 117 [2017]).

[8] Defendants concede that although the CBA has expired, the agreement remains in effect by virtue of Civil Service Law § 209-a(1)(e).

Local Law could be applied lawfully. Defendants rely upon the provision of the CBA that permits the City to "correct the actions of the officers, to counsel them without imposing discipline, or to take corrective measures to improve conduct and performance which does not constitute discipline" (Section 19.4) and contend that the Local Law does nothing more than provide a mechanism for the PRB to investigate and make suggestions about policy and discipline.

This Court agrees with Plaintiffs that the Local Law affects both the substance and the procedure of officer discipline, in contravention of the CBA. Inasmuch as officer discipline is covered by the CBA, Defendants were not permitted to change the process by which that discipline occurs. Fundamentally, the Local Law is an attempt to have the PRB's "recommendation" regarding discipline interjected into the ultimate determination made by the Police Chief. Such is clear from the provisions of the Local Law that require the Chief to wait for the recommendation of the PRB before imposing discipline and to explain his/her decision including an explanation of how it differs from the PRB's recommendation. Furthermore, the PRB is required to submit an annual report, made available to the public, wherein it reports the number of cases where the Chief "enforced" the PRB recommendation and the number of cases where the Chief "rejected" the recommendation (Local Law 1-2021 § 15-14[3][F],[G]).

The Defendants rely upon their argument, rejected by this Court, that the procedure set forth in the Local Law amounts only to a "supplemental review" and does not interfere with or contradict the only procedure provided for in the CBA – an investigation conducted by a superior officer. The provisions of the Local Law are a thinly veiled attempt to require the Police Chief to adopt the recommendations of the PRB rather than leaving officer discipline in the discretion of

the Police Chief.

Regarding Plaintiffs' argument that the Local Law is in direct conflict with the terms of the CBA, this Court agrees with Plaintiffs that by interfering with the discipline process spelled out in the CBA, the Local Law conflicts with the CBA. Specifically, the Local Law requires that the Police Chief await the PRB's recommendation and sets forth a time frame for investigation and determination. As the CBA is wholly lacking in either of those provisions, the Local Law violates the CBA. The Local Law further violates the CBA by permitting investigation and questioning by an individual other than a superior officer (contradicting Article 16 of the CBA), failing to account for the summary discipline provisions of the CBA (Section 19.2) and by failing to provide for representation of an officer being questioned (contradicting Sections 16.9 and 19.1 of the CBA, Civil Service Law § 75, and Civil Service Law § 209-a[1][g]).

This Court finds that the Plaintiffs' argument that the Local Law permits the PBA to compel the testimony of an officer in contravention of the CBA is without merit. The Local Law provides that the PRB may issue subpoenas for witnesses[9] but does not provide the same authority with regard to officers. Contrary to Plaintiffs' contention, the reference in the Local Law to *Garrity v State of New Jersey* (385 US 493 [1967]), does not compel a different result. In *Garrity* the Supreme Court held that statements that a police officer made as a result of a statute that permitted removal of the officer for failure to testify before commission inquiring about his official conduct should not have been admitted into evidence against the officer in a criminal prosecution. This cannot be read to infer that the PBA is permitted to compel the testimony of an officer. Rather, it is an acknowledgment that *Garrity* would apply should the officer be

[9] As Plaintiffs concede, the Local Law draws a distinction between "witnesses" and "GPD Officers" (Local Law 1-2021 § 15-9[2]), and this Court will not interpret witnesses to include officers.

compelled to testify by their superior officer or other city official.

Defendants' argument that the investigatory and disciplinary procedure spelled out in the CBA applies *only* to investigations by a superior officer and therefore would not apply to an investigation by an independent body such as the PRB is without merit. The investigation and recommendation of the PRB is inserted directly into any investigation and determination of the Police Chief by requiring the Chief to wait for the recommendation of the PRB before rendering his/her decision.

The Court is likewise not persuaded by Defendants' argument that the Local Law is the authorized enactment of Section 19.4 of the Collective Bargaining Agreement which provides, "Nothing contained in this procedure shall be construed to limit the rights of the City to correct the actions of the officers, to counsel them without imposing discipline, or to take corrective measures to improve conduct and performance which does not constitute discipline." Again, adopting this interpretation would require a finding by this Court that the 'recommendation" of the PRB is just that and nothing more, a finding that this Court has declined to make and one that is belied by the structure of the investigation and review set for the in the Local Law.

This Court finds that Local Law 1-2021 violates the 2018 CBA by interfering in the disciplinary substance, structure and process spelled out in the agreement.

