

ORIGINAL

In the Supreme Court of Ohio

STATE, ex rel. PAUL CALVARUSO, et al.,

Relators,

v.

CHARLES BROWN,

Respondent.

FILED
MAR 12 2013
CLERK OF COURT
SUPREME COURT OF OHIO

ORIGINAL ACTION FOR A WRIT OF QUO WARRANTO

CITY OF AKRON'S MOTION TO INTERVENE AS RESPONDENT

Susannah Muskovitz (0011457)
(COUNSEL OF RECORD)
William E. Froehlich (0087857)
MUSKOVITZ & LEMMERBROCK,
LLC
The BF Keith Building
1621 Euclid Avenue, Suite 1750
Cleveland, OH 44115
Tel: (216) 621-2020
Fax: (216) 621-3200
E-mail: muskovitz@mllabor.com
froehlich@mllabor.com

Cheri B. Cunningham (0009433)
Director of Law
Patricia Ambrose-Rubright (0009435)
(COUNSEL OF RECORD)
Tammy L. Kalail (0072295)
Assistant Directors of Law
City of Akron
161 S. High Street, Suite 202
Akron, OH 44308
Tel: (330) 375-2030
Fax: (330) 375-2041
E-mail: ccunningham@akronohio.gov
pambrose@akronohio.gov
tkalail@akronohio.gov

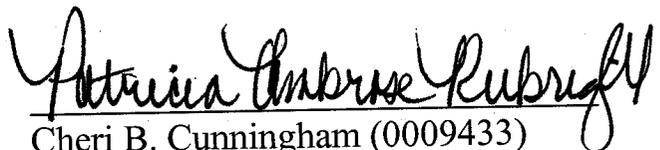
Attorneys for Relators

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Attorneys for Proposed Intervenor
City of Akron

The City of Akron ("City"), pursuant to Civ.R. 24(A) and (B), respectfully moves this Court to issue an order granting the City leave to intervene in this action. Intervention is warranted because the City has a distinct interest in this matter, as Relators' Complaint centers on: 1) the interpretation and application of the Akron City Charter; and 2) the authority of the Mayor and the Chief of Police under the Charter. As more fully explained in the attached Memorandum in Support, these interests and the common questions of law and fact raised by Relators' Complaint and the City's Answer¹ warrant intervention under Civ.R. 24.

Respectfully submitted,



Cheri B. Cunningham (0009433)

Director of Law

Patricia Ambrose-Rubright (0009435)

(COUNSEL OF RECORD)

Tammy L. Kalail (0072295)

Assistant Directors of Law

City of Akron

161 S. High Street, Suite 202

Akron, OH 44308

Tel: (330) 375-2030

Fax: (330) 375-2041

E-mail: ccunningham@akronohio.gov

pambrose@akronohio.gov

tkalail@akronohio.gov

*Attorneys for Proposed Intervenor
City of Akron*

¹The City's Answer to Relators' Original Complaint in Quo Warranto is being filed simultaneously with this Motion to Intervene as required by Civ.R. 24 (C).

MEMORANDUM IN SUPPORT

I. INTRODUCTION

Relators' Complaint is founded upon misinterpretations of the Akron City Charter. Their request for an extraordinary writ of quo warranto is rooted in the theory that an Assistant to the Mayor, Respondent Charles Brown, is a "de facto" holder of the position of Deputy Chief of Police, and that the Chief of Police cannot temporarily assign his duties to Brown while the Chief is absent from work. (Complaint ¶¶ 34,37-38, 41-45). Central to these claims is the interpretation of the Akron Charter, which specifies the authority of the Mayor of Akron and the Police Chief. Relators also purport to rely on the Akron Police Division's 1991 Manual of Rules and Regulations ("APD Rules and Regulations"). Because Relators' claim relies on the Akron City Charter and the APD Rules and Regulations, and challenges the authority of the Mayor and Chief of Police, the City has a distinct interest in this action and is entitled to intervene.

II. BACKGROUND

The Mayor possesses broad powers to hire employees and supervise the Division of Police under the Charter of the City of Akron. Charter Section 54 specifies that the Mayor "shall be recognized as the official head of the city by the Courts," and grants the Mayor power to "appoint and remove all employees in both the classified and unclassified service, except elected officials," and "exercise

control over all departments and divisions created by the Charter[.]” Akron City Charter 54(4)-(5).² The Mayor has plenary authority over City administrative departments, including the Department of Public Safety, and any department director appointed by the Mayor remains “[s]ubject to the supervision and control of the Mayor in all matters.” Akron City Charter 59-60. Charter Section 67 confirms that all divisions of the Department of Public Safety, including the Division of Police, are “under the immediate supervision of the Mayor, who shall make all rules necessary for the regulation and discipline of the same.” *Id.* at § 60.

The Charter vests the Mayor with power to hire Assistants to the Mayor with authority to act for him in carrying out his broad supervisory powers. *See* Akron City Charter 105 (1)(g). An Assistant to the Mayor is an unclassified position not subject to the civil service rules. *Id.* No section of the Charter limits who may be hired as Assistant or the duties the Mayor may assign to such an Assistant.

Within the Division of Police, the Chief of Police has broad “control over the Police Station and any substation which may be hereafter established, and shall have control over the stationing and transfer of all patrolmen and other employees constituting the Division of Police, under such rules and regulations as the Mayor may prescribe.” Akron City Charter 68. The Charter contemplates the need for

² The Akron City Charter is available online at: <http://library.municode.com/index.aspx?clientID=16028&stateID=35&statename=Ohio>.

flexibility in meeting Division needs, permitting the hiring of “special detectives” and “other special officers” for a specified period of time upon “written authority from the Mayor,” which “shall be exercised only under the direction and control of the Chief of Police[.]” *Id.* Nothing in the Charter or the APD Rules and Regulations purports to limit the persons to whom the Chief may temporarily assign his duties when he is absent; at most, the APD Rules and Regulations suggest that, when the Division employs one or more Deputy Chiefs, those officers “can assume the duties of the Chief of Police if assigned to do so during the absence of the Chief of Police.” (*See* Relators’ Exhibits at Ex. C, Section 3.05.)

