

At a Term of the Supreme Court held in
and for the County of Herkimer at the Courthouse
located in Herkimer, New York on the 3rd day of
August, 2026.

STATE OF NEW YORK
COUNTY OF HERKIMER SUPREME COURT

POLAND VOLUNTEER FIRE COMPANY, INC.

Petitioner,

-VS-

**DECISION
AND ORDER
AND JUDGMENT**

Index No. EF2025-113958

POLAND JOINT FIRE DISTRICT

Respondent.

Attorney for Petitioner:
Poland Volunteer Fire Company Inc.

CERIO LAW OFFICES, PLLC
By: David W. Herkala, Esq.

Attorney for Respondent:
Poland Joint Fire District

THE D'AMATO LAW GROUP, LLC
By: Gregory V. Serio, Esq.

Attorney for Non- Parties:
Association of Fire Districts

SAPIENZA & FRANK
By: Joseph F. Frank, Esq.

Rose, M.R., J.S.C.

By Verified Petition dated November 11, 2025, Petitioner alleges that Respondent's
August 19, 2025 resolution and subsequent action to suspend Petitioner from providing fire

protection within Respondent's fire district should be annulled. Petitioner alleges causes of actions that Respondent has violated NYS Town Law § 176 (22) and has otherwise acted in violation of CPLR Article 78. In the first cause of action, Petitioner alleges that Respondent violated NYS Town Law § 176(22) as its services were suspended without a determination that the fire company was able to provide "adequate and prompt fire protection services." The Second Cause of Action alleges that the resolution to suspend was arbitrary and capricious, not supported by substantial evidence, and an abuse of discretion in violation of lawful procedure. Last, Petitioner alleges that contracts with outside fire companies are inadequate under NYS Not for Profit Corporations Law § 1402 (e)(2). By Order to Show Cause signed November 25, 2025, Petitioner's request for the temporary relief to be reinstated to provide fire protection was denied by the Court. Respondent filed an answer and counterclaim alleging that Petitioner is in possession of taxpayer funded property of which Respondent is entitled to possession. Respondent alleges that for over the past several months, Petitioner "engaged in a campaign of improper and dangerous aggression" which has led Respondent to be "dissatisfied with the orderly process and system of accountability to assure that the Petitioner is operating effectively" (NYSCEF Doc. No. 18, P.3). Because of this, the District has acted within the confines of NYS Town Law § 176 and Article 78. Without objection, the Association of Fire Districts of the State of New York submitted an Amicus Curiae brief in support of Respondent's position concerning Town Law § 176. The Association advocates the position that as a member of its fire district the Respondent has authority over Petitioner to make decisions regarding proper operation of the department and that the Respondent is empowered to act as it did under Town Law. It is further their position that it "is important to provide clear precedent that a board of

fire commissioners in a fire district or joint fire district may place a fire company out of service and contract with other fire departments and/or fire companies when the board determines that the in-district fire department and/or fire company is not rendering adequate and prompt fire protection and related emergency services” (NYSCEF Doc. No. 36, P.5). The Court unsuccessfully conducted several lengthy conferences with Counsel to resolve this matter.¹ After considering the papers submitted and the arguments of counsel, and for the reasons set forth below, this Court denies the petition in its entirety.

BACKGROUND

The Poland Volunteer Fire Company Inc. is located within the Poland Joint Fire District and has provided fire protection within the district area for approximately the last past 122 years (Wenzel affidavit, Fleming affirmation). On August 19, 2025, the Respondent resolved to suspend its service agreement with Petitioner. The Poland Joint Fire District monthly meeting minutes August 19, 2025 read as follows:

“Chairman Topham states the over the last 8 months all of the issues and arguments and situations, workers compensations issues, personnel equipment insurance, this isn’t working and regrets but make a motion to cease the relationship with Poland Volunteer Fire company effective at midnight tonight, August 19, 2025. Commissioner DeLucia 2nd the motion. Motion carried. No abstentions.”

“Commissioner Potasiewicz made a motion to contact neighboring Fire Companies from Newport to Barneveld to coordinate fire coverage for the district, 2nd by Commissioner DeLucia.

¹ At one point, negotiations were suspended pending the outcome of the ballot proposal to dissolve the Fire District. Had the proposal passed, the issue at hand would have been moot. On February 10, 2026, the proposal was defeated.

