No. 125508

IN THE
SUPREME COURT OF ILLINOIS

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

CITY OF SPARTA's SUPREME COURT REPLY BRIEF

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E-FILED
5/27/2020 4:07 PM
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POINTS AND AUTHORITIES

INTRODUCTION

It is undisputed that the City of Sparta Police Department's (the "City's" or the Department's") practice of awarding "activity points" for traffic citations within its evaluation policy has absolutely nothing to do with the unlawful practice of establishing "bright-line" ticket quotas, nor does it violate the "direct" prohibitions under the Quota Act. 65 ILCS 5/11-1-12. In fact, before the trial court, the Police Benevolent Labor Committee (the "Union") conceded that the Activity Points policy was not a quota (R.P. 9 at Tr. 8:5-15), and that the City's officers do not have to issue a certain number of citations over a given period of time, are not compared to each other for the purposes of writing citations, and are not even required to write a single citation under the Activity Points policy. (C. 137-38, 619-620).

Notwithstanding, as explained in greater detail below, the Union first attempts to interject some sort of factual dispute into this appeal, even though such arguments are completely contradicted by record evidence, including the Union's own acknowledgements throughout this litigation. Of course, to the extent that an issue of material fact exists, it should have precluded the Union from seeking (or the Appellate Court awarding) summary judgment in the first place. Notwithstanding, contrary to these new factual claims, record evidence does not support any inference that the Department, for evaluation purposes, compares officers with respect to the number of citations issued. In fact, again, the Union has previously conceded that the City did not implement a quota system.

Because the City's Activity Points system is not a citation quota, the Union advocates an overly narrow misinterpretation of the Act that is strictly focused on taking the final sentence of the Act out of context. However, this interpretation undermines the well-established maxim of reading statutory language as a whole in its entirety. If anything, the Union's tortured arguments

about statutory interpretation show that the oddly-worded Quota Act is susceptible to multiple interpretations, and should be viewed in conjunction with outside sources, such as legislative debates.

Despite the Union's claims to the contrary, the Act's clear legislative debates demonstrate that the Union's narrow interpretation undermines the true intent of the Act. Clearly, the purpose of the Quota Act is to prohibit revenue-driven ticket quotas—not to discourage officers from writing citations. There is simply no canon of statutory construction to support the Union's narrowly-focused interpretation of the last sentence of the Quota Act that impermissibly renders most of the other parts of the statute as superfluous, undermines the mandatory sections of the Act, and contradicts legislative debates about the true intent of the law.

As such, the City respectfully asks this Supreme Court to vacate the Appellate Court's reversal of the Circuit Court's decision to effectively dismiss the Union's lawsuit.

A. If There is an Actual Dispute of Material Fact, the Union Cannot Succeed on its Cross-Motion of Summary Judgment.

Within its Appellee brief, the Union seems to dispute and otherwise take issue with the fact that "[u]nder the Activity Points Policy, no officers are compared with each other related to the 'number of citations issued'." (Appellee Br. at 12-13). For the reasons explained in greater detail in Section B of this brief below, the City does not agree that the Union's unsupported allegations raise an actual question of material fact. However, as an initial matter, assuming *arguendo* that there is a factual dispute about whether the City compares officers with respect to citations, such a question precludes the consideration of the Union's cross-motion for summary judgment.

"Summary judgment is appropriate when pleadings, affidavits, depositions and admissions of record, when viewed in the light most favorable to the nonmoving party, show

there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." *McLear v. Vill. of Barrington*, 392 Ill. App. 3d 664, 669-70 (1st Dist. 2009); 735 ILCS 5/2-1005(c). Parties that file cross-motions for summary judgment "agree that only questions of law are involved and invite the court to decide the issues based on the record." *Bremer v. City of Rockford*, 2016 IL 119889, ¶ 20. Notwithstanding, where "undisputed material facts could lead reasonable observers to divergent inferences, or where there is a dispute as to a material fact, summary judgment should be denied and the issue decided by the trier of fact." *Pielet v. Pielet*, 2012 IL 112064, ¶ 53.