IV. Does the Local Law violate Sections §§ 75 and 76 of the Civil Service Law?

As noted above, through the City Charter, the City of Geneva made police disciplinary issues subject to the provisions of the Civil Service Law. Sections 75 and 76 of the Civil Service Law provide the procedure for disciplinary investigations, hearings and appeals for several classes of civil servants, including police officers. Plaintiffs contend that the Local Law is in

direct conflict with Sections 75 and 76 of the Civil Service Law in a number of ways: the right to representation at the time of questioning, the right to be apprised of the identity of the complainant, the right to a hearing before "the officer or body having the power to remove the person against whom such charges are preferred" (Civil Service Law § 75[2]).

This Court is persuaded by Plaintiffs' argument that the Local Law's failure to provide for representation for a GPD Officer during an investigation is contradictory to Civil Service Law § 75. The Local Law provides, "The PRB is empowered to interview complainants, witnesses, and GPD Officers (subject to *Garrity v. New Jersey,* 385 U.S. 493), and gather other relevant evidence" (Local Law 1-2021 § 15-9[2]). However, the Local Law provides only for legal counsel for witnesses (Local Law 1-2021 § 15-9[6]). In contrast, Civil Service Law § 75(2) provides, in part, "An employee who at the time of questioning appears to be a potential subject of disciplinary action shall have a right to representation by his or her certified or recognized employee organization under article fourteen of this chapter and shall be notified in advance, in writing, of such right." In addition to the distinction between the rights afforded to witnesses and GPD Officers drawn in the Local Law, the Local Law provides only the right to legal counsel and not the right to union representation.

The Court rejects Plaintiffs' argument that the ability of the PRB to accept an anonymous complaint violates the provision of the Civil Service Law that requires "A person against whom removal or other disciplinary action is proposed shall have written notice thereof and of the reasons therefor, [and] shall be furnished a copy of the charges preferred against him" (Civil Service Law § 75[2]). This requires only that the subject of the disciplinary proceeding be notified of "the nature of the charges" (*Matter of Stodolka v Starpoint Cent. School Dist.*, 72

AD3d 1633, 1634 [4th Dept 2010]; *rearg. denied* 98AD3d 1325), which this Court does not interpret to include the identity of the complainant.

This Court disagrees with the Defendants that the Local Law, on its face, does not violate the hearing provisions of Civil Service Law § 75, and likewise the hearing provisions of Unconsolidated Law § 891[10]. Both of these statutes require a hearing to be held prior to removal or disciplinary action. However, nothing in the Local Law authorizes the PRB to hold a hearing and therefore, the provisions regarding the procedural requirements of disciplinary hearings found in the Civil Service Law have been contradicted in the most fundamental sense.

In light of the provisions of Civil Service Law § 75 that give civil servants the right to a hearing by the person or entity "having the power to remove," Defendants contend, as they must, that the procedure established in the local law "has no bearing on" the statutorily required hearing. Even if Defendants' argument is accepted, it is here that the conflict with Civil Service Law § 75 and Unconsolidated Laws § 891 is easily seen. Although the PRB is given the authority to issue subpoenas and to interview complainants, witnesses, and GPD Officers (Local Law 1-2021 §§ 15-9[2],[4]), the safeguards and bilateral nature of a hearing are wholly missing from the procedure established in the Local Law. Primarily lacking is the right of an officer to testify on his/her behalf or to call witnesses. Ultimately, the Local Law authorizes the PRB to influence the outcome of a disciplinary decision by making a "recommendation" to the Police Chief without providing the opportunity to the officer to present a defense. Defendants, through the Local Law, cannot be permitted to circumvent the procedural requirements of a hearing *by*

[10] Unconsolidated Law § 891 requires a hearing be held prior to the removal of a police officer and provides the specifics regarding the hearing, including the right to representation by counsel, the placing of the burden of proof on the person alleging misconduct, and requirements regarding the identity of the hearing officer.

not providing for a hearing at all.

As previously noted, this Court has rejected Defendants' argument that "To the extent that the Board's actions have any impact on officers' disciplinary rights, that impact is at most "indirect[] or tangential[]," *Levitt*, [*Levitt v Bd. of Collective Bargaining*, 140 Misc. 2d 727 [Sup. Ct. 1988], because the Local Law does not disturb the process through which officers can be disciplined" (NYSCEF No. 86, Defendants' Memorandum of Law in Support, p. 19). Although expressed in terms of "recommendations", the PRB's actions are designed to have a substantive effect on the disciplinary determination. The Local Law is, at its heart, a substantive interference into both the procedure and outcome of police discipline in the City of Geneva.

Despite the Local Law's reference to the Civil Service Law throughout its text, the Local Law facially conflicts with Civil Service Law § 75 in the ways in which the Local Law alters the disciplinary procedures codified in those laws. Additionally, while allowing the PRB to substantively insert itself into the disciplinary proceedings, the Local Law deprives officers of the procedural safeguards afforded by Civil Service Law § 75 and Unconsolidated Law § 891.