Motion carried. No abstentions.” (NYSCEF Doc. No. 24, P.2)

The said minutes set forth a contentious exchange prior to the resolution wherein Petitioner’s chief refused to answer Respondent with regards to a list of Poland Fire Company members which is required for insurance purposes. Prior to that exchange Respondent claimed that “this has been an uphill battle and unwillingness to provide information that is needed from the fire company that the district needs, i.e. training records, membership records, training records, etc” (*Id.* at P. 4). There is no evidence of public notice or comment concerning the resolution.

LEGAL ANALYSIS

Acknowledging that the CPLR § 7803 (3) standard for granting Petitioner’s petition requires Petitioner to demonstrate that the resolution at hand “was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion,” and that the Respondent’s resolution “is entitled to great weight and judicial deference” so long “as it is neither irrational, unreasonable nor inconsistent with the governing statute,” the determination in this matter comes down to whether Respondent’s actions comply with Town Law § 176, and if so, whether those actions survive CPLR Article 78 review (*Matter of 1640 State Rte. 104, LLC v Town of Ontario Planning Bd.*, 207 AD3d 1101, 1104 [4th Dept 2022] [internal citations and quotations omitted]). Specifically, the issue at hand centers around whether Town Law § 176 only applies to the department’s arrival at and performance on the fireground or whether it also applies to other aspects of administering and operating a fire department as argued by Respondent and as outlined in the amicus brief.

Upon review of the Town Law as a whole and when applying the principals of Article 78

review, the Court adopts the position argued by the Respondent.

FIRST CAUSE OF ACTION

In the First Cause of Action, Petitioner alleges that Respondent violated NYS Town Law § 176(22)(a) when it resolved to suspend Petitioner from providing fire services. In relevant part, the law states that a fire district may:

“Contract for the furnishing of fire protection within the fire district with any city, village, fire district or incorporated fire company having its headquarters outside such fire district and maintain adequate and suitable apparatus and appliances for the furnishing of fire protection in such district; provided there is no fire company maintaining its headquarters in said district or **provided the fire department of said district is, in the judgment of such fire commissioners, unable to render adequate and prompt fire protection to such district or any part thereof.”** (emphasis added)

Fire districts in New York State are created and governed by Town Law Article 11. As outlined in the Memoranda of Law provided to the Court, Fire Commissioners are statutorily empowered with decision-making authority over the operations of fire departments that are contracted within the fire district (See NYSCEF Doc. Nos. 17 and 36). The Board of Commissioners is first appointed and thereafter elected by the voters of the district. The role between the Board and Fire Department is defined in Town Law § 176 (11). The Board “may adopt rules and regulation governing all fire companies and fire department in said district and prescribing the duties of the members thereof and enforce discipline...” [Town Law §176 (11)]. However, “such rules and regulations shall not authorize any member of the board of fire commissioners to interfere with the duties of the chief or assistant chief at such times as the fire department or any company or squad thereof on duty” [Town Law §176 (11)]. Although Town Law § 176 has been modified over the years, the long-standing principal that a fire department in

a district may adopt its own rules so long as they are not in conflict with the rules of the Fire District Board remains (see 24 Ops St Comp No. 68-374 at 390 [1968]; 8 Ops St Comp No.5698 at 160, [1952]). Although an informal opinion, the solicitor general has opined that in the absence of express legislative provisions, a board's determination regarding Town Law § 176 (22) issues should be left to "the judgment of the District's Board of Fire Commissioners" (1999 N.Y. Op. Atty. Gen. (Inf.) 1076 (N.Y.A.G.);1999 WL 33603771).²

Petitioner argues that because it is located within the district and has a proven record of providing adequate and prompt protection, it must be contracted with. Further, the Respondent failed to make a "finding" in this matter. In support, Petitioner submitted Chief's Report and Incident Reports for the period of January 1, 2025 through August 19, 2025 (See NYSCEF Doc. Nos. 3,4). The Chief's Report is a summary of the company's activities. The Incident Reports provide details of each incident including, but not limited to the date, place and response time for each incident. Because Respondent has provided no credible proof that the response times are inadequate, Petitioner argues that Respondent has not complied with Town Law § 176 (22).