Within its initial cross-motion for summary judgment filed before the Circuit Court, in addition to conceding that there is no material factual dispute that would prevent summary judgment, the Union acknowledged that "[t]he City has denied liability, arguing. . . that it does not compare tickets issued by the officers as part of any performance system." (C. 303, 306). Accordingly, to the extent that the Union intends to litigate the factual question of whether the City compared officers related to the number of citations issued, it has to either concede this fact or not seek summary judgment.

Incidentally, the Union's allegation related to comparing citations also contradicts its earlier admissions to the Circuit Court. (A. 63, acknowledging that the Department's evaluation form "does not mention citations and does not explicitly measure them over time;" (A. 25 at Tr. 8:11-15, conceding that the Activity Points system is not a "quota system."). Moreover, neither the Appellate Court nor the Trial Court seemed to adopt the Union's claim that officers are "compared with each other related to the 'number of citations issued'." (A. 13 at ¶¶ 23, 24, noting that the Department's evaluation form only compares officers related to aggregate activity points and that "it seems like an officer can achieve the monthly minimum points total without

issuing a single citation"; (A. 25 at Tr. 8:11-15, getting the Union to agree that it is not claiming the City is "requiring a quota system" and that the Union's argument is focused on whether the City should be allowed to assign activity points related to citations). Nevertheless, to the extent that "reasonable observers" may make "divergent inferences" related to the factual record, under *Pielet* and *Bremer*, it is improper to find in favor of the Union on its cross-motion on summary judgment.

B. The Evidentiary Record Contradicts the Union's Claim and Does Not Support Any Reasonable Inference that the City Compared Officers Related to the Number of Citations Issued.

The Union's factual arguments within its Appellee brief are devoid of any evidentiary support. Specifically, the Union's brief does not cite to any record evidence demonstrating that the City compared two officers on the basis of their number of citations. (Br. at 13). Instead, in its brief, the Union merely argues that "it is more likely than not that. . . [activity] point totals. . . include rather than exclude points assigned to the officers for issuing citations." (*Id.*). However, aside from the fact that the Union has not definitively asserted that the Department actually awards activity points for citations (i.e. "it is more likely than not"), the action of including citations within activity points totals is not the same as comparing two officers related to their "number of citations."

Evidence submitted to the Circuit Court definitively shows that the Department does not make such comparisons. Notably, the entire evidentiary record related to summary judgment consists of just two City affidavits with corresponding documentation. (A. 41-48, A. 52-62, C. 521-593). In particular, the City filed two separate affidavits containing the sworn statements of Assistant Chief Jeremy Kempfer (A. 41-52, 52-53), and the Union did not produce any cross-affidavit to legally challenge AC Kempfer's sworn claims. In fact, AC Kempfer's July 25, 2017

affidavit was attached as an exhibit to the Union's September 19, 2018 Amended Complaint. (A. 268-271-72).

According to AC Kempfer's undisputed July 25, 2017 and October 15, 2018 affidavits, there are three steps in the process related to how the Department formulates an officer's activity points score on evaluations. First, the Department awards points on separate "Activity Logs" for each officer. (A. 52 at ¶ 4, C. 522-86). As explained by AC Kempfer:

> 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.

(A. 41 at ¶ 4). The Union generally acknowledged this process of how activity points are "counted" on page 6 of its Appellee Brief. Moreover, during the litigation, the City actually provided specific examples of how daily activity points were tabulated for Officer and Union President Steve Miles on weekly Activity Logs throughout 2016. (A. 52 at ¶¶ 4, 6-10, C. 522-86).

The second part of the process merely summarizes each officer's monthly activity points total in an "Activity Log" chart. (A. 52 at ¶ 3, A. 55). This chart is solely focused on each officer's activity points and there is no mention of "citations" on this cumulative Activity Log. (*Id.*). For instance, in December of 2016, it appears that Officer Brooks earned 112 activity points in comparison to Officer Miles' 67 activity points, but there is no way to determine how many, if any, citations each officer wrote during this period. (*Id.*). As the Union acknowledged on page 13 of its Appellee Brief, "those 'Monthly Totals' for 2016 do not indicate whether citations were or were not included."

The final part of the process involves the actual evaluation of officers on the Department's evaluation form. As acknowledged by the Union to the Circuit Court, the word "citation" does not appear on the evaluation form, and the City "does not explicitly measure [citations] over time." (A. 45-46, 63). Instead, the evaluation form only restates an officer's monthly "activity points" tabulation and compares officers on the basis of cumulative activity points. (*Id.*). Accordingly, there is no measure of whether any officer issued a single traffic citation during any evaluation period. Quite clearly, there is no evidence whatsoever for the Union to suggest that the Department "compare(s) 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." (Br. 12-14).

