

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: DECLARATORY JUDGMENT

JUDGE: SUSAN M. ROBINER

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David Bicking *et al.*,

Court File No: 27-CV-16-11839

Petitioners,

v.

Casey Joe Carl *et al.*,

Respondents,

and

Police Officers' Federation of  
Minneapolis,

Intervenor.

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**INTERVENTOR POLICE OFFICERS  
FEDERATION OF MINNEAPOLIS  
MEMORANDUM OF LAW IN OPPOSITION  
TO PETITION FOR CORRECTION OF  
BALLOT ERROR AND FOR DECLARATORY  
JUDGMENT**

**FACTS**

The Police Officers Federation of Minneapolis (Federation) is the “Exclusive Representative”, as defined by Minn. Stat. §179A.03, subd. 8, of all sworn police officers employed by Respondent City of Minneapolis (City) who hold the rank of patrol officer, sergeant or lieutenant.

On July 5, 2016, Petitioners submitted a petition to amend the City Charter of the City of Minneapolis to the City Clerk to require that all City’s police officers, including all Federation members, carry professional liability insurance. On July 11, 2016, the City Clerk certified the

sufficiency of the petition and transmitted the proposed charter amendment to the City Council. On August 5, 2016, the City Council declined to forward the proposed amendment to the County Auditor for inclusion on the November 8, 2016 general election ballot. Petitioners subsequently commenced this action seeking an order requiring Respondents to include the proposed amendment on the general election ballot.

## **ISSUES**

1. Was the Minneapolis City Council correct in declining to include the proposed charter amendment on the general election ballot because it conflicts with the Public Employment Labor Relations Act (PELRA), Minn. Stat. § 179A.01 *et seq.*?
2. Was the Minneapolis City Council correct in declining to include the proposed charter amendment on the general election ballot because it is expressly preempted by state law?
3. Was the Minneapolis City Council correct in declining to include the proposed charter amendment on the general election ballot because the state has occupied the field of qualifications for licensed peace officers?

## **STANDARD OF REVIEW**

“The power conferred upon cities to frame and adopt home rule charters is limited by the provisions that such charter shall always be in harmony with and subject to the constitution and laws of the state.” *State ex rel. Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958). Where a proposed charter provision is unconstitutional or conflicts with the state’s public policy, as evidenced by its general laws, the city council may refuse to place the proposal on the ballot. *Haumant v. Griffin*, 699 N.W.2d 774, 779-80 (Minn. Ct. App. 2005) (citing *State ex rel Town of Lowell v. City of Crookston*, 91 N.W.2d 81 (Minn 1958)). Whether state statutes prevail over a local charter provision is a question of law for the court to decide. *Haumant v. Griffin*, 699 N.W.2d 774, 777 (Minn. Ct. App. 2005) (citing *Morton Bldgs., Inc. v. Comm’r of Revenue*, 488 N.W.2d 254, 257 (Minn. 1992)).

## I. FEDERATION'S STANDING TO INTERVENE

The Minnesota Rules of Civil Procedure provide, “anyone *shall* be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest” MINN. R. CIV. P. 24.01. Intervention under Rule 24.01 is mandatory in that, upon a showing that an action will impair the interests of the proposed intervenor, the proposed intervenor must be permitted to enter the action.

The authority to negotiate the terms and conditions of employment with the employer is a right possessed by the employees’ exclusive representative, here, the Federation. MINN. STAT. § 179A.06, subd. 5 (2016). As will be discussed further below, the proposed charter amendment impairs the Federation’s ability to negotiate the terms and conditions of employment. Because the Federation’s right to negotiate the terms and conditions of employment will be affected by this action, the Federation must be permitted to intervene.