V. Does the Local Law conflict with the City Charter?

Plaintiffs contend that the Local Law conflicts with the City Charter in a number of ways: by impermissibly affecting the Chief of Police's sole authority over the Police Department as provided for in Section 9.2 of the City Charter, by authorizing the expenditure of funds and by delegating the power to investigate official conduct and to issue subpoenas. Defendants contend that the Local Law in not in conflict with the City Charter in any respect.

Despite the language of Local Law 1-2021 § 15-11(10), "In matters of Police Discipline, the Chief maintains full authority to decide discipline subject to the City Charter, the New York

State Civil Service Law, and Collective Bargaining Agreements between the City and the Officers. The authority of the PRB is at all times limited to an advisory role", this Court is not persuaded that the authority to decide police disciplinary issues remains solely in the discretion of the Chief, following the enactment of the Local Law. As noted above, the intent of the Defendants in drafting the provisions of the Local Law requiring the Chief to wait for the "recommendation" of the PRB and to "provide the PRB with a written explanation of his or her decision" is clear. The pressure exerted on the Police Chief from the scheme established in the Local Law cannot be overstated and affects the ability of the Police Chief to operate as an independent arbiter of police disciplinary matters.

With regard to the delegation of the City's investigatory and subpoena powers, Plaintiffs contend that the delegation of the power to investigate official conduct and to issue subpoenas, from the City Council and the Mayor to the PRB, constitutes a violation of the City Charter[11]. Defendants contend that the delegation of powers is specifically authorized by law. This Court agrees with Defendants that the Laws of the State of New York do not prohibit the establishment of an agency, commission or board to carry out a law otherwise lawfully promulgated. "While the Legislature cannot delegate its lawmaking functions to other bodies, there is no constitutional prohibition against the delegation of power to an agency or commission to administer the laws promulgated by the Legislature, provided that power is circumscribed by reasonable safeguards and standards [citations omitted]" (*Center for Jud. Accountability, Inc. v Cuomo*, 167 AD3d

[11] This Court rejects Defendant's argument that Plaintiffs are precluded from raising this because it was not pled in the complaint. The Complaint alleges, "The adoption of the Local Law curtails the power of the City Council by usurping the investigative functions of the City Council regarding police misconduct and giving those functions to the PRB" (Complaint, ¶ 111). However, the Complaint does not allege that the City improperly delegated the authority to issue subpoenas and this Court will not address that issue.

1406, 1410 [3rd Dept 2018], *lv denied* 34 NY3d 961). Specifically, the 1974 Geneva City Charter gives City Council the right to "establish offices, departments, boards, commissions, and agencies in addition to those created by this Charter and may prescribe the functions of such offices, departments, boards, commissions and agencies subject to all applicable provisions of law."

Likewise, this Court is not persuaded by Plaintiffs' argument that the budgetary provisions of the Local Law (Local Law 1-2021 § 15-14[3][L] ["The Board shall report expenses incurred for the first twelve (12) months and prepare a budget for approval in subsequent years"]) conflict with the Geneva City Charter which provides, "Notwithstanding any of the foregoing provisions, the City Council shall have the power to borrow money, to make additional appropriations and to exercise all other powers and control over the financial affairs of the City pursuant to the provisions of the Local Finance Law or other provisions of law" (1974 Geneva City Charter § 5.14). The City Council is authorized to make the expenditures anticipated by the Local Law.

Despite the fact that this Court has determined that the Local Law's providing regarding expenditures and the delegation of investigatory powers do not conflict with the City Charter, this Court, as noted above, does conclude that the Local Law conflicts with the City Charter by interfering with the sole authority to decide police disciplinary issues granted to the Chief of Police through the City Charter.

Conclusion

Local Law § 1-2021 is fundamentally flawed by its terms which insert the Police Review Board's "recommendations" into the police disciplinary process in contravention of the

Collective Bargaining Agreement, Civil Service Law §§ 75 and 76, Unconsolidated Law § 891 and the 1974 Geneva City Charter. Although invalidating the offending sections may have left some of the Local Law's provisions intact under the severability clause, the conclusion that Local Law 1-2021 was required to be subject to a referendum pursuant to Municipal Home Rule Law § 23(2) renders the entire law invalid.

Therefore, it is hereby

ORDERED that Defendants' motion for summary judgment dismissing all claims in the Complaint is denied in its entirety; and it is further

ORDERED that Plaintiffs' motion for summary judgment is granted in its entirety; and it is further

ORDERED that Local Law 1-2021 is declared invalid, void and unenforceable; and it is further

ORDERED that Defendants are permanently enjoined from implementing or putting the Local Law into effect.

This shall constitute the Decision and Order of the Court.

Dated: April 11, 2022

Hon. Craig J. Doran
Justice of the Supreme Court