Such a claim is also completely contradicted by the Union's previous statements and admissions on the record. Again, the Union conceded that the City does not utilize a "quota system" and that on its evaluation form, the City "does not explicitly measure [citations] over time." (A. 25 at Tr. 8:5-15, A. 45-46, 63). In fact, the Union has repeatedly characterized the City's Activity Points system as some sort of "indirect" or "back door" violation of the Act that is inapposite to a "bright-line quota." (Appellee Br. 12, 26, C. 310).

Accordingly, the Union's argument that the Department compares officers with respect to their number of citations is contradictory to its prior admissions and not supported by evidence.

C. The Union's Claim that the Activity Points Policy "Incents" Officers to Write Citations Instead of Giving Written Warnings is not Supported by the Record.

Within its Appellee brief, the Union also claims that because the Activity Points policy awards officers one point for written warnings and two points for citations, the "policy incents officers to write more tickets." (Br. at 7, 26). However, as an initial matter, because this allegation was not raised to the Circuit Court, there is no reason for the Supreme Court to

consider it now. (*See* C. 303, claiming the City was "indirectly incentivizing this issuance of traffic tickets," but not raising any arguments that the Department was encouraging officers to "write more tickets"). *City of Chicago v. Michigan Beach Hous. Co-op.*, 297 Ill. App. 3d 317, 324 (1st Dist. 1998) (stating "[a]rguments raised for the first time on appeal are waived.").

Substantively, there is also no evidence to support this claim. Again, the Union did not provide any affidavits in support of this allegation (or any other argument). There is no testimony related to how long it takes to write up a single citation (which earns 2 points) in contrast to issuing two verbal warnings (which earns 1+1=2 points). No officer provided deposition testimony or a cross-affidavit claiming that he or she objectively or subjectively believes the Activity Points policy creates an incentive to write more citations and/or that the officer wrote more citations because of the policy.[1]

In fact, the only evidence on the record related to this question actually seems to indicate that former Union President Miles preferred to give verbal warnings instead of writing citations. In particular, based on 2016 data:

- Miles gave 12 verbal warnings and wrote 1 citation during the week of 9/4/16;
- Miles gave 11 verbal warnings and wrote 1 citation during the week of 12/4/16;
- Miles gave 10 verbal warnings and wrote 1 citation during the week of 10/16/16;
- Miles gave 9 verbal warnings and wrote 1 citation during the week of 11/27/16;
- Miles gave 8 verbal warnings and wrote 0 citations during the week of 4/10/16;

[1] As set forth below on pags 16-17 of this brief, as repeatedly explained during legislative debates, the purpose of the Act is to prohibit revenue-driven citation quotas—not to discourage (or prevent encouraging) officers from enforcing traffic laws. As such, even if the Union could point to facts to support some sort of inference that the Department incentivized officers to write citations, which it cannot, absent an actual ticket quota, such claims are insufficient as a matter of law.

- There were two weeks where Miles gave 7 verbal warnings and wrote 2 citations (the weeks of 3/13/16, 10/2/16);
- Miles gave 6 verbal warnings and wrote 0 citations during the week of 7/31/16;
- There were two weeks where Miles gave 6 verbal warnings and wrote 2 citations (the weeks of 8/1/16, 8/14/16);
- Miles gave 5 verbal warnings and wrote 0 citations during the week of 12/18/16;
- There were two weeks where Miles gave 5 verbal warnings and wrote 1 citation (the weeks of May 15, July 17, 2016);
- There were three weeks where Miles gave 4 verbal warnings and wrote 1 citation (the weeks of 5/1/16, 10/9/16, 11/6/16);
- There were five weeks where Miles gave 3 verbal warnings and wrote 0 citations (the weeks of 3/1/16, 8/21/16, 9/11/16, 10/23/16, 12/1/16);
- There were four weeks where he gave 3 verbal warnings and wrote 1 citation (the weeks of 1/24/16, 3/20/16, 5/29/16, 7/24/16); and
- Miles gave 2 verbal warnings and wrote 0 citations during the week of 1/17/16.

