

No. 125508

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**IN THE  
SUPREME COURT OF ILLINOIS**

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POLICEMEN’S BENEVOLENT LABOR COMMITTEE,	)	
	)	
Plaintiff-Respondent,	)	On Appeal From
	)	the Illinois Appellate Court, Fifth
	)	District, No. 5-19-0039
v.	)	
	)	On Appeal From the Circuit Court
CITY OF SPARTA,	)	of the 20th Judicial Circuit, Randolph
	)	County, 2017 MR 52
Defendant-Petitioner.	)	
	)	Honorable Gene Gross
	)	Judge Presiding

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**CITY OF SPARTA’S  
RULE 315(h) APPELLANT’S BRIEF**

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## **INTRODUCTION**

In this action, Petitioner/Defendant the City of Sparta (the “City”) is seeking reversal of the October 22, 2019 Rule 23 order of the Illinois Appellate Court, Fifth District, which erroneously found that an “Activity Points” system, which is one of the metrics that the City’s Police Department (the “Department”) utilizes to evaluate patrol officers, is an unlawful quota system under the Illinois Quota Act. 65 ILCS 5/11-1-12.

Instead, the City is seeking a determination similar to the 20th Judicial Circuit Court’s December 19, 2018 order granting summary judgment (Count I of the Amended Complaint) to the City and denying the Respondent/Plaintiff Policemen’s Benevolent Labor Committee’s (the “Union’s”) cross-motion on the same subject.

No questions are raised on the pleadings.

## **ISSUE PRESENTED**

Does the Illinois Quota Act prohibit a police department’s activity points policy that gives credit to officers who exercise their discretion in writing citations, but does not require patrol officers to write any citations, does not compare officers on the number of traffic citations written over a period of time, and does not otherwise set a ticket quota?

## **STATEMENT OF JURISDICTION**

Illinois Supreme Court Rule 315 confers jurisdiction upon this Court. The Appellate Court issued its Rule 23 opinion on October 22, 2019. On November 26, 2019, the City filed a time Petition for Leave to Appeal. On January 29, 2020, this Court granted the Petitions for Leave to Appeal. Under S. Ct. R. 315(h), the City filed a timely election to file this brief in support of its appeal.

## STATUTE INVOLVED

**65 ILCS 5/11-1-12--Quotas prohibited.** A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.

A municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. For the purposes of this Section, "points of contact" means any quantifiable contact made in the furtherance of the police officer's duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.

## SUMMARY OF POINTS RELIED UPON FOR REVERSAL

In a case of first impression, the Fifth District Court of Appeals found that the City's Activity Points Policy violates the Illinois Quota Act. (A. 1-14). However, the Activity Points Policy clearly does not fall under the commonly understood meaning of "quota" since no officer is required to write a single citation and officers are not compared based on their number of citations. To the contrary, City patrol officers receive credit for staying active by performing a wide range of activities, including writing citations, but they can achieve all of their evaluation goals without writing a single citation. As such, in meeting these activity points standards, patrol officers still maintain full discretion on whether the issuance of a ticket is proper in a particular situation.

The Court's reversal of this decision is imperative since it expressly negates the ability of the City of Sparta and other law enforcement agencies to continue to implement similar Activity Points Systems. As explained within an Appellate *amicus* brief filed by

the Illinois Association of Chiefs of Police before the Appellate Court,<sup>1</sup> “Activity Point Systems. . . are widely used by law enforcement agencies across the state to maintain accountability for officer duty performance.” (A. 69). Although the Appellate Court issued its decision as a Rule 23 Order, the Fifth District expressly rejected the Illinois Chiefs’ argument, implicitly warning law enforcement agencies across the state that they must avoid considering citations in any fashion in any evaluation system (irrespective of whether an actual citation quota exists). (A. 14 at ¶ 25).

However, as outlined below, because the Appellate Court’s decision relies on a portion of a provision that contradicts other provisions of the Act and the legislative intent, and because police agencies through the State must now decide whether to continue Activity Points Systems (or face inevitable litigation caused by this decision), this matter is ripe for Supreme Court intervention and reversal.

In particular, the Appellate Court failed to read all of the sentences of the Quota Act together as a whole. By doing so, it overlooked and contradicted express language in the statute, rendering that language meaningless. In the alternative, the Fifth District failed to consider latent ambiguities within the poorly worded and contradictory statute. Had the legislature wanted to prohibit municipalities from entirely considering citation activities within any evaluation policy, it could have implemented concise language to that effect. Instead, the legislature implemented language that prohibits municipalities from comparing officers about the number of citations issued and/or requiring officers to write a specific number of citations over a given period of time. Of course, these prohibitions mirror the commonly understood practice of establishing ticket quotas,

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<sup>1</sup> Based on information and belief, the Illinois Chiefs’ are taking steps to seek leave to file/refile their viewpoints before the Supreme Court.

which the Act is attempting to address. In fact, the Fifth District’s interpretation leads to the absurd result where the Quota Act is affecting evaluations systems that do not utilize quotas. Moreover, to the extent that a points of contact system violates the Act, the system must be “based on. . . the issuance of citations,” which clearly, was not the case in this situation.

The Appellate Court’s interpretation also contradicts the actual legislative intent of the Quota Act, as set forth in legislative debates, where bill sponsors repeatedly clarify that municipalities retain authority over requiring officers to write citations, as long as they are not requiring a quota. (A. 78-104). Accordingly, the City respectfully asks the Supreme Court to exercise its jurisdiction to recognize the legislative intent of the Quota Act for the Sparta Police Department, as well as other law enforcement entities throughout the State.

## **STATEMENT OF FACTS**

### **A. The Department’s Activity Points Policy**

Relevant facts of this matter are generally undisputed. The Union is the exclusive bargaining representative for all full-time patrol officers and dispatchers employed by the City. (A. 41, Affidavit of Assistant Police Chief Jeremy Kempfer, at ¶ 3). The Activity Points Policy went into effect on January 13, 2013, and shortly thereafter, the Union and the City worked together to codify the Activity Points Policy in writing. (A. 41-42 at ¶¶ 4, 5)

The Activity Points Policy uses a system of monthly activity points to track officers’ performance in the police department. (*See* A. 43-44, Activity Points Policy). All full time officers must meet their monthly activity points minimum. (*Id.*). Activities

that produce points include, but are not limited to: cases, arrests, citations, traffic stop warnings, extra duty assignments, drug task force duties, investigations that cannot be completed during the shift during which they originated, shooting range training, court time, etc. (*Id.*). Officers may participate in any of the activities listed in the Activity Points Policy to achieve their monthly point minimum. (*Id.*; *see also* A. 41 at ¶ 4). In other words, officers must simply engage in enough activities to achieve their monthly point minimum. (A. 49-50 at ¶¶ 2-3, A. 52-53, A. 63-64). In fact, officers can achieve a satisfactory evaluation without writing a single citation if, in the officer's discretion, a citation is not appropriate under the circumstances. (*Id.*).

In that respect, during oral argument before the trial court, counsel for the Union conceded the Activity Points Policy does not set a quota. (A. 25 at Tr. 8:5-15). Likewise, within pleadings responsive to the City's affirmative defenses, the Union expressly conceded that under the City's Activity Points Policy, "patrol officers are not required to write any citations. . . Instead, officers have a choice of earning activity points by writing a high number of traffic citations, writing zero traffic citations, or something in between." (A. 49-50 at ¶¶ 2-3).

For instance, throughout 2016, Officer (and former Union President) Steve Miles satisfied the Department's activity points standard by earning 65+ points each month and constantly performing within 20% of a range of average activity points in comparison to fellow comparable officers. (A. 52, Assistant Chief Jeremy Kempfer 10/15/18 Affidavit, at ¶6). Notwithstanding, Officer Miles earned the overwhelming majority of these activity points by engaging in activities other than writing citations. (*Id.* at ¶7). In fact, between May 31 and July 17, 2016, Officer Miles did not write a single citation, yet still

met expectations. (*Id.* at ¶8). Moreover, Officer Miles only wrote one citation during the entire month of December; two citations during the entire month of February; three citations during May, and just four citations during March; September and October, respectively. (A. 53 at ¶9). Officer Miles actually wrote almost as many citations (7) during a single November 5, 2016 shift as he did during the rest of October, November and December, combined (8). (*Id.* at ¶10).

It should also be noted that the evaluation form that the Union attached to its Amended Complaint that allegedly serves as the basis for its claim does not even involve or otherwise reference citations. Specifically, Officer Miles' evaluation for the first half of 2017, nowhere includes the word "citation" or measures the number of citations written over that six months or any other period of time. (A. 45-46, 63). Instead, the evaluation form only tabulates and compares officers on the basis of the aggregate number of "activity points" earned each month. (*Id.*). Accordingly, there is no measure of whether Officer Miles (or his peers) wrote a single traffic citation during this time period, and quite clearly, the Department does not compare officers based on their number of written citations. (*Id.*).

Simply put, patrol officers in the bargaining unit are not assigned a quota or otherwise required to write a certain number of citations over a certain period of time and the Department does not compare officers' aggregate number of citations during the evaluation process.

**B. Sparta and Other Law Enforcement Agencies Create and Enforce Activity Points Policies as an Important Evaluation Tool that Has Nothing to Do With Citation Quotas.**

Generally, the City's Police Department provides police patrol, traffic, and

investigations service to protect life and property, to enforce state laws and local ordinances, and to provide services and assistance to the residents and visitors of Sparta in a professional and courteous manner. (A. 41, Assistant Chief Jeremy Kempfer 7/25/17 Affidavit, at ¶2). The Activity Points Policy sets performance standards intended to effectively track patrol officers' general performance with respect to a variety of activities. (*Id.* at ¶4).

As further explained by the Illinois Association of Chiefs of Police before the Appellate Court, similar activity point systems are “widely used” throughout Illinois to monitor accountability for law enforcement officers:

The systems represent an understanding of time spent by officers in the performance a range of common police duties (making arrests, conducting traffic enforcement activities, engaging the community and issuing citations). Tasks which require more time are generally accorded higher point values.

(A. 70; *see also* Sparta's policy at A. 43-44).

Notwithstanding, again, under the Activity Points Policy (in Sparta and elsewhere), patrol officers have the discretion to accumulate points by focusing on any activity (e.g. arrests, traffic stops, drug task force work, etc.) and there is no requirement whatsoever that they write a certain number of citations over a certain period of time. (A. 41 ¶ 4, A.49 at ¶¶ 2-3).

Furthermore, as explained by the Illinois Association of Chiefs of Police, if extended State-wide, the impact of the Fifth District's opinion is extremely detrimental to the ability of law enforcement agencies to ensure that employees are being productive:

The failure to consider all aspects of officer job performance in the APS degrades the ability of law enforcement agencies to manage and control its workforce. The system is designed to allow for a full accounting of officer time on key activities. If activities like citations are excluded, this prevents

an agency from getting an accurate picture of the productivity of its officers. That accurate picture is essential for fair evaluation of the workforce and to ensure accountability to taxpayers who are paying the salaries of those officers.

(A. 72).

**C. Legislative Debates Show that the Quota Act is Limited to Quotas and Not Intended to Curtail Law Enforcement Agencies' Ability to Otherwise Evaluate Officers Related to Citations.**

Before the Quota Act was passed, signed into law and became effective on January 1, 2015, within extensive legislative debates on both the House and Senate floors, legislators expressly recognized the importance of the ability of law enforcement agencies to manage and control their workforce related to traffic safety. In fact, bill sponsors repeatedly clarified that the Quota Act is strictly focused on prohibiting situations where officers are required to write a specific number of citations over a given period of time. Likewise, municipalities even retain authority over requiring officers to write citations, as long as they are not requiring a quota or taking away “the discretion of human judgment from officers” related to citation quotas. As House Sponsor Jay Hoffman and Senate Senator Andy Manar repeatedly stated on the floor of the General Assembly:

- **House Sponsor Hoffman:** “Senate Bill 3411 is a straightforward Bill. The Bill simply prohibits counties, municipalities or the state from requiring a police officer to issue a specific number of citations in a given period of time. This would make it illegal to have a quota system where there is a specific number of citations required of a police officer to write in a given period of time. . .” 98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 44, attached as Ex. A. (A. 78).
- **Q:** “Will this legislation in any way restrict the sheriff or chief to assign special traffic details based on complaints from citizens, such as speeding in school zones or neighborhoods, and require an officer to write a ticket for those violations?” **House Sponsor Hoffman:** “This [bill] simply says that you



can't have a quota system where there has to be a number of citations given in a specific period of time. So, the answer would be no." *Id.* at 45 (A. 79).

- **Q:** "Will this legislation allow an officer to simply refuse to write a traffic citation when that officer is assigned to traffic enforcement?" **House Sponsor Hoffman:** "No." *Id.*
- **Q:** "Thank you. So, are you saying that as long as the department does not require a ticket quota or compare officers based on the number of citations issued, this Bill will not affect them?" **House Sponsor Hoffman:** "Yes." *Id.* at 46 (A. 80).
- **House Sponsor Hoffman:** ". . . The only thing that this Bill prohibits is requiring an officer to issue a specific number of traffic citations in a designated period of time." *Id.* at 47 (A. 81).
- **Q:** "Yeah. Jay, just a couple of quick questions again on legislative intent. This Bill is not meant to take away any authority from management, that they presently have within a police department anywhere?" **House Sponsor Hoffman:** "Well, the Bill is very specific in that it indicates that you could not require a specific number of citations be given in a period time, that's all it does. . ." *Id.*
- **House Sponsor Hoffman:** "Well. . . what you would say is, if a ticket should be written, a ticket should be written. But we wouldn't say that you have to write 150 tickets." *Id.*
- **House Sponsor Hoffman:** "This doesn't say that they shouldn't write the tickets. It simply says that you couldn't say you have to write 10 tickets in the first hour." *Id.* at 49 (A. 82).
- **Q:** "Okay. So, what is the real intent of this legislation? What are you really trying to do?" **House Sponsor Hoffman:** "I'm trying to say that a quota system is not something that is fair to the officers, is not something that the general public supports, and it removes the discretion of human judgment from officers, and you can still require that officers have to have so many stops, warnings, arrests, investigations, and community outreach. You just can't require, in a given period of time, that there be a quota on the number of citations that have to be issued." *Id.* at 51 (A. 85).
- **Q:** "The second question that hasn't come up is the concern about evaluation from office to officer. We've talked about a fixed number, and as I understand

it, there's also language in there that you couldn't compare. So, for instance, if a department had a rule that part of the evaluation was looking at, say, what was the average number of citations written by, say a patrolman in the department, that... and they were using this to look at compared evaluation, that that also would no longer be permitted. Is that... did I read that part correctly?" **House Sponsor Hoffman:** "I... I don't believe that would be prohibited." **Q:** "Okay. So... so, your understanding of this Bill is that they would still be able to compare two different officers on the basis of the number of citations issued?" **House Sponsor Hoffman:** "I believe that just can't compare officer to officer, but you can compare to an average. . . It could be compared, you just can't mandate a specific number of citations be given in a given period of time. . . Well, okay. I got... I want to be... I want to make sure that... that it's clear. It's my understanding, this Bill would prohibit entities from using the number of citations in a specific period of time in an evaluation of job performance. So, I.. the whole issue of using an average and looking at that, I don't know that that's prohibited, but as far as the entity using that number of citations in that specific time, it is my intent that you could not do that. . ." *Id.* at 53-54 (A. 87-88).

- **Senate Sponsor Manar:** "The bill simply states that a county, municipality, or State – State government cannot require a police officer to issue a specific number of citations -- I want to stress that -- citations in a given period of time. The bill also prohibits these government entities from using that criteria, specific number of citations in a specific period of time, in the matter of evaluation -- evaluating, excuse me, the job performance of -- of a police officer." 98th Ill. Gen. Assem., House Proceedings, April 10, 2014, at 42 (A. 92).
- **Senate Sponsor Manar:** "I think it is oftentimes tempting for individuals and local government to use specific number of citations in a specific given period of time as a way to raise revenue for local government. I think that takes away from a police officer's discretion and it puts divisions in particular communities that ought not be there." *Id.* at 43 (A. 93).
- **Senate Sponsor Manar:** ". . . The only thing that this Bill prohibits is requiring certain number of traffic citations in a specific period of time." *Id.* at 46 (A. 96).
- **Senate Sponsor Manar:** ". . . Again, the bill simply says that a predetermined outcome of issuing a certain number of citations in a given period of time and then evaluating that police officer on that criteria would be prohibited moving forward." *Id.* at 47 (A. 97).

- *Senate Sponsor Manar*: “. . . What we are saying this bill is that saying to a police officer that they have to write five tickets in one hour and then evaluating the job performance of that officer on that alone is prohibited.” *Id.* at 49 (A. 99).

**D. The Circuit Court Follows Legislative Intent to Dismiss the Lawsuit.**

The instant case is an action for a declaratory judgment, which claims that the City’s Activity Points Policy violates 65 ILCS 5/11-1-12 (“the Quota Act”). (C. 71-72 at ¶¶ 3, 4, 8). On December 3, 2018, oral arguments were heard on the parties’ cross-motions for summary judgment. (A. 18-39). During this hearing, the Union initially made an argument based on the Quota Act’s express statutory text. (A. 23 at Tr. 5:4-5). In response, the City argued that its Activity Points system did not include ticket quotas, and that as a matter of statutory interpretation, as evidenced by the statute’s clear and robust legislative history (which is quoted in the analysis below), there was no violation of the Quota Act. (A. 23-24).

At that point, Circuit Court Judge Gene Gross initiated the following exchange with the Union:

THE COURT: Okay. I guess I need to clarify a couple things I’ll ask you both. We deal with words, okay, and this is a case all about words, And trying to make sense out of this 65 ILCS 5/11-1-12 is difficult when you read it together. When you read the whole - all three sentences together, that’s really the only thing that’s in dispute. Because you’re not claiming that they’re requiring a quota system, right? You’re saying that they shouldn’t be allowed to assign points for points of contact evaluation based upon a citation?

UNION ATTORNEY VOYLES: Correct.

(A. 25 at Tr. 8:5-15).

Thereafter, the Court stated that it struggled to understand the exact meaning of different words in the statute (e.g. “citation,” “arrest,” “points of contact”) and that the

final two sentences of the statute “completely contradict one another.” (A. 26-28). Accordingly, the Circuit Court explained that based on the legislative history, it was clear that the intent of the Quota Act was to deter the practice of “speed traps” and that legislators still wanted to give municipalities the discretion to evaluate officers to prevent “lazy cops.” (A. 30). As such, the Court declared that the City’s activity points policy was not an unlawful quota system. (A. 34-35).

On December 19, 2018, the Circuit Court memorialized this decision in a final written order. (A. 15-16). The Union’s appeal followed. (C. 638-39).

**E. The Appellate Court Reverses.**

During the appeals process, the City raised two primary arguments in accordance with well-established canons of statutory construction, which the Fifth District acknowledged (but did not analyze or consider) within its decision. First, the City argued that when all of the statutory provisions are read together, the plain language of the Act reveals that the prohibition against using the issuance of citations as a point of contact relates back to the original prohibitions, which state that a municipality cannot require an officer to issue a specific number of citations within a designated period of time and/or otherwise prohibits comparing two officers about the number of citations issued. (A. 10 at ¶ 18).

In the alternative, as recognized by Judge Gross during oral argument, the City argued that reading each of the sentences together results in a latent ambiguity. (A. 7-8 at ¶ 11). Quite obviously, the legislature did not draft straightforward statutory language. While even assuming *arguendo* that a literal reading of the Act’s final sentence suggests that a municipality may never evaluate a patrol officer based on citation activities, the

earlier sentences of the statute modify that prohibition considerably. 65 ILCS 5/11-1-12. As such, the breadth of the statute, if anything, is unclear. Based on this ambiguity, the Court should resort to extrinsic aides of statutory construction. Specifically, before passage of the Quota Act, as summarized above, there was robust legislative debate that completely counters any argument that the statute should be expanded to situations where officers are not required to write a single citation or comply with a ticket quota. (A. 78-104).

In any event, on October 22, 2019, within a Rule 23 Opinion, the Fifth District Appellate Court reversed the Circuit Court’s decision by denying the City’s motion for summary judgment and granting the Union’s cross-motion. Initially, the Fifth District properly conceded that:

All provisions of a statute should be viewed as a whole. *Brucker v. Mercola*, 227 Ill. 2d 502, 514. Accordingly, all words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation. *Sandholm*, 2012 IL 111443, ¶ 41. Statutes are to be construed so that no word, clause, or sentence is rendered meaningless or superfluous. *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 397 (1994). . .

(A. 9-10 at ¶ 17).

However, instead of accepting these standards of statutory construction (or even analyzing them), the Appellate Court found that plain language in the final sentence of the statute prohibited the City from including citations in its Activity Points policy. (A. 10-11 at ¶ 19). Moreover, even though the standard of review was *de novo*, the Fifth District only focused on a few of the arguments raised by the Circuit Court related to whether the terms “arrest” and “citation” are ambiguous. (A. 11-12 at ¶¶ 20-21). Accordingly, based on a narrow interpretation of just one sentence of the Quota Act, the

Appellate Court refused to consider the other sentences in the provisions or the statute's robust legislative debates. (A. 9-10 at ¶ 17). Moreover, in spite of the absurdity of expanding the "Quota Act" to situations that do not involve quotas, the Fifth District rationalized:

Because the policy includes the issuance of a citation as a permissive point of contact for evaluation purposes, it violates section 11-1-12. Although it seems like an officer can achieve the monthly minimum points total without issuing a single citation, this policy still violates section 11-1-12 because it does exactly what is prohibited by the plain language of the statute, i.e., it permits the department to evaluate its officers by including the issuance of citations or the number of citations issued, among other things, as a point of contact.

(A. 13-14 at ¶ 24).

Last but not least, the Appellate Court rejected arguments raised in the *amicus* brief filed by the Illinois Association of Chiefs of Police, which again, sought clarity on this issue affecting law enforcement agencies State-wide. (A. 14 at ¶ 25). Not only did the Fifth District expressly reject the Illinois Chiefs' arguments and concerns, it derisively chastised the suggestion that agencies could award patrol officers points for exercising discretion in writing citation as part of a larger evaluation process:

we do not find persuasive the *amicus*'s argument that we should affirm the trial court's ruling because this same points-based system is commonly utilized in police departments throughout Illinois, and the failure to include citation activity in the evaluation policies will impair the ability of the departments to thoroughly evaluate its officers and impair important public safety efforts. As the City argued that an officer can currently meet the monthly activity points total without issuing a single citation, we fail to see how our decision will impair the department's ability to evaluate its officers.

(*Id.*).

## STANDARD OF REVIEW

When determining statutory construction, an appellate court's review is *de novo*. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11 (2011). Likewise, a court's review of whether summary judgment was appropriate is subject to a *de novo* review. *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001).

## ARGUMENT

As explained below, the Appellate Court failed to interpret the entire statute in its entirety, which has rendered part of the statute as superfluous. Either the plain meaning of the entire Quota Act should be enforced, or in the alternative, it should be recognized that ambiguities exist amongst different sentences and words of the statute. In that case, the Quota Act's unambiguous legislative history, as evidenced within legislative debates, clearly supports the City's interpretation that the statute is strictly focused on prohibiting quotas (situations where officers are required to write a specific number of citations over a given period of time), and that municipalities retain authority to count citations written as a point of contact, as long as they are not comparing officers about the number of citations issued or otherwise requiring a quota.

### **A. The Final Sentence of the Quota Act Should Be Read in Conjunction With and Should Not Be Rendered As Superfluous to Other Sections of the Statute.**

Within its Order, the Fifth District advocates an overly literal interpretation of the Act's final sentence, which is inconsistent with the previous statutory language. In actuality, the plain-language of the Quota Act supports the City's interpretation, especially considering the well-established principle that provisions of a statute should be read together. "All provisions of a statute should be viewed as a whole. Accordingly,

words and phrases should be interpreted in light of other relevant provisions of the statute and should not be construed in isolation.” *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41. It is also well established that “[e]ach word, clause and sentence of [a] statute, if possible, must be given reasonable meaning and not rendered superfluous.” *Brucker v. Mercola*, 227 Ill. 2d 502, 514 (2007).

As background, the parties’ dispute involves the interpretation of the two different parts of the Quota Act. First, in a mandatory fashion, the statute prohibits conduct that is related to establishing quotas for traffic citations:

- “A municipality may not require a police officer to *issue a specific number* of citations *within a designated period of time*. . .” and
- “A municipality may not, for purposes of *evaluating a police officer’s job performance, compare the number of citations issued* by the police officer to the number of citations issued by any other police officer who has similar job duties.”

65 ILCS 5/11-1-12. (emphasis added). Then, in a more permissive/directory manner, the statute states:

- “Nothing in this Section shall prohibit a municipality from *evaluating a police officer based on* the police officer’s points of contact. For the purposes of this Section, ‘points of contact’ means any quantifiable contact made in the furtherance of the police officer’s duties, *including, but not limited to*, the number of traffic stops completed, arrests, written warnings, and crime prevention measures,” and
- “Points of contact shall not include either the *issuance of citations* or the *number of citations issued* by a police officer.”

*Id.* (emphasis added).

