



NEW YORK CITY LAW DEPARTMENT
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Press Release

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For Immediate Release

**COURT OF APPEALS RULES THAT ALL POLICE DISCIPLINARY MATTERS
ARE RESERVED TO THE NEW YORK CITY POLICE COMMISSIONER
AND NOT SUBJECT TO COLLECTIVE BARGAINING**

***IN ITS RULING, THE COURT DECIDES IN EFFECT THAT THE "48-HOUR RULE"
(WHICH PROHIBITS INTERROGATIONS FOR 48 HOURS OF POLICE OFFICERS WHO ARE SUBJECTS OF
INVESTIGATIONS AFTER POLICE-RELATED OCCURRENCES)
AND OTHER DISCIPLINARY CLAUSES CANNOT BE COLLECTIVELY BARGAINED***

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New York, March 28, 2006 – The New York State Court of Appeals today affirmed a lower court order rendered by the Appellate Division, Third Department, which held that all police discipline – including elimination of the “48-hour rule” from the PBA contract – is statutorily reserved to the New York City Police Commissioner by the Charter and the Administrative Code, and cannot be the subject of collective bargaining, notwithstanding the normally broad presumption in favor of public collective bargaining provided in the Taylor Law.

The issue in this case, *PBA v. PERB and The City of New York*, was whether the Charter of the City of New York, section 434(a) and NYC Administrative Code, section 14-115 reserve all powers over police discipline to the NYC Police Commissioner, thereby making it a “prohibited” subject of collective bargaining or whether, as the PBA argued, it was a “mandatory” or at least, a “permissive” subject of collective bargaining. Specifically, at issue in this case were five provisions which had been in the 1995-2000 collective bargaining agreement dealing with police disciplinary issues. In effect, the court’s ruling will eliminate in future police contracts the so-called “48-hour rule,” which required waiting 48 hours before police officers who are the subjects of alleged misconduct in administrative proceedings can be questioned.

The issue was presented to the Public Employment Relations Board (PERB) in 2002, which found in favor of the City and Police Commissioner, determining that statutes governing the City Police Department were clear in reserving all disciplinary matters solely to the Police Commissioner and prohibiting any such authority to be bargained away in the collective bargaining process which is regulated by the New York State Taylor Law governing public employment relations.

The PBA (Patrolmen’s Benevolent Association) appealed the PERB determination to the Supreme Court, Albany County, which confirmed the PERB decision. It then appealed to the Appellate Division, Third Department, which affirmed the Supreme Court’s order. The PBA then obtained leave to appeal from the Court of Appeals.

Today, the Court of Appeals recognized the disciplinary authority of the Police Commissioner granted by the Charter and Administrative Code provisions: “Though these two provisions are now New York City legislation, both were originally enacted as State statutes Thus, they reflect the policy of the State that police discipline in New York City is subject to the Commissioner’s authority.”

The Court cited approvingly three earlier Appellate Division decisions which upheld the reservation of disciplinary authority to the New York City Police Commissioner, as well as to police officials in other towns and villages in the state, having similar legislation. The Court found that this is not a case in which deference is given to PERB's judgment, since it involves "legislation not within PERB's area of expertise."

Edward F.X. Hart, the City's Appeals Division lawyer appeared on behalf of New York City, expressed satisfaction with the decision, stating, "It is especially significant, because it recognizes the importance of the disciplinary authority and power of the Police Commissioner which the legislature has 'clearly and plainly' delegated solely to that office."

In addition to Ed Hart's work on the case, the initial court proceeding was handled by Michelle Molfetta of the Labor & Employment Law Division. Spencer Fisher of the Law Department's Legal Counsel Division also worked on the matter.

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