(C. 526-583). Again, the Union never produced former Union President Miles to testify as to why he tended to give warnings instead of writing tickets, but based on data alone, it clearly did not appear that Miles was incentivized to write citations as asserted in the Union's unsupported claim.

D. The Final Sentence of the Quota Act Should Be Read in Conjunction With <u>All</u> of the Other Sections of the Statute.

i. The Quota Act Prohibits Requiring Officers to Issue a Specific Number of Citations or Comparing the Number of Citations Issued Within Evaluations.

Within the Appellee brief, the Union misconstrues and mischaracterizes the City's position related to the plain language of the statute. Specifically, the City never argued, as the Union contends, that the final sentence in the Quota Act's second paragraph only relates to "hard, bright-line ticket quotas prohibited by the statute's first paragraph." (Br. at 10). Instead,

the City has consistently argued, in accordance with canons of statutory construction, that the final sentence of the Act needs to be read in conjunction with the rest of the entire statute. (City Br. 15-20). *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41 (stating "words and phrases should be interpreted in light of other relevant provisions of the statute and should not be construed in isolation."); *Brucker v. Mercola*, 227 Ill. 2d 502, 514 (2007) (noting that "[e]ach word, clause and sentence of [a] statute, if possible, must be given reasonable meaning and not rendered superfluous.").

Here, in accordance with *Sandholm* and *Brucker*, the City has consistently argued that the terms in the final sentence (i.e. "issuance of citations" and "number of citations issued") should be read in conjunction with the Act's first paragraph that prohibits requiring an officer to "issue a specific number of citations within a designated period of time." (City Br. 15-20). 65 ILCS 5/11-1-12 (emphasis added). Additionally, the final sentence's reference to "number of citations issued" is identical to and should also be construed in conjunction with earlier language in the second paragraph. (*Id.*). In particular, the first sentence in the second paragraph uses an identical phrase "number of citations issued," but only in the context of comparing officers with respect to the "number of citations issued" and in reference to "evaluating a police officer's job performance." Similarly, the second sentence in the second paragraph clarifies that "[n]othing in this Section shall prohibit a municipality from evaluating a police officer based on the police officer's points of contact," which when read together with the final sentence, indicates that points of contact systems are only unlawful when they are actually "based on" the issuance of citations or the number of citations issued. (*Id.*).

Within its Appellee brief, the Union seems to concede that the City does not require any officer to issue a specific number of citations within a designated period of time. (Br. at 10-11).

This is consistent with record evidence unequivocally showing that officers may participate in or utilize any of the activities listed in the Activity Points Policy to achieve their monthly points minimum. (A. 43-44, A. 41 at ¶ 4). Stated another way, the Activity Points policy does not require officers to issue "X" number of citations in a specific period of time.

Moreover, the Union actually acknowledges within its Appellee brief that the final sentence of the Act should be read in conjunction with other parts of the statute's second paragraph. Nevertheless, the Union fails to concede that such statutory language is inapposite to the Activity Points system. Notably, the Quota Act does not create a *per se* prohibition on comparing officers related to citation activities. Instead, the statutory language bans comparisons specifically related to the "number of citations issued" and only when such comparisons are for the purpose of "evaluating a police officer." 65 ILCS 5/11-1-12 (emphasis added). Likewise, the Act permissibly permits municipalities to evaluate a police officer based on quantifiable points of contact, but not the issuance of citations or the number of citations issued.[2] *Id.*

ii. The City Has Produced Evidence Showing that its Administration of the Activity Points Evaluation System Does Not Involve Comparing Officers Regarding the Number of Citations Issued.

Here, there is no indication whatsoever that the Department "compared" officers against each other with respect to the "number of citations issued." (*See* Section B of this brief above). The dearth of supporting evidence for this argument is apparent within the Appellee brief. Unable to point to any actual evidence showing that the Department, for evaluation purposes, compares officers related to the number of citations issued, the Union meekly claims that

[2] In the Appellee brief, the Union vaguely argues that the two points of contact sentences in the statute should not be read together and that a municipality can still violate the Act even though its evaluation system is not actually "based on" the number of citations issued. However, again, there is no canon of statutory construction that supports reading this final sentence in a vacuum without any context.

comparisons between officers on "citation activity. . . are possible rather than impossible." (Br. 30).