The thrust of Respondent's argument does not concern response times or performance on the fireground. Instead, Respondent argues that the resolution was premised upon the board's judgment that the department "could not safely and effectively provide fire protection under the conditions that existed" (NYSCEF Doc. No. 27, P.5). Respondent argues that Town Law § 176 contemplates the management and functioning of a department as a whole and not simply how the department functions at the time of a call. In Respondent's judgment, the determination as to

² Op. No. 99-32 is factually distinguished as it concerned whether §172 (22) contracts are subject to referendum. However, the overriding principle that the determination of issues not expressly set forth by the statute rests in the judgment of the board is analogous.

whether “adequate protection” is being provided must include certain non-call related aspects of management.

Here, the record clearly indicates a “toxic relationship” between the parties (See NYSCEF Doc. No. 24). The Board alleges that department personnel have engaged in insubordinate behavior, including breaching decorum at meetings by using profane language; refusing to cooperate and becoming confrontational; intimidating board members; yelling; throwing a chair during meetings; and leaving an executive session (See NYSCEF Doc. Nos. 20, 25 and 27). Such alleged acts of insubordination alone may or may not rise to the level warranting the application of Town Law § 176 (22) and suspension; however, when coupled with additional acts, the conduct collectively rises to that level.

In addition to the refusal to accept authority, Respondent, through the affidavits of Commissioners Potasiewicz and Topham, argues that Town Law § 176 (22) is applicable as Petitioner’s actions place the safety of the public at risk and the board is responsible for ensuring proper fire protection. Pursuant to said affidavits and meeting minutes, among other things, Petitioner caused the fuel account to be frozen for lack of payment and failed to provide the names and nominations of new officers (See NYSCEF Doc. Nos. 23 and 24). More alarming, the Petitioner failed to ensure that firefighters without insurance clearance or with medical restrictions did not respond to calls. Additionally, it failed to ensure compliance with insurance requirements, including active membership lists, training records and clearance documents. This is reflected in both the minutes and the Potasiewicz affidavit at Page 3.

The Court agrees that Town Law §176 (22) cannot be read in the narrow manner urged by Petitioner. Although the statute references “adequate and prompt fire protection,” that

language necessarily encompasses more than a fire company's physical arrival at the scene and its actions during an emergency. The adequacy of fire protection depends not only on response time, but also on the administrative, operational, and safety-related functions that ensure a department is prepared and legally authorized to respond in the first instance. A department cannot provide adequate and prompt fire protection if the structural and administrative foundations necessary for safe operations are not in place. Matters such as training and insurance coverage must be an element in determining whether protection services are "adequate."

In the judgment of the Board these foundational aspects of departmental readiness were compromised. As set forth in the affidavits and meeting minutes, the relationship between the Petitioner and the Board had deteriorated to the point that essential information required for oversight was repeatedly withheld. These documented instances of insubordination, refusal to provide training and membership records, and confrontational conduct at meetings represent a breakdown in the cooperative framework envisioned by the Town Law. While such conduct alone may or may not justify action under §176 (22), it must be considered alongside the additional operational deficiencies established in the record.

Respondent, through the affidavits of Commissioners Potasiewicz's and Topham, identified failures that bear directly on the district's ability to ensure safe, lawful fire protection. The failures go beyond interpersonal conflict and directly implicate public safety. These include allowing the district fuel account to lapse for nonpayment; failing to provide officer nominations; failing to ensure that only medically cleared and insurance-eligible firefighters responded to calls; and failing to provide updated membership rosters, insurance documentation, and training records. These operational shortcomings render it impossible for the district to

verify that its firefighting force complied with required safety, insurance, and eligibility standards.

Viewed in this context, the Court concludes that the statutory phrase “adequate and prompt fire protection” cannot reasonably refer solely to performance on the fireground. Operational safeguards, such as ensuring firefighter eligibility, training compliance, accurate membership and insurance records, and maintenance of essential accounts are integral components of the statutory purpose. To interpret Town Law § 176 (22) otherwise would undermine the Legislature’s evident intent and ignore the practical realities of managing fire protection within a district.

The facts of this matter illustrate the point. Petitioner’s repeated failure to resolve insurance-related issues, to supply required documentation, and to comply with basic administrative functions created operational and financial risk to both the district and the public. These omissions, occurring outside the immediate context of firefighting activity, nonetheless affect the ability to provide safe, reliable fire protection. A company does not provide adequate coverage when it fails to comply with essential requirements both at the scene and behind the scenes.

As the Court has determined that Town Law § 176 (22) is applicable, the Court must now determine whether the Board’s application of the law conforms to Article 78.