As highlighted above, both the mandatory and permissive parts of the statute utilize nearly identical terminology, such as “issuance of citations,” “evaluating a police officer” and “number of citations,” such that it is clear that they are intended to be read together. The first two sentences include the prohibitions on employers. More



specifically, the first sentence's prohibition on the issuance of citations explicitly forbids a department from requiring officers to write a "specific number of citations within a designated period of time." Likewise, the second sentence restricts "evaluating a police officer," but only to the extent that a law enforcement entity compares one officer about the "number of citations issued" to another officer or officers.

In the third and fourth sentences, the legislature acknowledges that certain evaluations are acceptable. "Evaluating a police officer" (which is nearly identical to the "evaluating a police officer's job performance" phrase stated in the earlier sentence) "**based on** . . . points of contact," which includes "**any quantifiable contact that includes but is not limited to...**" is permissible, except as provided in the final sentence. A review of the choice of words in the final sentence, however, ("number of citations" and "issuance of citations") reveals it is merely an affirmation of the prohibitions in the first and second sentences. The parties' dispute really boils down to whether these sentences should be read together or in isolation.

If all of these phrases are read together, as required under the canons of statutory interpretation, then clearly, the City has not violated the Quota Act. Under the Activity Points Policy, no officers are compared with each other related to the "number of citations issued." (A. 55). In fact, the evaluation form that the Union attached to the complaint does not even specify the number of citations an officer issued. (A. 45-46).

Likewise, with respect to the "issuance of citations," under the Activity Points Policy, no officer is required to write a "specific number of citations within a designated period of time." To the contrary, the Union has acknowledged that under the Activity Points Policy, "patrol officers are not required to write any citations. . . Instead, officers

have a choice of earning activity points by writing a high number of traffic citations, writing zero traffic citations, or something in between.” (A. 49 at ¶¶ 2-3). In fact, based on undisputed evidence, Officer Miles was able to satisfy activity points standards during 2016 while writing minimal citations, going days, weeks and even months at a time without writing a single citation. (A. 52-53 at ¶¶ 4-11, A. 57-58).

By reading the final sentence of the statute in isolation, the Appellate Court has failed to properly interpret statutory language and effectively rendered statutory language as superfluous. In fact, the Appellate Court’s opinion results in the absurd result that a non-quota policy is subject to the Quota Act. This matter is ripe for adjudication to provide a proper interpretation to agencies throughout the State who believe that similar evaluation standards are necessary to keep law enforcement personnel active and ready.

**B. The Appellate Court Ignored the Statutory Language “Based On.”**

Notwithstanding an obligation to read all of the statutory terms as a whole, the Fifth District improperly fixated on the last line of the statute stating that points of cannot include “either the issuance of citations or the number of citations issued.” (A. 13-14 at ¶ 24). Ultimately, the Appellate Court erroneously determined that “[b]ecause the [City’s Activity Points] policy includes the issuance of a citation as a permissive point of contact for evaluation purposes, it violates [the Quota Act].” (*Id.*). (emphasis added).

However, the word “permissive” does not appear in the Act, and “permissive” points do not violate the Act. In fact, the statute states exactly the opposite. Under the Act, a “points of contact” system only exists where a department “evaluat[es] a police officer based on the police officer’s points of contact.” 65 ILCS 5/11-1-12. Points of contact is then defined as “any quantifiable contact [which includes] the number of traffic

stops completed, arrests, written warnings, and crime prevention measures.” *Id.* However, again, “[p]oints of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” *Id.*

Reading these provisions together, clearly, an evaluation system based on traffic stops, arrests, written warnings, etc. is expressly allowed under this language. For instance, a department could require officers to make 50 traffic stops each month. On the other hand, further re-enforcing the first sentence, an evaluation system cannot be based on the issuance of citations. For example, a department could not require officers to make 50 traffic stops each month, 25 of which must result in the issuance of citations.

In contrast, here, within the City’s Activity Points Policy, although the Department counts citations if an officer writes them, no officer is required to write a single citation. (A. 41 ¶ 4, A.49 at ¶¶ 2-3). Therefore, the essential question is whether this particular evaluation policy is “**based on**” the “issuance of citations or the number of citations issued by a police officer.”

To ascertain the ordinary and popular meaning of words, a court can appropriately use a dictionary as a resource. (A. 11, *citing Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 275 (2009)). In this context, the Oxford dictionary defines “base” as “have as the foundation for (something); use as a point from which (something) can develop.” *Lexico-Oxford* online dictionary, available at: <https://www.lexico.com/en/definition/base>.

Clearly, here, the issuance of citations was not the foundation for or the point from which the Activity Points policy was developed. To the contrary, the Fifth District called the practice of counting citations “permissive,” which literally means “allowed but not obligatory; optional.” *See* <https://www.lexico.com/en/definition/permissive>.

Something that is optional within a system clearly cannot be viewed as the foundation of it.

In fact, as recognized by the Appellate Court, “it seems like an officer can achieve the monthly minimum points total without issuing a single citation.” (A. 13-14 at ¶ 24). Moreover, the evaluation form that the Union attached to the complaint does not even specify the number of citations an officer issued. (A. 45-46).

Clearly, the Activity Points system is not based on the issuance of citations; it is based on the number of activity points officers accrue by completing various tasks that may or may not involve citations. (A. 13 at ¶ 23, *conceding*: “this policy compares the activity point totals with that of other department officers with similar job duties in order to evaluate the department’s officers.”). Accordingly, the system clearly does not constitute an improper points of contact system.

**C. If Anything, the Union’s Interpretation Highlights Latent Ambiguities in the Act, which Allows the Court to Rely Upon the Statute’s Legislative History.**

As explained above, the plain language of the Act supports the City’s interpretation when the statute is read as a whole. However, the Union has tried to spin a different interpretation based on a reading of a select piece of the same statutory language, and admittedly, a court may find language to be unclear despite both parties’ contentions that the plain language is unambiguous and/or vice versa. *See Stewart v. Indus. Comm’n*, 115 Ill. 2d 337, 340 (1987). In this case, if the language cannot be read as a whole as consistent, there is clearly a latent ambiguity. *Id.* In resolving such a latent ambiguity, the Court should recognize the legislative debates prior to enactment of the statute, which clarify the legislature’s intent and make clear that the City is not engaging

in conduct that violates the Act. *Krohe v. City of Bloomington*, 204 Ill. 2d 392, 398 (2003) (stating “[a] statute’s legislative history and debates are valuable construction aids in interpreting an ambiguous statute.”).

Of course, had the legislature intended to ban all consideration of citations, the legislature could have passed an extremely simple and straightforward statute that entirely prohibits departments from requiring officers to write citations and/or prohibits departments from considering all citations within any evaluation (as opposed to just quotas). It did not do that. As such, it was and would be overreach to find that the final sentence of the Act (“Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer”) creates a *per se* prohibition over considering traffic or any other citations in any evaluation system. At a minimum, this literal interpretation is in conflict with the earlier mandatory sections of the Act, which are entirely focused on prohibiting the practice of “requir[ing] a police officer to issue a specific number of citations within a designated period of time” or “evaluating” officers related to the “number of citations” issued. 65 ILCS 5/11-1-12.

The position and arguments of the Union throughout this litigation also suggests the presence of such latent ambiguities within the Act. In particular, within its Appellate brief, without citation, the Union asked the court to read into the Act and otherwise adopt a series of non-statutory terms (e.g. direct, indirect, back-door, front-door). (A. 117-18). Of course, to the extent that the Act was clear and unambiguous, the Union would not have to introduce terms and concepts that are not stated within express statutory language.

Moreover, at times, the Union has introduced this “indirect/direct” and “front-door/back-door” language in order to erroneously argue that that the different sentences of the statute should be read independently, instead of collectively. For instance, as counsel for the Union argued to the Circuit Court: “There is a front door direct prohibition at the first paragraph of the act and a back door indirect prohibition to Paragraph 2 of the act.” (A. 21). However, within its reply brief to the Appellate Court, in arguments related to what it calls “back-door” ticket quotas, the Union inconsistently acknowledged that it is reasonable for individuals to have a difference of opinion about the meaning of the statutory language. (A. 137, stating “[p]erhaps one could construe the middle two sentences of the second paragraph of the Act as granting permission, but it is better understood as language demonstrating the legislature’s intent of not prohibiting or interfering with a given state of affairs.”).

Accordingly, the Union’s arguments about whether this statutory language applies to “indirect” and “back-door” policies highlights what the Union perceives to be ambiguities in the statutory language. If that is the case, the City respectfully suggests that this Court should resolve these clear ambiguities by looking to the statute’s legislative history and/or its mandatory provisions, which only focus on situations where officers are required to issue a “specific number of citations within a designated period of time.”

**D. There Are Numerous Other Ambiguities in the Statute.**

The Quota Act contains numerous ambiguities that are relevant to this case. For instance, the statute does not attempt to explain how to treat activities that inherently involve the issuance of citations. As alluded to by Judge Gross, “citations” are types of

“arrests.” While the Appellate Court vaguely rejected this argument by adopting its “popularly understood meaning” and citing Black’s Law Dictionary, there is absolutely no guidance on how these words are supposed to be treated under the Act.

For instance, DUI arrests almost inherently involve the issuance of (single or multiple) citations. *See* 625 ILCS 5/11-501(a)(1), (a)(2). Based on the Appellate Court’s overly-narrow interpretation of the Act, it is unclear whether a municipality can evaluate officers for any DUI arrests or any underlying traffic stops when such activities result in the issuance of citation, even though an arrest and traffic stop are clearly identified in the Act as an allowable point of contact. Notably, the statute also does not even specify what types of citations (e.g. traffic, ordinance violation, etc.) are actually covered under the Act. And again, these questions have nothing to do with the unlawful practice of ticket quotas (requiring officers to write X number of traffic tickets in a given period of time), which according to legislative debates, was clearly the conduct upon which the legislature was focused. (*See* A. 81, 96: “. . . The only thing that this Bill prohibits is requiring certain number of traffic citations in a specific period of time.”).

Again, the Union’s arguments about whether this statutory language applies to the City’s Activity Points policy highlights ambiguities in the statutory language. As explained below, such ambiguities can be resolved by looking at the Quota Act’s legislative history and debates.

#### **E. Legislative History is Consistent With the City’s Position**

To determine legislative intent of a statute, the Supreme Court has referred to a statute’s legislative debates. *See Krohe v. City of Bloomington*, 204 Ill. 2d 392, 398 (2003) (stating “[a] statute’s legislative history and debates are valuable construction aids in interpreting an ambiguous statute.”). Here, the Quota Act’s unambiguous legislative

history clearly supports the City's interpretation that the statute is strictly focused on prohibiting situations where officers are required to write a specific number of citations **over a given period of time**, and that municipalities even retain authority over requiring officers to write citations, **as long as they are not requiring a quota**. (See 98th Ill. Gen. Assem., House Proceedings, May 21, 2014 at 44-57; 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014 Transcripts at 42-54) (attached at A. 78-104).

In particular, House Sponsor Jay Hoffman and Senate Senator Andy Manar repeatedly communicated to the General Assembly that the "only thing" that this "straightforward" legislation was focused on and would make illegal was the practice of "requiring a police officer to issue a specific number of citations in a given period of time." (A. 78, 79, 81, 92, 96). In that respect, debate was clear that "as long as [a] department [like Sparta] does not require a ticket quota or compare officers based on the number of citations issued, this Bill will not affect them." (A. 80, see also A. 97: "the bill simply says that a predetermined outcome of issuing a certain number of citations in a given period of time and then evaluating that police officer on that criteria would be prohibited moving forward.").

In contrast, aside from these restrictions on quotas, the purpose of the legislation was not intended to "take away any authority from management, that they presently have within a police department anywhere." (A. 81). For instance, the legislation was not intended in "any way [to] restrict the sheriff or chief to assign special traffic details based on complaints from citizens, such as speeding in school zones or neighborhoods, and require an officer to write a ticket for those violations." (A. 79).



The Act was also not intended to allow an officer “to simply refuse to write a traffic citation when that officer is assigned to traffic enforcement,” (A. 79). Moreover, “if a ticket should be written, a ticket should be written. . . This doesn’t say that they shouldn’t write the tickets. It simply says that you couldn’t say you have to write 10 tickets in the first hour.” (A. 82-83, *see also* A. 99: “[w]hat we are saying this bill is that saying to a police officer that they have to write five tickets in one hour and then evaluating the job performance of that officer on that alone is prohibited.”).

In addition, both Representative Hoffman and Senator Manar provided express statements that the Quota Act was attempting to address the effects of actual ticket quotas, something that is clearly not applicable here:

- **Q:** “Okay. So, what is the real intent of this legislation? What are you really trying to do?” **House Sponsor Hoffman:** “I’m trying to say that a quota system is not something that is fair to the officers, is not something that the general public supports, and it removes the discretion of human judgment from officers, and you can still require that officers have to have so many stops, warnings, arrests, investigations, and community outreach. You just can’t require, in a given period of time, that there be a quota on the number of citations that have to be issued.” *Id.* at 51.
- **Senate Sponsor Manar:** “I think it is oftentimes tempting for individuals and local government to use specific number of citations in a specific given period of time as a way to raise revenue for local government. I think that takes away from a police officer’s discretion and it puts divisions in particular communities that ought not be there.” *Id.* at 43.

Accordingly, the City’s Quota Act interpretation is consistent with these legislative debates. Under the City’s interpretation and the Activity Points policy, officers may receive credit for the time spent writing a citation, but there is no requirement whatsoever that they write a certain number of tickets over a certain period of time, and officers clearly are not evaluated on such a metric. (A. 49-50, 52-53, 63-64). Quite

simply, in the context of the concerns stated by legislators throughout the Act's debate history, under the Activity Points system, there is no "predetermined outcome." There is no "fixed number." The Department is not attempting to pressure officers to "raise revenue." As previously acknowledged by the Union, this is simply not a situation involving a quota. (A. 25 at Tr. 8:5-15).

**F. The Appellate Court's Interpretation Leads to an Absurd Result.**

For the above reasons and others, the Appellate Court's interpretation leads to an absurd result. There is no indication whatsoever that the legislature wanted to deter officers from writing tickets, and in fact, the floor debate is quite clear that municipalities could still insist that officers write tickets under appropriate circumstances. (e.g. "if a ticket should be written, a ticket should be written."). However, the Appellate Court's opinion leads to the result that a non-quota policy is prohibited by the Quota Act. A perhaps even more outrageous practical effect is to discourage and even penalize officers, who use their discretion to actually write tickets (even when they are not required to do so), by prohibiting an employer from granting any credit or points for such activity. As a result, officers may actually choose not to write tickets and instead engage in other activities just to make his/her activity points. In fact, officers may actually choose to write a warning instead of a citation, not because the offender deserves the warning, but because the officer can receive points for a warning but not for a citation.

This is clearly not what the legislature intended. Going even further, the Appellate Court decision creates a concern about whether a Chief who actually personally observes an officer fail to write a ticket to a speeder going 90 miles an hour in a 30 mile an hour zone could consider that failure in an evaluation. Again, the legislative history is clear that departments retain the ability to order officers to write citations under such a

scenario. (A. 81: “if a ticket should be written, a ticket should be written. But we wouldn’t say that you have to write 150 tickets.”)

In short, the Appellate Court decision creates more questions than provides answers and leads to a ridiculous result. Accordingly, the Appellate Court’s erroneous legal conclusion that a municipality cannot consider citations in its Activity Points system, based on its overly literal interpretation of the Quota Act, should be reversed and clarified. *See Vill. of Lake Villa v. Bransley*, 348 Ill. App. 3d 280, 284 (2d Dist. 2004) (stating “courts must avoid reading statutory language either too literally or too broadly, and must try to garner what the legislature intended“); *Grever v. Bd. of Trustees of Illinois Mun. Ret. Fund*, 353 Ill. App. 3d 263, 266–67 (2d 2004) (stating “[a] literal interpretation is not controlling where the spirit and intent of the General Assembly in enacting a statute are clearly expressed, its objects and purposes are clearly set forth, and a literal interpretation of a particular clause would defeat the obvious intent”); *People v. Hanna*, 207 Ill. 2d 486, 498 (2003) (stating “where a plain or literal reading of a statute produces absurd results, the literal reading should yield.”).

### CONCLUSION

For the foregoing reasons, this Court should grant leave to reverse the erroneous legal conclusion adopted by the Appellate Court.

Respectfully submitted,

**CITY OF SPARTA**

By: /s/ Paul Denham  
One of Its Attorneys

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Policemen's Benevolent Labor Committee v. City of Sparta

No. 125508

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**IN THE  
SUPREME COURT OF ILLINOIS**

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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 28 pages.

Respectfully submitted,

**CITY OF SPARTA**

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Dated: March 4, 2020

No. 125508

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**IN THE  
SUPREME COURT OF ILLINOIS**

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POLICEMEN’S BENEVOLENT LABOR COMMITTEE,	)	
	)	
Plaintiff-Respondent,	)	On Appeal From
	)	the Illinois Appellate Court, Fifth
	)	District, No. 5-19-0039
v.	)	
	)	On Appeal From the Circuit Court
CITY OF SPARTA,	)	of the 20th Judicial Circuit, Randolph
	)	County, 2017 MR 52
Defendant-Petitioner.	)	
	)	Honorable Gene Gross
	)	Judge Presiding

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**APPENDIX**

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**IN THE  
SUPREME COURT OF ILLINOIS**

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POLICEMEN’S BENEVOLENT	)	
LABOR COMMITTEE,	)	
	)	On Appeal From
Plaintiff-Respondent,	)	the Illinois Appellate Court, Fifth
	)	District, No. 5-19-0039
v.	)	
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CITY OF SPARTA,	)	of the 20th Judicial Circuit, Randolph
	)	County, 2017 MR 52
Defendant-Petitioner.	)	
	)	Honorable Gene Gross
	)	Judge Presiding

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NOTICE  
Decision filed 10/22/19. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2019 IL App (5th) 190039-U

NO. 5-19-0039

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

POLICEMEN’S BENEVOLENT LABOR	)	Appeal from the
COMMITTEE,	)	Circuit Court of
	)	Randolph County.
Plaintiff-Appellant,	)	
	)	No. 17-MR-52
v.	)	
	)	
THE CITY OF SPARTA,	)	Honorable
	)	Eugene E. Gross,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.  
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* We reverse the circuit court’s judgment denying the appellant’s motion for summary judgment and also reverse the court’s judgment granting the appellee’s cross-motion for summary judgment where the appellee’s evaluation policy of its full-time police officers at the Sparta police department violated section 11-1-12 of the Illinois Municipal Code (65 ILCS 5/11-1-12 (West 2016)). We remand with instructions for the court to enter summary judgment in favor of the appellant on count I of the appellant’s complaint.

¶ 2 The appellant, the Policemen’s Benevolent Labor Committee (Union), filed a complaint for declaratory judgment against the appellee, the City of Sparta (City), seeking a declaration that the City’s activity points policy (evaluation policy or policy)

for evaluation of its full-time police officers violated section 11-1-12 of the Illinois Municipal Code (Code) (65 ILCS 5/11-1-12 (West 2016)) because it awarded points to officers who issued citations and, thus, established an unlawful quota. The trial court granted summary judgment in favor of the City, finding that the policy was not unlawful under section 11-1-12 because it did not establish a quota. For the following reasons, we reverse the trial court's order granting summary judgment in favor of the City on count I of the Union's complaint, reverse the court's denial of the Union's motion for summary judgment, and remand with directions.

¶ 3 The Union is the exclusive bargaining representative for all full-time patrol officers and dispatchers employed by the City. The evaluation policy went into effect on January 13, 2013, and thereafter, the Union assisted the City in codifying it in writing. The evaluation policy uses a system of monthly activity points to track and evaluate officers' performance in the Sparta Police Department (department). All full-time officers must meet the monthly activity points minimum, and officers may participate in any of the listed activities to achieve their point minimum. Some of the activities that produce points include, but are not limited to, cases, issuing citations, issuing traffic stop warnings, undertaking extra-duty assignments, undertaking drug task force duties, completing investigations that cannot be completed during a regular shift, participating in shooting range training, and court time. Each activity is worth a certain amount of points, and the officers have the discretion to determine how they want to accumulate points. For instance, issuing citations is worth two points, where issuing a verbal or written traffic stop warning is only worth one point. The City contends that the point value is

determined by the length of time that the task takes to complete; those tasks that take more time are worth more points. The City also contends that the officers could achieve a satisfactory monthly evaluation without issuing a single citation that month.

¶ 4 On September 19, 2018, the Union filed an amended complaint for declaratory judgment<sup>1</sup> in accordance with section 2-701 of the Code of Civil Procedure (735 ILCS 5/2-701 (West 2016)), seeking a declaration that the evaluation policy established an unlawful ticket quota prohibited by section 11-1-12 of the Code (65 ILCS 5/11-1-12 (West 2016)). Section 11-1-12 instructs as follows:

“A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.

A municipality may not, for purposes of evaluating a police officer’s job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer’s points of contact. For the purposes of this Section, ‘points of contact’ means any quantifiable contact made in the furtherance of the police officer’s duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12 (West 2016).

¶ 5 The Union contended that the evaluation policy violated section 11-1-12 because it required the City’s police officers to issue a certain number of citations within a designated period of time, *i.e.*, it required all full-time officers to meet the monthly points standard and failure to reach that monthly minimum resulted in discipline. In addition,

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<sup>1</sup>The Union’s complaint asserted two counts: count I sought a declaratory judgment determination on whether the policy violated section 11-1-12 of the Code, and count II requested that the court confirm an unrelated arbitration award on the Union’s grievances with a new scheduling practice that the City had adopted. The summary judgment motions did not deal with count II and, thus, it is not part of this appeal. For clarity, we will not refer to count II any further in this decision.

the Union argued that the policy compared the number of issued citations by one officer to other officers by including the issuance of citations as a point of contact in its evaluation process. Thus, the Union argued that the policy violated the plain language of section 11-1-12. Attached to the amended complaint was the written policy, which detailed the evaluation policy.

¶ 6 On October 16, 2018, the Union filed a motion for partial summary judgment on count I of its complaint in which it contended that the following material facts were uncontested: that the officers were evaluated monthly, annually, or semi-annually; that the evaluation form indicated that the department compared the number of citations issued by peer officers when evaluating officer performance; and that although the officers were evaluated on their point totals of various activities, officers received two points for issuing citations. The Union also contended that section 11-1-12 was unambiguous and that the plain language prohibited the consideration of the number of citations issued in evaluations or in policies measuring points of contact. The Union further argued that the City's evaluation policy created an "indirect quota system" by counting and comparing citations issued among the officers and by considering citations as a point of contact.

¶ 7 Attached to the motion was a July 25, 2017, affidavit from Jeremy Kemper, the assistant chief of police for the department, in which he stated that the City's policy used a system of monthly activity points to track its officers' performance; that all full-time officers must meet a monthly point minimum; that points are accrued based on a variety of activities, one of which includes the issuance of citations; and that officers may choose

to participate in any of the activities to achieve their monthly point minimum (there was no requirement that the officers engage in specific activities). Kemper opined that the policy did not measure officers' points of contact nor did it set a points of contact quota. He noted that, if the trial court determined that the policy violated section 11-1-12, the City may be forced to retroactively reevaluate its officers' performance over the last 28 months to determine the impact, if any, that the citations had on their monthly performance scores. He noted that this reassessment would be administratively burdensome to the City and a detriment to the public. Also attached to the Union's motion for partial summary judgment was the department's activity points policy and a 2017 department evaluation form, which included the 2016 activity points logs for Officer Steve Miles.

¶ 8 Thereafter, the City filed a cross-motion for summary judgment in which it argued that under the policy, the officers were not required to issue any citations within a designated period of time and that the City did not compare the number of citations issued by an officer with the number of citations issued by any other officer who had similar job duties. The City disagreed that section 11-1-12 prohibited it from considering the issuance of citations in any evaluation system. The City acknowledged that section 11-1-12 prohibited a municipality from requiring officers to write citations but noted that this was only to the extent that a "specific number of citations" were required "within a designated period of time." As for the points of contact provision, the City argued that the prohibition against considering the issuance of citations in a points of contact evaluation merely precluded the department from comparing the number of citations

issued “within a designated period of time,” and that the language only clarified that municipalities could not establish points of contact systems that circumvented the general prohibition against ticket quotas. The City argued that a point of contact system that included citations did not violate that provision because it did not set any ticket quota “within a designated period of time.”

¶ 9 The City further argued that the legislative history of section 11-1-12 demonstrated that a municipality was permitted to require its officers to write tickets under appropriate circumstances and to give its officers credit for time spent writing a citation; a municipality had the authority to encourage and require officers to write citations as long as the municipality did not require a quota, *i.e.*, did not require officers to issue a certain number of citations within a designated period of time. The City argued that the department only tabulated and compared officers based on the aggregate number of activity points each month and did not consider whether any individual officer had written a single traffic citation during a single evaluation period. As there was no requirement in the policy that an officer write a certain number of tickets within a certain period of time, the City argued that the policy did not violate section 11-1-12.

