

STATE OF MINNESOTA**DISTRICT COURT****COUNTY OF HENNEPIN****FOURTH JUDICIAL DISTRICT**

Cathy Spann, Aimee Lundberg, Jonathan
Lundberg, Don Samuels, Sondra Samuels,
Julie Oden, Audra Pugh, Georgianna Yantos,

Case Type: Civil/Other

Court File No. 27-cv-20-10558

Petitioners,

vs.

**AMICUS CURIAE
MEMORANDUM**

Minneapolis City Council, Mayor Jacob Frey,

Respondents.

Statement of Amicus Curiae¹

The National Police Associations is a Delaware 501(c)(3) non-profit corporation established to educate supporters of law enforcement to assist police departments to accomplish their goals. It seeks to balance the influence of anti-police activists by also holding them accountable against supporters of law enforcement who require adequate resources to preserve public order and protect lives and property in every neighborhood within every community of a municipality. The NPA seeks to assist this Court through this memorandum in the adjudication of the underlying issues as outlined in the Petitioners' petition for a writ of mandamus. The NPA's memorandum is submitted in support of the

¹ Counsel for the National Police Association certifies that the instant amicus curiae memorandum was authored in whole by me with the assistance of members of my law firm. No person or entity other than the National Police Association made any monetary contribution to the preparation or submission of this memorandum. *See* Minn. R. Civ. App. P. Rule 129.03.

Petitioners Cathy Spann, Aimee Lundberg, Jonathan Lundberg, Don Samuels, Sondra Samuels, Julie Oden, Audra Pugh, and Georgianna Yantos.

This Court granted the NPA's motion to file an amicus curiae memorandum and required its filing on February 1, 2021.²

Introduction

Whatever reform the City of Minneapolis seeks to initiate as to the City's current City Charter, it cannot exceed its authority or fail to follow its own laws of governance or contracts. When a municipality fails to fully understand the consequences of its actions, it undermines the social contract between the police force and the people it is sworn to serve and protect. The City Charter represents a specific guarantee—a social contract—of the governed, through the police department, to protect all people in all communities within that municipality. At the present time, the Charter commands and governs the obligations upon any governmental official and the legality of those action resulting in the decline of the police force below levels the Charter requires. Moreover, the implications involve contractual obligations of the collective bargaining agreement between the City of Minneapolis and the Police Officers' Federation of Minneapolis. Until such time that a Charter amendment does occur, the City's obligations to its people and the police force remain intact.

² Or. Granting NPA Amicus Curiae Mot. (Dec. 17, 2020).

Argument

I. A “police force” includes licensed sworn police officers but does not include “civilian employees” of a Police Department.

The Minneapolis City Charter is explicit regarding the funding of its “police force:”

The City Council must fund a police force of at least 0.0017 employees per resident, and provide for those employees’ compensation, for which purpose it may tax the taxable property in the City up to 0.3 percent of its value annually.³

There is a meaningful difference between a “police force” and a “police department.”

One is part of the whole—the “force” is part of the “department.” Here, “police force” modifies “employees” meaning that “employees” refers to members of the “police force,” that is, trained officers. “Police force” means “a body of *trained officers* entrusted by a government with maintenance of public peace and order, enforcement of laws, and prevention and detection of crime.”⁴ A “police department” on the other hand, refers to “a governmental department concerned with the administration of the police force.”⁵

In Minneapolis, to be a member of the police force as a trained officer, in Minnesota, requires an extensive list of requirements that must be met to be considered before being hired by a police department. Before consideration as a Minneapolis member of the police force, a person must obtain a state license through Minnesota’s Peace Officers Standards and Training Board.⁶ “Minnesota requires those aspiring to work in law enforcement to

³ Minneapolis, City Charter, Art. VII, § 7.3 (c).

⁴ <https://www.merriam-webster.com/dictionary/police%20force> (last visited Feb. 1, 2021) (emphasis added).

⁵ <https://www.merriam-webster.com/dictionary/police%20department> (last visited Feb. 1, 2021).