Nevertheless, the Union still seems to suggest that the City violated the Act by merely including citations within an Activity Points system. (Br. 13). However, even assuming *arguendo* that the Union is somehow correct that this constitutes some sort of "indirect" or "back-door" comparison, there is no evidence that the City actually has compared officers related to the number of citations issued. In fact, the Union has previously conceded that the Department's evaluation form "does not explicitly measure [citations] over time." (A. 45-46, 63).

Moreover, it is well established that the City does not consider any sort of citation activities for the purpose of evaluating officers. In the Appellee brief, the Union does not even address its prior acknowledgment 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 example, 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 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. (*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).

Again, there was nothing wrong with Officer Miles opting to meet activity performance standards through focusing on tasks other than writing citations. To the contrary, during the two applicable 2016 evaluation periods, the Department did not consider the number of citations that he completed, and Officer Miles was actually lauded for generally staying busy (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."). (*Id.* at ¶11).

Quite clearly, as demonstrated by Officer Miles situation, the Department did not consider his number of citations he issued during the evaluation process, much less compare his citation productivity with other officers. The City's Activity Points policy clearly is not based on the issuance of citations. As such, the Union cannot show the City violated the plain language of the statute.

iii. The Last Antecedent Doctrine Has No Applicability to the Present Situation.

Finally, although the Union generally acknowledges in its brief that statutory language should be read in "context," in a new argument not raised to the lower courts, it misapplies the last antecedent doctrine to somehow argue that the "issuance of citations" and "number of citations issued" language in the Quota Act's final sentence should be read in conjunction with the other language in the second paragraph of the Act—but not the first paragraph. (Br. 11-12).

However, the Union does not clearly explain how the doctrine of the last antecedent is applicable to this dispute. Under the last antecedent doctrine, it is generally accepted that a referential and qualifying phrase refers solely to the last antecedent." *Advincula v. United Blood Servs.*, 176 Ill. 2d 1, 26 (1996). For instance, within the phrase, "[p]oints of contact shall not

include either the issuance of citations or the number of citations issued by a police officer," the qualification "issued by a police officer" is related to its antecedent, "number of citations." Here, neither party has raised any issue involving the proper attribution of qualifications to antecedents. While the Union seems to suggest that this last antecedent doctrine can somehow be used to avoid reading a statute in its entirety (Br. 11-12), this argument is not supported by *Advincula* and its progeny.

E. If Anything, the Union's Interpretation, Which Would Render the Other Parts of the Statute As Superfluous, Highlights Latent Ambiguity and Other Ambiguities in the Act and Should Allow 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 the same statutory language, and admittedly, this Court may find language to be unclear despite both parties' contentions that the plain language is unambiguous. 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, the legislature could have, as the Union advocates, 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. It did not do that. 65 ILCS 5/11-1-12. As such, it would be overreach to argue 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 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 comparing officers related to "number of citations issued" for evaluation purposes. *Id.*

At no point in the Appellee brief does the Union even try to reconcile how these different standards can coexist within the same statute. While the Union pays lip service to the well-established maxim that a statute should be read in its entirety as a whole (Br. 11), it does not explain how its narrow interpretation only focusing on the Act's final sentence is somehow justified in consideration of other statutory language.

In that respect, the Union's interpretation would effectively render the Act's other mandatory terms as superfluous in that it would completely prohibit municipalities from considering citations in any evaluation system irrespective of whether officers are required to issue a certain number of citations "within a designated period of time" and/or whether officers are actually evaluated an compared in relation to their "number of citations." Moreover, finding a violation of the Quota Act without a municipality actually implementing a citation quota also creates an absurd result that should be avoided. *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.").

Nevertheless, at a minimum, as recognized by the Circuit Court, it is extremely difficult to make sense out of the statute's meaning when all of its provisions are read together. (R. 9 at Tr. 8:5-14; 11:3-6, *stating* "those two sentences completely contradict one another. So I think that makes us go to the legislative history. What am I missing on that?").

