SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE

In the Matter of the Application of
ROCHESTER POLICE LOCUST CLUB, INC.,

Petitioner,

DECISION, ORDER & JUDGMENT
Index No. E2024018465

vs.

CITY OF ROCHESTER,

Respondent.

Submitted on April 10, 2025
Counsel:
Daniel P. DeBolt, Esq., Trevett Cristo, for Petitioner
John A. Mancuso, Esq., Erin E. Elmouji, Esq., and Zachary T. Ruetz, Esq., Mancuso Brightman PLLC, for Respondent

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Joseph D. Waldorf, J.,

In May 2020, Supreme Court (Ark., J.) ruled that the City of Rochester (Respondent) – through the Police Accountability Board (PAB) – cannot lawfully conduct disciplinary hearings or impose discipline on Rochester Police Department Officers (RPD).[1] That decision was grounded upon several considerations: Local Law No. 2 – which created the PAB – unlawfully interfered with the Civil Service Law, the City Charter, and the collective bargaining agreement (CBA) between the Rochester Police Locust Club, Inc.

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[1] *See Rochester Police Locust Club, Inc. v City of Rochester*, 71 Misc 3d 438, 466 (Sup Ct, Monroe County 2020). The Court's subsequent Order and Judgment granted the petition in part finding "those portions of Local Law No. 2 which authorize and empower the Police Accountability Board to conduct disciplinary hearings and discipline officers of the City of Rochester Police Department are determined and declared to be invalid, void and unenforceable, as more fully set forth in the [Court's May 7, 2020] Decision…" (NY St Cts Elec Filing [NYSCEF] Doc No. 28.) Those parts of Local Law No. 2 "which do not relate to the Police Accountability Board conducting disciplinary hearings or disciplining officers of the City of Rochester Police Department continue in full force and effect…" (NYSCEF Doc No. 28.)

(Petitioner) and Respondent. The CBA exclusively governs the investigation and discipline of police officers.[2] The Appellate Division[3] and the Court of Appeals agreed.[4] Despite this history, the PAB continues to claim lawful authority to conduct police disciplinary investigations by subpoenaing officers, rendering decisions proclaiming its disciplinary recommendations, and publicly releasing its findings through case closure reports. As such, Petitioner commenced this combined CPLR article 78 proceeding and declaratory judgment action.[5]

As to the article 78 relief, Petitioner seeks a judgment finding that Respondent – through the PAB – by its continued police disciplinary related activities, is acting in violation of lawful procedure, in an arbitrary and capricious manner, and in a manner affected by an error of law.

As to the declaratory judgment portion of the action, Petitioner seeks a declaration specifying what portions of Article 18 of the City Charter are invalid insofar as the PAB's challenged activities allegedly relate to or address police discipline. For the reasons that follow, the petition/complaint is GRANTED in

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[2] For instance, Supreme Court's decision observed that "Local Law No. 2 diminishes…the Chief of Police's authority over the police department…[insofar as t]he Chief will not have control over the investigation *or* adjudication of police misconduct…[nor will t]he Chief…have authority over the imposition of officer discipline." (*Rochester Police Locust Club, Inc. v City of Rochester*, 71 Misc 3d 438, 466 [Sup Ct, Monroe County 2020] [emphasis added].)

[3] *Rochester Police Locust Club, Inc. v City of Rochester*, 196 AD3d 74, 76 (4th Dept 2021) ("[T]he police-discipline process created by Local Law No. 2 was never subject to collective bargaining and is irreconcilable with the police-discipline process set forth in the governing collective bargaining agreement.").

[4] *Rochester Police Locust Club, Inc. v City of Rochester*, 41 NY3d 156 (2023). For purposes of this decision the Court will refer to the trial court's decision, the Appellate Division's decision, and the Court of Appeals' decision collectively as *Locust I*.