SECOND CAUSE OF ACTION

In the Second Cause of Action, Petitioner alleges that Respondent’s resolution is in violation of CPLR § 7803 (3). CPLR § 7803 (3) authorizes judicial review of whether the

board's decision "was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." The Court's review is "limited to whether the determination was irrational, arbitrary and capricious or contrary to law" (*In the Matter of Adirondack White Lake Association and Protect the Adirondacks v Adirondack Park Agency and Red Rock Quarry Associates, LLC*, 225 AD3d 1247 [4th Dept. 2024] internal citations and quotations omitted)]. "Arbitrary action is without sound basis in reason and is generally taken without regard to the facts" (*Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1. of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

Here, Petitioner argues that the resolution to suspend fire services was made in violation of lawful procedure and in error of law as it was made without public notice or comment and was not accompanied by a proper "finding" that Petitioner could not provide adequate and proper coverage. Contrary to Petitioner's contention, the Town Law does not require that resolutions or determinations pertaining to Town Law §176(22) matters be proceeded by public notice or comment. Nor does the statute require any type of specific type of finding. When a board does "not articulate its findings" the Court's review is whether the decision is "supported by a rational basis" (*Matter of Kotary v. Town of Floyd Zoning Bd of Appeals* (248 AD3d 1701, 1704 [4th Dept 2026] [internal citations omitted])).

Petitioner further argues that the decision was arbitrary and capricious and not supported by evidence, alleging that the reason for suspending the Poland Fire Company is personal. In support of this claim, Petitioner submits the aforementioned response reports and the affirmation/affidavits of two (2) department members and two (2) residents. Wendy Wenzel,

who is both a member of the Poland Volunteer Fire Department and a District Commissioner, states that the district never determined the issue of adequate and timely service and never discussed the possibility of suspension. It is her “belief” that the decision to suspend “was based upon personal animus of the other District commissioners towards members of the Poland Fire Company.” Roy Copperwheat, a resident of the district, states that certain district commissioners disapproved the appointment of the 1st and 2nd assistant Chief for “personal reasons” that they “did not wish to say.” He then infers that because of this Petitioner’s suspension has nothing to do with performance. Instead, it is based upon personal issues between the parties. The affidavits/affirmations of resident James Hall and 1st Assistant Chief Shawn Flemming likewise advocate the personal reason theory. In response, the Respondent submits meeting minutes and the affidavits of Poland Joint Fire District Commissioners Potasiewicz, Finch and Topham. The minutes, as aforementioned, clearly illustrate an ongoing toxic relationship between the parties. The root of which is clearly fueled, at least in part, by Petitioner’s lack of cooperation in providing crucial information to the commissioners. Potasiewicz states that there has been a breakdown in trust and public conduct. Because of Petitioner’s actions and or inactions the decision to suspend was made to safely and effectively ensure fire protection. Potasiewicz recites concerns over a general failure to cooperate, intimidation, the frozen fuel account, failure to provide lists of approved officers, violent behavior at meetings, failure to ensure that medical clearance and insurance clearance was adhered to, and failure to submit paperwork for training stipends. The Topham affidavit reiterates the same, adding that the issue was so bad that on one occasion the police had to be called in to remove a lock in order to obtain access to records. Contrary to Petitioner’s

contention the record supports Respondent's decision to suspend. The decision was not made on a whim but was based upon several months of concern and is consistent with Town Law § 176 (22). The decision to suspend based upon the concerns outlined by the Respondent has a rational basis. Thus, in accordance with the *Matter of 1640 State Rte. 104, LLC v. Town of Ontario Planning Bd.*, 207 A.D.3d 1101 [4th Dept 2022]) and opinions of the Attorney General, the decision to suspend is entitled to great weight and will be upheld.

The Court has considered all other arguments and finds them either to be without merit or rendered moot by this decision.

NOW, THEREFORE, for the reasons stated herein, it is hereby,

ORDERED, ADJUDGED AND DECREED that Petitioner's petition is dismissed in its entirety; and it is further

ORDERED that this matter is scheduled for a conference concerning Respondent's counterclaim on December 17, 2026 at 9:30 a.m., in person.

The foregoing constitutes the Decision and Order of the Court.

ENTER.

Dated: October 26 2026



Hon. Mark R. Rose
Justice of the Supreme Court