⁶ <https://dps.mn.gov/entity/post/becoming-a-peace-officer/Pages/Routes-to-Peace-Officer-Licensure.aspx> (last visited Feb. 1, 2021).

complete an educational program and pass a state board exam. Licensing itself only occurs when eligible candidates are appointed to a peace officer position and certain selection standards are met. Licensing is a cooperative process between the POST Board, the hiring agency and the candidate.”⁷ Once hired by Minneapolis, the person must attend the Minneapolis Police Academy for another 14 to 16 week training period.⁸

Indeed, even the City recognizes the difference between police officers and other “civilian” positions serving within the Police Department. For instance, in the declaration of Tracy J. Turner, a Minneapolis Human Resources Data Analyst, she affirms the differences between whom is an employee as a member of the police force and other employees of the police department:

- The City of Minneapolis Police Department had 1,053 employees, of whom were sworn licensed police officers and 176 of whom were civilian police employees.
- The Minneapolis Police Department hired 29 employees, this number includes 26 new hire sworn licensed police officers and 3 civilians.
- The Minneapolis Police Department employed 987 total employees, including 844 sworn licensed police officers and 143 civilian employees.⁹

Although “civilian employees” is not defined, one definition finds a “civilian” to mean: “a person who is not an active member of the military, the police, or a belligerent group in conflict.”¹⁰ But by the City’s own admission it makes a distinction among the

⁷ <https://dps.mn.gov/entity/post/licensing/Pages/default.aspx> (last visited Feb. 1, 2021).

⁸ http://www2.minneapolismn.gov/police/recruiting/reqs/police_recruiting_academy (last visited Feb. 1, 2021).

⁹ Tracy J. Turner Decl. ¶¶ 2, 4, 5.

¹⁰ <https://www.thefreedictionary.com/civilian> (last visited Feb. 1, 2021).

Police Department’s employees—sworn licensed police officers and others. Even with the most recent proposal to amend the City Charter, proponents of the change appear to agree with the distinction between a “police force” of licensed police officers and civilian employees:

“The new proposal says the Department of Public Safety must include a Division of Law Enforcement Services that employs *police officers*.”¹¹
In short, the present Minneapolis City Charter requires a “police force” of sworn

licensed police officers, as employees within the Police Department of at least 0.0017 per resident. Civilians don’t count as members of the “police force.”

II. The City Charter mandates a minimum number of police officers in a police force which also protects the City and officers under the existing collective bargaining agreement who have not waived the existing Charter right as part of a social contract.

Notably, the collective bargaining agreement, the CPO, for police officers is instructive. The CPO is the governing labor agreement between the City of Minneapolis and the Police Officers’ Federation of Minneapolis. The agreement acknowledges the City’s recognition of the Federation’s exclusive representation for the “unit” consisting of employees serving as police officers—it does not include civilian employees of the Police Department:

¹¹ “New proposal would scrap Minneapolis Police Department but keep the officers, New Minneapolis department would require approval from voters,” **Liz Navratil** Star Tribune (Jan. 29, 2021), <https://www.startribune.com/new-proposal-would-scrap-minneapolis-police-department-but-keep-the-officers/600016195/> (last visited Feb. 1, 2021) (emphasis added).

The City recognizes the Federation as the exclusive representative for the unit consisting of employees serving in the following job titles: Police Officer, Sergeant and Lieutenant.¹²

The CPO does not include other Police Department employees such as civilian employees.

The CPO is also instructive as it relates to the employment of the number of licensed police officers under the City Charter. The City Charter § 7.3(c), is a social contract not only between the people of Minneapolis and a guaranteed number of police officers to protect and serve them, but also a contract between the City and members of the police force. In other words, § 7.3(c) establishes a minimum number of police officers to serve the public. A number below that established threshold is a violation of not only the social contract between the City and its residents regarding police protection, but also a breach of the CPO.

Under § 11.07, the CPO expressly states that there is no waiver of rights without a written agreement. To avoid controversy between the police force and the City, both parties agreed that the City has the “exercise its unabridged managerial prerogatives or the Federation’s right to negotiate over terms and conditions of employment.”¹³ However, if the City, under its current Charter, falls below the threshold number of police officers mandated per resident, it disrupts the otherwise orderly and constructive relationship between police officers as public employees and their employer, here, the City of Minneapolis. The police force members did not waive their Charter rights to a number of police officers that would either endanger their own—having an insufficient number of officers to conduct their sworn

¹² CPO, Police Officers Federation, § 1.01 (Jan. 1, 2017–December 31, 2019) <http://www2.minneapolisismn.gov/hr/laboragreements/index.htm> (last visited Feb. 1, 2021).

¹³ CPO, § 11.07.

duties to the public with insufficient resources—or having insufficient number of officers to protect City residents.

