

collective bargaining agreement. The lower court found that the arbitration requirement in the collective bargaining agreement is invalid under the Rockland County Police Act, which gives local authorities control over police disciplinary matters. In both cases, the Appellate Division affirmed the lower court and the Court of Appeals, in this consolidated case, affirms the Appellate Division decisions.

Reasoning

The Court of Appeals recognized that although Sections 75 and 76 of the Civil Service Law provide a disciplinary procedure for public employees, including police officers, under established case law these provisions do not prohibit collective bargaining regarding police discipline. See *Matter of Auburn Police Local 195 v. Helsby*, 46 N.Y.2d 1034 1979.

The court stressed the importance of the public policy underlying collective bargaining under the Taylor Law, providing that all terms and conditions of employment are subject to mandatory bargaining, and emphasized that these provisions cannot easily be overcome. In prior decisions, however, the Court found that some subjects are excluded from collective bargaining as a matter of policy even without statutory underpinnings. These cases involved such matters as teacher tenure and benefits for injuries in the line of duty. In these cases, the Court of Appeals found a public policy sufficiently strong to warrant exclusion of the subject from collective bargaining requirements.

The New York City and Orangetown Laws Prevail

Section 434(a) of the New York City Charter, granting

the police commissioner jurisdiction over discipline of police officers, was originally enacted by State law and, therefore, reflects the policy of the State that police discipline is subject to the New York City Police Commissioner's jurisdiction.

Similarly, the Town of Orangetown is subject to Section 7 of the Rockland County Police Act, granting to the town board authority to determine disciplinary charges against any member of the town police department. Thus, in the case of both municipalities, the State Legislature specifically has given control over police disciplinary matters to local authorities. The question before the Court was whether these laws, relating to police discipline, represent a strong enough public policy so as to supplant collective bargaining under the Taylor Law.

Holding

The Court of Appeals decided that where State legislation specifically commits police discipline to the discretion of local officials that policy prevails and collective bargaining over these disciplinary matters is prohibited.

Importance to Towns

The Court of Appeals, in referring to the State law applicable to the Town of Orangetown refers to similar wording in Section 155 of the Town Law, granting to town authorities control over police disciplinary matters. Under this decision of the Court of Appeals, police discipline is to be conducted under Section 155 of the Town Law and collective bargaining of these matters is prohibited. ♦

Highway

Questions and Answers About Low-Volume Road Designation

Prepared by the NYS Tug Hill Commission

Editor's Note: *Several towns have adopted local laws that provide for the designation of certain town highways as "low volume roads." The authority to enact such laws however, currently has no state enabling law foundation. These laws are adopted pursuant to home rule local law authority. Accordingly, state enabling authority has been a part of the AOT Legislative Agenda for the past few years. With the prospect of legislation on the horizon, questions regarding low volume road designation are resurfacing. The Tug Hill Commission has produced a paper that answers common questions in relation to so designating roads. Please note*

that this paper is not a source of authority to adopt such laws; it is being reprinted here for informational and educational purposes only. It is recommended that the town attorney be consulted prior to adopting such a local law.

What is low-volume road designation?

A town may officially designate a road as a low-volume road, upon public hearing, and upon the adoption of a local law by the town board, and classify it according to the Local Road Research and Coordination Council *Manual: Guidelines for Rural Town and County Roads*.

What roads may be designated as a low-volume road?

Any town road in a town where there is less than 150 people per square-mile, and the road carries less than 400 vehicles per day.

Why designate low-volume roads?

To **REDUCE COSTS** and **REDUCE LIABILITY** If a motor vehicle accident occurs on an undesignated road, a community may be held to inappropriate or unspecific design, construction and maintenance standard by a court. The American Association of State Highway and Transportation Officials (AASHTO) currently has two published standards, both of which are considered inappropriate for low-volume, rural roads in the New York State context: Chapter 5 of *A Policy on Geometric Design of Highways and Streets*, and *Guidelines for Geometric Design of Very Low-Volume Local Roads (ADT less than or equal to 400)*. These standards are either extremely costly to implement, or lack the specific guidance a local highway department with no professional engineering personnel can manage. It is impractical for rural towns to afford this level of design, construction and maintenance. Low volume road designation provides a more realistic standard both in terms of cost and liability.

What kinds of low volume road designations can be made?

There are six types of low-volume road designations that can be made, depending on traffic volume and the existing use of the road. These are 1) low volume collector, 2) residential access, 3) farm access, 4) resource/industrial areas, 5) agricultural land access, and 6) recreational land access. These are specific design, construction and maintenance specifications for each type of road.

What is a "minimum maintenance" road?

"Minimum maintenance roads" are **A PARTICULAR TYPE OF LOW VOLUME ROAD**, and must be created through a special designation procedure. Two categories of low-volume roads, agricultural land access and recreational land access roads, may be designated "minimum maintenance." These roads must be maintained according to the standards deemed appropriate and as adopted by the town board. The road is **NOT ABANDONED**, and still remains in all respects.

What is the procedure for designating a "minimum maintenance" road?

There is a special procedure for designating "minimum maintenance" roads that is more complex than the simple procedure used to designate a low-volume road by local law. The "minimum maintenance" procedure is as follows: 1) the town board prepares findings and issues them to the school district, to the town planning board and the general public for comment, 2) the town board notifies adjacent property owners by certified mail, 3) the town board holds a public hearing, 4) the town board accepts in part or rejects recommendations of the school board or planning board prior to their vote, and 5) the designation

is effective upon the posting of signs, and the adoption of maintenance standards.

How will a "minimum maintenance" road be maintained?

Each town must specify what types of maintenance activities will be conducted prior to the designation taking effect. These activities will be based on the minimum that is necessary to keep the road in service, consistent with its classification. In some circumstances it may mean reducing or eliminating snow removal. This is particularly important for protecting roads used as winter recreation trails.

Isn't designation just a step towards abandonment?

No. In fact, a road may not be abandoned until six years have elapsed following the termination of "minimum maintenance" designation in addition to complying with all statutory abandonment criteria. Designation is seen as a cost-effective **ALTERNATIVE TO ABANDONMENT**.

Is "minimum maintenance" designation permanent?

Not necessarily. The town board may terminate designation at any time upon amending the local law if such a change is in the public interest. Also, any landowner abutting the road may petition the town for removal, and the town board must hold a public hearing on the petition within 45 days of receipt of the petition.

What is the difference between "minimum maintenance" road designation and "seasonal use" designation?

"Seasonal use" is an annual designation by the town board to limit snow plowing, and such roads must be plowed upon the request of anyone living or operating a business on the road, even if they have located on the road following designation. "Minimum maintenance" standards which have been adopted by the town, and which may include limitations on snow plowing, will be continued until such time as the town board deems that maintenance standards should be changed.

How will "minimum maintenance" road designation affect my assessment?

In most cases, designation will have no effect. Lands have been assessed based upon the existing condition of the road, which in most cases will remain the same for the foreseeable future. Should "minimum maintenance" roads be improved, then assessments may be increased. ❖