It should also be noted that the Union is now raising arguments about the meaning of

terms like "arrest" and "citation" in its Appellee brief that are the exact opposite to what it communicated prior to the appeals process. Specifically, during oral arguments on summary judgment, the Circuit Court correctly pointed out that the term "citation" was ambiguous. In response, contradicting the Union's current arguments, counsel for the Union actually agreed that the term, and other terms in the Act, were not clear. (R.P. 10 at Tr. 9:12-14, *stating*: "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;" R.P. 12 at Tr. 11:8-13: *stating*: "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 the citation. So I agree with that, and in a broad sense, they could all be arrests.").

Quite clearly, it is possible that the individual words and sentences within the poorly-drafted Quota Act are ambiguous and contradictory enough to resort to interpretive aids outside the plain language of the statute.

F. Legislative Debates Fully Support the City's Interpretation.

In its Appellee brief, the Union claims that the City believes that the Quota Act's legislative history, as explained in the legislative debates, is "strictly focused upon only the first sentence of the statute." (Br. 24). However, again, contrary to the Union's claims, there is absolutely no record evidence that might show a violation of the second paragraph's prohibition on comparing officers for evalutation purposes based on an officer's number of citations. As such, the City also consistently and repeatedly quoted excerpts of the legislative debates related to the Act's second paragraph throughout its Appellant brief and within other briefs. (C. 502-03; City Br. at 24, stating the legislative "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.") (emphasis added).

Nevertheless, the Union stil claims that the City was "cherry-picking the legislative history to achieve a particular result" and that the legislative debates are not "one-sided." (Br. 19, 24-27, 31). However, all of the examples that the Union raise in its Appellee brief actually support the City's arguments.

First, the Union quotes Senator Holmes' statement clarifying the "very, very straightforward" Bill "simply" does not allow a municipality "from requiring an officer to issue a specified number of citations or warnings in a given period of time" or "using the number of citations in a specific period of time as an evaluation of job performance." (Br. at 25-26, A. 98). However, again, neither of the prohibitions raised by Senator Holmes apply to the present situation. In fact, the Union has conceded that (1) the City does not utilize a "quota system," (2) on its evaluation form, the City "does not explicitly measure [citations] over time," and (3) officers can satisfy evaluation standards while writing "zero" traffic citations. (A. 25 at Tr. 8:5-15, A. 45-46, 63, A. 49-50 at ¶¶ 2-3).

In addition, the Union quotes Representative Hoffman, who at one point during the debate, seemed uncertain about whether municipalities could compare officers' number of citations against an average. (Br. 26-27; A. 88-89). Nevertheless, Representative Hoffman eventually opined that "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." (*Id.*). However, again, it is undisputed that

the City does not "explicitly measure" or compare officers. (A. 25 at Tr. 8:5-15, A. 45-46, 63, A. 49-50 at ¶¶ 2-3).

Finally, the Union quotes Senator Raoul, who initially lamented the fact that police officers who are required to complete quotas are "trying to stop cars" at the end of each month and "pressure[d] to write a certain number of citations" as a "means of gathering revenue." (Br. at 26, A. 101-103). He later indicated that "we . . . ought not be incenting them to exercise their discretion to stop a certain number of people just to generate more money." (*Id.*). However, again, in this situation, officers are not pressured or "incented" to write any citations. (A. 49-50 at ¶¶ 2-3). There is absolutely no evidence in the record to suggest that the City's motivation is revenue based, as opposed to simply having an interest in encouraging and enforcing public safety on the roadways.

In that respect, at no point in its Appellee brief does the Union attempt to discuss the repeated statements within the legislative debates showing that the purpose of the Act was to prohibit revenue-driven citation quotas—not to discourage (or prevent encouraging) officers from enforcing traffic laws. Specifically, 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.").

At most, the Union can show that the City included citations when tabulating activity points totals. However, there is no evidence to support any reasonable inference that the City compared officers based on the number of citations issued for evaluation purposes or otherwise engaged in unlawful practices under the Quota Act. The Activity Points system is intended to ensure that officers are staying busy and not loafing. Accordingly, 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 as a "means of raising revenue." As previously acknowledged by the Union, this **is not** a situation involving a quota. (A. 25 at Tr. 8:5-15). As such, based on the clear legislative intent, there is no basis to find that the Activity Points System violates the Quota Act.