Section 11.07 of the CPO imposes an obligation upon the City *not* to interfere with Federation rights—rights of the licensed police officers—without a written agreement waiving those rights:

[I]t is not a prerequisite to substantive and/or meaningful discussions concerning a matter of interest to either the Employer or the Federation.... The Parties may freely discuss any such matters and may reach an understanding regarding the extent to which the matter may be resolved and/or the manner of resolution. However, unless the parties shall enter into a written agreement which contains clear and unmistakable language documenting a waiver of rights, neither the mere fact that the Parties had such discussions nor the existence of any understanding regarding resolution of the matter shall constitute or be construed to be a waiver of either: the Federation's right to at any time thereafter assert or contest that the matter is a term and condition of employment which is subject to collective bargaining and which may not be unilaterally imposed; or the Employer's right to at any time thereafter assert that the matter is one of inherent managerial policy not subject to mandatory collective bargaining prior to implementation.

In other words, knowingly decreasing the police force to a number below what the City Charter mandates, the City cannot do so without the Federation's written agreement. The significance is part of the policy associated with § 7.3(c) of the Charter. The provision provides a mathematical minimum formula of a police force to protect the populous, without the politics.

There should be no question that public safety is a core responsibility of local government.¹⁴ There should be no question that victims of crime suffer billions of dollars in

¹⁴ “More COPS, Less Crime,” 1 Steven Mello, *Journal of Public Economics* (Princeton U. Feb. 25, 2018).

costs per year.¹⁵ Whether a person believes more police officers will reduce crime or not, having a force that cannot respond because of the lack of numbers in relationship to the population will not serve the public. For instance, according to one article, the New York Police Department routinely recalculates how many officers it requires to staff a 24-hour cycle. Referred to as the Patrol Allocation Plan, the statistical model studies 911 calls and calculates such variables as how the time of day and type of crime affect an officer's response time.¹⁶ While the Department might require fewer police officers, it still requires an amount equal to the task at hand and the required funding. Having too few has detrimental effects not only on the police force—for example, double shift demands—but also to the public in increased costs for overtime or greater distrust between the parties.¹⁷ In Minneapolis, the increase in violence continues.

Minneapolis, as of December 10, 2020, recorded 532 gunshot victims, more than double the number reported last year. Carjackings were up 331% from the same period last year and violent crimes surpassed 5,100, over 1,000 more than what was reported in 2019.¹⁸ And while the debate continues as to its root causes, whether it be “inadequate housing, systemic racism, poverty, and other forms of neglect—made all the worse by the worldwide

¹⁵ *Id.*

¹⁶ More cops. Is it the answer to fighting crime? Simone Weichselbaum and Wendi C. Thomas, *The Marshall Project* (Feb. 12, 2019) <https://www.usatoday.com/story/news/investigations/2019/02/13/marshall-project-more-cops-dont-mean-less-crime-experts-say/2818056002/> (last visited Feb. 1, 2021).

¹⁷ *Id.*

¹⁸ “Minneapolis Cuts Millions From Police Budget Amid Crime Spike,” *Jemima McEvoy, Star Tribune* (Dec. 10, 2020) <https://www.forbes.com/sites/jemimamcevoy/2020/12/10/minneapolis-cuts-millions-from-police-budget-amid-crime-spike/?sh=50df75e3701e> (last visited Feb. 1, 2021).

pandemic, which has added significant stress on the communities that already suffer the most violence, or “continued distrust of law enforcement by many minority residents,”¹⁹ failing to meet the City Charter’s mandate, also embodied within the CPO, does not rectify the public safety crisis. But, to reduce a police force below an existing contractual obligation based upon a non-political formula is not in anyone’s best interests.

The Petitioners are correct in their arguments to seek a writ of mandamus. The sea-change in policies to circumvent the explicit language of the existing City Charter will not cure the ills real or perceived. The significance of Article VII, § 7.03(c) is the lack of politics through a mathematical formula to ensure a minimum police force—a part of the Police Department that excludes civilian employees. Without the adequate number of police officers as the police force, the current Minneapolis public safety crisis will continue to no one’s benefit.

Dated: February 1, 2021.

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¹⁹ “Amid sharp rise in Minneapolis shootings, slayings, a solution appears elusive.” *Libor Jany Star Tribune* (Nov. 14, 2020) <https://www.startribune.com/amid-sharp-rise-in-minneapolis-shootings-slayings-a-solution-appears-elusive/573079021/> (last visited Feb. 1, 2021).

Minnesota Statute § 549.211 Acknowledgement

The undersigned, hereby acknowledges that pursuant to Minnesota Statute §549.21(1), costs, disbursements, and reasonable attorney fees and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the course of the proceedings; or committed fraud upon the Court.

Dated: February 1, 2021.

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