[5] For clarity, Petitioner commenced the instant matter by way of a notice of petition (NYSCEF Doc No. 2) and petition (NYSCEF Doc No. 1). Both the notice of petition and petition request combined relief pursuant to CPLR article 78 and a declaratory judgment. Under CPLR 103, "[i]f a court has obtained jurisdiction over the parties, a civil proceeding shall not be dismissed solely because it is not brought in the proper form but the court shall make whatever order is required for its proper prosecution. If the court finds it appropriate in the interests of justice, it may convert a motion into a special proceeding, or vice-versa…" The Court so finds here, and the matter is hereby converted into a hybrid proceeding and action with the notice of petition being deemed also to be a summons and the petition being deemed to be a petition/complaint (*See e.g.*, *Greenberg v Assessor of Town of Scarsdale*, 121 AD3d 986, 990 [2d Dept 2014]).

its entirety as Respondent's challenged actions relate to and address police discipline and are therefore invalid exercises of Respondent's statutory powers.

Preliminarily, the Court provided notice to the parties that it was treating the motions as being made for summary judgment pursuant to CPLR 3211 (c) and afforded the parties an opportunity for supplemental briefing and oral argument upon the converted papers.[6]

As to Respondent's threshold arguments seeking dismissal of the declaratory judgment claim on the grounds of res judicata and justiciability, the Court rejects them. For instance, Respondent continues to issue subpoenas to police officers commanding their appearance at hearings, advising officers of their right to counsel at said hearings, and an officer's failure to so comply could result in the issuance of a warrant.[7] Such conduct runs afoul of the bargained-for rights exclusively governing said matters[8] and violates court decisions at every level addressing the issue. Thus, contrary to Respondent's argument, the Court finds such conduct creates a real dispute between the parties that raises substantial legal interests warranting a declaration establishing the parties' rights (*See generally*, *Parker v Hilton*, 233 AD3d 1472, 1474 [4th Dept 2024]).

Nor does res judicata bar the action. The Court rejects Respondent's attempt to cast Petitioner's action as a collateral attack on *Locust I*. Quite the contrary. Petitioner obtained a favorable declaration in *Locust I* but Respondent continues to conduct disciplinary investigations, disciplinary hearings, and issue disciplinary findings. Rather than a collateral attack on *Locust I*, Petitioner calls upon the Court to answer or reaffirm what specific provisions of Local Law 2 unlawfully relate to the discipline of RPD officers. And Petitioner further calls upon the Court to address Respondent's ongoing actions that are alleged to go beyond any statutory authorization whatsoever.

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[6] NYSCEF Doc No. 59 and Doc No. 60 addressing motion sequences 1 and 2.

[7] NYSCEF Doc No. 7.

[8] NYSCEF Doc No. 9 and Doc No. 12.

Additionally, the Court likewise rejects Respondent's threshold arguments that the CPLR article 78 claims should be dismissed upon the grounds of an alleged failure to exhaust administrative remedies, Petitioner's purported lack of standing, and finality/ripeness grounds.

For instance, as to Respondent's exhaustion and finality/ripeness arguments, the Court notes the following: Respondent has issued officer statement requests and subpoenas compelling, under the penalty of contempt, the attendance of police officers at disciplinary hearings; Respondent created a disciplinary matrix and created a panel to make disciplinary findings, issue disciplinary recommendations, and to draft and publish its disciplinary determinations. "[E]xhaustion of administrative remedies is not required where an agency's action is challenged as beyond its grant of power or when resort to an administrative remedy would be futile." (*Lehigh Portland Cement Co. v New York State Dept. of Environmental Conservation*, 87 NY2d 136, 140 [1995].) Such is the case here. Petitioner has clearly established that the PAB is acting in excess of its statutory authority. Indeed, the record reflects that the PAB does not even heed the legal advice of Corporation Counsel.[9] As such, exhaustion of administrative remedies is not required to maintain the instant article 78 challenge.

With respect to standing, "[a]n association or organization has standing when 'one or more of its members would have standing to sue, the interests it asserts are germane to its purposes, and neither the asserted claim nor the appropriate relief requires the participation of the individual members." (*Matter of Melrose Credit Union*, 161 AD3d 742, 747 [2d Dept 2018] [internal quotations omitted].) When considering if participation of an organization's individual members is required, the Court looks to the nature of the relief sought (*See e.g.*, *Victory Village Tenants Association, Inc. v Evergreen Communities, LLC*, 218 AD3d 1207 [4th Dept 2023]).