¶ 10 Attached to the motion was Kemper’s July 2017 affidavit, the department’s activity points policy, and Kemper’s second affidavit dated October 15, 2018. Attached to Kemper’s second affidavit was the department’s 2016 activity logs and evaluations for Officer Steve Miles, which indicated that Officer Miles had satisfied the department’s activity points minimums each month in 2016, that he had earned the overwhelming majority of his activity points by engaging in activities other than issuing citations, that

between May 31 and July 17, 2016, he did not issue a single citation; and that the department did not consider the number of citations that he issued in his evaluations.

¶ 11 At the December 3, 2018, hearing on the cross-motions for summary judgment, the following colloquy occurred between the trial court and counsel:

“THE COURT: You said tickets in argument, but citation is the word. That’s the key word \*\*\* when I read the latest arguments you both have made, we’ve kind of now focused in on the last sentence that says, ‘Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.’ Is that the gist of your dispute? Would you agree with that?

[THE UNION’S COUNSEL]: I think that makes it very clear, and \*\*\* its our position that it’s still prohibited by the \*\*\* preceding sentences in that paragraph.

THE COURT: Okay. Now, here’s my problem I have in trying to make sense out of that sentence. I also agree with your authorities that you’ve cited which say that when the meaning’s clear that we don’t even go to the legislative history. I mean, if I can understand. If there was just one sentence that said points of—if you couldn’t include the issuance of citations or the number of citations, it would—that’s a pretty clear sentence, but what’s a citation? What is a citation? I’m asking.

[THE UNION’S COUNSEL]: Well, I take it to mean a traffic ticket, but I suppose it could mean just about anything. It could be an ordinance ticket or some other situation.

\* \* \*

THE COURT: \*\*\* [A] citation is an arrest. Anytime you write a ticket you’re arresting somebody.

So the previous sentence in the paragraph I’m trying to interpret says points of contact means any quantifiable contact in the furtherance of a police officer’s duties including, but not limited to, the number of traffic stops. \*\*\* [A] citation’s always an arrest. So if you can count arrests, how can you not count a citation? And that’s \*\*\* where this paragraph starts getting infirm.

\*\*\* So they can create a system of evaluation based on points of contact, and they can use things like traffic stops completed, arrests, written warnings, crime prevention. Then it goes to say, ‘Points of contact shall not include issuance of citations or the number of citations.’ So because \*\*\* those two sentences completely contradict one another. So I think that makes us go to the legislative history. What am I missing on that?

[THE UNION’S COUNSEL]: Your Honor, I wouldn’t agree with that. I understand what you’re saying. \*\*\* Of course, anytime a person’s freedom is prohibited they’re arrested. You don’t need the arrest or the citation. So I agree

with that, and in a broad sense, they could all be arrests. Even a warning can start off as an arrest. \*\*\* But when I think the legislature uses these terms, that means that they intend something different when they use different terms. Had they just repeated arrests in the last sentence, and there's case law on this, when they use different terms, they mean something different. \*\*\*

\* \* \*

[THE CITY'S COUNSEL]: \*\*\* Now, I will say that the final sentence, if you read it in conjunction, and that's another [maxim] statutory [construction], when there's unclear language you read different statutes together in unison. I think that last sentence modifies the first two sentences. When it talks about issuance of citations, \*\*\* what it should say is the issuance of citations over a given period of time, which based on the legislative history is what they're trying to address here.

So I agree with you. I think it's ambiguous. I think if you look at the legislative history, \*\*\* the legislature could have implemented a statute that says municipalities can't consider issuance of citations, period. But they didn't do that. \*\*\*"

¶ 12 The trial court then stated as follows:

“[T]here's a big array or spectrum of different types of citations that your police officers write on a daily basis all the way from \*\*\* seat belt citation, speeding citation to a DUI driving while revoked that could end up being a felony case, which clearly is an arrest and you \*\*\* go to jail on those. But they're still citations because they're traffic tickets.”

Thereafter, the court announced that it was going to deny the Union's motion for summary judgment on count I of the complaint and find that the system currently in place was not unlawful.

¶ 13 On December 19, 2018, the trial court entered a written order, in pertinent part, denying the Union's motion for summary judgment and granting summary judgment in favor of the City. The court found that the City's policy was not unlawful under the Code. The Union appeals. With leave of this court, the Illinois Association of Chiefs of Police filed an *amicus curiae* brief in support of the evaluation policy.



¶ 14 This case was decided in the context of cross-motions for summary judgment. Summary judgment is proper where the pleadings, depositions, and admissions on file, together with any affidavits, demonstrate that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 20. Where, as here, the parties file a cross-motion for summary judgment, the parties agree that there is no genuine issue of material fact and that the case should be decided based on the presented record. *Id.* We review *de novo* a trial court's decision to grant or deny a motion for summary judgment. *Id.*

¶ 15 The sole issue before us on appeal requires us to determine whether the City's evaluation policy violates section 11-1-12 of the Code. On appeal, the Union does not argue that this policy requires an officer to issue a certain number of citations within a designated period of time. Instead, the question here is whether the consideration of the issuance of citations (by allocating two points to that activity) violates the provision that prohibits the inclusion of the issuance of citations in a point-of-contact officer evaluation.

¶ 16 An issue of statutory construction is reviewed *de novo*. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41. The primary objective of statutory construction is to ascertain and give effect to the legislature's intent. *Id.* "The language of the statute is the best indication of legislative intent, and our inquiry appropriately begins with the words used by the legislature." *Brucker v. Mercola*, 227 Ill. 2d 502, 513 (2007).

¶ 17 All provisions of a statute should be viewed as a whole. *Id.* at 514. Accordingly, all words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation. *Sandholm*, 2012 IL 111443, ¶ 41. Statutes

are to be construed so that no word, clause, or sentence is rendered meaningless or superfluous. *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 397 (1994). Where the statutory language is clear and unambiguous, it must be applied as written without resort to extrinsic aids of statutory construction. *Brucker*, 227 Ill. 2d at 513. However, where a statute is susceptible to more than one equally reasonable interpretation, then the statute is ambiguous, and the court may consider extrinsic aids of construction to discern the legislative intent. *Id.* at 514. Statutory ambiguity is not created simply because the parties disagree, and where there is no ambiguity in the statutory language, there is no basis to delve into the legislative history. *Kaider v. Hamos*, 2012 IL App (1st) 111109, ¶ 11.

¶ 18 The City contends that the plain language of the statute reveals that the prohibition against using the issuance of citations as a point of contact relates back to the original prohibition, which instructs that a municipality cannot require an officer to issue a specific number of citations within a designated period of time. In other words, the City argues that the statute prevents a municipality from using the issuance of citations or the number of citations issued “within a designated period of time” as a point of contact in its evaluation process. As this sentence only clarifies that municipalities cannot establish points of contact systems that circumvent the Code’s general prohibitions against ticket quotas, and the evaluation policy at issue here does not set any ticket quota “within a designated period of time,” the City argues that its policy does not violate the statute.

¶ 19 In considering these arguments and applying the above principles of statutory construction, we find that the trial court erred in granting summary judgment in favor of

the City. As previously noted, section 11-1-12 prohibits a municipality from requiring a police officer to issue a specific number of citations within a designated period of time and from comparing, for evaluation purposes, the number of citations issued by a police officer to the number of citations issued by any other police officer who has similar job duties. 65 ILCS 5/11-1-12 (West 2016). However, the municipality is not prohibited from evaluating an officer based on the officer's points of contacts, which include the number of completed traffic stops, arrests, written warnings, and crime prevention measures. *Id.* The statute specifically provides that points of contact cannot include either the issuance of citations or the number of citations issued by a police officer. *Id.* Thus, under the plain language of the statute, when evaluating officers' performance based on points of contact, the city cannot consider the number of citations issued. There is no rule of statutory construction that empowers a court to declare that the legislature did not mean what the plain language of the statute imports. *American Buyers Club of Mt. Vernon, Illinois, Inc. v. Zuber*, 57 Ill. App. 3d 899, 902 (1978).

¶ 20 In granting summary judgment in favor of the City, the trial court found that the statute was ambiguous because a citation was an arrest, and an arrest was included as a permissible point of contact in an evaluation system. We note that the terms "citation" and "arrest" are not defined by this statute. Where a term is not defined by statute, we presume that the legislature intended the term to have its popularly understood meaning. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 75. To ascertain the ordinary and popular meaning of words, a court can appropriately use a dictionary as a resource. *Exelon Corp. v. Department of Revenue*, 234 Ill. 2d 266, 275 (2009).

¶ 21 An “arrest” is defined in Black’s Law Dictionary as follows:

“1. A seizure or forcible restraint, esp. by legal authority. 2. The taking or keeping of a person in custody by legal authority, esp. in response to a criminal charge; specif., the apprehension of someone for the purpose of securing the administration of the law, esp. of bringing that person before a court.” Black’s Law Dictionary (11th ed. 2019).

A “citation” is defined as “a police-issued order to appear before a judge on a given date to defend against a stated charge, such as a traffic violation.” Black’s Law Dictionary (11th ed. 2019). Thus, an arrest is a seizure or forcible restraint or taking someone into custody as a result of a criminal charge where a citation is a charging document. An elementary rule of construction is where the legislature uses certain words in one instance and different words in another, it intends a different meaning. *In re Marriage of Walters*, 238 Ill. App. 3d 1086, 1092 (1992). In section 11-1-12, the legislature instructed that an arrest was a permissive point of contact where the issuance of a citation is not. Although we agree with the trial court that the same traffic stop can result in the issuance of a citation and an arrest, there is nothing in the plain language of the statute to indicate that the legislature meant to include the issuance of a citation as a permissive point of contact by using the term “arrest.” Thus, we find that the trial court erred when it found that this language was ambiguous.

¶ 22 Having interpreted the plain language of the statute, we next consider whether the City’s policy violates section 11-1-12. The policy at issue here states that the department uses a system of monthly activity points to track its officers’ performance and that the system sets forth the required standard of performance. The policy explains that all full-time officers must meet the required minimum monthly points; that the evaluation policy

will be used to determine awards, such as officer of the month and officer of the year; and that these awards will be based on the most points earned over the officer's monthly minimum standard. The officers are awarded points based on points of contact, such as by issuing traffic stop warnings and issuing citations, as well as extra-duty assignments. An officer obtains two points for issuing a citation. The policy indicates that dayshift officers are required to obtain 82 activity points and that nightshift officers are required to obtain 65 points. The averages for the dayshift officers and nightshift officers are reviewed each year, and new minimum point totals could be implemented after the review. A failure to reach the minimum monthly points results in discipline.

¶ 23 The 2017 department evaluation form indicates that a particular officer's monthly point totals are compared to the average monthly points of other officers working the same shift. The evaluation form indicates that there should not be more than a 20% difference in performance. The department also considers the overall average of point totals for a six-month period. Thus, this policy compares the activity point totals with that of other department officers with similar job duties in order to evaluate the department's officers.

¶ 24 Because the policy includes the issuance of a citation as a permissive point of contact for evaluation purposes, it violates section 11-1-12. Although it seems like an officer can achieve the monthly minimum points total without issuing a single citation, this policy still violates section 11-1-12 because it does exactly what is prohibited by the plain language of the statute, *i.e.*, it permits the department to evaluate its officers by

including the issuance of citations or the number of citations issued, among other things, as a point of contact.

¶ 25 Moreover, we do not find persuasive the *amicus's* argument that we should affirm the trial court's ruling because this same points-based system is commonly utilized in police departments throughout Illinois, and the failure to include citation activity in the evaluation policies will impair the ability of the departments to thoroughly evaluate its officers and impair important public safety efforts. An evaluation system based on an officer's points of contact is not prohibited by section 11-1-12; the points of contact simply cannot include the issuance of citations. As the City argued that an officer can currently meet the monthly activity points total without issuing a single citation, we fail to see how our decision will impair the department's ability to evaluate its officers. Accordingly, the trial court erred in granting summary judgment in favor of the City and in denying the Union's motion for summary judgment on count I of the Union's complaint.

¶ 26 We reverse the trial court's order granting summary judgment in favor of the City on count I of the Union's complaint, reverse the court's denial of the Union's motion for summary judgment, and remand with instructions for the trial court to enter summary judgment in favor of the Union on count I of the complaint.

¶ 27 Reversed and remanded with directions.

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
COUNTY OF RANDOLPH

**FILED**

DEC 19 2018

*Sherry L. Johnson*  
CIRCUIT CLERK  
RANDOLPH COUNTY, IL

**POLICEMENS BENEVOLENT )  
LABOR COMMITTEE )**

**Plaintiff )**

**v. )**

**CITY OF SPARTA )**

**Defendant )**

No. 2017 MR 52

**ORDER**

This matter comes before for the Court on the parties' cross-motions for summary judgment related to the Policemen's Benevolent Labor Committee's (the "Union's") Count I (Petition for Declaratory Ruling) of its Second Amended Complaint, the Union's Application to Confirm Arbitration Award (Count II of its Second Amended Complaint) and the City of Sparta's (the "City's") Motion to Vacate Arbitration Award, and the Alternative, Confirm the Arbitration Award, the parties appearing by counsel on December 3, 2018, the Court being fully advised in the premises finds and orders:

1. The City of Sparta's Motion for Summary Judgment is granted, and the Union's Motion for Summary Judgment is denied. The Court finds that the City's Activity Points Policy that is currently in place in the Sparta Police Department is not unlawful under the Quota Act.
2. The Union's Application to Confirm Arbitration Award (Count II) is granted. The City's Motion to Vacate Arbitration Award, and the Alternative, Confirm the Arbitration Award is partially denied to the extent that the City seeks vacation of the Arbitration Award and

is partially granted to the extent the City seeks confirmation of the Arbitration Award. Under the Illinois Uniform Arbitration Act (710 ILCS 5/11, 710 ILCS 5/12(d), and 710 ILCS 5/14), Arbitrator Thomas Erbs' June 19, 2018 Award, including the Arbitrator's analysis and remedy, is hereby confirmed.

3. This is a final judgment in accordance with Sup. Ct. R. 303(a).

SO ORDERED this 19<sup>th</sup> day of December, 2018.



Honorable Judge Gene Gross



5-19-0039

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
FIFTH JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
RANDOLPH COUNTY, ILLINOIS

POLICEMENS BENEVOLENT LABOR COMMITTEE	)	
Plaintiff/Petitioner	)	Reviewing Court No: 5-19-0039
	)	Circuit Court No: 2017MR52
	)	Trial Judge: Gene Gross
v	)	
	)	E-FILED
	)	Transaction ID: 5-19-0039
	)	File Date: 2/13/2019 1:24 PM
CITY OF SPARTA	)	John J. Flood, Clerk of the Court
Defendant/Respondent	)	APPELLATE COURT 5TH DISTRICT

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IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
RANDOLPH COUNTY, ILLINOIS

POLICEMENS BENEVOLENT LABOR COMMITTEE, )  
 )  
Plaintiff, )  
 )  
v. ) No. 2017-MR-52  
 )  
 )  
CITY OF SPARTA, )  
 )  
Defendant. )

REPORT OF PROCEEDINGS

MOTION HEARING

Before the HONORABLE GENE GROSS, Associate Judge

December 3, 2018

APPEARANCES:

MR. SHANE M. VOYLES, Attorney At Law,  
On Behalf of the Plaintiff; and,  
  
MR. PAUL DENHAM, Attorney At Law,  
On Behalf of the Defendant.

KELLY EPPLIN, CSR, RPR  
Official Court Reporter  
CSR License No. 084-003676

1 BE IT REMEMBERED AND CERTIFIED that heretofore, on  
2 to-wit: December 3, 2018, being one of the regular judicial  
3 days of this Court, the matter as hereinbefore set forth came  
4 on for hearing before the HONORABLE GENE GROSS, Associate  
5 Judge in and for the Twentieth Judicial Circuit, Randolph  
6 County, Illinois, and the following was had of record,  
7 to-wit:

8 \*\*\*\*\*

9 THE COURT: I'm going to call Case No. 17-MR-52,  
10 which is the Policemens Benevolent Labor Committee against  
11 the City of Sparta. Present for the plaintiff is Mr. Voyles  
12 and present for the City of Sparta is Mr. Denham.

13 We have cross -- we have pending cross-motions for  
14 summary judgment involving the original -- original issue  
15 which was brought in this MR action together with a second  
16 count to confirm an arbitrator's award, correct?

17 MR. VOYLES: Correct.

18 THE COURT: Okay. Do you want to take up the  
19 motion on the citations first?

20 MR. VOYLES: That's fine.

21 MR. DENHAM: That's fine.

22 THE COURT: Okay. Because it seems like more  
23 action on that one. Who filed -- do you have a preference on  
24 how you want to address this?

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1 MR. DENHAM: It's the union's complaint for  
2 declaratory judgment, so --

3 THE COURT: But you both filed summary judgment, so  
4 I don't know who filed that first, but --

5 MR. VOYLES: We may have filed it the same day. I  
6 don't mind going first, your Honor. That's fine.

7 THE COURT: Okay. Well, I know you've both said in  
8 your motions that -- and then there's cross-summary judgments  
9 and basically you're both conceding there aren't any  
10 contested factual issues. That being said, I've had cross  
11 pending summary judgments before where I've denied them both  
12 because they both disagree on what the facts are. But I  
13 think in this case, it's truly one where we're really not  
14 disputing about what the facts are; it's just interpretation  
15 of the statute.

16 MR. DENHAM: I think that's accurate, your Honor.

17 THE COURT: Do you all agree with that?

18 MR. VOYLES: That's the way it should be, yes, sir.

19 THE COURT: Okay. All right. Mr. Voyles, go  
20 ahead.

21 MR. VOYLES: All right. Thank you, your Honor.  
22 With respect to the ticket quota issue, Count I, it's our  
23 position that there is an indirect as well as a direct  
24 prohibition against ticket quotas in the act. We believe

1 there's a back door as well as a front door to this  
2 proverbial house. There is a front door direct prohibition  
3 at the first paragraph of the act and a back door indirect  
4 prohibition to Paragraph 2 of the act. Paragraph 2 in the  
5 last sentence also specifically prohibits counting tickets or  
6 citations and a point system. And a point system is  
7 fundamentally a way of assigning numeric value to certain  
8 activities in order to measure them. And the only rational  
9 way to operate a point system in a police department is to  
10 use the particular experience of that police department as a  
11 baseline. It's not like degrees Fahrenheit, watts, volts,  
12 horsepower, something like that. There is no one size fits  
13 all point system. The only point system is the one that's  
14 tailored to that particular police department.

15 And I mention that because on a very basic level, a  
16 point system only works if officers are compared to each  
17 other. It can't work any other way. The officers have to be  
18 compared to each other to find out what officers on a first,  
19 second, or third shift that the, for instance, Sparta Police  
20 Department should be doing. Can't compare Sparta to Chester,  
21 Chester to Peoria, Peoria to Chicago, etc.

22 So the legislature specifically discussed a point  
23 system. They devoted more text in the statute to points than  
24 to the direct sort of blanket quota system. And the

1 legislature prohibited counting tickets as points in the last  
2 sentence of Paragraph 2 of the act. Now, the defendant  
3 argues that the second paragraph has no meaning independent  
4 from or in addition to the first paragraph. And we believe  
5 the defendant is asking the Court to ignore statutory text.  
6 And we think the defendant is making that argument because  
7 the facts are so overwhelmingly against its position. It's a  
8 fact that the department absolutely counts tickets as points  
9 in its point system. The department compares points from  
10 officer to officer as it must in any point system or its  
11 point system doesn't mean anything.

12 And, finally, the department specifically  
13 references its point system in the evaluations, and we  
14 included some of those along with one of the amended  
15 complaints. So because these facts are undisputed and  
16 because doing that, the things that are in dispute, because  
17 that's admitted by the second paragraph under the act, we  
18 believe that summary judgment for Plaintiff is proper.

19 THE COURT: Okay. What relief exactly are you  
20 asking for?

21 MR. VOYLES: Right now we're just asking for a  
22 declaration that the current system is in violation of the  
23 act.

24 THE COURT: Okay. All right. Mr. Denham?

1 MR. DENHAM: Thank you, your Honor. This is not a  
2 quota system. The union concedes that officers are not  
3 required to write a single citation. In fact, this is an  
4 activity point system in which officers have their choice of  
5 performing a whole range of tests in any given monthly  
6 evaluation period. Simply the purpose of this evaluation  
7 tool is to make sure the patrol officers are staying busy.  
8 When a patrol officer writes a citation or makes a traffic  
9 stop, they're given credit for performing such a task, and  
10 it's a pretty low level of performance that they're required  
11 to do. The union concedes that on the actual evaluation  
12 there's no quantified score for actual citations. Again, a  
13 patrol officer can choose to write as many citations as he or  
14 she wants or write zero citation in a given evaluation  
15 period.

16 The City agrees that this is a question of  
17 statutory interpretation. The quota act contains two primary  
18 prohibitions. First, a municipality may not require a police  
19 officer to issue a specific number of citations within a  
20 designated period of time. I think the facts are clear and  
21 both parties concede that the City's not requiring that.  
22 Secondly, a municipality may not, for the purposes of  
23 evaluating a police officer's job performance, compare the  
24 number of citations issued by a police officer to the number

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1 of citations issued by any other police officer who have  
2 similar job duties. That's not happening here as well. I  
3 think this entire claim is based off a points of contact  
4 interpretation at the end of the statute which is taken out  
5 of context. Usually in terms of statutory interpretation the  
6 Court would look at the statute as a whole. In this  
7 particular situation, it makes some sort of statement about  
8 points of contact not considering issuance of citations. At  
9 the same time, the legislative history is clear, and I've  
10 cited a great deal of examples of the legislative history,  
11 the purpose of this statute isn't just to -- is not to  
12 prevent municipalities from requiring officers to write  
13 ticket citations. It's a quota. It's preventing a  
14 municipality from requiring citations over a given period of  
15 time. In this situation, the City has no interest in  
16 establishing a ticket quota. This isn't a revenue generating  
17 thing. It -- the union's claim is completely contrary to the  
18 legislative purpose of this act. And because, quite frankly,  
19 this isn't a ticket quota, there's no reason to issue the  
20 declaration that the union seeks.

21 THE COURT: Do you want to respond to any of that?

22 MR. VOYLES: I believe the evidence is clear that  
23 the municipality is evaluating a police officer's job  
24 performance, comparing the number of citations issued by the



1 police officer to the number of citations issued by any other  
2 police officer who has similar job duties. I think it's  
3 clear that is going on, so I think that point needs to be  
4 made.

5 THE COURT: Okay. I guess I need to clarify a  
6 couple things I'll ask you both. We deal with words, okay,  
7 and this is a case all about words, the way I look at it.  
8 And trying to make sense out of this 65 ILCS 5/11-1-12 is  
9 difficult when you read it together. When you read the  
10 whole -- all three sentences together, that's really the only  
11 thing that's in dispute. Because you're not claiming that  
12 they're requiring a quota system, right? You're saying that  
13 they shouldn't be allowed to assign points for points of  
14 contact evaluation based upon a citation?

15 MR. VOYLES: Correct.

16 THE COURT: You said tickets in argument, but  
17 citation is the word. That's the key word that you're --  
18 when I read the latest arguments you both have made, we've  
19 kind of now focused in on the last sentence that says,  
20 "Points of contact shall not include either the issuance of  
21 citations or the number of citations issued by a police  
22 officer." Is that the gist of your dispute? Would you agree  
23 with that?

24 MR. VOYLES: I think that makes it very clear, and

1 I think it -- it's our position that it's still prohibited by  
2 the other -- the preceding sentences in that paragraph.

3 THE COURT: Okay. Now, here's the problem I have  
4 in trying to make sense out of that sentence. I also agree  
5 with your authorities that you've cited which say that when  
6 the meaning's clear that we don't even go to the legislative  
7 history. I mean, if I can understand. If there was just one  
8 sentence that said points of -- if you couldn't include the  
9 issuance of citations or the number of citations, it would --  
10 that's a pretty clear sentence, but what's a citation? What  
11 is a citation? I'm asking.

12 MR. VOYLES: Well, I take it to mean a traffic  
13 ticket, but I suppose it could mean just about anything. It  
14 could be an ordinance ticket or some other situation.

15 THE COURT: Conservation ticket, disorderly conduct  
16 ticket, trash burning ticket.

17 MR. VOYLES: I'd say something that's not charged  
18 by an information or an indictment and something that's not a  
19 warning.

20 THE COURT: Well, the supreme court -- the word  
21 "citation", because I looked this up, because it's confusing.  
22 It's kind of circular. The supreme court says that the word  
23 "citation" really got meaning when they enacted -- Supreme  
24 Court Rule 552 talks about the uniform citation and

1 complaint, uniform citation and complaint forms, and that's  
2 the thing we all see when we get a ticket, pulled over. And  
3 municipalities are encouraged to use the same form. And they  
4 all get them printed up, and they say City of Sparta, Village  
5 of Tilden, wherever you're at, and then they have the same  
6 language, section number. But a citation is an arrest.  
7 Anytime you write a ticket you're arresting somebody.