Additionally, the Federation has associational standing to protect the interests of its members. *See State by Humphrey v. Phillip Morris Inc.*, 551 N.W.2d 490, 497-98 (Minn. 1996). If the proposed charter amendment is adopted, members of the Federation will be required to carry professional liability insurance as a condition of their continued employment with the Minneapolis Police Department. Federation members have an interest in their qualifications for continued employment. Thus, the Federation has standing to assert the interests of its members.

Because the Federation itself has an interest that will be affected by the outcome of the present action and because the Federation may assert the interests of its members that will be

affected by the outcome of the present action, the Federation has standing and must be allowed to intervene.

## **II. THE PROPOSED CHARTER AMENDMENT VIOLATES THE PUBLIC EMPLOYMENT LABOR RELATIONS ACT**

Petitioners' proposed charter amendment violates PELRA because the amendment unilaterally imposes a term and condition of employment on Federation members.

The Federation is the exclusive representative, as defined by Minn. Stat. § 179A.03, subd. 8, of certain police officers in the City of Minneapolis. The Federation and City are parties to a collective bargaining agreement (CBA) that expired December 31, 2014. By operation of Minn. Stat. § 179A.20, subd. 6, such contract continues in effect and is enforceable upon both parties.

The terms and conditions of employment are “the hours of employment, the compensation therefor including fringe benefits \* \* \* and the employer’s personnel policies affecting the working conditions of the employees.” MINN. STAT. § 179A.03, subd. 19 (2016). Courts have interpreted this definition very broadly, holding that when a labor issue affects the employees’ welfare, it is a term or condition of employment. *City of Richfield v. Local No. 1215, Int’l Ass’n of Fire Fighters*, 276 N.W.2d 42, 49 (Minn. 1979). Simply stated, if the proposed amendment were adopted, a person could not be employed (or remain employed) as a Minneapolis police officer unless he or she had the required insurance. The requirement that officers carry professional liability insurance is not a mere minimum qualification for the position. Rather, it is a personnel policy of the employer which defines whether or *not an individual* can be employed as a Minneapolis police officer. No employer’s personnel policy more fundamentally affects an employee’s welfare, and is thus a term and condition of employment, than a policy that defines whether or not *the individual* can be employed.

The City is obligated to bargain with the Federation regarding the terms and conditions of employment. MINN. STAT. § 179A.07, subd. 2 (2016). Concurrently, the Federation has the right to negotiate the terms and conditions of employment of its members with the City. MINN. STAT. § 179A.06, subd. 5 (2016). The right to negotiate includes the right to be free from the obligation to reach an agreement on the topic of bargaining or make a concession. *Id.*

A public employer cannot circumvent its obligation to bargain by passing a charter amendment or ordinance which affects a term and condition of employment, even when such amendment or ordinance is proposed by petition of constituents of the public employer. Any such amendment or ordinance is superseded by the public employer's obligation to bargain. MINN. STAT. § 179A.07, subd. 2 (2016).

The proposed charter amendment would unilaterally impose a term and condition of employment: that all officers carry professional liability insurance. The amendment leaves no room for the Federation to disagree. Therefore, by abrogating the Federation's collective bargaining rights, the proposed amendment violates Minn. Stat. § 179A.06, subd. 5.

Because the proposed amendment conflicts with state law, the City Council has the authority to decline to include the amendment on the general election ballot.

### **III. PREEMPTION**

#### **A. THE PROPOSED CHARTER AMENDMENT IS EXPRESSLY PREEMPTED BY MINN. STAT §§ 466.06 AND 466.11**

State law may preempt a local charter provision or ordinance when the state statute explicitly defines the extent to which its enactments preempt local regulation. *See State v. Kuhlman*, 722 N.W.2d 1, 4 (Minn. 2006). The proposed charter amendment has been completely preempted by statute.