The City has an interest in protecting the prerogatives of the Mayor and Chief of Police. The Mayor previously has hired Assistants to the Mayor (*see* the City’s Answer, ¶ 55), and likely will do so in the future. The Police Chief previously has assigned, on a temporary basis during an absence, the duties of his office to an Acting Chief (*see id.*, ¶ 56), and he likely will do so in the future. The City has a distinct interest in preserving the scope of the Mayor’s authority to delegate duties to an Assistant, and a distinct interest in preserving the discretion of the Police Chief to designate the person who will carry out his duties on a temporary basis while he is absent.

III. THE CITY IS ENTITLED TO INTERVENE UNDER CIV.R. 24

A. Intervention as of right is warranted.

In light of these distinct interests, the City is entitled to intervention. Civ.R. 24(A) provides that:

Upon timely application anyone shall be permitted to intervene in an action . . .(2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

This rule is liberally construed to permit intervention. *See State ex rel. Johnson v. Richardson, et al.*, 131 Ohio St.3d 120, 2012-Ohio-57, 961 N.E.2d 187, ¶ 9, citing *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 534, 696 N.E.2d 1079 (1998). In *Richardson*, this Court allowed intervention for the same reason the City seeks it here: so a political subdivision can defend its interpretation of its own Charter, an interest not adequately represented by an individual respondent. *Richardson* at ¶ 8.

Relators' claims regarding Respondent Charles Brown are necessarily connected to the Mayor's and Police Chief's authority under the City Charter. The City plainly has an interest in the subject of this action, as the scope of the Mayor's and Police Chief's authority is key to the functioning of the City's executive branch. *See Richardson, supra*. Furthermore, the City's interest is not adequately

protected or represented by Respondent Charles Brown, whose primary interest lies in retaining his position — not preserving the prerogatives of the Mayor and Chief of Police.³ Accordingly, the City is entitled to intervene as of right under Civ.R. 24(A).

B. Permissive intervention is also warranted.

The City's intervention in this matter is also appropriate under Civ.R. 24(B). Permissive intervention is allowed "when an applicant's claim or defense and the main action have a question of law or fact in common." Civ.R. 24(B)(2). The City's defenses to Relators' Complaint and Relators' claims have common questions of fact and law, including the authority of the Mayor and Police Chief and the proper interpretation of the Akron City Charter and the APD Rules and Regulations. (See City of Akron's Answer to Original Complaint for Writ of Quo Warranto ¶¶ 50, 52-53, 55-58.) Therefore, even if the City were not entitled to intervene as of right, this Court should exercise its discretion under Civ.R. 24(B) and grant the City permission to intervene. See *City of Cincinnati v. Cincinnati Dist. Council 51, et al.*, 35 Ohio St.2d 197, 200 (1973).

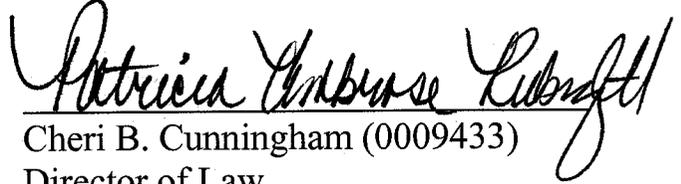
IV. CONCLUSION

The City's distinct interest in this matter, as fully set forth above, is irrefutable. Relators' claims are premised on the Akron City Charter, and

³ This motion is timely under Civ.R. 24(A) as it is being served within the deadline for Respondent Brown to file an Answer.

challenge the Mayor's authority to control the Department of Public Safety and the Police Chief's authority to manage the Police Department. These issues are wholly within the purview of the City, not Respondent Charles Brown. The City, therefore, respectfully requests that this Court grant its Motion to Intervene.

Respectfully submitted,



Cheri B. Cunningham (0009433)

Director of Law

Patricia Ambrose-Rubright (0009435)

(COUNSEL OF RECORD)

Tammy L. Kalail (0072295)

Assistant Directors of Law

City of Akron

161 S. High Street, Suite 202

Akron, OH 44308

Tel: (330) 375-2030

Fax: (330) 375-2041

E-mail: ccunningham@akronohio.gov

pambrose@akronohio.gov

tkalail@akronohio.gov

*Attorneys for Proposed Intervenor
City of Akron*

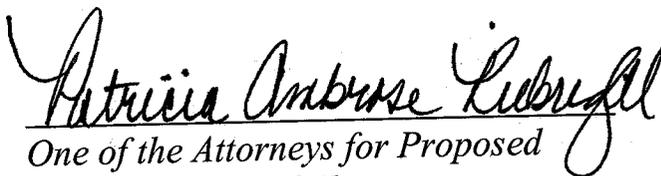
PROOF OF SERVICE

A copy of the foregoing was served on March 11, 2013 pursuant to Civ.R.

5(B)(2)(c) by mailing it by United States mail to:

Susannah Muskovitz
William E. Froehlich
MUSKOVITZ & LEMMERBROCK, LLC
The BF Keith Building
1621 Euclid Avenue, Suite 1750
Cleveland, OH 44115

Attorneys for Relators


*One of the Attorneys for Proposed
Intervenor City of Akron*