[9] NYSCEF Doc No. 43 and Doc No. 44.

Petitioner – on behalf of its members – seeks declaratory and article 78 relief prohibiting ongoing unlawful conduct by Respondent. "[S]o long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction." (*Warth v Seldin*, 422 US 490, 512 [1975].)

Here, Petitioner "is the recognized exclusive bargaining representative for all Police Officers, Investigators, Sergeants, Lieutenants and Captains employed by the City of Rochester[.]"[10] And since May of 2023 Respondent has sought to compel Petitioner's members to attend alleged misconduct investigation hearings through so-called "Officer Statement Requests" and subpoenas.[11] Following these hearings, Respondent issues a report denominated as a "Notification of Case Closure"[12] where it applies a disciplinary matrix based on recommended findings to pronounce so-called "Recommended Disciplinary Action." A declaratory judgment and article 78 relief will impact all of Petitioner's members equally and proper resolution of these issues may be had without the involvement of Petitioner's individual members or delving into their specific circumstances (*See e.g.*, *Victory Village Tenants Association, Inc. v Evergreen Communities, LLC*, 218 AD3d 1207 [4th Dept 2023]). As such, the Court finds Petitioner has sufficiently established its standing.

To the merits. Petitioner has established its entitlement to judgment as a matter of law declaring that specific provisions of Local Law No. 2 relate to and/or address police discipline and are therefore unlawful and Respondent/PAB's conduct related thereto constitutes an ongoing violation of the CBA and *Locust I*. Respondent urges a reading of the trial court's order

[10] NYSCEF Doc No. 1 at ¶ 6.

[11] NYSCEF Doc No. 5 (Officer Statement Request directed to RPD officer) and Doc No. 7 (Subpoena directed to Lieutenant with RPD).

[12] NYSCEF Doc. No. 6.

and judgment as finding invalid only those portions of Local Law No. 2 empowering the PAB to conduct disciplinary hearings and discipline RPD officers.[13] This Court rejects such a narrow reading. Indeed, the trial court's decision reasoned that "Local Law No. 2 diminishes…the Chief of Police's authority over the police department…[insofar as t]he Chief will not have control over the *investigation or adjudication* of police misconduct…" (*Rochester Police Locust Club, Inc. v City of Rochester*, 71 Misc 3d 438, 466 [Sup Ct, Monroe County 2020] [emphasis added].) As such, *Locust I* struck down those portions of Local Law No. 2 related to or addressing the PAB's investigation or adjudication of officer discipline.[14]

The PAB, "as a creature of [statute], is clothed with those powers expressly conferred by its authorizing statute, as well as those required by necessary implication." (*City of N.Y. v State of N.Y. Commission on Cable Television*, 47 NY2d 89, 92 [1979].) Here, the PAB has been stripped of any express or implied statutory powers relating to its investigation or disciplinary-related activities concerning RPD officers. The PAB cannot thereafter cloak its unlawful conduct as being merely advisory or non-binding when it seeks to compel Petitioner's members to attend alleged misconduct investigation hearings through so-called "Officer Statement Requests" and subpoenas carrying contempt power. And nowhere in the statute is the PAB authorized to issue case closure reports.

Contrary to Respondent's argument, this Court's ensuing declaration does no violence to the law's severability clause. Indeed, the facial validity of the statute is not at issue here. And those surviving statutory powers continue to advance important objectives.[15] Rather, Petitioner seeks a declaration to

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[13] NYSCEF Doc No. 28.

[14] Where a judgment impermissibly expands or contracts "the relief granted to petitioner in the decision…the decision controls…" (*Roth & Roth, LLP v City of Rochester*, 200 AD3d 1728 [4th Dept 2021] [internal quotation and citation omitted].)

