



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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Press Release

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For Immediate Release

**NEW YORK SUPREME COURT UPHOLDS DELETION
OF 48-HOUR RULE FROM PBA CONTRACT**

***COURT UPHOLDS THE STATE LABOR BOARD'S DECISION THAT THE 48-HOUR RULE
-- WHICH FORBIDS INTERROGATIONS FOR 48 HOURS OF POLICE OFFICERS WHO ARE SUBJECTS OF
INVESTIGATIONS AFTER POLICE-RELATED OCCURRENCES --
AND OTHER DISCIPLINARY CLAUSES CANNOT BE BARGAINED***

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New York, September 16, 2003 – Justice Edward A. Sheridan of the New York Supreme Court, Albany County, has upheld the City's position that five disciplinary clauses in the 1995-2000 Patrolmen's Benevolent Association (PBA) union contract are not mandatory subjects of collective bargaining and therefore can be removed from successor contracts without bargaining. The State's Public Employment Relations Board (PERB) had agreed with the City's position, which has now been upheld by the Court. Included among these disciplinary clauses is the "48-hour rule," which requires the New York City Police Department (NYPD) to delay interrogations of "subject" police officers (those who are the subjects of investigations) for 48 hours after police-related events or occurrences.

Corporation Counsel Michael A. Cardozo stated, "We are gratified that the Court has recognized the Police Commissioner's authority over the discipline of police officers. This is another milestone in the City's continuing efforts toward eliminating the now-infamous 48-hour rule."

During last year's negotiations regarding the 2000-2002 PBA contract, the City contended to the PERB that there were five clauses in the 1995-2000 PBA contract which were "prohibited subjects of collective bargaining" and which therefore should be removed from successor contracts with the PBA. Among those prohibited clauses were provisions for the "48-hour rule." Similar 48-hour rule clauses have been removed from contracts with other police unions at the insistence of the City.

The City petitioned PERB for removal of those clauses as "prohibited subjects of bargaining" -- that is, subjects which, because of public policy or existing statutes, cannot be bargained away. PERB agreed with the City that these clauses were barred by public policy and were in conflict with the law's grant of broad authority over disciplinary matters to the Police Commissioner. The PBA then appealed to the Court to reverse the PERB determination. The Albany Court's ruling dismisses the PBA's petition and upholds the City's position, which had been adopted by PERB.

The Court first noted that "courts have generally recognized the comprehensive nature of the Police Commissioner's authority pursuant to the [Charter and Administrative Code] to structure disciplinary processes." The Court went on to hold that "[t]he statutes evidence legislative intent to preempt the area of police discipline from collective bargaining and, as discussed above, the exhaustive breadth of this authority, has been considered and acknowledged by the courts."

In rejecting the PBA's arguments for reversal of the PERB decision, the Court concluded that the PBA's

position “ignores the reality that it would be unreasonable (if not impossible) for the New York City Charter and Code to include enumeration of every single procedural aspect of police discipline” The Court concluded that the Charter and Administrative Code” pre-empted the entire subject matter of police discipline from collective bargaining....”

The Court also held that a PBA proposal for increasing the Variable Supplement Fund, a payment made to retired officers, also could not be bargained. The Court again upheld the City’s position -- and the PERB’s decision -- that this was also a prohibited subject of collective bargaining, because the fund was created by statute and the City’s contribution was fixed through 2007.

Michele Molfetta, an Assistant Corporation Counsel in the New York City Law Department’s Labor & Employment Division, was the lead attorney. Senior Counsel Alan M. Schlesinger in Labor & Employment also worked on the case.

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