G. The Illinois Chiefs' *Amicus* Brief Should be Considered.

With almost no explanation other than engaging in vague *ad hominem* attacks, the Union argues that the Court should disregard the *amicus* brief filed on behalf of the Illinois Association of Chiefs of Police (the "Illinois Chiefs"). However, at most, the Union points out that the Illinois Chiefs has a different legal theory than the Union. (Br. 29). Specifically, the Illinois Chiefs have expressed concern that Union's misinterpretation of the Quota Act will result in other activity points systems throughout the State being effectively "gutted." (*Id.*).

First, the Union argues that the Court should "disregard" the Illinois Chiefs based on rules related to parties' citation to the record. However, the Union has failed to recognize that "[b]y definition, an "*amicus curiae*" is not a party to the action, but a friend of the court. As

such, the sole function of an *amicus* is to advise or make suggestions to the court." *Fiorito v. Jones*, 72 Ill. 2d 73, 96 (1978), *abrogated on other grounds by Brundidge v. Glendale Fed. Bank, F.S.B.*, 168 Ill. 2d 235 (1995). In fact, this Court has explained that it is appropriate to consider such arguments "when the *amicus* has a unique perspective, or information, that can assist the court beyond the help that the lawyers for parties are able to provide." *Id.*; *Kinkel v. Cingular Wireless, L.L.C., No. 100925*, 2006 WL 8458036, at *2 (Ill. Jan. 11, 2006).

Accordingly, in this situation, the viewpoint of the Illinois Chiefs is important—not necessarily due to the specific issues raised by the parties—but because of how the Court's decision might affect other municipalities. Specifically, the Illinois Chiefs has noted that similar Activity Points systems are "widely used by law enforcement agencies across the state to maintain accountability for officer duty performance." (A. 69).

It should also be noted that throughout its Appellee brief, the Union has raised numerous antagonizing and baseless criticisms against opposing counsel (Br. 12-14, 16-17, 19, 31), and the unsupported *ad hominem* attacks against counsel for the Illinois Chiefs is quite egregious. (Br. 29-31). In particular, without any proof, the Union vaguely claimed that counsel for the Illinois Chief is "divorced from the facts of the case," has exhibited a "lack of familiarity with the record," has "chosen to believe whatever the City told it about the case, without verifying the City's account against the record," "apparently misunderstood that the Appellate Court's decision," is not acting as an *amicus* because "friends do not intentionally mislead one another," took steps to "intentionally omit, misrepresent, and obscure matters to mislead the Court," and has "cherry-picked the legislative history to include only that which was consistent with its agenda, while omitting damaging material inconsistent with that agenda." (Br. 29-31).

Such lack of civility and professionalism should not be condoned. *See Bd. of Managers of Northbrook Country Condo. Ass'n v. Spiezer*, 2018 IL App (1st) 170868, ¶ 18 (stating counsel's "remarks serve no purpose other than to demean or insult the other side. We expect all attorneys to behave with respect and civility in their written as well as oral interactions with opposing counsel and with the court.") *Maksym v. Bd. of Election Comm'rs of City of Chicago*, 242 Ill. 2d 303, 333 (2011) (Freeman and Burke, JJ., concurring) (stating "[s]pirited debate plays an essential role in legal discourse. But . . . [i]nflammatory accusations serve only to damage the integrity of the judiciary and lessen the trust which the public places in judicial opinions.").

In any event, there is no basis to disregard the *amicus* brief filed by the Illinois Chiefs.

CONCLUSION

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

Respectfully submitted,

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Policemen's Benevolent Labor Committee v. City of Sparta

No. 125508

IN THE
SUPREME COURT OF ILLINOIS

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 20 pages.

Respectfully submitted,

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Dated: May 27, 2020

No. 125508

IN THE
SUPREME COURT OF ILLINOIS

POLICEMEN'S BENEVOLENT LABOR COMMITTEE,	)
	)
	) On Appeal From
Plaintiff-Appellee,	) 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-Appellant.	)
	) Honorable Gene Gross
	) Judge Presiding

NOTICE OF FILING

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PLEASE TAKE NOTICE that on the May 27, 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 SUPREME COURT REPLY BRIEF,** a true and correct copy of which is hereby served upon you.

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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 SUPREME COURT REPLY BRIEF** to be served upon the following counsel of record via electronic mail on May 27, 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**
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