Brighton Police Patrolman Assn. v Catholdi
2021 NY Slip Op 32978(U)
April 16, 2021
Supreme Court, Monroe County
Docket Number: Index No.I2020002814
Judge: Ann Marie Taddeo
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STATE OF NEW YORK
SUPREME COURT: COUNTY OF MONROE

BRIGHTON POLICE PATROLMAN ASSOCIATION,
INVESTIGATOR STEPHEN HUNT
TOWN OF BRIGHTON POLICE OFFICER,

Petitioners,

vs.

DECISION AND ORDER
Index No. I2020002814

BRIGHTON POLICE CHIEF DAVID CATHOLDI,
BRIGHTON TOWN SUPERVISOR WILLIAM MOEHLE,
THE TOWN OF BRIGHTON,
BRIGHTON TOWN CLERK DANIEL AMAN,
BRIGHTON POLICE DEPARTMENT
RECORDS DEPARTMENT,

Respondents.

Hon. Ann Marie Taddeo, J.S.C.

Petitioner having commenced this proceeding by filing a Notice of Petition and Verified Petition, dated January 20, 2021, seeking an Order and Judgment pursuant to CPLR §7806 prohibiting Respondents from releasing police disciplinary records prior to the repeal of Civil Rights Law §50-a, in addition to other requested relief;

And the Court having read and considered the Notice of Petition and Verified Petition of the Petitioner, Brighton Police Association, et al, dated January 20, 2021, with exhibits thereto, and the Verified Answer of Respondents, Brighton Police Chief, David Catholdi, et al, dated February 12, 2021; and the parties having appeared before the Court for Oral Argument on April 12, 2021; the Court renders the following Decision:

Petitioner Brighton Police Patrolman Association ("Union") is a labor union incorporated and existing under the laws of the State of New York, which represents many Brighton Police Officers. Petitioner Stephen Hunt (Hunt) is an Investigator with the Town of Brighton Police Department and a member of the Brighton Police Patrolman Association.

Prior to June 12, 2020, New York Civil Rights Law (CRL) §50-a provided, in relevant part, that

> [a]ll personnel records...under the control of any police agency...shall be considered confidential and not subject to inspection or review without the express written consent of such police officer...except as may be mandated by lawful court order.

On June 12, 2020, §50-a was repealed and replaced with amendments to Public Officers Law (POL) sections 86, 87 and 89, which held that the above disciplinary records are now subject to disclosure.

On or about December 29, 2020, a New York Freedom of Information Law (FOIL) request was made to the Respondent Brighton Police Department (BPD) seeking personnel and disciplinary records for Petitioner Investigator Hunt (Hunt) and every other officer in the BPD from the date of the FOIL request back to the date when each officer was hired. BPD informed their officers that, pursuant to the new sections of the POL, all disciplinary records, including those dated before June 12, 2020, would

be released notwithstanding the respective officers' accrued rights to privacy and confidentiality delineated in the respective settlement agreements they made with the BPD.

On or about December 31, 2020, Petitioners brought the instant CPLR Article 78 action seeking a declaratory judgment that such a release of records would be violative of the Town's current Collective Bargaining Agreement (CBA) with the Union, and that any such releases would also be a violation of the affected officers' accrued rights pursuant to past settlement agreements entered into before June 12, 2020.

The Court holds that the repeal of § 50-a should not be given retroactive effect. New York State General Construction Law (GCL) § 93 states,

> [t]he repeal of a statute or part thereof shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

It is well established that "in the absence of evidence of contrary intent such legislation is not to be given retroactive effect" and that to rule otherwise "would deprive persons of substantial rights." *People v Roper*, 259 NY 635 (1932). The recent

legislation which repealed § 50-a contained no language to suggest that either the Legislature or the Governor intended such repeal to be applied *retroactively*. "[R]etroactive application is not permitted...[where] applying the statutes and amendments retroactively would infringe on existing, recognized rights." *Charbonneau v State of New York*, 178 AD2d 815 (3d Dept. 1991).

"Except where the Constitution prohibits it, the Legislature is free to enact laws that have retroactive application. [The Court has] long recognized that the General Construction Law places no restraint on the Legislature beyond the restrictions in the Constitution." *Kellogg v. Travis*, 100 NY2d 407, 411 (2003). In *Kellogg*, the Court found "undisputably clear language of the statute" that the Legislature intended the relevant act to apply retroactively. This Court can find no similar "undisputably clear language" in the repeal of § 50-a.

Petitioners also established that officers represented by the Union have, over time, entered into settlement agreements with BPD, and have relied on a condition that such settlements would remain confidential. Thus, to now allow for retroactive disclosure of the details of these same settlements would be to deprive these officers of their contractual or accrued rights. "[T]he legislature is not free to impair vested or property rights. The vested rights doctrine recognizes that a judgment after it becomes final, may not be affected by subsequent legislation...[U]nder this doctrine, a judgment becomes an inviolable property right, which thereafter may not constitutionally be abridged by subsequent legislation." *Hodes v. Axelrod*, 70 NY2d 364 (1987).

The Court also finds, and Respondents concede, that under the terms of the CBA, details of any *unfounded* complaints cannot be released by the Town or BPD. According to the CBA, Article 7, paragraph 4, "[a]fter investigation, no reference or record of a citizen complaint that proves unfounded shall be entered into the employee's personnel folder..."

Accordingly, it is

ORDERED, that the language of New York General Construction Law § 93, which states that the repeal of part of a statute does not affect any act accruing prior to the time of such repeal, applies to the repeal of Civil Rights Law §50-a; it is further

ORDERED, that, based on the above, the repeal of Civil Rights Law §50-a is not to be applied retroactively; it is further

ORDERED, the repeal of Civil Rights Law § 50-a does not provide for the release of records related to unsubstantiated claims; it is further

ORDERED, that a Permanent Injunction is hereby issued prohibiting the Respondents from releasing any employment or disciplinary records created prior to June 12, 2020 except as may be mandated by lawful court order.

Dated: April 16, 2021

ENTER:

Hon. Ann Marie Taddeo, J.S.C.