8           So the previous sentence in the paragraph I'm  
9 trying to interpret says points of contact means any  
10 quantifiable contact in the furtherance of a police officer's  
11 duties including, but not limited to, the number of traffic  
12 stops. A lot of times traffic stops end up with a citation  
13 or not. I mean, they can be, A, community caretaking,  
14 warning, whatever, but traffic stops completed, comma,  
15 arrests, which arrests -- a citation's always an arrest. So  
16 if you can count arrests, how can you not count a citation?  
17 And that's why the -- where this paragraph starts getting  
18 infirm.

19           The next sentence is -- or the next word is written  
20 warnings and crime prevention measures, which I guess would  
21 be like DARE programs and things like that or lecturing to  
22 the kids at school. So they can create a system of  
23 evaluation based on points of contact, and they can use  
24 things like traffic stops completed, arrests, written

1 warnings, crime prevention. Then it goes on to say, "Points  
2 of contact shall not include issuance of citations or the  
3 number of citations." So because they're -- those two  
4 sentences completely contradict one another. So I think that  
5 makes us go to the legislative history. What am I missing on  
6 that?

7 MR. VOYLES: Your Honor, I wouldn't agree with  
8 that. I understand what you're saying. I'm a former public  
9 defender. Of course, anytime a person's freedom is  
10 prohibited they're arrested. You don't need the arrest or  
11 the citation. So I agree with that, and in a broad sense,  
12 they could all be arrests. Even a warning can start off as  
13 an arrest. You rested their movement. But when I think the  
14 legislature uses these terms, that means that they intend  
15 something different when they use different terms. Had they  
16 just repeated arrests in the last sentence, and there's case  
17 law on this, when they use different terms, they mean  
18 something different. And, you know, tickets may be an  
19 emphasized term, but I think that's exactly what it is. It's  
20 a law to prohibit tickets.

21 THE COURT: So --

22 MR. VOYLES: Ticket quotas. Excuse me. Not to  
23 prohibit tickets.

24 THE COURT: -- they got issue -- a citation is not



1 an arrest?

2 MR. VOYLES: No, it is. It is. It's just a  
3 particular --

4 THE COURT: Okay.

5 MR. VOYLES: The particular arrest that ends up  
6 with a citation as opposed to confinement.

7 THE COURT: Well, when we go -- what do you -- when  
8 you read the legislative history, when you hear Jay Hoffman  
9 talking about this and Jay -- and he's up there saying, well,  
10 you know, we're not trying -- we don't want to get into  
11 the -- you know, we want to let them evaluate. We just don't  
12 want to have speed traps. Because it seems like this is an  
13 anti-speed trap law, because you know, somebody must have got  
14 a ticket on -- you know, they had the holidays, they went  
15 home, they got pulled over, you know, maybe in Ruma or  
16 somewhere, and they got mad and they went back up and  
17 proposes legislation, we got to stop these police from being  
18 evaluated based on the number of citations they write. But  
19 then during the legislative history, it seems like, well,  
20 somebody said we don't stop them from -- we don't want lazy  
21 cops either so we're going to have to have a way to have the,  
22 you know, mayor evaluate these people. Well, let's use  
23 points of contact, which as far as I know is found nowhere  
24 else in the law. Do you know, points of contact, is that a

R 13

A-030

1 term of art anywhere else?

2 MR. VOYLES: It means something -- it means  
3 something in the industry, but I don't think it's a legal  
4 term. It's not a legal term of art.

5 MR. DENHAM: I think it was created for the  
6 statute. I think that initially that first couple of  
7 sentences was initially drafted in the statute there was some  
8 resistance. One issue, which isn't relevant here, is there  
9 are state grants or federal grants which actually require  
10 officers to write, let's say, a citation per hour for a seat  
11 belt violation or a DUI violation. They added a sentence in  
12 the statute which talked about that specific issue. Here,  
13 you know -- and the weird thing about this statute, too, is  
14 the first two sentences are the sentences which are  
15 prohibited. I mean, they're clearly you can't do this. You  
16 can't require a certain number of citations over a given  
17 period of time. You can't create an evaluation that utilizes  
18 the same metric. And then it talks in a permissive sort of  
19 way about this points of contact system, and I think there  
20 are other ambiguous terms within that language. I mean, it  
21 talks about you have -- nobody shall prohibit the  
22 municipality from evaluating. What does evaluating mean? It  
23 talks about a quantifiable contact. Well, in this particular  
24 situation, yes, we can count up the number of citations that

R 14

1 an officer writes. And, again, I agree with your  
2 interpretation about what a citation is. And I think the  
3 citation that's in the statute is actually different than  
4 what the municipality is counting in this particular  
5 situation. But I agree with you, I think it's unclear what  
6 this points of contact language means.

7 Now, I will say that the final sentence, if you  
8 read it in conjunction, and that's another maximum statutory  
9 instruction, when there's unclear language you read different  
10 statutes together in unison. I think that last sentence  
11 modifies the first two sentences. When it talks about  
12 issuance of citations, it talks -- what it should say is the  
13 issuance of citations over a given period of time, which  
14 based on the legislative history is what they're trying to  
15 address here.

16 So I agree with you. I think it's ambiguous. I  
17 think if you look at the legislative history, clearly they  
18 could have -- the legislature could have implemented a  
19 statute which says municipalities can't consider issuance of  
20 citations, period. But they didn't do that. So I don't know  
21 how the union's going to claim that that's what the  
22 legislative meaning of the statute is.

23 THE COURT: Okay. Anything else you want to say,  
24 Mr. Voyles?



1 MR. VOYLES: Your Honor, if you recall, we had an  
2 initial motion to dismiss claiming that the claim was moot  
3 because the point system at Sparta Police Department predated  
4 this statute by a number of years, and I will submit that  
5 Sparta Police Department's not terribly innovative in the  
6 state of Illinois. My guess is -- I can't say for certain --  
7 but my guess is that this points of contact system probably  
8 originated with the state police or somewhere in Chicago,  
9 then worked its way down through the state as a way to  
10 evaluate police officer performance. I do not believe the  
11 legislature made up the term.

12 THE COURT: Okay. All right. Well, what I mean by  
13 that is, is there any -- I don't see how you can take out a  
14 citation or an arrest for -- there's a big array or spectrum  
15 of different types of citations that your police officers  
16 write on a daily basis all the way from, you know, seat belt  
17 citation, speeding citation to a DUI driving while revoked  
18 that could end up being a felony case, which clearly is an  
19 arrest and you, you know, go to jail on those. But they're  
20 still citations because they're traffic tickets.

21 So what relief are you asking for?

22 MR. DENHAM: We think you should grant the City's  
23 Motion for Summary Judgment.

24 THE COURT: Well, yeah, and declare that the --

1 it's not a violation of the section?

2 MR. DENHAM: I don't know if we need a declaration.  
3 I mean, it's just a denial of their cross-motion and a  
4 granting of our motion for the following reasons.

5 THE COURT: You filed a motion as an amended  
6 complaint, didn't you, recently? The amended complaint was  
7 filed when?

8 MR. DENHAM: Past two months, I believe.

9 THE COURT: Yeah, pretty recently.

10 MR. DENHAM: I think for the ticket quota part of  
11 it, your Honor, the amended complaint is the same. I think  
12 he just added a motion to confirm and enforce on the other  
13 issue that we haven't talked about yet.

14 THE COURT: Right. I know that. I'm just trying  
15 to -- second amended complaint. Okay. I'm trying to figure  
16 out exactly what relief they're asking.

17 MR. VOYLES: Amended complaint I have it filed  
18 September 19, your Honor.

19 THE COURT: I got it in front of me now.

20 MR. VOYLES: Got a copy here if you need it.

21 THE COURT: I've got it right in front of me.

22 Okay. I'm going to -- and I've thought about this  
23 a lot. I want a simple order because you two guys seem like  
24 you're oil and water on your orders. So I'm going to deny

1 Count I and declare that the quota system currently in place  
2 at the Sparta Police Department is not unlawful. And  
3 against the police officers. Okay.

4 As far as Count II -- and I've read all of the  
5 briefs on this -- I don't think we really need argument --  
6 I'm just going to confirm the arbitration award. And that  
7 will be that.

8 MR. DENHAM: Confirm and enforce, your Honor?

9 THE COURT: Confirm it. And I'm not going to --  
10 because I think you asked as an alternative that I confirm it  
11 and then make some findings.

12 MR. DENHAM: Well, just that it's enforced and that  
13 it would have a res judicata effect. So, for instance, as  
14 the union's trying convince the labor board that only parts  
15 of the arbitration award should be enforced, we think that  
16 this order should say confirmed and enforced so we can show  
17 something to the labor board saying, no, this is part and  
18 parcel of the collective bargaining agreement, which is how  
19 it's supposed to operate.

20 THE COURT: You just want it to say confirmed,  
21 right?

22 MR. VOYLES: I believe that's all that's possible  
23 under the act.

24 MR. DENHAM: The statute expressly says confirm and

1 enforce, your Honor.

2 THE COURT: Well, I don't think you agree on that  
3 either, right?

4 MR. VOYLES: I've got it in front of me. I could  
5 find it.

6 THE COURT: I just want to confirm it. So if -- I  
7 can do an order or if you want to submit an order. You know,  
8 I don't want you to have to come back down here to argue  
9 about the order.

10 MR. DENHAM: Why don't I take a stab at drafting  
11 both parts of the order, and I can show opposing counsel and  
12 --

13 THE COURT: Just e-mail it to me.

14 MR. DENHAM: Okay.

15 THE COURT: Is that all right?

16 MR. DENHAM: Yeah.

17 THE COURT: And then if I don't like it, I'll just  
18 change it. Okay. But I want it simple so the -- because  
19 there's -- everything's -- we've got three volumes now on  
20 this case.

21 MR. DENHAM: Sure.

22 THE COURT: And if you guys want to pursue this  
23 further, I'm sure the Fifth District will take a look at it  
24 if they want to take it that far. But I want it short and

R 19



1       sweet that I'm denying the request for the declaratory  
2       judgment and I'm confirming the arbitration award. All  
3       right?

4               MR. VOYLES: Thank you, your Honor.

5               MR. DENHAM: Thank you, your Honor.

6               THE COURT: Okay. Thanks for all your hard work on  
7       this.

8               MR. DENHAM: Thank you.

9                       (Which were all the proceedings had in the  
10                      above cause this date.)

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STATE OF ILLINOIS )  
TWENTIETH JUDICIAL CIRCUIT ) SS.  
COUNTY OF RANDOLPH )

I, Kelly Epplin, CSR, RPR, Official Court Reporter, in  
and for the Twentieth Judicial Circuit, Randolph County,  
Illinois, do hereby certify the foregoing to be a true and  
accurate transcript of the testimony and proceedings in the  
above-entitled cause.

/s/Kelly Epplin  
Kelly Epplin, CSR, RPR  
Official Court Reporter  
CSR License No. 084-003676

Dated: December 27, 2018





**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
COUNTY OF RANDOLPH**

<b>POLICEMEN'S BENEVOLENT</b>	)	
<b>LABOR COMMITTEE,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>No. 2017 MR 52</b>
	)	
<b>v.</b>	)	
	)	
<b>CITY OF SPARTA,</b>	)	
	)	
<b>Defendant.</b>	)	

**AFFIDAVIT OF JEREMY KEMPFER**

The undersigned affiant, Jeremy Kempfer, states under oath:

1. I was first employed by the City of Sparta ("City") on March 22, 2004 as a patrol officer for the City. I was promoted on June 24, 2013 to my current position as Assistant Chief of Police.

2. The City's Police Department provides police patrol, traffic, and investigations service to protect life and property, to enforce state laws and local ordinances, and to provide services and assistance to the residents and visitors of Sparta in a professional and courteous manner.

3. The Plaintiff, Policemen's Benevolent Labor Committee, is the exclusive bargaining representative for all full-time patrol officers and dispatchers employed by the City, as recognized in the parties' collective bargaining agreement effective April 1, 2015 to March 31, 2020.

4. The City's Activity Points System Policy ("Activity Points Policy") went into effect on January 13, 2013. The Police Department uses a system of monthly activity points to track its officer's performance. The Activity Points Policy is used as a performance standard. All full time officers must meet a monthly point minimum. Points are accrued based on variety of activity, including, but not limited to: cases, arrests, citations, traffic stop warnings, extra duty assignments, drug task force duties, investigations that take more than the shift they were created on to complete, shooting range training, court time, etc. Officers may choose to participate in any of the activities listed in the Activity Points Policy to achieve their monthly point minimum. In other words, there is no requirement that officers engage in specific activities; officers must simply engage in enough activities to achieve their monthly point minimum. The Activity Points Policy does not measure officer's points of contact or set a point of contact quota. For example, one officer may gain all his monthly activity points by attending training outside the Department or in the shooting range, making traffic stops, and performing drug task force duties. Another officer may gain all of his activity points by making arrests, writing citations, and conduct

investigations that take more than the shift they were created on to complete.

5. After the Activity Points Policy went into effect, the Plaintiff asked the City to codify it in writing. Thereafter, Plaintiff and the City worked together to codify the Activity Points Policy in writing and it was published to Plaintiff's membership in December, 2013. A copy of the Activity Points Policy that went into effect in December 2013 is attached hereto as Exhibit 1.

6. From January 2013 to July 2017, City patrol officers were evaluated on a monthly and annual basis based on their monthly activity points pursuant to the Activity Points Policy. For the 28 months between January 1, 2015 to May 24, 2017, patrol officers were also evaluated on a monthly basis 28 separate times.

7. Until this lawsuit, the Plaintiff did not challenge the Activity Points Policy in a grievance, an unfair labor practice charge, a lawsuit, or in any other manner.

8. Depending on how the Court rules and the remedy the Plaintiff ultimately requests if the Court finds the Activity Points Policy unlawful, among other things, the City may face the prospect of having to retroactively re-evaluate numerous officers' monthly performance over the last 28 months in order to determine the impact, if any, that citations had on their monthly performance scores. This reassessment might lead to the re-calculation or re-assessment of various Officer of the Month and Officer of the Year awards that are based on performance. This reassessment will be administratively burdensome to the City and a detriment to the public.

9. In defending this lawsuit, the City must further gather documentation dating back to 2013 concerning the issuance of the Activity Points Policy and any notes or other documentation from when the Plaintiff met with and aided the City in codifying the Activity Points Policy. This too will create a tremendous administrative burden for the City and be a detriment to the public.

  
 \_\_\_\_\_  
 JEREMY KEMPFER

Subscribed and Sworn to  
 before me this 25 th day of July, 2017.

  
 \_\_\_\_\_  
 NOTARY PUBLIC



P036

## Activity Points System

The Sparta Police Department will use a system of monthly activity points to track its Officers performance in the Police Department. This system will be used as a standard of performance that is required. It will also be used to determine awards like Officer of the Month and Officer of the Year. The following is the break down of how this system works. All full time Officers must meet their monthly point's standard.

### Month Points needed

Dayshift- 82

Nightshift- 65

### Activities that produce points and their values

Cases- 2 points each

Citations- 2 points each

NCR- 1 point each

Traffic stop warning (Both written and verbal) - 1

### Extra duty assignment that earn points

-Drug task force duties

-Investigations that take more than the shift they were created on to complete

-Shooting range training

51



A-043

**-Training outside the department full or half day**

**-Court time full or half day**

**-Full day extra duty-dayshift 5, nightshift 4**

**-Half day extra duty-dayshift 2.5 nightshift 2.**

**Days off**

- Full day dayshift-5
- Full day nightshift-4
- Half day dayshift-2.5
- Half day nightshift-2

**Awards for Officer of the Month and of the Year will be based on most points earned over the Officer's month minimum standard.**

**Each year the Chief or the Asst. Chief of Police will review the dayshift and nightshift NCR averages. They will then subtract the nightshift NCR average from the Dayshift NCR average to create the appropriate difference between dayshift and nightshift. The nightshift minimum point value of 65 will remain the same and the difference in average will be added to that to create the dayshift minimum point amount.**

**If an Officer is off duty for the entire month either for sick time, vacation time or other, he or she will be credited the full minimum amount of points for that month that was taken off.**

**Failure to reach the minimum monthly points will result in discipline. Discipline will be corrective and progressive in nature. If an Officer fails to meet the minimum standard that Officer will be given a verbal warning and is required to meet the standard for the next two months. If the Officer meets the standard for the next two months the verbal warning will be removed from his or her personal file. If the Officer fails to meet the standard again in the two month period discipline will be progressive.**

## Sparta Police Department Evaluation Form 2017

Officer's Name- S. Miles

1. Were minimum activity points met each month?

- See attached activity report sheets.
- Dayshift-82 Nightshift-65

Jan	Feb	Mar	April	May	June
67	65	69	74	82	114

Comments about minimum activity points

2. Activity points how you compare to your other Officers?

- See attached activity report sheets and monthly records.
- Officer's monthly points are compared to the avg. monthly points of other Officers working same shift and times. Should not be more than -20% differences in performance.

Month	Jan	Feb	Mar	April	May	June
Officer's Points	67	65	69	74	82	114



Peers Points avg.	94	88.6	105	81	102.3	111.3
% of difference	-29%	-36%	-52%	-9%	-20%	+2%
Overall Average of difference over six months						
-24% overall average						

Comments about activity points, and how Officer compared to other Officers working same shift

Overall average exceeded the -20% level for the last six months.

3. Vehicle inspections pass or fail.

- See Attached inspections reports

Month	Jan	Feb	Mar	April	May	June
Pass or Fail	X	X	Passed	X	X	X

Comments about Vehicle inspections

4. Traffic Contacts Vs Peer Officers.

Allow credit for stops for days off.

- Avg. # of Stops/ by number of working days in month for credit. The avg. is figured by the other Officers working the same shift and times.
- Should not be more than -20% differences in performance.

-See attached monthly records sheet.

Month	Jan w-10 o-4	Feb w-10 o-4	Mar w-12 o-3	April w-13 o-3	May w-14 o-1	June w-14 o-1
Officer Stops	9+6.2 15.2	8+3.2 11.2	5+2.7 7.7	8+1.6 9.6	7+.8 7.8	9+.7 9.7
Peers Avg. Stops	22	11.3	13.6	9	12.3	11
# of difference	-44%	-0%	-77%	+6%	-63%	-13%
Overall average of difference over six months.						
-31% overall average						

#### Comments about traffic contacts

Overall average exceeded the -20% average for the last six months

In order to get both your overall points averages and traffic stop averages back with in the acceptable percentage range you will be on the following performance improvement program for the next six months. You will be required to make at least one traffic stop per every shift worked. This will assisted you in meeting the acceptable percentage

range in your evaluation for the fall. If you have any questions please contact the Chief of Police or myself.

*S. Lukes*  
Chief of Police S. Lukes

*J. Kempfer*  
Asst. Chief of Police J. Kempfer



STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
COUNTY OF RANDOLPH

POLICEMENS BENEVOLENT )  
LABOR COMMITTEE )

Plaintiff )

v. )

CITY OF SPARTA )

Defendant )

No. 2017 MR 52

REPLY

PLAINTIFF, in response to new matter asserted by Defendant in its Answer, replies as follows:

Defense One

- 1. Defendant's Activity Points system is not a quota policy.

REPLY: Denied.

- 2. As evidenced by the documentation attached to the Amended Complaint, patrol officers are not required to write any citations. (See the Activity Points Policy and Kempfer Affidavit).

REPLY: Admitted.

- 3. Instead, officers have a choice of earning activity points by writing a high number of traffic citations, writing zero traffic citations, or something in between.

REPLY: Admitted.

- 4. Furthermore, on the evaluation form, there is no indication whatsoever about whether an officer has written a single ticket during an evaluation period, and officers' number

of traffic citations are not compared in any manner. (See the Miles Police Department Evaluation Form).

**REPLY: Denied.**

5. As such, Defendant does not “require a police officer to issue a specific number of citations within a designated period of time . . .” nor does it “compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties.”

**REPLY: Denied.**

6. Therefore, there is no actual controversy between the parties with regards to the implementation, interpretation and/or application of this State law to Defendant’s evaluation policy in the Sparta Police Department.

**REPLY: Denied.**

Defense No. 2

1. Plaintiffs unreasonably failed to take legal action for years following the enactment of the Quota Act.

**REPLY: Denied.**

2. Through its course of conduct, Plaintiff has acquiesced to Defendant’s enforcement of the Activity Points Policy.

**REPLY: Denied.**

3. Plaintiff’s claims for declaratory relief therefore are barred by the doctrine of *laches*.

**REPLY: Denied.**

WHEREFORE, Plaintiff respectfully requests that Defendant's affirmative defenses be denied,  
with any other relief authorized by law.

Respectfully submitted,

Plaintiff,

/s/ Shane Voyles

BY: \_\_\_\_\_  
Shane Voyles ARDC No. 6279482

Shane M. Voyles, ARDC #6279482  
PBLC  
840 South Spring, 1st Floor  
Springfield, IL 62704  
svoyles@pbpa.org

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
COUNTY OF RANDOLPH**

<b>POLICEMEN'S BENEVOLENT</b>	)	
<b>LABOR COMMITTEE,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>No. 2017 MR 52</b>
	)	
<b>v.</b>	)	
	)	
<b>CITY OF SPARTA,</b>	)	
	)	
<b>Defendant.</b>	)	

**SECOND AFFIDAVIT OF JEREMY KEMPFER**

The undersigned affiant, Jeremy Kempfer, states under oath:

1. I was first employed by the City of Sparta ("City") on March 22, 2004 as a patrol officer for the City. I was promoted on June 24, 2013 to my current position as Assistant Chief of Police.

2. My duties as Assistant Chief include writing biyearly evaluations for patrol officers in accordance with the City's Activity Points System Policy ("Activity Points Policy"). I also am responsible for maintaining copies of such evaluations and their underlying documentation.

3. Attached is a chart of total activity points earned by each patrol officer throughout 2016. (Ex. 1). These totals are calculated from daily information that is tabulated from individual "Activity Logs."

4. Attached are complete copies of the Activity Logs for Officer and Union President Steve Miles throughout 2016. (Ex. 2).

5. Attached are Officer Miles' biyearly evaluations during the same time period. (Ex. 3).

6. Throughout 2016, Officer Miles satisfied the Department's activity points standard by earning 65+ points each month and constantly performing within 20% of the average activity points earned by fellow comparable officers.

7. Notwithstanding, Officer Miles earned the overwhelming majority of his activity points by engaging in activities other than writing citations.

8. In fact, between May 31 and July 17, 2016, Officer Miles did not write a single citation.

9. Moreover, Officer Miles only wrote one citation during the entire month of December; three citations during May; and just four citations during March, September and October, respectively.

10. Officer Miles actually wrote almost as many citations (7) during a single November 5, 2016 shift as he did during the rest of October, November and December, combined (8).

11. On his evaluations, the Department did not consider the number of citations that Officer Miles completed. Instead, he was lauded for generally staying busy during this period (e.g. "Officer Miles met his monthly activity points all six months. . . [he] did a good job of meeting his activity points level. . . "Good job meeting your monthly minimum.").

  
 \_\_\_\_\_  
 JEREMY KEMPFER

Subscribed and Sworn to  
 before me this 5th day of October, 2018.

  
 NOTARY PUBLIC



# Exhibit 1

**ACTIVITY LOG**  
**MONTHLY TOTALS**  
**2016**

	01	02	03	04	05	06	07	08	09	10	11	12
<b>HANNA</b>	92	86	91	103	91	90	85	95	105	89	93	90
<b>STEELE</b>	92	79	103	124.5	85	115	92	115	132	111	95.5	76
<b>JONES</b>	85	89.5	87	108	95	100	77.5	108	89.5	96	82	85
<b>BROOKS</b>	99	91.5	113.5	89	125	101	110	104	121	104.5	92	112
<b>MILES</b>	78	71	71	77	70	85	74	84	83	87	77	87
<b>STEELY</b>	94	73	80	72	86	115	83	77	70	87	78	98
<b>DAHLEM</b>	94	75	77	86	93	83	91	84	102	89	86	87
<b>MAHAN</b>	x	x	x	x	x	x	x	x	x	108	117	87

# Exhibit 3



## Sparta Police Department Evaluation Form 2016

Officer's Name- S. Miles

1. Were minimum activity points met each month?
- See attached activity report sheets.
  - Dayshift-82 Nightshift-65

Jan	Feb	Mar	April	May	June
78	71	71	77	70	65

Comments about minimum activity points

Officer Miles met his monthly activity points all six months.

2. Activity points how you compare to your other Officers?

- See attached activity report sheets and monthly records.

- Officer's monthly points are compared to the avg. monthly points of other Officers working same shift and times. Should not be more than -20% differences in performance.

Month	Jan	Feb	Mar	April	May	June
Officer's Points	78	71	71	77	70	65

Peers Points avg.	93	72	82.6	81.6	84.6	0
% of difference	-17%	-2%	-15%	-6%	-18%	0%
<b>Overall Average of difference over six months</b>						
<b>-9% overall average.</b>						

**Comments about activity points, and how Officer compared to other Officers working same shift**  
**Officer Miles did a good job of meeting his activity points level.**

### 3. Vehicle inspections pass or fail.

- See Attached inspections reports

Month	Jan	Feb	Mar	April	May	June
Pass or Fail	X	X	Passed	X	X	X

**Comments about Vehicle inspections**

### 4. Traffic Contacts Vs Peer Officers.

- Allow credit for stops for days off.  
 - Avg. # of Stops/ by number of working days in month for credit. The avg. is figured by the other Officers working the same shift and times.