Minn. Stat. § 466.11 provides, “[s]ections 466.01 to 466.15 are *exclusive of and supersede* all home rule charter provisions and special laws *on the same subject* heretofore and hereafter adopted” (emphasis added). Minn. Stat. § 466.06 provides, “[t]he governing body of any municipality may procure insurance against liability of the municipality and its officers, employees, and agents for damages, including punitive damages, resulting from its torts and those of its officers, employees, and agents.” The proposed charter amendment addresses the same subject – namely, liability insurance for the acts of employees. Therefore, under Minn. Stat. § 466.11, the provisions of Minn. Stat. § 466.06 is and can be the *only* law governing liability insurance for municipalities, their officers, employees, and agents and all charter provisions on the “same subject”, including the proposed charter amendment, are expressly preempted by state statute.<sup>1</sup> Allowing an election by citizens of the City of Minneapolis would be futile and the City Council may properly refuse to include the issue on the general election ballot. *See Hous. & Redevelopment Auth. v. City of Minneapolis*, 198 N.W.2d 531, 536 (Minn. 1972).

**B. THE STATE HAS FULLY OCCUPIED THE FIELD OF QUALIFICATIONS FOR PEACE OFFICERS**

“The doctrine of preemption is premised on the right of the state to so extensively and intensively occupy a particular field or subject with state laws that there is no reason for municipal regulation.” *Haumant v. Griffin*, 699 N.W.2d 774, 778 (Minn. Ct. App. 2005) (citing *Nordmarken v. City of Richfield*, 641 N.W.2d 343, 348 (Minn. Ct. App. 2002)).

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<sup>1</sup> Minn. Stat. §466.07 obligates public employers to defend and indemnify employees. Defense and indemnity are the very obligations provided to an insured by their insurer. Thus, Minn. Stat. §466.07 is also on the “same subject” as the proposed charter amendment and, as such, the amendment is expressly pre-empted by Minn. Stat. §466.11 regardless of whether the relevant statute is deemed to be §466.06, §466.07, or both.

The state legislature has enacted extensive qualifications for licensed peace officers. *See* MINN. STAT. § 626.843 (2016); MINN. R. 6700.0200-6700.2704 (2016). Among these qualifications are:

- Minimum standards of physical, mental, and educational fitness
- Citizenship requirements
- Driver's license requirements
- Education at a post-secondary school certified to provide professional peace officer education
- The learning objectives that must be met within a certified school's professional peace officer education program
- The courses of study, equipment, and facilities required by such certified schools
- The qualifications of instructors at such certified schools
- Continuing education courses
- The issues to be considered when establishing a code of conduct for peace officers
- The establishment, by the political subdivision or law enforcement agency employing the peace officer, of procedures for investigation and resolution of allegations of misconduct

*Id.*

The proposed amendment adds an additional qualification for Minneapolis police, and only Minneapolis police. Statewide uniformity in qualifications for licensed police officers is important because many law enforcement agencies have overlapping jurisdictions. For example, within the City of Minneapolis, the Minneapolis police, Hennepin County Sheriff, State Patrol, Metro Transit police, University of Minnesota police, Minneapolis Park Police, and any licensed peace officer who observes a felony in progress may take law enforcement action. Given the importance of uniform qualifications and extensive regulation, it is clear that the state legislature intends to occupy the field of qualifications for peace officers. Therefore, the requirement that Minneapolis police officers carry professional liability insurance is preempted because the state

has fully occupied the field. Because the proposed charter amendment is preempted, the City Council may refuse to include the issue on the general election ballot.

### **CONCLUSION**

The Minneapolis City Council has authority to decline to include proposed charter amendments on the ballot when such amendments are unconstitutional or conflict with the public policy of the state as evidenced by its general laws. In this case, the proposed charter amendment conflicts with PELRA, is expressly preempted by the political subdivisions tort liability statute, Minn. Stat. §§ 466.06 and 466.11, and is preempted because the state has occupied the field of qualifications of licensed peace officers. Therefore, the Minneapolis City Council acted properly in declining to include petitioners' proposed charter amendment on the November 8, 2016 general election ballot.

Date: August 17, 2016

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