[15] For instance, the PAB may pursue numerous statutory objectives including recommendations related to RPD policies and training (NYSCEF Doc No. 3 at § 18-5 [C]),

settle the rights of the parties so that Respondent's ongoing unlawful actions in contravention of the CBA and *Locust I* stop. Whether or not "the City Council wishes to amend Local Law No. 2 in response to a judicial ruling, it is more than capable of doing so on its own initiative." (*Matter of Rochester Police Locust Club, Inc. v City of Rochester*, 196 AD3d 74, 86 [4th Dept 2021].) But Local Law No. 2 has not been so amended. And Respondent therefore cannot act as if it has by rebranding its disciplinary-related activities as merely advisory or non-binding so as to avoid the effects of the prior declaratory judgment.

Additionally, Petitioner has further established its entitlement to a judgment pursuant to CPLR 7803 and CPLR 7806 in that Respondent – through the PAB – is engaged in ongoing disciplinary-related actions in violation of lawful procedure, affected by an error of law, and in an arbitrary and capricious manner. An agency may only exercise that authority which its enabling statute has conferred upon it (*See e.g.*, *DeSana v Bd. of Zoning Appeals of the Inc. Vill. of Hempstead*, 45 NY2d 105, 109 [1978]; *Greater New York Taxi Ass'n v New York City Taxi and Limousine Commission*, 121 AD3d 21, 32 [1st Dept 2014]). Put simply, an agency that acts "solely on [its] own ideas of sound public policy…operat[es] outside of its proper sphere of [statutory] authority." (*Boreali v Axelrod*, 71 NY2d 1, 12 [1987].) Such is the case here.

Specifically, following *Locust I*, Respondent does not have statutory authority to conduct investigations into individualized allegations of police misconduct; it may not attempt to obtain testimony from RPD Officers through voluntary requests or subpoenas; it may not issue findings or recommendations for discipline; and it may not publicly release investigatory reports or so-called case closure reports. Such actions have either been expressly or impliedly prohibited by *Locust I*. Additionally, with respect to the

community outreach (NYSCEF Doc No. 3 at § 18-7) and issuing quarterly and annual reports with the content of said reports being specifically enumerated (NYSCEF Doc No. 3 at § 18-11).

PAB's public release of case closure reports, said actions find no statutory support whatsoever.

Accordingly, it is hereby

ADJUDGED that the petition/complaint insofar as it seeks a declaratory judgment pursuant to CPLR 3001 is GRANTED, and it is further

DECLARED that the following provisions of Local Law No. 2 are unlawful as they conflict with Civil Service Law, the Taylor Law, the CBA between Petitioner and Respondent, and *Locust I*: Section 18-3 (C), (D), (E), (F), (G), (I), 18-5 (A), (B), (G) (1) through (4) and (6) through (8), (H) (1) and (2), 18-5 (I), (J), 18-6 (A)(3), and 18-8, and it is further

ORDERED, that Respondent is permanently enjoined from engaging in such conduct going forward, and it is further

ORDERED, that Respondent's converted cross-motion for summary judgment directed to dismissal of that portion of the petition/complaint seeking a declaratory judgment, or alternatively for a declaration in Respondent's favor, is DENIED in its entirety, and it is further

ADJUDGED, that the portion of the petition/complaint insofar as it seeks CPLR article 78 relief is GRANTED and Respondent's continued police disciplinary-related activities constitute actions in violation of lawful procedure, are arbitrary and capricious, and are affected by an error of law insofar as Respondent's actions rely upon the invalidity of Section 18-3 (C), (D), (E), (F), (G), (I), 18-5 (A), (B), (G) (1) through (4) and (6) through (8), (H) (1) and (2), 18-5 (I), (J), 18-6 (A)(3), and 18-8, and said challenged actions not subject to the above invalid statutory provisions – specifically, the public release of case closure reports containing disciplinary investigative reports, determinations, and recommendations – finds no statutory support in Local Law No. 2, and it is further

ORDERED, that Respondent is permanently enjoined from engaging in such conduct going forward, and it is further

ORDERED, that Respondent's motion directed to dismissal of that portion of the petition/complaint insofar as it seeks CPLR article 78 relief is DENIED.

Any arguments or prayers for relief not specifically addressed herein are denied.

This constitutes the Decision, Order, and Judgment of the Court.

Dated: April 28, 2025
Rochester, New York

Honorable Joseph D. Waldorf
Supreme Court Justice