- Should not be more than -20% differences in performance.

-See attached monthly records sheet.

Month	Jan w-14 o-3	Feb w-13 o-1	Mar w-13 o-1	April w-16 o-0	May w-11 o-5	June w-0 o-14
Officer Stops	9+2.2 11.2	6+.8 6.8	8+1.1 9.1	7	7+3.9 10.9	0+10.6 10.6
Peers Avg. Stops	12.6	12.3	16.3	12.6	12.6	10.6
# of difference	-12%	-80%	-55%	-80%	-15%	0%
<b>Overall average of difference over six months.</b>						
<b>-40% overall average.</b>						

#### Comments about traffic contacts

Overall average is over -20%. Overall average number of stops for peers was 12.8 per month. Officer Miles will be required to meet or exceed that average for the next six months in order to stay consistent with other Officers.

\_\_\_\_\_  
Chief of Police S. Lukes

\_\_\_\_\_  
Asst. Chief of Police J. Kempfer

C 590

## Sparta Police Department Evaluation Form 2016

Officer's Name- S. Miles

1. Were minimum activity points met each month?  
 - See attached activity report sheets.  
 - Dayshift-82 Nightshift-65

July	Aug	Sept	Oct	Nov	Dec
74	84	83	87	77	67

Comments about minimum activity points

Good job meeting your monthly minimum

2. Activity points how you compare to your other Officers?

- See attached activity report sheets and monthly records.

- Officer's monthly points are compared to the avg. monthly points of other Officers working same shift and times. Should not be more than -20% differences in performance.

Month	July	Aug	Sept	Oct	Nov	Dec
Officer's Points	74	84	83	87	77	67

Peers Points avg.	85.6	80.5	86	88	93.6	90.6
% of difference	-14%	+4%	-4%	-2%	-18%	-27%
<b>Overall Average of difference over six months</b>						
<b>-10% overall average</b>						

**Comments about activity points, and how Officer compared to other Officers working same shift**

**Overall average was above -20%**

### 3. Vehicle inspections pass or fail.

- See Attached inspections reports

Month	July	Aug	Sept	Oct	Nov	Dec
Pass or Fail	X	X	X	X	X	X

**Comments about Vehicle inspections**

**No vehicle inspections completed this period.**

### 4. Traffic Contacts Vs Peer Officers.

- Allow credit for stops for days off.
- Avg. # of Stops/ by number of working days in month for credit. The avg. is figured by the other Officers working the same shift and times.

- Should not be more than -20% differences in performance.

-See attached monthly records sheet.

Month	July w-15 o-2	Aug w-15 o-0	Sept w-13 o-2	Oct w-14 o-1	Nov w-12 o-3	Dec W-12 o-4
Officer Stops	9+.8 9.8	20	13+1.6 14.6	14+1 15	10+2.1 12.1	11+3.1 14.1
Peers Avg. Stops	7	23	12.5	16	10.6	12.6
# of difference	+40%	-15%	+15%	-7%	+13%	+11%
Overall average of difference over six months.						
+9.5% overall average.						

#### Comments about traffic contacts

Good job on traffic stops, your average from Aug-Dec was 14.9 stops which meet your required amount needed for that time period. You are no longer on a set number of stops keep up the good work.

\_\_\_\_\_  
Chief of Police S. Lukes

\_\_\_\_\_  
Asst. Chief of Police J. Kempfer

**STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
COUNTY OF RANDOLPH**

**POLICEMENS BENEVOLENT )  
LABOR COMMITTEE )  
 )  
Plaintiff )  
 )  
v. )  
 )  
CITY OF SPARTA )  
 )  
Defendant )**

**No. 2017 MR 52**

**REPLY TO  
DEFENDANT’S RESPONSE TO  
PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

NOW COMES Plaintiff, in reply to the Defendant’s response to the Plaintiff’s motion for partial summary judgment. In reply, Plaintiff states:

The Defendant’s response to Plaintiff’s motion for partial summary judgment on the pending Quota Act issue consists of three parts, labeled “A,” “B,” and “C.” At least one argument set forth in the Defendant’s part “A” is contrary to and not consistent with its statements at part “B.”

Defendant accurately states in part “A” that Officer Miles’ evaluation (Plaintiff’s Exhibit 1) does not mention citations and does not explicitly measure them over time. But it is beyond dispute that citations are counted as, and therefore become activity points. In the last paragraph of its part “B,” the Defendant (1) admits that it compares officer based on their point totals, and (2) makes the blatantly inaccurate representation such comparisons exclude citations:

“Here, again, the Department only tabulates and compares officers on the basis of the aggregate number of ‘activity points’ each month and does not consider



whether any individual officer has written a single traffic citation during a single evaluation period.”

At best, in the light most favorable to the Defendant, it does not know for certain and therefore cannot state that it “does not consider whether any individual officer has written a single traffic citation during a single evaluation period.” But it is beyond dispute that at the Sparta Police Department, citations are counted as points, officers are evaluated based on their total points, and their point totals are compared to other officers. (Defendant’s Exhibit 1; Plaintiff’s Exhibit 1; Kempfer Affidavit). That given set of facts is absolute and the Defendant loses credibility by denying any of the given facts.

The Defendant’s argument at Part “C” also damages its credibility. At paragraph three of its part “C,” the Defendant argues that the legislature did not concisely enact language “prohibit[ing] municipalities from entirely considering citations within any evaluation policy,” even though it had just quoted the Act’s command that “[p]oints of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” “Points of contact” under the Act is an evaluation policy. The Defendant consistently relies on distortions and misrepresentations with the apparent goal of not complying with the law.

Complicating these shortcomings, the Defendant does not identify or discuss the appropriate standard allowing resort to legislative history when legislative text is under review. Defendant does not argue that the legislative text under review meets that unidentified standard. Instead of proving that resort to legislative history is proper, let alone proving that its presentation of that history is accurate and complete, the Defendant devotes most of its argument to claiming that the Act does not mean what it says and/or that the Plaintiff is bad, evil or “too literal[.]” The latter argument is no argument at all, and, the former argument asks this



Honorable Court to disregard precedent about how the plain text of statutes should be construed.

In this matter, the Defendant has openly and frequently admitted that it counts citations as part of its points of contact policy. At part "A," the Defendant clearly admits that it compares points of contact among its officers:

"For instance, within the evaluation system, the Department has determined that Officer Miles earned 74 activity points throughout April of 2017 (Miles Eval. At ¶ 1), which was 9% lower than his peers (Id. at ¶ 2)."

As such, the Defendant has not provided sufficient factual or legal justification to allow this Honorable Court to find that the Defendant is complying with and not violating the Quota Act. Instead, at almost every turn, it has admitted violating the Act.

WHEREFORE, Plaintiff requests this Court enter a declaratory judgment against the Defendant which finds that its activity points policy and/or its evaluation system violates the prohibitions of 65 ILCS 5/11-1-12, with any further relief appropriate under the circumstances.

Respectfully submitted,

Plaintiff,

/s/ Shane Voyles

BY: \_\_\_\_\_  
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5-19-0039

CASE NO. 5-19-0039

**IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT**

**E-FILED**  
Transaction ID: 5-19-0039  
File Date: 6/6/2019 10:54 AM  
John J. Flood, Clerk of the Court  
APPELLATE COURT 5TH DISTRICT

<b>POLICEMENS BENEVOLENT, LABOR COMMITTEE</b>	)	
	)	
<b>Plaintiff-Appellant,</b>	)	<b>Appeal from the Circuit Court of the</b>
	)	<b>20<sup>th</sup> Judicial Circuit, Randolph</b>
	)	<b>County, Illinois</b>
<b>v.</b>	)	
	)	<b>Case No.: 2017 MR 52</b>
<b>CITY OF SPARTA</b>	)	
	)	<b>Honorable Judge Gene Gross</b>
<b>Defendants-Appellee.</b>	)	<b>Judge Presiding</b>
	)	
	)	

**AMICUS CURIAE BRIEF OF THE  
ILLINOIS ASSOCIATION OF CHIEFS OF POLICE**

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**INTEREST OF AMICUS CURIAE**

The Illinois Association of Chiefs of Police (ILACP), which celebrated its 75th anniversary in 2016, is a voluntary professional organization with over 1,300 members representing over 400 law enforcement agencies across Illinois. Most members of ILACP are executive level members and leaders in law enforcement agencies across Illinois. The jurisdictions in which ILACP members serve include large urban centers employing thousands of police officers, suburban agencies with smaller complements of officers, and rural municipalities which only have a few officers. These agencies almost universally engage in activities targeting enforcement of Illinois traffic laws, including issuance of traffic citations. Additionally, many of these jurisdictions have adopted point-based systems for evaluating duty performance by the officers they employ. Maintaining accountability for the actions of officers is critical to the effective and efficient administration of justice and sustaining community confidence. In addition to the law enforcement personnel who are members of the ILACP, membership includes legal advisors who counsel law enforcement officers and administrators on issues including the formulation of policy, including those policies for the management of police personnel and the promotion of traffic safety. The ILACP membership is committed to the best interest of their respective communities and to promoting the highest professional standards for law enforcement activity throughout the state of Illinois.

## ARGUMENT

This case implicates two issues of policy important to the administration of justice in this state. Firstly, the decision addresses the Activity Point Systems (APS) for the management and evaluation of law enforcement personnel which are widely used by law enforcement agencies across the state to maintain accountability for officer duty performance. The decision of the Circuit Court affirming the validity of an APS which includes consideration of an officer's citation activity, along with a variety of other factors, provides a fair platform for evaluating officer performance. Such a system promotes the critical policy goal of police accountability. Secondly, the failure to include officer activity in issuance of traffic citations as part of an officer's duty performance would undercut important traffic safety enforcement measures. Those measures are critical to overall public safety

### **I. Proper Police Accountability Requires Consideration of Officer Activity in Issuance of Citations**

The decision of the Circuit Court supports a well-accepted statewide practice of APSs, which are essential to proper police accountability. The decision of the Circuit Court affirms the fact that officers can be evaluated on performance of a wide range of police-related activities, including activities related to the issuance of citations. Those *activities* are assigned point values. To ensure that officers are productive during their shifts, the points across all activities are totaled. Officers are not specifically directed or required to achieve quotas in any specific activity. Instead, they can select from a menu of activities.

The Circuit Court decision rejects an argument advanced by the Police Benevolent Labor Committee (PBLC) that the mere consideration of officer citation

activity constitutes a violation of statutory prohibitions against quotas provided on the provisions of 65 ILCS 5/11-1-12 (the “Quota Act”). The sweeping interpretation of the Quota Act proposed by the PBLC would result in invalidating point-based APSs across the state. The failure to include citation activity in this accounting of officer duty performance would provide an inaccurate picture of officer activity.

Point-based evaluation systems like APS employed in Sparta are commonly utilized in Illinois. Many agencies across the state have spent significant time money and effort in creating these systems, often with direct input from officers and their bargaining unit representatives. The systems represent an understanding of time spent by officers in the performance a range of common police duties (making arrests, conducting traffic enforcement activities, engaging the community and issuing citations). Tasks which require more time are generally accorded higher point values.

In addition to respecting the level of time and effort of officers in performing discrete tasks, these systems allow for community input. Weighting the point value allows for a community to express a desire for emphasis on certain tasks. For example, a community experiencing a problem of speeding in school zones might provide a higher point value for enforcement activity concerning school zones, including zero tolerance for speeding near schools.

The APS systems, like the one in Sparta, do not compel officers to issue any specified number or quota of citations. In fact, the APS goals can frequently be met by engaging in a variety of law enforcement activity other than citation issuance. These systems balance the complex issues of officer discretion, community concerns and preferences for certain law enforcement activities, and recognition that differing law

enforcement activities have differing degrees of difficulty

The position advanced by the PLBC and rejected by the Circuit Court would not allow officers who, in their discretion determine to issue citations, from having that activity considered as part of their overall job performance. In essence, the PBLC position would require agencies to ignore the important work of citation issuance and to disregard the difficulty and additional officer time spent preparing and presenting those citations. This result turns on its head the Quota Act which was designed to protect the discretion of the officer. Under the PBLC's interpretation of the Quota Act, an officer who decides in the exercise of his or her discretion to issue a citation would be disadvantaged because the APS would not allow his or her work efforts to be fully considered.

The issue of whether the Quota Act would result in depriving law enforcement supervisors and managers of tools to measure officer performance was specifically addressed in the legislature. In this colloquy the issue is specifically addressed.

[Rep. Dwight] Kay: "So, what you're saying is that this doesn't have to do... this is not in any way taking away a management tool from local police or State Police or whomever the case may be, it's simply saying that it's a performance tool for evaluation purposes."

[Rep. Jay] Hoffman: "For... for evaluation purposes, you can still use for management tools or a performance tool, points of contact which would include stops, warnings, arrests, investigations and community outreaches. This simply says that an officer cannot be required or have a quota to issue a specific number of citations in any given period of time."

Kay: "Okay. And again, for legislative intent. This Bill, in no way, needs to... means to impede a supervisor's ability to get the job done by officers that serve underneath him?"

Hoffman: "No. The Bill is very specific and it still allows for points of contacts to be used for that purpose."

98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 50. Notwithstanding this clear expression of legislative intent, the PBLC would have the APS system gutted based on its interpretation of the Quota Act

The failure to consider all aspects of officer job performance in the APS degrades the ability of law enforcement agencies to manage and control its workforce. The system is designed to allow for a full accounting of officer time on key activities. If activities like citations are excluded, this prevents an agency from getting an accurate picture of the productivity of its officers. That accurate picture is essential for fair evaluation of the workforce and to ensure accountability to taxpayers who are paying the salaries of those officers.

The APS reinforcement of accountability to the community extends beyond the issue of fiscal accountability. It also creates transparency and demonstrates responsiveness to community concerns. As noted above, points allocated for activity include both an understanding of officer efforts, and importance that a community places on officer efforts. Suppressing consideration of officer citation activity destroys transparency and takes away the ability of agencies to ensure that community concerns are respected.

Because failure to include citation activity in APS will impair the ability of agencies officers; and because that it will drive a wedge between agencies and communities they serve with respect to transparency and responsiveness to community concerns; this Court should affirm the Circuit Court order.



## **II. Elimination of Consideration of Citation Activity Will Impair Important Public Safety Efforts**

Traffic safety has long been a focus of the ILACP. In 2016 in connection with the celebration of ILACP's 75<sup>th</sup> Anniversary, the Board of Officers reaffirmed Traffic Safety Advocacy and the Traffic Safety Challenge as key initiatives of the organization. Through these activities the ILCP has come to understand the importance of traffic enforcement, including the issuance of citations to public safety.

While the Quota Act does preclude the use of shift quotas for issuance of citations or the comparison of officers based solely on citation activity, it does not suggest that citation issuance should not be considered by agencies. The authors of the Quota Act were careful to note the importance of traffic enforcement and the ability to direct that activity. Yet if the PBLC position is accepted, and citation activity has to be accepted from evaluation of officer performance, that is the likely result.

In the legislative discussion of the Quota Act the importance of local control over traffic enforcement was noted by the legislators. Assurances were given that the Quota Act would not serve to limit the direction given to officers except for directions to issue a specified number of citations. The following colloquy demonstrates that fact

[Rep. Rich] Brauer: "Representative, I have a few quick questions for legislative intent, will this legislation restrict the ability of a sheriff or chief to have policies that require tickets to be written in traffic accidents and DUIs?"

Hoffman: "No."

Brauer: "Will this legislation in any way restrict the sheriff or chief to assign special traffic details based on complaints from citizens, such as speeding in school zones or neighborhoods, and require an officer to write a ticket for those violations?"

Hoffman: "This simply says that you can't have a quota system where there has to be a number of citations given in a specific period of time. So the answer would be no."

98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 44 to 45.

Despite that clear expression of legislative intent, the PBLC offers a construction of the Quota Act that will tie the hands of law enforcement administrators and supervisors and make targeted direction of officer activity in enforcement of traffic laws an impossibility. Supervisors would be placed in the position of directing officer activity in the performance of tasks that officers would not be credited to the officers. This mixed message will undoubtedly adversely affect critical traffic enforcement initiatives. The result will be a degradation of traffic safety programs.

### CONCLUSION

For the reasons stated above, *amicus* Illinois Association of Chiefs of Police urges this Court to affirm the decision Circuit Court upholding the activity point system used by the Sparta Police Department.

Respectfully submitted,

*Amicus Curiae*  
Illinois Association of Chiefs of Police

By: /s/ Donald R. Zoufal  
One of the Attorneys

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**CERTIFICATE OF COMPLIANCE**

I certify that the AMICUS CURIAE BRIEF OF THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 7 pages.

/s/ Donald R. Zoufal  
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CASE NO. 5-19-0039

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT**

---

<b>POLICEMENS BENEVOLENT, LABOR COMMITTEE</b>	)	
	)	
<b>Plaintiff-Appellant,</b>	)	<b>Appeal from the Circuit Court of the 20<sup>th</sup> Judicial Circuit, Randolph County, Illinois</b>
<b>v.</b>	)	
	)	<b>Case No.: 2017 MR 52</b>
<b>CITY OF SPARTA</b>	)	
	)	<b>Honorable Judge Gene Gross</b>
<b>Defendants-Appellee.</b>	)	<b>Judge Presiding</b>

---

**NOTICE OF FILING**

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**PLEASE TAKE NOTICE** that on the 29<sup>th</sup> day of May, 2019 the **ILLINOIS ASSOCIATION OF CHIEFS OF POLICE** electronically filed with the Clerk of the Circuit Court of the Twentieth Judicial Circuit, County of Randolph, **AMICUS CURIAE BRIEF OF THE ILLINOIS ASSOCIATION OF CHIEFS OF POLICE** a true and correct copy of which is hereby served upon you.

DATED: May 29, 2019

Respectfully submitted,

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**ILLINOIS ASSOCIATION OF  
CHIEFS OF POLICE**

By: /s/ Donald R. Zoufal  
One of the Attorneys

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing, **NOTICE OF FILING AND ILLINOIS ASSOCIATION OF CHIEFS OF POLICE** to be served upon the following counsel of record via U.S. Mail on May 29, 2019.

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Donald R. Zoufal

STATE OF ILLINOIS  
98th GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES  
TRANSCRIPTION DEBATE

135th Legislative Day

5/21/2014

'no', 1 voting 'present', Senate Bill 3409, having received the Constitutional Majority, is hereby declared passed. Senate Bill 3411, Representative Hoffman. Mr. Clerk, please read the Bill."

Clerk Bolin: "Senate Bill 3411, a Bill for an Act concerning local government. Third Reading of this Senate Bill."

Speaker Turner: "Representative Hoffman."

Hoffman: "Thank you, Mr. Speaker, Ladies and Gentlemen of the House. Senate Bill 3411 is a straightforward Bill. The Bill simply prohibits counties, municipalities or the state from requiring a police officer to issue a specific number of citations in a given period of time. This would make it illegal to have a quota system where there is a specific number of citations required of a police officer to write in a given period of time. This does not, and I repeat, this does not prohibit the evaluation of an officer based on points of contact. These points of contact include stops, warnings, arrests, investigations and community outreach. I believe that this is a commonsense approach to making sure that we continue to restore faith in police officers. We... when we have a quota system, it removes the discretion and human judgment from these officers and I believe undermines the relationships that they have with the community they are sworn to protect. I ask for an 'aye' vote."

Speaker Turner: "And now we have Representative Brauer."

Brauer: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Brauer: "Representative, I have a few quick questions for legislative intent. Will this legislation restrict the

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ability of a sheriff or chief to have policies that require tickets to be written in traffic accidents and DUIs?"

Hoffman: "No."

Brauer: "Will this legislation in any way restrict the sheriff or chief to assign special traffic details based on complaints from citizens, such as speeding in school zones or neighborhoods, and require an officer to write a ticket for those violations?"

Hoffman: "This simply says that you can't have a quota system where there has to be a number of citations given in a specific period of time. So, the answer would be no."

Brauer: "Will this legislation allow an officer to simply refuse to write a traffic citation when that officer is assigned to traffic enforcement?"

Hoffman: "I'm sorry, I didn't hear that. Could you please repeat that? I apologize."

Brauer: "Will this legislation allow an officer to simply refuse to write a traffic citation when that officer is assigned to traffic enforcement?"

Hoffman: "No."

Brauer: "Thank you, Representative. I encourage an 'aye' vote."

Speaker Turner: "Representative Anthony."

Anthony: "Thank you, Mr. Speaker. Mr. Speaker, to the Bill. Trust is the basis of any relationship with public or private. Citizens must be able to trust law enforcement officers and agencies to put public safety first and foremost. This Bill does not stop sheriff or police officers from evaluating their offices. What this Bill does, simply, it states that a sheriff or police officer... or a sheriff or a chief cannot use ticket

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writing when it comes down to the evaluation process. We have to heal the divide between police and local citizens and I personally believe that this Bill, Senate Bill 3411, does just that. Public safety should be the top priority of our law enforcement agencies. And I encourage an 'aye' vote."

Speaker Turner: "Representative DeLuca."

DeLuca: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

DeLuca: "Thank you. Representative Hoffman, as you know, we've talked about this Bill extensively. Had some meetings back in the district office with some of the local officials and also with some of the chiefs of police, so I also have some questions regarding legislative intent. If a department or law enforcement organization does not have traffic citation quotas or compare officers based on their issuance of citations currently, will this Bill affect that department?"

Hoffman: "No. If a police organization does not have citation quotas and does not compare officers based on their issuance of citations currently, this Bill will not have any effect on their department's operation."

DeLuca: "Thank you. So, are you saying that as long as the department does not require a ticket quota or compare officers based on the number of citations issued, this Bill will not affect them?"

Hoffman: "Yes."

DeLuca: "Does this Bill have any effect on any federal or state grants or funds awarded to the department?"

Hoffman: "No. It's very specific. If a federal or state grant requires a certain number of citations in a given period of



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time, that requirement would not be prohibited by this Bill 'cause we don't want jeopardize federal or state dollars going to police departments."

DeLuca: "Thank you. And lastly, if a sheriff or a chief wanted to mandate that an officer stop, also known as points of contact, a certain number of people in a given period time, is this allowed under this legislation?"

Hoffman: "Yes, that would be allowed. The only thing that this Bill prohibits is requiring an officer to issue a specific number of traffic citations in a designated period of time."

DeLuca: "Thank you very much. I encourage an 'aye' vote. Thank you."

Speaker Turner: "Representative Kay."

Kay: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Kay: "Yeah. Jay, just a couple of quick questions again on legislative intent. This Bill is not meant to take away any authority from management, that they presently have within a police department anywhere?"

Hoffman: "Well, the Bill is very specific in that it indicates that you could not require a specific number of citations be given in a period time, that's all it does. It still allows for management to evaluate an officer based on points of contact. Those points of contact would not include specific number of citations in a given period of time. They would include stops... the number of stops. You could have a quota for warnings, arrests, investigation and community outreach. So, I can't say that it wouldn't... some police departments probably have a quota system where they requires a specific

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number of traffic citations in a given month by an officer. They may evaluate those officers based on that. This would prohibit that."

Kay: "So, if a chief decided that he wanted to have a seat belt week where seat belts were enforced and was looking for four or five officers to write 150 tickets, this Bill would prohibit him from doing that?"

Hoffman: "This Bill would prohibit a specific number of citations that would be... must be given in a given period of time. So, yes, it would."

Kay: "And the same for child restraints? Supposing that they had a child restraint awareness week, a 150 tickets to be written or more that would be prohibited?"

Hoffman: "Yes. but what is not prohibited is points of contact, and that would mean stops, warnings, arrests, investigations or community outreach. So if you were going to have safety belt week, you could say you have to have... you have to have 150 or 200 or 500 contacts with individuals to check their safety belt use. But you couldn't say that you have to write a 150 tickets during that period of time."

Kay: "Notwithstanding, that that would be the law."

Hoffman: "I... I couldn't year. I apologize."

Kay: "Well, I'm sorry. Notwithstanding, the fact that that would be a broken law and a ticket should be written."

Hoffman: "Well, what we would say... what you would say is, if a ticket should be written, a ticket should be written. But we wouldn't say that you have to write 150 tickets."

Kay: "So, let's take another example. Supposing you had a high incident accident intersection of which we have several in

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the Madison/St. Clair area that have incident rates that are very high. And so, we have a police chief who says we want officer A and B to set watch over these intersections and make sure that they're well protected, and indeed, if there's a violation, we write those violations up. And let's say over a 24-hour period of time that there are 10 potential citations that should be written. Would they be written by those two, three, four, five officers or not?"

Hoffman: "If... yes. This doesn't say that they shouldn't write the tickets. It simply says that you couldn't say you have to write 10 tickets in the first hour."

Kay: "Well, what if you had an officer who wrote three tickets in the first out... in the first hour and then the rest of the day down to his shift end he did nothing and then saw a violation. Would he be prohibited from writing that violation?"

Hoffman: "I'm not... I'm not sure that I understand."

Kay: "Well, let me rephrase."

Hoffman: "No, no. You would... This does not prohibit you from writing a citation for... if a citation is warranted in every instance, in every instance. A chief could say to his police officers, if at this intersection there's any violation of the law, you must write a citation. He can say that. He just can't say you must write a hundred citations at this... at this location in a given period of time."

Kay: "Yeah. I didn't phrase my question very well. Let me try it one more time. Supposing you have a police officer that's less than energetic and he decides to hit his quota in the first hour of the day and a violation comes up that requires

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him to write a ticket. He can write that ticket, is that correct? Or he should write that ticket."

Hoffman: "Yes."

Kay: "Okay. And the same question would be true with respect to DUIs? You would... in one circumstance have an officer who might write two DUIs at ten in the morning one at two, and if he incurs another one at four in the afternoon, you'd expect him to write that ticket. Is that correct?"

Hoffman: "Yes. And as a matter of fact, a lot... most times, I believe, if it is a DUI, you'll be placed under arrest. You can still, under this Bill, have a quota for arrests."

Kay: "Okay."

Hoffman: "You just can't for citations."

Kay: "So, what you're saying is that this doesn't have to do... this is not in any way taking away a management tool from local police or State Police or whomever the case may be, it's simply saying that it's a performance tool for evaluation purposes."

Hoffman: "For... for evaluation purposes, you can still use for management tools or a performance tool, points of contact which would include stops, warnings, arrests, investigations and community outreaches. This simply says that an officer cannot be required or have a quota to issue a specific number of citations in any given period of time."

Kay: "Okay. And again, for legislative intent. This Bill, in no way, needs to... means to impede a supervisor's ability to get the job done by officers that serve underneath him?"

Hoffman: "No. The Bill is very specific and it still allows for points of contacts to be used for that purpose."

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Kay: "Thank you, Representative."

Speaker Turner: "Representative Ives."

Ives: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Ives: "Do you think officers are writing bogus tickets? When they pull someone over, do you think that that... that they're usually... the ticket is warranted or not?"

Hoffman: "I would hope that they're not issuing bogus tickets. This Bill does not say that officers are or aren't issuing bogus tickets. I think the general public believes and in some cases it is true, that in a given month there would be... there's a quota put on some officers that they have to write so many citations. Therefore, if they're not up to their citation limit towards the end of the month, they may have to write more citations and it takes away the discretion of an officer to do what they're suppose... what they really want to do, and that's keep the motoring public safe."

Ives: "Okay. So, what is the real intent of this legislation? What are you really trying to do?"

Hoffman: "I'm trying to say that a quota system is not something that is fair to the officers, is not something that the general public supports, and it removes the discretion of human judgment from officers, and you can still require that officers have to have so many stops, warnings, arrests, investigations, and community outreach. You just can't require, in a given period of time, that there be a quota on the number of citations that have to be issued."

Ives: "Okay. To the Bill. So, what you have here really is... this is a tool, and I will tell you, the Wheaton City chief of

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police basically said, that if 3411 passes, it presents a potentially enormous deterrent to Illinois traffic safety and creates a chilling effect on the ability of law enforcement executives to appropriately oversee and evaluate officer performance. What you have is you have labor coming down talking to Legislators and asking you as a Legislator to write the employee handbook for your individual municipalities. Now in my district, I have some cities that use this... a system like this. I have other cities that use a different system. I have other cities that don't have a system at all in terms of traffic stops with their officers. But the truth is that this is best decided at the local level with how they want to evaluate officers. Instead, we... we just decide here that we're going to write the employee handbook for municipalities. I mean, we're already doing that with our schools, write the employee handbook for our schools, sitting up here in Springfield and that's what's inappropriate here. We should let our own individual municipalities decide what's right for their individual situation. And, for us to be doing like this is complete interference at the local level, complete interference. So, please vote 'no'. Please give your own chief of police the ability to decide what's appropriate for their needs. Thank you."

Speaker Turner: "Representative Fortner."

Fortner: "Thank you, Speaker. Will the Sponsor yield?"

Speaker Turner: "The Sponsor will yield."

Fortner: "I think a lot of the questions that I had initially have already been covered. There are a couple that haven't; I just want to make sure I understand. So, for instance, if a



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municipality has in a collective bargaining agreement say, a phrase that would say, patrolmen are expected to write a certain number of citations in a given month. They could, under this legislation, in... say their next CBA, decide to instead say it has to be a certain number of stops that the patrolmen... that would then still be permitted. Is that correct?"

Hoffman: "Yes. It could be stops, it could be warnings, it could be arrests, investigations. What they do in... in the... the chief police of Belleville is in favor of this legislation, and what they do is they require a certain amount of community contacts. And then the officer then has the discretion whether to write the citation."

Fortner: "Right. I just wanted to make sure because I spoke with my chief of police and he initially had a lot concerns like... the way I thought I read it when we talked it through, he seemed to think as long as the bargaining agreement could be very specific about things like stops or arrests, that there was still some kind of tool for the patrolmen to be evaluated on that, that would still meet what they look for within their bargaining agreement."

Hoffman: "Yes... yes."

Fortner: "The second question that hasn't come up is the concern about evaluation from office to officer. We've talked about a fixed number, and as I understand it, there's also language in there that you couldn't compare. So, for instance, if a department had a rule that part of the evaluation was looking at, say, what was the average number of citations written by, say a patrolman in the department, that... and they were using

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this to look at compared evaluations, that that also would no longer be permitted. Is that... did I read that part correctly?"

Hoffman: "I... I don't believe that would be prohibited."

Fortner: "Okay. So... so, your understanding of this Bill is that they would still be able to compare two different officers on the basis of the number of citations issued?"

Hoffman: "I believe that you just can't compare officer to officer, but you can compare to an average."

Fortner: "You could compare to an average then."

Hoffman: "It could be compared, you just can't mandate a specific number of citations be given in a given period of time."

Fortner: "Okay. So... so just to be real clear, because I think this is an important part from, again, some of the departments that I heard from in my district, that though you could not make a specific comparison from officer to officer it is your intent that the way this Bill would work is that there could be... one could look at the overall average performance of the patrolmen for instance within a department and evaluate based on individual's performance compared to that average. But just as long it's not saying, you know, you didn't have the same numbers as this other person."

Hoffman: "Well, okay. I got... I want to be... I want to make sure that... that it's clear. It's my understanding, this Bill would prohibit entities from using the number of citations in a specific period of time in an evaluation of job performance. So, I... the whole issue of using an average and looking at that, I don't know that that's prohibited, but as far as the... the entity using that number of citations in that specific time, it is my intent that you could not do that. So, I want



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to make that clear. What you would have to do is, you could look at stops, warnings, arrests, investigations, community outreach, community contacts or a point what's called under the Bill points of contact. So, I don't want to really, you know, sugarcoat the issue here. I don't believe that you should be using the number of citations written in a given period of time as a job performance tool, not citations written. But I do believe you should be able to use arrests and points of contact."

Fortner: "Okay. thank you."

Speaker Turner: "Representative Cabello."

Cabello: "Thank you, Mr. Speaker, Ladies and Gente... to the Bill. Ladies and Gentlemen, there's a lot of issues that were brought up with this Bill, a lot of different debate. Let's... let's get to the heart of this. When you pull somebody over, let's say it's your son, your daughter, your mother, your father, and the officer comes to the car. Do you want them mandated to give them a citation or do you want them to have the officer's discretion to say, folks, you were going five miles an hour over the speed limit. Folks, you didn't really stop at the stop sign as much as you were supposed to stop. Or what would you rather have them do? A lot of these folks are going to be correcting their actions once they are pulled over. That is what the police department is for. They're to... they're to correct people's actions and they are there to arrest people. They're not supposed to be a revenue generating arm of the mayor's office or government. And unfortunately, the genesis of this Bill is because one mayor decided to tell his police department that this section of town, we are losing

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tax dollars from. So, now you police officers are going to go and start issuing citations to the public that already pays too much in taxes so that we can make up for this lost revenue. Ladies and Gentlemen, the police department goes to different areas of town because there are, like some of the Representatives here have said, some issues, maybe is there a high traffic volume or a high traffic crash area. The officers are not going to go to this and sit there and watch a traffic crash happen. The officers are not going to go there and sit there and see an egregious act take place and not act upon it. The officers are there; they are trained very well. I believe that we have the finest police officers in the country in this state. They are going to do their job the way they believe and they have been trained to do it. So, Ladies and Gentlemen, when you look at that red button or when you look at that green button, think about how you want your police department to react. Do you want them to hurriedly get to a quota that is dictated to them by their commander or do you want them to have good sound judgment. I would say we want them to have good sound judgment. Representative Hoffman, I commend you for bringing this Bill forward. I'm honored to be on it with you. Thank you very much. Please vote 'yes'."

Speaker Turner: "Representative Hoffman to close."

Hoffman: "Well, thank you, Mr. Speaker, Ladies and Gentlemen of the House. I really can't say it any better than Representative Anthony and Representative Cabello did. They are two individuals that have been on the front line as police officers. They understand that the relationship of

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police officers with the community that they serve, when you remove the discretion and human judgment from those officers, is undermined. That is why we should not have quotas for citations written. We should not have an arbitrary number of citations that have to be written in a given period of time, whether it's a week, a month or a day. And we should not allow officers to be disciplined or evaluated on their job performance based on a quota system of citations. I ask for a favorable Roll Call."

Speaker Turner: "The question is, 'Shall Senate Bill 3411 pass?' All in favor vote 'aye'; all opposed vote 'nay'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Clerk, please take the record. On a count of 106 voting 'yes', 9 voting 'no', 1 voting 'present, Senate Bill 3411, having received the Constitutional Majority, is hereby declared passed. Mr. Clerk."

Clerk Bolin: "Committee Reports. Representative Currie, Chairperson from the Committee on Rules reports the following committee action taken on May 21, 2014: recommends be adopted Motion to Table Committee Amendment #1 to Senate Bill 3022."

Speaker Turner: "Representative McAuliffe, for what reason do you seek recognition?"

McAuliffe: "Point of personal privilege."

Speaker Turner: "Please state your point, Sir."

McAuliffe: "I'm joined here with Senator Mulroe, and I'd like to have the whole Legislature welcome Oriole School which is in the northwest... which is located northwest side of the City of Chicago one of the great public schools in the city. Welcome."

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also came out of the Labor Committee. Be happy to take questions on 3rd Reading.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Is there any discussion on Amendment 3? Seeing none, all those in favor will say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Mr. Secretary, are there any further Floor amendments approved for consideration?

SECRETARY ANDERSON:

No further amendments reported.

PRESIDING OFFICER: (SENATOR SULLIVAN)

3rd Reading. Now on the Order of 3rd Reading is Senate Bill 3411. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 3411.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

Thank you, Mr. President and my colleagues in the Senate. This bill came to -- came to me from many different individuals and specifically the Fraternal Order of Police. The bill simply states that a county, municipality, or State -- State government cannot require a police officer to issue a specific number of citations - I want to stress that - citations in a given period of time. The bill also prohibits these government entities from using that criteria, specific number of citations in a specific period of time, in the matter of evaluation -- evaluating, excuse me, the job performance of -- of a police officer. I -- I believe this

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bill is necessary because a quota, which is what that -- that action is typically called, takes away from a -- a police officer's ability to use good judgment. I think it is oftentimes tempting for individuals and local government to use specific number of citations in a specific given period of time as a way to raise revenue for local government. I think that takes away from a police officer's discretion and it puts divisions in particular communities that ought not be there. This bill differs greatly, again, just like the previous bill, from when it was filed to how it sits in front of the Body today. I tried to work with the opposition to work through potential issues. There is still opposition to this bill. I want to acknowledge that upfront. And I value that opposition, but I do want to say to those opponents that I did my best to work through these issues with them. But I think the way that this bill is presented today is a good step forward for the State and I'd be happy to take any questions.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Is there any discussion. Senator Bivins, for what purpose do you rise?

SENATOR BIVINS:

Thank you, Mr. President. To the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

To the bill, Senator Bivins.

SENATOR BIVINS:

Thank you. This is what you need to know. This is what you need to know. This bill is not about quotas. That sounds good. We don't want people out issuing directives to their officers you have to have a certain number of tickets. That's not what this bill is about. This bill is about an action that was filed by the

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FOP against the City of Carbondale when the City of Carbondale police department wanted to have matrix standards of performance for their officers. The FOP did not like that. They challenged that. Wanted to do their own. The State Labor Relations Board said there's no duty upon the city to bargain over this issue, which is that what -- that's what they want to do, is bargain over this issue. So, the board issued a decision last September, the Illinois Labor Relations Board. Now, if you're not familiar with them, there's eight members on that board. Six of 'em appointed by the Governor, one appointed by the Mayor of Chicago, one appointed by the Cook County President. I would venture to say predominately they rule in favor of labor, probably more than they do management. But in this case, they ruled in favor of management on this issue, saying that you don't have the duty to negotiate and bargain. 'Cause here's the problem, Ladies and Gentlemen, with this bill: If you pass this bill, number one, you're circumventing the collective bargaining process that exists. And I would be saying the same thing if it was the sheriffs, a reversed situation, that we'd be going around the process of collective bargaining. I'm not anti-union. I'm a former union president. I've negotiated on both sides of the table for over three decades on labor issues. But, again, this isn't about quotas. And what's going to happen if you pass this bill? Now, anyone who's managed people, you know that you have that one percent, maybe five percent, in my case it was maybe one percent, of the employees who don't want to do their job, that they're not doing anything. And if you pass this bill, my fear is what's going to happen is that one percent's going to be filing grievances, unfair labor practices, that they don't have to issue a ticket for DUI, that



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they don't have to issue a ticket, they don't have to do their job. That's where we're going here. That's -- this is what this is over and, again, I'm not anti-union. This is not what it's about. But if -- if we circumvent this process, then we've opened the door for both management and labor to come to us anytime there's an issue and we pass a law to get what they want. Thank you, Mr. President.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Further discussion? Senator Holmes, for what purpose do you rise?

SENATOR HOLMES:

Thank you, Mr. President. I have a few questions of the sponsor.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Indicates he will yield, Senator Holmes.

SENATOR HOLMES:

Senator, I'd like to ask you a few questions to clarify some of the legislative intent of this. When this bill amends the Counties Code, do you mean sheriffs?

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

Yes, for purposes of legislative intent, when we use the term "county" in the bill, the term is meant to include the county and the sheriff's office as joint employers of the law enforcement officer.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Holmes.

SENATOR HOLMES:

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Does -- does this bill have any effect on any federal or State grants or funds awarded to a department?

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

No, it does not. Actually, the -- the original bill would have. This is an area, as I mentioned, that we tried to accommodate a suggested change from law enforcement. The federal or State grant requires a certain number of citations in a given period of time. That requirement would not be prohibited by this bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Holmes.

SENATOR HOLMES:

If a sheriff or chief wanted to mandate that an officer stop a certain number of people in a given period of time, is this still allowed under your bill?

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

Yes, it is. And I would say that we would expect, as all public sector employees ought to be, they should be evaluated at all times. And that would be allowed in the bill. The only thing that the bill prohibits is requiring a certain number of traffic citations in a specific period of time.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Holmes.

SENATOR HOLMES:

Thank you. Can a sheriff or chief require a certain number of DUI arrests?



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PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

A sheriff or a police chief can mandate a certain number of DUI arrests. Arrests are specifically listed in the bill under the definition of "point of contact". Because an arrest involves a more serious crime and requires probable cause, it is not a problematic mandate on police officers. Again, the bill simply says that a predetermined outcome of issuing a certain number of citations in a given period of time and then evaluating that police officer on that criteria would be prohibited moving forward.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Holmes.

SENATOR HOLMES:

Thank you, Mr. President. And my final question is, what about the concern that officers would never write citations under this legislation?

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

There are many ways, as the -- the legislation enumerates, on how officers can be evaluated. Points of contact may be instituted, as I said earlier, by way of a quota to ensure that officers are actively engaged, including quotas on stops, warnings, arrests, investigations, or community outreach, all of which can be done today. Again, the prohibition only applies to traffic citations.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Holmes.

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SENATOR HOLMES:

And -- and, finally, to the bill. I would like to urge everybody to support this bill. This bill is not trying to do anything. This bill is, quite simply, very, very straightforward. It simply doesn't allow a county or municipality or a State from requiring an officer to issue a specified number of citations or warnings in a given period of time. It also prohibits these entities from using the number of citations in a specific period of time as an evaluation of job performance. This is -- that was a very outdated way of doing business. So I would appreciate an Aye vote. Thank you.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Further discussion? Senator Oberweis, for what purpose do you rise?

SENATOR OBERWEIS:

Question of the sponsor.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Indicates he will yield, Senator Oberweis.

SENATOR OBERWEIS:

Senator, this is one of those bills where, when I came in this morning, I didn't know how I'd vote. In fact, I am still not sure, but I have a couple of questions that I hope you can help me clear up, and I -- and I -- I'm serious, this is not politics. If -- if I'm understanding this correctly, there is nothing that would prohibit a police department from, even if the bill passes, from using a variety of means to evaluate officers, including tickets that have been written, so that they know that he's doing his job. Is that correct?

PRESIDING OFFICER: (SENATOR SULLIVAN)

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Senator Manar.

SENATOR MANAR:

Thank you for the question. It's -- it's partially correct and allow me to explain. There are a variety of tools today that exist that allow management to evaluate, in this case, the job performance of a police officer. What we are saying in this bill is that saying to a police officer that they have to write five tickets in one hour and then evaluating the job performance of that officer on that alone is prohibited. They could use, for example, the number of traffic stops. They could still say we have a zero tolerance on DUI arrests or seatbelt arrests or things of that nature. The number of times you visit a school. You know, the number of hours you spend in a -- in a community. You know, there's a variety of things that can be used that I would say leads us to better policing, better relationships. But -- but using a predetermined outcome of the number of citations in a given period of time in my mind is -- as the previous speaker said, is an outdated way to evaluate.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Oberweis.

SENATOR OBERWEIS:

Thank you. And I have just one other question. Actually, it was raised when -- when Senator Holmes was speaking. And I didn't really understand exactly what went -- went on there. Did I understand you to say or -- or -- in response to her question that there could still be a mandated number of DUI arrests? And if the answer is yes, how do you do that? What if -- what if the officer never stops somebody who'd been drinking too much?

PRESIDING OFFICER: (SENATOR SULLIVAN)

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Senator Manar.

SENATOR MANAR:

The bill does not prohibit a -- a sheriff or a police chief from saying, for example, we have a zero tolerance policy for DUI stops. A citation is different than an arrest for driving under the influence, number one. Number two, there are grants that municipal governments and State government receive from -- from the federal government that are intended to enforce things like DUI laws, where it is quite plausible that a number would be attached to a grant. So we're saying in the bill, in that case, the provisions of the prohibition of the definition of a quota would not be exercised. So we want to make sure that that -- that continues. That -- that came to use from law enforcement in the bill and we tried to accommodate that.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Oberweis.

SENATOR OBERWEIS:

I'm have a little trouble understanding. I just want to be sure. Are you saying that, currently, and under this bill, a police department can mandate, for example, that each officer must have two DUI arrests a month, or something like that?

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

The answer is, today they can, and under this bill, they still can. Yeah. But -- but citations, we're getting at citations. So -- so to the extent of your question, Senator Oberweis, this is a limited -- this is a limited step. You know, there -- there were some folks that say we should go further than this, and -- but I

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think this is a limited step forward, to say that, you know, traffic citations should not be mandated in number or outcome before the citation or the stop is even made and then using that to evaluate the performance of a police officer.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Further discussion? Senator Raoul, for what purpose do you rise?

SENATOR RAOUL:

To the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

To the bill, Senator Raoul.

SENATOR RAOUL:

I think this is a pretty straightforward measure that makes a lot of sense. You know, I -- I -- I can recall when, you know, drivers are -- are cautious, super cautious because it may be the end of the month and there are quotas and -- and police officers are forced to try to stop more cars, and -- and many of these stops are discretionary stops, because it -- it's a matter of whether it's improper lane usage and -- and things of that nature. So it's not always a radar gun stop. And if it -- it -- it's -- if -- if you give 'em that discretion and you have this pressure to write a certain number of citations, then in certain municipalities that pressure may be put on just as a means of generating revenue, not as a means of keeping the streets safe, but just because, oh, we need to pull in more money and so let's pull in some more money from motorists. That's not good policy. And so we've been operating with bad policy for some time. Police officers ought not be playing the role of fee or tax collectors. And I know many of us out here are always opposed to any fee increases and unfair

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impositions on the citizens at large, and so all of those people should -- should -- should be green lights on this bill, because -- because that's not what we ought to have our police officers doing. We ought to certainly have them stop somebody who is -- who's violating the laws in our Vehicle Code. However, we not -- ought not be incenting them to exercise their discretion to stop a certain number of people just to generate more money. That's bad policy. That's dishonest to our citizens. So I urge everybody to -- to push a green button on this.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Further discussion? Senator Luechtefeld, for what purpose do you rise?

SENATOR LUECHTEFELD:

Thank you, Mr. President. Question of the sponsor.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Indicates he will yield, Senator Luechtefeld.

SENATOR LUECHTEFELD:

I guess I've been surprised at the number of calls I've had on this both -- in both directions. Early on, I had, excuse me, a couple of police -- captains or police chiefs call and say they were against the bill. One of 'em, for instance, and -- and -- said that, you know, he's served in two different situations, one where they had quotas, one where they had none, and -- and -- and he found that when they had none, everything shut down. They -- they -- there were very few, very few stops. There were very few things to happen and he -- he just thought that was -- that was not right. I told him that I believe that this thing -- this particular bill in -- was amended, or at least would allow, and he called 'em contacts, and he said I -- I -- I'm satisfied with the



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bill if I can mandate contacts. And -- and -- and then he hoped that simply good judgment -- and I really often believe that one of the best qualifications of any good officer would be simply good judgment. But you assure me that you can have contacts in - - in this bill, is -- and you can have a quota on contacts, is that right?

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Manar.

SENATOR MANAR:

Yes, thank you for the question. I'm going to read the text from page 3 of the bill. "Nothing in this Section shall prohibit the Department from evaluating a Department of State Police officer based on the Department of State Police officer's points of contact." So you could take the Department of State Police, in that instance, Senator Luechtefeld, and insert the -- this -- this language appears multiple times in the bill, so you can insert the other provisions for which the bill is intended to cover.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Seeing no further discussion, Senator Manar, to close.

SENATOR MANAR:

Just simply ask for an Aye vote, Mr. President. Thank you.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you. Ladies and Gentlemen, the question is, shall Senate Bill 3411 pass. All those in favor will vote Aye. Opposed, Nay. The voting is -- oh, excuse me. Excuse me, Mr. Secretary. Excuse me. I forgot to read something. As the bill denies or limits the power of home rule unit under -- unit to tax, pursuant to Section 6(g) of Article VII of the Illinois Constitution, the passage of this measure will require a three-fifths majority. Mr.

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Secretary, would you like me to start that discussion over? Ladies and Gentlemen, the question is... The question is, shall Senate Bill 3411 pass. As the bill denies or limits the power of a home rule unit to tax, pursuant to Section 6(g) of Article VII of the Illinois Constitution, the passage of this measure will require a three-fifths majority. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 57 voting Aye, 1 voting Nay, 0 voting Present. Senate Bill 3411, having received the required constitutional majority, is declared passed. Next up on the Calendar, we have Senate Bill 3414. Senator Steans. Out -- out of the record. Senate Bill 3456. Senator Brady. Senator Brady seeks leave of the Body to return Senate Bill 3456 to the Order of 2nd Reading. Seeing no objection, leave is granted. Now on the Order of 2nd Reading is Senate Bill 3456. Mr. Secretary, are there any Floor amendments approved for consideration?

SECRETARY ANDERSON:

Floor Amendment No. 2, offered by Senator Brady.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Brady, on Floor Amendment 2.

SENATOR BRADY:

Thank you, Mr. President. Floor Amendment 2 is an agreement with the Department -- with DNR on how we can work to put abandoned wells back into production efficiently and effectively. I'd ask for your favorable consideration.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Is there any discussion on the amendment? Seeing none, all those in favor will say Aye. Opposed, Nay. The Ayes have it, and



**STATE OF ILLINOIS  
APPELLATE COURT, FIFTH DISTRICT**

**FROM THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
COUNTY OF RANDOLPH**

<b>POLICEMENS BENEVOLENT</b>	)	<b>Appeal from Randolph Co.</b>
<b>LABOR COMMITTEE</b>	)	<b>Twentieth Judicial District</b>
	)	
<b>Plaintiff</b>	)	<b>No. 2017 MR 52</b>
	)	<b>Trial Judge: Gene Gross</b>
<b>v.</b>	)	
	)	<b>Notice of Appeal Filed</b>
<b>CITY OF SPARTA</b>	)	<b>1/17/19</b>
	)	<b>Judgment entered 1/19/18</b>
<b>Defendant</b>	)	<b>Rule 301 confers</b>
	)	<b>jurisdiction</b>

**BRIEF OF APPELLANT**

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**ORAL ARGUMENT REQUESTED**

**Rule 341(c) Certificate of Compliance**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the rule 341(h) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 20 pages.

/s/ Shane Voyles

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Shane Voyles

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**INTRODUCTION**

Plaintiff sought a declaratory judgment to challenge the legality of the Defendant's activity points system under the Illinois statutory prohibition against ticket quotas. 65 ILCS 5/11-1-12. In the context of that same case, the parties resolved a labor arbitration matter. No appeal or cross-appeal challenged that part of the decision pertaining to the labor arbitration award, and nothing with respect to the labor arbitration award is before this Honorable Court. Because the trial court below found that the Defendant's activity points system does not violate the quota act, even though that points system definitely counts citations written or issued, this appeal followed.

**STATEMENT OF THE ISSUE PRESENTED FOR APPEAL**

Whether the trial court below erred by construing 65 ILCS 5/11-1-12 as not prohibiting the Defendant-Appellee's points system, that includes either the issuance of citations or the number of citations issued by a police officer, and that is used to evaluate a police officer's job performance on a monthly or semi-annually basis?

**JURISDICTION**

The parties filed cross-motions for summary judgment in the trial court below. R. C636-37. The trial court granted Defendant's motion and denied Plaintiff's motion. R. C636-37. On December 19, 2018, the trial court issued a "final judgment in accordance with Sup. Ct. R. 303(a)." R. C636-37. This final judgment is appealable under Rule 301. Plaintiff then timely filed a Notice of Appeal on January 17, 2019. By timely filing a Rule 301 Notice of Appeal, Plaintiff vested this Honorable Court with jurisdiction.



**STATUTE INVOLVED****Quotas Prohibited 65 ILCS 5/11-1-12**

“Quotas prohibited. A municipality may not require a police officer to issue a specific number of citations within a designated period of time. This prohibition shall not affect the conditions of any federal or State grants or funds awarded to the municipality and used to fund traffic enforcement programs.

A municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. For the purposes of this Section, “points of contact” means any quantifiable contact made in the furtherance of the police officer's duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.

A home rule municipality may not establish requirements for or assess the performance of police officers in a manner inconsistent with this Section. This Section is a denial and limitation of home rule powers and functions under subsection (g) of Section 6 of Article VII of the Illinois Constitution.”

## STATEMENT OF FACTS

The Sparta, Illinois Police Department, “uses a system of monthly activity points” to evaluate officer performance. R. C271. The Police Department includes the number of citations issued by the officers in its “Activity Points Policy” that is “used as a performance standard.” R. C271. By comparing the number of “cases, arrests, citations, traffic stop warnings, extra duty assignments, drug task force duties, [and/or] investigations,” the police department then sets “a monthly point minimum.” R. C271. “All full time officers must meet a monthly point minimum.” R. C271.

The Defendant freely admits that it requires its officers to meet this points minimum, or quota. R. C271-74. Defendant requires the officer to “meet a monthly point minimum,” and, “[f]ailure to reach the minimum monthly points will result in discipline.” R. C271, C274. The Defendant includes rather than excludes the issuance of citations or the number of citations issued by a police officer in this points system, by counting “Citations” and assigning them a point value of “2 points each.” R. C273.

“From January 2013 to July 2017, City patrol officers were evaluated on a monthly and annual basis based on their monthly activity points pursuant to the Activity Points Policy.” R. C272. The “Sparta Police Department Evaluation Form” requires the evaluator to consider “how you compare to your other Officers.” R. C275. With that form, the Police Department compares the officers’ activity points, including citations, “to the avg. monthly points of other Officers working same shift and times.” R. C275.

### **B. The trial court’s order**

On this record, Plaintiff moved for summary judgment, alleging that the points and/or evaluation policy in place at the Sparta Police Department established an indirect

quota in violation of the second paragraph of 65 ILCS 5/11-1-12. Conversely, the Defendant alleged that: “the Union incorrectly claims that the phrase ‘[p]oints of contact shall not include either the issuance of citations or the number of citations’ means that municipalities are prohibited fro including ‘either the issuance of citations or the number of citations issued by a police officer,’ **in any evaluation system.**” R. C498-99 (emphasis in original). The Defendant never argued that the quota act confused the terms “arrest” and “citation” or that the law was too vague to be enforced. R. C493 – C505. There was no dispute between the parties about what the legislature meant by “citations.” R. C493 – C505.

However, the trial court questioned, “what is a citation?” R. 10. It also explained that it believed the term was “confusing” and “kind of circular.” R. 10. The trial court below further stated that “a citation is an arrest,” and thus found lack of clarity in the statute. R. 11. The trial court below granted then Defendant’s motion in a final appealable order. R. C637. This appeal followed. R. C638-39.

## ARGUMENT

### I. The Standard of Review is *de novo*.

A circuit court's decision to grant or deny a motion for summary judgment is reviewed *de novo*. Harrison v. Hardin County Community Unit School District No. 1, 197 Ill.2d 466, 758 N.E.2d 848 (2001). Where there is no dispute as to an issue of material fact, the sole function of this court is to determine whether the trial court's judgment was correct as a matter of law. Thurman v. Grinnell Mutual Reinsurance Co., 327 Ill.App.3d 920, 764 N.E.2d 130 (5th Dist. 2002). By filing cross-motions for summary judgment, the parties agreed that no genuine issue of material fact existed and that the matter should be decided based on the record presented. Tri-State Coach Lines, Inc. v. Metropolitan Pier and Exposition Authority, 315 Ill.App.3d 179, 189, 732 N.E.2d 1137, 1145 (1st Dist. 2000). Because the Plaintiff is relying upon the Defendant's affidavit, policy and evaluation form, there is no dispute of fact. R. C271-74. As such, *de novo* review applies to this matter.

### II. The trial court below erred by granting summary judgment on a theory neither party advanced.

Even though *de novo* review applies, fundamental notions of due process exist to prevent depriving a party of their day in court. In this case, the trial court below decided this matter on a position not argued by either party, when it questioned whether the term "citation" was too ambiguous to enforce. R. 10 – 11.

Parties are prohibited from seeking summary judgment on a theory that was never pled in the complaint. Gold Realty Group Corp. v. Kismet Café, Inc., 358 Ill.App.3d 676, 832 N.E.2d 403 (1st Dist. 2005). In that case, the "theory on which the plaintiff was awarded possession of the premises never was pled in its complaint, directly or

indirectly.” Id. The Appellate Court found that it could not “condone this omission,” so it reversed and remanded because the “trial court entered summary judgment for the plaintiff on an issue entirely absent from the pleadings.” Id. A similar situation occurred in this case.

In the trial court below, the Plaintiff argued that the first paragraph of the Act prohibited direct, front-door quotas, that the second paragraph of the Act prohibited indirect, back-door quotas, and that the Sparta Police Department had a back-door quota. For its part, the Defendant argued that there was no difference between the first and second paragraphs of the law prohibiting quotas, and that the second paragraph of the statutory prohibition actually granted it permission to count citations in its points system. Neither party ever expressed any doubt about what a citation was, either as that term is used in the statute or as it is used under the Defendant’s evaluation and/or points system. R. C42 – 45; C493 – C505. At all times, the parties understood the word citation in the Defendant’s point system to have the same meaning as used by the legislature. The issue was whether the Defendant’s points of contact system that includes citations was prohibited by the legislature, when it stated: “Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12.

Even though the parties expressed no lack of clarity about what a citation was, the trial court below questioned, “What is a citation?” R. 10. The trial court below then considered whether citations and arrests under the law prohibiting quotas were one and the same thing. R. 10-11. The trial court had every right to consider this question, but, it was not proper for it to frame the issue as such without affording the parties advance

notice that it considered that issue central to the matter. After all, “procedural due process requires [advance] notice an opportunity to respond, and a meaningful opportunity to be heard.” Gold Realty Group Corp. v. Kismet Café, Inc., 358 Ill.App.3d 676, 832 N.E.2d 403 (1st Dist. 2005). The trial court below had every right to *sua sponte* postpone the matter and demand submissions on the meaning of the word “citation” prior to hearing. But it was not proper for it to grant summary judgment on an issue not considered or presented by the parties. Doing so undermined “a meaningful opportunity to respond.” Id.

Had the trial court below notified the parties that it was considering whether the term “citation” was too vague, the parties could have briefed that issue and provided relevant authority. But without advance notice that the trial court was struggling with what the legislature meant by the word “citation,” even though the trial court had reviewed Supreme Court Rule 552 “Uniform Tickets-Processing,” the parties were not able to meaningfully address this issue. Because the trial court below based its ruling on a position never advanced by the parties, it committed reversible error. Gold Realty Group Corp. v. Kismet Café, Inc., 358 Ill.App.3d 676, 832 N.E.2d 403 (1st Dist. 2005).

**III. The decision of the trial court below is contrary to rules of statutory construction.**

The Defendant and the trial court below offered different reasons to find that the law prohibiting ticket quotas was not violated. The Defendant defended its activity points system by arguing that the legislature gave it permission to count, track and award “2 points each” for citations. R. C273. According to the Defendant, the law only prohibits direct, front-door ticket quotas because the second paragraph of the law has no meaning different or distinct from the first paragraph. The trial court below found that

the word “citations” was too vague to apply, and so it declined to find that the Defendant’s points system violated the Act. Neither position is sustainable, because each originates from a goal of avoiding application of the plain text of the law as written.

Hanson v. Bd. of Trustees of State Universities Retirement System, 115 Ill.App.3d 974, 451 N.E.2d 925 (5th Dist. 1983).

**1. The law should be applied as written.**

“The primary rule of statutory construction is to ascertain and give effect to the legislature’s intent, and that inquiry must begin with the statute’s language.” Tri-State Coach Lines, Inc. v. Metropolitan Pier and Exposition Authority, 315 Ill.App.3d 179, 189, 732 N.E.2d 1137, 1145 (1st Dist. 2000). “When the language of a statute is precise and the intent of the draftsmen is clear, the court’s only function is to enforce the law as enacted.” Hanson v. Bd. of Trustees of State Universities Retirement System, 115 Ill.App.3d 974, 451 N.E.2d 925 (5th Dist. 1983). “Moreover, there is no rule of construction which empowers a court to declare that the legislature did not mean what the plain language of the statute imports.” American Buyers Club of Mt. Vernon, Illinois, Inc. v. Zuber, 57 Ill.App.3d 899, 373 N.E.2d 786 (5th Dist. 1978).

The statutory prohibition against quotas clearly, unmistakably and unequivocally states:

“A municipality may not, for purposes of evaluating a police officer’s job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer’s points of

contact. For the purposes of this Section, “points of contact” means any quantifiable contact made in the furtherance of the police officer's duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer. 65 ILCS 5/11-1-12.

This language is not ambiguous. To find an ambiguity, one would have to question the clear meaning of terms like “citations” or “written warnings,” or, pretend that the words “may not” do not prohibit conduct but instead grant permission.

The points system in place at the Sparta Police Department violates the plain language of the second paragraph of the statutory prohibition against quotas. 65 ILCS 5/11-1-12. The first sentence of this second paragraph was violated by the Police Department’s evaluation system, because the Department evaluates officers by comparing the number of citations that they write to the number written by other officers. R. C271-78. That the Department compares other statistics matters not, because the legislature did not permit any evaluation system to includes citations, if citations count only a tiny bit. The statutory text is clear and unmistakable, prohibiting any and all hourly, daily, monthly or yearly evaluation systems that “include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12.

The clarity and precision of the absolute prohibition is underscored, rather than clouded, by that final sentence of the second paragraph of the act. 65 ILCS 5/11-1-12. In spite of this statutory text, the Sparta Police Department “include[s] either the issuance of citations issuing or the number of citations issued” by assigning them a value of “2 points



each.” R. C273; 65 ILCS 5/11-1-12. This case has never presented a close or ambiguous question, and the trial court below erred by looking for ambiguities instead of applying the plain meaning of the words used by the legislature, even if it did not agree with the law.

**2. When the legislature uses different words, it is understood that the legislature is referring to different things.**

The trial court below suggested that the act prohibiting quotas was “confusing” and “kind of circular,” because “a citation is an arrest.” R. R10-11. But:

“Whenever a court disregards the clear language of legislation in the name of ‘avoiding absurdity,’ it runs the risk of implementing its own notions of optimal public policy and effectively becoming a legislature. Interpreting legislation to mean something other than what it clearly says is a measure of last resort, to avoid ‘great injustice’ or an outcome that could be characterized, without exaggeration, as an absurdity and an utter frustration of the apparent purpose of the legislation.” Dusthimer v. Bd. of Trustees of Univ. of Ill., 368 Ill.App.3d 159, 857 N.E.2d 343 (4th Dist. 2006).

The trial court below erred by ascribing the same meaning to different terms, instead of giving different meaning to the different words “arrest” and “citation” used by the legislature.

It is “[a]n elementary rule of statutory construction [] that when the legislature uses certain words in one instance and different words in another, it intends a different meaning.” In re Marriage of Walters, 238 Ill.App.3d 1086, 604 N.E.2d 432 (2nd Dist. 1992); Firststar Bank N.A., v. Faul, 253 F.3d 982 (7th Cir. 2001). Additionally, it is

presumed that the legislature does not use synonyms within the context of a single statute. People v. Price, 375 Ill.App.3d 684, 873 N.E.2d 453 (1st Dist. 2007).

**3. The trial court below erred by giving words a technical, rather than an ordinary, meaning.**

The trial court below found that the legislature passed unenforceable and confusing legislation by using the words “arrest” and “citation” that were, in the opinion of the trial court below, synonyms. R. R10-11. The trial court below reasoned that these words have the same legal meaning. R. R10-11. This reasoning conflicts with multiple rules of statutory construction. Because the legislature did not define the words it used in the quota prohibition act, the words it used should have been “given their ordinary and popularly understood meaning,” rather than their technical legal meaning. People v. Lieberman, 228 Ill.App.3d 639, 592 N.E.2d 575 (4th Dist. 1992). Had the trial court below given the words “arrest” and “citation” their ordinary and popular meaning, rather than their technical definition, the ambiguity it perceived would not have been created.

Instead of giving the words “citation” and “arrests” their ordinary and popularly understood meanings, the trial court below opted to give them technical interpretations. While a current or former criminal defense attorney would view any arresting of freed to move as an arrest, most people would not agree. R. R12. Police officers, the legislature’s intended audience, by and large do not believe an arrest occurs unless there is an arrestee to be booked and processed at the county jail. No matter which definition of arrest is correct, the latter definition is much more common.

Moreover, according to the popularly understood meaning and the title of Supreme Court Rule 552, a ticket is a citation. Sup.Ct.Rule 552 “Uniform Tickets-Processing.” Yet, the trial court below opted to give “arrest” and “ticket” the same

meaning. By and large, citizens and police officers do not believe or understand that an arrest occurs when a ticket is issued. Any spouse confessing to their significant other that they were issued a speeding ticket would not begin the conversation by saying, “I was arrested today.” Instead of giving “arrest” and “ticket” their common and popular meanings, the trial court below found them to be synonymous legal terms. Because the trial court’s interpretation was contrary to the rules of statutory construction, its decision should be reversed.

**IV. The Defendant’s urged interpretation would render statutory text superfluous.**

The trial court below declined to enforce the plain text of the quota prohibition act because it believed a latent ambiguity existed in the law. R. R10-11. The City of Sparta never argued this position in the trial court below. R. C493-C505. In its motion for summary judgment, the City of Sparta argued that the Plaintiff’s interpretation of the act was “overly literal,” not that the words used in the Act lacked definition or clarity. R. C500. In the trial court below, the City of Sparta claimed that the bulk of the statutory text was superfluous, and, that the quota prohibition act was really a law granting it permission to do something. The latter argument contradicts the rule that “statutes granting power to a municipal corporation are construed strictly against the municipality which claims the right to exercise the power.” Ross v. City of Geneva, 71 Ill.2d 27, 373 N.E.2d 1342 (1978). Moreover, these arguments render the second paragraph of the quota prohibition act meaningless.

The final sentence of the second paragraph of the act states: “Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12. In the trial court below, the City of Sparta argued

that “[t]his sentence is clearly a reference back to the original prohibitions” of the first paragraph, rather than a reference to the preceding text of the second paragraph. R. C500. In other words, the City of Sparta was arguing that the second paragraph of the Act should be ignored, overlooked and not enforced. This argument is not surprising, because the City was in violation of the language appearing in the second paragraph of the Act. 65 ILCS 5/11-1-12.

At their core, the Defendant’s arguments require statutory language to be overlooked or ignored. Courts presume that the legislature does not enact superfluous provisions in a statute. Bonaguro v. County Officers Electoral Bd., 158 Ill.2d 391, 634 N.E.2d 712 (1994); Niven v. Siqueira, 109 Ill.2d 357, 487 N.E.2d 937 (1985). This presumption exists because all words in the statute must, if possible, be given effect. Hirschfield v. Barrett, 40 Ill.2d 224, 239 N.E.2d 831 (1968). Courts should not undermine the legislative process by simply ignoring the words selected by the legislature. The Defendant argued that the Plaintiff’s interpretation of the statute was too literal because the Defendant was blatantly violating the statute. It continues to do so. Because Defendant was and is violating the statutory text, it wants the words used by the legislature to be rendered superfluous, meaningless, inoperable, void, insignificant, or redundant. The Defendant’s arguments are contrary to law and should be rejected.

**V. If relevant, the full Legislative History undermines Defendant’s arguments.**

The quota prohibition act states that: “Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12. This language is clear, crisp and concise. It is unambiguous. Because no ambiguity exists, “there is no basis to delve into the conference reports or statements of

legislators to resolve the dispute in this case.” Kaider v. Hamos, 975 N.E.2d 667, 363 Ill.Dec. 641 (1st Dist. 2012).

However, if this Honorable Court believes the act prohibiting quotas is ambiguous, then the entire legislative history, rather than mere snippets of it, should be considered. Morel v. Coronet Ins. Co., 117 Ill.2d 18, 509 N.E.2d 996 (1987). As the Illinois Supreme Court explained:

“Statements made by members of the General Assembly in legislative debate assist in revealing the legislative intent behind a statute only when examined in the context of the debate in its entirety. ‘Legislative intent’ speaks to the will of the legislature as a collective body, rather than the will of individual legislators.” *Id.* at 24, 509 N.E.2d 996, 999 (1987).

The entirety of the legislative history underscores that there is no ambiguity in the Act prohibiting ticket quotas because it means what it says. The law forbids direct and indirect ticket quotas.

**1. The Senate debate of April 10, 2014 undermines the reasoning of the trial court below, and, the Defendant’s arguments.**

The Senate transcript of the 98th General Assembly for the 109th legislative day contains roughly 12 pages of discussion about this bill. 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 42-54. After the Senate sponsor, Andy Manar, introduced the bill and summarized it, Senator Bivins then spoke at length about the history behind the bill. 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 42-45. According to Senator Bivins, the legislation resulted from a labor dispute between the Fraternal Order of Police and the City of Carbondale. 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 44. Following that discussion, Senator Holmes asked “a

few questions to clarify some of the legislative intent.” 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 45.

The following debate then occurred:

Q. “If a sheriff or chief wanted to mandate that an officer stop a certain number of people in a given period of time, is this still allowed under your bill?”

A. “Yes, it is. And I would say that we would expect, as all public sector employees ought to be, they should be evaluated at all times. And that would be allowed in the bill. The only thing that the bill prohibits is requiring a certain number of traffic citations in a specific period of time.”

Q. “Thank you. Can a sheriff or chief require a certain number of DUI arrests?”

A. “A sheriff or police chief can mandate a certain number of DUI arrests. Arrests are specifically listed in the bill under the definition of “point of contact.” Because an arrest involves a more serious crime and requires probable cause, it is not a problematic mandate on police officers. Again, the bill simply says that a predetermined outcome of issuing a certain number of citations in a given period of time and then evaluating that police officer on that criteria would be prohibited moving forward.”

Q. “Thank you, Mr. President. And my final question is, what about the concern that officers would never write citations under this legislation?”

A. “There are many ways, as the – the legislation enumerates, on how officers can be evaluated. Points of contact may be instituted, as I said

earlier, by way of a quota to ensure that officers are actively engaged, including quotas on stops, warnings, arrests, investigations, or community outreach, all of which can be done today. Again, the prohibition only applies to traffic citations.” 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 46-47.

Having concluded his questions, Senator Holmes then urged support for the bill, which he summarized as follows:

“This bill is, quite simply, very, very straightforward. It simply doesn’t allow a county or municipality or a State from requiring an officer to issue a specified number of citations or warnings in a given period of time. It also prohibits these entities from using the number of citations in a specific period of time as an evaluation of job performance.” 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 48.

This Senate debate undermines the reasoning of the trial court below and the arguments of the Defendant.

**2. Independently from and in addition to the Senate debate, the House debate of May 21, 2014 also undermines the Defendant’s arguments.**

The House perhaps had a more robust debate about this bill than did the Senate. The House floor debate occurred on the 135th legislative day, and spanned about 13 pages. 98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 44-57. The Plaintiff encourages this Honorable Court to review the entire debate. During that debate, the Bill’s House Sponsor, Representative Hoffman, indicated that the Bill would allow municipalities to evaluate officers on a department-wide average number of traffic

citations issued or written, so long as officers weren't compared to each other. 98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 47-48, 53-54.

But, after making those statements, Representative Hoffman corrected course:

“Well, okay. I got . . . I want to be . . . I want to make sure that . . . that it's clear. It's my understanding, this Bill would prohibit entities from using the number of citations in a specific period of time in an evaluation of job performance. So, I . . . the whole issue of using an average and looking at that, I don't know that's prohibited, but as far as the . . . entity using that number of citations in that specific time, it is my intent that you could not do that. So, I want to make that clear. What you would have to do is, you could look at stops, warnings, arrests, investigations, community outreach, community contacts or a point what's called under the Bill points of contact. So, I don't want to really, you know, sugarcoat the issue here. I don't believe that you should be using the number of citations written in a given period of time as a job performance tool, not citations written. But I do believe you should be able to use arrests and points of contact.” 98th Ill. Gen. Assem., House Proceedings, May 21, 2014, at 54-55.

The Defendant is not only violating the letter of the law, but also the intent behind it, by using a performance evaluation system that counts citations as “2 points each.” R. C273.



## CONCLUSION

The raison d’etre for the last sentence of the second paragraph of the act prohibiting quotas is to resolve and negate any doubt about the meaning of the law. With straightforward and unclouded words, the legislature resolved doubts rather than creating them by clarifying that “[p]oints of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12. It is hard to imagine a clearer statement by the legislature. Narrowly, this case is about the meaning of the act prohibiting ticket quotas. But the larger concept involved is whether an Illinois municipality may refuse to follow a state law it simply does not like. The Defendant fully understands the law and has no actual confusion about what it means. The Defendant chose to not follow it. Because the decision of the trial court below upheld the Defendant’s unlawful conduct, it should be reversed.

WHEREFORE, Plaintiff Hofrichter respectfully requests this Honorable Court reverse the trial court below and remand with whatever further instructions this Honorable Court deems necessary and appropriate under the circumstances.

Respectfully submitted,  
Plaintiff,

/s/ Shane Voyles  
BY: \_\_\_\_\_  
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**Proof of Service**

I hereby certify that on the 20th day of March, 2019, I electronically filed the foregoing pleading with the Clerk of the Court and parties of record using the Odyssey electronic filing system.

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5-19-0039

**STATE OF ILLINOIS  
APPELLATE COURT, FIFTH DISTRICT**

**FROM THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
COUNTY OF RANDOLPH**

<b>POLICEMENS BENEVOLENT</b>	)	<b>Appeal from Randolph Co.</b>
<b>LABOR COMMITTEE</b>	)	<b>Twentieth Judicial District</b>
	)	
<b>Plaintiff</b>	)	<b>No. 2017 MR 52</b>
	)	<b>Trial Judge: Gene Gross</b>
<b>v.</b>	)	
	)	<b>Notice of Appeal Filed</b>
<b>CITY OF SPARTA</b>	)	<b>1/17/19</b>
	)	<b>Judgment entered 1/19/18</b>
<b>Defendant</b>	)	<b>Rule 301 confers</b>
	)	<b>jurisdiction</b>

**REPLY BRIEF OF APPELLANT**

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**ORAL ARGUMENT REQUESTED**

**Rule 341(c) Certificate of Compliance**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 17 pages.

/s/ Shane Voyles

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Shane Voyles

ARGUMENT

**A. By tallying citations written by officers as being worth “2 points each,” the Defendant’s Points System Violates the Plain Language of the Act.**

At part “B” of its brief, the Defendant claims that the plain language of the Act supports its arguments, but it then begins that argument by suggesting the Plaintiff is reading the Act too literally. Comparison of the plain language of the Act to the Affidavit, Points policy and evaluation form included in the appendix to the Union’s original brief demonstrates that the City is in violation of that Act. R. C271-78; Appendix p. 29-36. The City operates a points quota, as “[f]ailure to reach the minimum monthly points will result in discipline.” R. C273-74; Appendix p. 31-32. This quota system based on points of contact would not violate the Act if it did not “include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12. But, since the Defendant’s points system includes rather than excludes citations, it violates the plain language of the Act. That the Defendant also compares other statistics matters not, because the legislature did not permit any evaluation system to include citations only a tiny bit, or occasionally. 65 ILCS 5/11-1-12.

The act prohibiting ticket quotas prohibits not only direct ticket quotas, but also performance evaluation systems that “compare the number of citations issued” from officer to officer. 65 ILCS 5/11-1-12. The points system in place at the Sparta Police Department violates the first and last sentences of the Act’s second paragraph, because the Defendant “uses [its] system of monthly activity point to track its officer’s performance.” R. C271; Appendix p. 29. The Defendant’s “Activity Point Policy is used as a performance standard.” R. C271; Appendix p. 29. In other words, the Defendant’s

Points Policy is used “for purposes of evaluating a police officer’s job performance.” 65 ILCS 5/11-1-12. While the Defendant’s “Points Policy” does not require officers to write citations, it does award “2 points each” for each citation written. R. C271-74; Appendix p. 29-32. This is a clear violation of the last sentence of paragraph two of the Act, which states: “Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12.

Importantly, the Defendant awards “2 points each” per citation, while a “Traffic stop warning” is worth only one point, thus creating the incentive to issue a citation and not a warning to more quickly meet the “monthly point minimum.” R. C271-73; Appendix p. 29-31. As such, one must only divide an officer’s total monthly citation points in half to determine how many citations were written that month. These facts, attested to by the Assistant Chief of Police, conclusively demonstrate that the Defendant’s points of contact evaluation system violates the plain language of the Act. 65 ILCS 5/11-1-12.

The clarity and precision of the Act’s absolute prohibition is brought into sharper focus, rather than clouded, by the final sentence of the second paragraph of the Act. 65 ILCS 5/11-1-12. In spite of this statutory text, the Defendant “include[s] either the issuance of citations or the number of citations issued” by assigning them a value of “2 points each.” R. C273; 65 ILCS 5/11-1-12. As the Defendant noted in its brief:

“There is no rule of construction which authorizes a court to declare that the legislature did not mean what the plain language of the statute imports, and a court is not at liberty to depart from the plain language of a statute by reading into it exceptions, limitations or conditions that the legislature

did not express.” Kunkel v. Walton, 179 Ill.2d 519, 689 N.E.2d 1047 (1997).

Contrary to the Defendant’s arguments, the Plaintiff is not asking this Honorable Court to legislate anything into the law. Defendant simply does not offer “a reasonable or plausible alternative” interpretation of the law, because it advocates for ignoring what the law actually says. Id. at 535, 689 N.E.2d 1054 (1997).

The legislature left no room for Defendant’s points of contact policy that sometimes includes and counts citations, or that includes them along with “traffic stops completed, arrests, written warnings, and crime prevention measures.” 65 ILCS 5/11-1-12. The law states that a system of evaluating officers’ “[p]oints of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12. At bottom, the Defendant is simply requesting this Honorable Court to not apply the Act as written to its points policy that includes citations and awards them “2 points each.” R. C273; Appendix p. 31. This argument has no merit and should be rejected.

**B. The Subject of the Final Sentence of the Act prohibiting ticket quotas is “points of contact,” not direct quotas.**

The Defendant argues that application of the final sentence of the Act to the subject of “points of contact,” is overly literal. It also argues that final sentence is not about “points of contact,” but instead references the first paragraph, which does not use that phrase. These strained arguments are not compelling.

The legislative enactment at issue is titled, “Quotas prohibited.” 65 ILCS 5/11-1-12. The specific sentence at issues states:

“Points of contact shall not include either the issuance of citations or the

number of citations issued by a police officer.” Id.

When the legislature uses terms like “prohibited” and “shall not,” it is prohibiting rather than authorizing or permitting something. More specifically, the legislature is prohibiting conduct with respect to the subject matter of the language immediately preceding “shall not.” Gillespie Community Unit School Dist. No. 7 v. Macoupin County, 4 N.E.3d 37, 378 Ill.Dec. 438 (2014). Contrary to common sense, grammatical rules and precedent, the City claims that this final sentence of the act passed to prohibit ticket quotas is “permissive language.” City’s brief, p. 16-17. This claim lacks merit.

Moreover, the Plaintiff is not overemphasizing the final sentence of the second paragraph of the Act. That second paragraph begins with the following prohibition:

“A municipality may not, for purposes of evaluating a police officer’s job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties.” 65 ILCS 5/11-1-12.

It ends by stating: “Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” Id. Read together, as they must be, the words used by the legislature indicate that no evaluation system, whether euphemistically described as a points system or not, may tally and “compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties.” Id.

The plain and ordinary meaning of the words used in the second paragraph of the Act reveals that the legislature was trying to also prohibit police chiefs from comparing officers’ citation totals in order to create the incentive to write more tickets. Whether or



not this Honorable Court or anyone else believes that goal was worthy, the legislature intended to remedy an evil and its intent should be carried out:

“In determining the General Assembly's intent, we may properly consider not only the language of the statute, but also the purpose and necessity for the law, the evils sought to be remedied, and the goals to be achieved.”

Brucker v. Mercola, 227 Ill. 2d 502, 886 N.E.2d 306 (2007).

The Defendant takes issue with the Plaintiff referring to tallying citations as a “back-door” quota and claims that the Union is trying to add to the legislation. However, even the

Defendant concedes that “municipalities cannot establish points of contact systems that somehow circumvent the Act’s general prohibitions against ticket quotas.” (City’s brief, p. 17, end first partial para.).

The statute designed to prohibit ticket quotas can be and should be applied as written. The statute not only prohibits express, front-door, or direct ticket quotas, but also implied, back-door, or indirect ticket quotas. Moreover, the statute does not interfere with whatever right municipalities may have previously had to establish other quotas:

“There are many ways, as the – the legislation enumerates, on how officers can be evaluated. Points of contact may be instituted, as I said earlier, by way of a quota to ensure that officers are actively engaged, including quotas on stops, warnings, arrests, investigations, or community outreach, all of which can be done today. Again, the prohibition only applies to traffic citations.” 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 46-47.

Perhaps one could construe the middle two sentences of the second paragraph of the Act as granting permission, but it is better understood as language demonstrating the legislature's intent of not prohibiting or interfering with a given state of affairs. In any event, the Defendant could simply have complied with the law by discontinuing its practice of tallying traffic citations and giving them "2 points each." R. C273; Appendix p. 31. This Honorable Court should not rewrite legislation simply because a municipal chief of police does not like the law or believes they are above it.

**C. The Plaintiff seeks application of the plain language of the Act.**

The Defendant also argues that the Plaintiff's interpretation of the Act has revealed a latent ambiguity. To the contrary, the Union simply asks this Honorable Court to apply the language enacted by the legislature. Tri-State Coach Lines, Inc. v. Metropolitan Pier and Exposition Authority, 315 Ill.App.3d 179, 189, 732 N.E.2d 1137, 1145 (1st Dist. 2000). "[T]here is no rule of construction which empowers a court to declare that the legislature did not mean what the plain language of the statute imports." American Buyers Club of Mt. Vernon, Illinois, Inc. v. Zuber, 57 Ill.App.3d 899, 373 N.E.2d 786 (5th Dist. 1978). "When the language of a statute is precise and the intent of the draftsmen is clear, the court's only function is to enforce the law as enacted." Hanson v. Bd. of Trustees of State Universities Retirement System, 115 Ill.App.3d 974, 451 N.E.2d 925 (5th Dist. 1983). Additionally, "[e]ach word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." Brucker v. Mercola, 227 Ill. 2d 502, 886 N.E.2d 306 (2007).

The Act prohibits ticket quotas with the following unambiguous language:

“A municipality may not, for purposes of evaluating a police officer's job performance, compare the number of citations issued by the police officer to the number of citations issued by any other police officer who has similar job duties. Nothing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact. For the purposes of this Section, “points of contact” means any quantifiable contact made in the furtherance of the police officer's duties, including, but not limited to, the number of traffic stops completed, arrests, written warnings, and crime prevention measures. Points of contact shall not include either the issuance of citations or the number of citations issued by a police officer.” 65 ILCS 5/11-1-12.

This language can be and should be applied as written, as one must go looking for an ambiguity to find one in it. The Union simply asks that the statute be applied as written, an argument that does not highlight or reveal any latent ambiguities in the Act, because there are none.

**D. The Full Legislative History is not consistent with the City’s position.**

Defendant suggests that the Illinois Supreme Court, in Krohe, held that legislative history can or should be reviewed whenever the text of a statute is being construed. To the contrary, the Court cautioned that “[w]here the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction.” Krohe v. City of Bloomington, 204 Ill.2d 392, 789 N.E.2d 1211 (2003). Even the trial court below acknowledged that the final sentence of paragraph two of the act is “a pretty clear sentence.” R. R.10. The trial court below found latent ambiguity in the Act because it

mistakenly equated the terms “arrest” and “citation.” Because those terms are legally distinguishable, the sentences at issue contain no ambiguity. As such, the statute should be applied “without resort to” the legislative history. Krohe, at 395, 789 N.E.2d 1212.

As well-put by the Fourth District:

“Whenever a court disregards the clear language of legislation in the name of ‘avoiding absurdity,’ it runs the risk of implementing its own notions of optimal public policy and effectively becoming a legislature. Interpreting legislation to mean something other than what it clearly says is a measure of last resort, to avoid ‘great injustice’ or an outcome that could be characterized, without exaggeration, as an absurdity and an utter frustration of the apparent purpose of the legislation.” Dusthimer v. Bd. of Trustees of Univ. of Ill., 368 Ill.App.3d 159, 857 N.E.2d 343 (4th Dist. 2006).

Although “avoiding absurdity,” has not been advanced by the Defendant to justify consulting legislative history, the cautions apply nonetheless.

The Defendant also asserts that the legislative history of the act prohibiting ticket quotas is “unambiguous.” However, a review of the full legislative history undermines that assertion, and if this Honorable Court determines that the legislative history should be consulted, then all of it should be reviewed:

“Statements made by members of the General Assembly in legislative debate assist in revealing the legislative intent behind a statute only when examined in the context of the debate in its entirety. ‘Legislative intent’ speaks to the will of the legislature as a collective body, rather than the

will of individual legislators.” Morel v. Coronet Ins. Co., 117 Ill.2d 18, 24, 509 N.E.2d 996, 999 (1987).

In any event, page 24 of the City’s brief discloses that Representative Jay Hoffman did consider the specific issue in this case, and stated:

“Well, okay. I got... I want to be... I want to make sure that... that it’s clear. It’s my understanding, this Bill would prohibit entities from using the number of citations in a specific period of time in an evaluation of job performance. So, I... the whole issue of using an average and looking at that, I don’t know that that’s prohibited, but as far as the entity using that number of citations in that specific time, it is my intent that you could not do that. . . .” (City’s brief, p.24).

Because this statement very closely approximates the position advanced by the Union to the trial court below and here on appeal, the City’s claim that the legislative history unambiguously supports its position is simply not true. No party to this proceeding can credibly claim that the legislative history clearly supports one side or the other, as it is much more ambiguous and unclear than the final legislative enactment. If this Honorable Court wishes to get lost in the weeds, it should consult the legislative history.

**E. The Plaintiff did not waive the argument that the trial court’s decision was improper nor did the Plaintiff agree with the trial court’s finding that the word “citation” was ambiguous.**

The decision of the trial court below was based upon its finding that the term “citation” was too ambiguous to enforce. R. R. 10-11; Appendix p. 13-14. Neither party argued that the word “citation” was ambiguous in their respective cross-motions for summary judgment. As such, Plaintiff asserts that the trial court granted summary

judgment for the Defendant on a theory that it never argued. Gold Realty Group Corp. v. Kismet Café, Inc., 358 Ill.App.3d 676, 832 N.E.2d 403 (1st Dist. 2005). Defendant responds by saying that Gold Realty cannot apply to defendants, and, that the Plaintiff waived the argument by conceding that the Quota Act is ambiguous (even though no such concession appears in the record). The Defendant’s arguments lack merit.

**1. Whether a party is the plaintiff or defendant matters not under Gold Realty.**

In Gold Realty, “[t]he trial court entered summary judgment for the plaintiff on an issue entirely absent from the pleadings.” Gold Realty Group Corp. v. Kismet Café, Inc., 358 Ill.App.3d 676, 832 N.E.2d 403 (1st Dist. 2005). The Defendant asserts that this rule of law does not apply to defendants, while the Union believes the holding can apply to any party. The issue, however, was that neither party ever “join[ed] the issue” of whether the term “citation” in the Act was ambiguous. The trial court below sua sponte raised that issue, after the matter had been fully briefed, and without prior notice to either party. It should have requested further briefing on the issue or at least provided advance notice to the parties that it was considering whether the Act was too ambiguous to enforce because, in its view, the terms arrest and citation were legally indistinguishable.

Plaintiff cited to Gold Realty because it holds, generally, that a party should not be able to achieve summary judgment on a surprise theory. Gold Realty Group Corp. v. Kismet Café, Inc., 358 Ill.App.3d 676, 832 N.E.2d 403 (1st Dist. 2005). The Defendant claims that Gold Realty is not applicable because it is a defendant and not a plaintiff. While Gold Realty may not be “on all fours” with the facts of this case, the Defendant’s argument misses the point.

Neither party argued that the act prohibiting ticket quotas was ambiguous because

the terms arrest and citation are indistinguishable as a matter of law. Therefore, each party was as surprised as the other when the trial court employed that novel approach. The Defendant is simply willing to overlook that surprise because it prevailed, and so it argues that Gold Realty is not on point. The Plaintiff was not citing to the specific fact pattern of that case, but rather to the general principles espoused in it. Broadly, the case recognizes that it is improper to give one party an advantage over the other by granting summary judgment on an issue not framed or joined by the pleadings. A similar situation occurred in this case, when the trial court below granted summary judgment on an argument that was not mentioned in either party's motion. Gold Realty Group Corp. v. Kismet Café, Inc., 358 Ill.App.3d 676, 832 N.E.2d 403 (1st Dist. 2005). As stated in that case, "there is something to be said for order and predictability in motion practice." Id.

It was not reasonable for either party to anticipate that the trial court below did not understand the legal distinction between an arrest (a restriction of movement) and a ticket or citation (a charging document). An arrest impacts liberty while a citation is a document. After all, the words "arrest," "ticket," and "citation" appear within Supreme Court Rule 552, which all Illinois trial courts are expected to understand and apply. Moreover, there is no mathematical 1:1 ratio between arrests and citations or tickets, because an arrest can occur with or without a citation or ticket, and, a creative a police officer may issue multiple citations or tickets in one arrest. Presumably, the legislature had such creativity in mind when distinguishing between arrests and citations, because it forbade tallying the latter as part of a points system but not the former. 65 ILCS 5/11-1-12. Because the City's points system tallies citations, it violates that law.

**2. Plaintiff did not waive any arguments in the trial court below.**

At heading “F” of its argument, Defendant represented that the Plaintiff admitted the Act was ambiguous. However, in the body to part “F” of its argument, the Defendant also wrote:

“In fact, one of the Union’s arguments within its cross-motion for summary judgment was to claim that the ‘quota law is not ambiguous.’ (C. 308-310).”

The record does not reveal that the Union ever claimed or admitted the law prohibiting ticket quotas was ambiguous, because it is not.

According to the Defendant, the Plaintiff admitted the Act was ambiguous by agreeing with the trial court below about the tangential issue the court raised of whether “a citation is an arrest.” (C. R. 11). The undersigned stated, “So I agree with that, and in a broad sense, they could all be arrests.” (C. R. 12). Even stripped from context, this statement is not tantamount to an admission that the statute was ambiguous, or that the trial court’s reasoning was well-founded. There simply is no merit to the claim that the Plaintiff admitted the statute was ambiguous. It is not.

The Defendant has omitted factual information in order to misrepresent what actually occurred. In full, the undersigned stated:

“Your Honor, I wouldn’t agree with that. I understand what you’re saying. I’m a former public defender. Of course, anytime a person’s freedom is prohibited they’re arrested. You don’t need the arrest or citation. So I agree with that, and in a broad sense, they could all be arrests. Even a warning can start off as an arrest. You[‘ve ar]rested their



movement. But when I think the legislature uses these terms, that means that they intend something different when they use different terms. Had they just repeated arrests in the last sentence, and there's case law on this, when they use different terms, they mean something different. And, you know, tickets may be an emphasized<sup>1</sup> term, but I think that's exactly what it is. It's a law to prohibit tickets . . . Ticket quotas. Excuse me. Not to prohibit tickets." (R. 12).

Thereafter, the following exchange occurred:

"THE COURT: -- they['ve] got [to] issue – a citation is not an arrest?

"MR. VOYLES: No, it is. It is. It's just a particular . . . particular arrest that

ends up with a citation as opposed to confinement." (C. R. 13).

As such, the Union preserved rather than waived the argument that the reasoning of the trial court below was off kilter, and, that arrests and citations are not always one and the same in the context of criminal procedure law. Due to these facts that are readily apparent from the full record, the Defendant's reliance upon cases about waiving an issue by failing to raise it do not apply.

However, one of the cases Defendant cites contains a germane passage about addressing "an unbriefed issue." Mid-Century Insurance Company v. Founders Insurance Company, 404 Ill.App.3d 961, 936 N.E.2d 780 (1st Dist. 2010). In that case, the Court stated:

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<sup>1</sup> The transcript may have the incorrect word here.

“In choosing to address an unbriefed issue, we recognize that as a reviewing court, we must refrain from doing so if the effect would be to transform us from jurist to advocate.” *Id.* at 966, 936 N.E.2d 784.

This statement better states the Plaintiff’s arguments about the decision of the trial court below than does Gold Realty.

Even more to the point, the United States Supreme Court has stated:

“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. To the extent courts have approved departures from the party presentation principle in criminal cases, the justification has usually been to protect a *pro se* litigant's rights. [Citation omitted]. But as a general rule, ‘[o]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.’ [Citation omitted].” Greenlaw v. U.S., 554 U.S. 237 (2008).

There is only so much disagreeing that an advocate may pursue with a trial judge, even when that judge has expressed an imprecise legal conclusion, like, “a citation is an arrest.” R. R.11 @ 6. By expressing disagreement or doubt with that conclusion and then by filing appeal, the Union did not waive the right to later complain about the mistaken reasoning of the trial court below.

**F. Defendant’s accusations of misrepresentation by Plaintiff lack merit.**

Plaintiff made no misrepresentations about the fact or law in its original brief, because doing so could only have made its case weaker and not stronger. The appendix to the Plaintiff's original brief includes the Affidavit of the Defendant's Assistant Police Chief because the Plaintiff was relying upon the statements in it to present its arguments. R. C271-72. Plaintiff also included the Defendant's Activity Points policy because it clearly and unequivocally states that "Citations" are worth "2 points each," and, that the officers are "required . . . to meet their monthly point's standard" to avoid "discipline." R. C273-74. Nothing needs to be added to the facts appearing in the documents written by the Defendant in order for Plaintiff to demonstrate a violation of the Act.

Plaintiff was not asking this Honorable Court to buy into its statement of facts, but instead to review the documents repeatedly cited therein to reach its own conclusions. R. C271-74. Plaintiff cited to the record at the conclusion of each sentence in its statement of facts in order to facilitate that review. As such, the rules of law set forth in the cases cited by the Defendant do not apply to the Plaintiff's statement of facts. Moreover, for what its worth, the Defendant suggests that a one and one-half statement of facts is per se improper under Certified Mechanical Contractors, Inc. v. Wight & Co., Inc., 162 Ill.App.3d 391, 515 N.E.2d 1047 (2nd Dist. 1987). No such rule of law appears in that case or any other case cited by Defendant at part "A" of its brief. Hassebrock v. Ceja Corp., 29 N.E.3d 412, 390 Ill.Dec. 480 (5th Dist. 2015).

Defendant accuses the Plaintiff of uttering a misrepresentation to this Honorable by writing: "The Defendant freely admits that it requires its officers to meet this points minimum, or quota. R. C271-74." No misrepresentation occurred, because the Department has an "Activity Points System Policy" that Senator Holmes referred to as a

quota during the floor debates:

“There are many ways, as the – the legislation enumerates, on how officers can be evaluated. Points of contact may be instituted, as I said earlier, by way of a quota to ensure that officers are actively engaged, including quotas on stops, warnings, arrests, investigations, or community outreach, all of which can be done today. Again, the prohibition only applies to traffic citations.” 98th Ill. Gen. Assem., Senate Proceedings, April 10, 2014, at 46-47.

This case does not present a factual dispute about whether the Defendant has a quota, because it has one and suggesting otherwise misrepresents that which is plainly obvious.<sup>2</sup> R. C271-74. This question in this case is whether the Defendant’s quota, or required monthly points minimum, that includes rather than excludes citations and counts them as “2 points each,” violates the Act. The facts and law leave scant, if any room, for a finding that the Defendant’s points system, or quota, does not violate the Act.

## CONCLUSION

One must mistakenly equate arrests to citations, overlook the words used by the legislature, or obscure the facts to find that the Defendant has not violated the Act. The

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<sup>2</sup> The Affidavit of the Assistant Chief contains what perhaps could be described as an inaccurate legal conclusion rather than false testimony: “The Activity Points Policy does not measure officer’s points of contact or set a point of contact quota.” The Assistant Chief’s claim is objectively false because the “Month Points needed” are “Dayshift – 82” or “Nightshift – 65” in order to avoid “discipline.” R. C271-74.

Defendant's violation of the law is plainly set forth in its own words. This case originated because the Defendant was unwilling to simply comply with the law by ending its policy of tallying citations and awarding them "2 points each." R. C273. Now, the Defendant requests this Honorable Court to reward its unlawful behavior by overlooking it or undoing the Act. It argues untenable positions like, the Act is ambiguous, the final sentence about points of contact is instead about something else, and that the legislative history clears it all up. At the same time, the Defendant attempts to distract from the issues in this case by waging baseless attacks while it and not the Plaintiff omits material information from this Honorable Court. The larger concept in this case remains whether an Illinois municipality through its police chief may refuse to follow a state law simply because it is not liked. Because the decision of the trial court below upheld the Defendant's unlawful conduct, it should be reversed.

WHEREFORE, Plaintiff respectfully requests this Honorable Court reverse the trial court below and remand with whatever further instructions this Honorable Court deems necessary and appropriate under the circumstances.

Respectfully submitted,  
Plaintiff,

/s/ Shane Voyles  
BY: \_\_\_\_\_  
Shane Voyles ARDC No. 6279482

Shane M. Voyles, ARDC #6279482  
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**Proof of Service**

I hereby certify that on the 12th day of June, 2019, I electronically filed the foregoing pleading with the Clerk of the Court and parties of record using the Odyssey electronic filing system.

copied to:

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/s/ Shane Voyles

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Shane Voyles

No. 125508

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**IN THE  
SUPREME COURT OF ILLINOIS**

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POLICEMEN'S BENEVOLENT	)
LABOR COMMITTEE,	)
	) On Appeal From
Plaintiff-Respondent,	) the Illinois Appellate Court, Fifth
	) District, No. 5-19-0039
v.	)
	) On Appeal From the Circuit Court
CITY OF SPARTA,	) of the 20th Judicial Circuit, Randolph
	) County, 2017 MR 52
Defendant-Petitioner.	)
	) Honorable Gene Gross
	) Judge Presiding

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he served a copy of the foregoing APPENDIX upon the counsel of record shown below by sending the same via electronic mail on March 4, 2020:

Shane Voyles  
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840 S Spring Street  
Springfield, IL 62704  
[svoyles@pbpa.org](mailto:svoyles@pbpa.org)

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

By: /s/ Paul A. Denham  
Paul A. Denham

No. 125508

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**IN THE  
SUPREME COURT OF ILLINOIS**

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POLICEMEN'S BENEVOLENT LABOR COMMITTEE,	)	
	)	
Plaintiff-Respondent,	)	On Appeal From
	)	the Illinois Appellate Court, Fifth
	)	District, No. 5-19-0039
v.	)	
	)	On Appeal From the Circuit Court
CITY OF SPARTA,	)	of the 20th Judicial Circuit, Randolph
	)	County, 2017 MR 52
Defendant-Petitioner.	)	
	)	Honorable Gene Gross
	)	Judge Presiding

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**NOTICE OF FILING**

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<b>TO:</b> Shane Voyles PBLC 840 S Spring Street Springfield, IL 62704 <a href="mailto:svoyles@pbpa.org">svoyles@pbpa.org</a>	Donald R. Zoufal Legal Advisor Illinois Association of Chiefs of Police 426 S. 5th Street Springfield, IL 62701 <a href="mailto:dzoufal@gmail.com">dzoufal@gmail.com</a>
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PLEASE TAKE NOTICE that on the March 4, 2020, the **CITY OF SPARTA** served and filed by electronically means using File & Serve Illinois on the Clerk of the Supreme Court of Illinois, the **CITY OF SPARTA's RULE 315(h) APPELLANT'S BRIEF**, a true and correct copy of which is hereby served upon you.

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**Date: March 4, 2020**

Respectfully submitted,

**CITY OF SPARTA**

**By: /s/ Paul A. Denham**  
**One Of Their Attorneys**

**CERTIFICATE OF SERVICE**

The undersigned attorney hereby certifies that he caused a true and correct copy of the foregoing, **NOTICE OF FILING AND CITY OF SPARTA's RULE 315(h) APPELLANT'S BRIEF** to be served upon the following counsel of record via electronic mail on March 4, 2020.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

By: /s/ Paul A. Denham  
Paul A. Denham