

## Union firefighters' challenge to the City of Spokane's administrative structure

Nathaniel Odle  
Assistant City Attorney, City of Spokane  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201  
(509) 625-6228  
nodle@spokanecity.org

### History of subject legislation

- Spokane is governed by its City Charter and the Spokane Municipal Code (“SMC”)
- Per Article IV, § 24 of the Charter, the Mayor of Spokane is delegated the power to “appoint and remove administrative heads and assistant department heads in each department of the city government...”
- What constitutes a “department” is undefined in the Charter and defined only by use in the SMC/Ordinance

## SMC Title 3

Entitled "Administrative and Executive Organization"

SMC 3.01.710 referred to Fire, stating

- A. The fire department, through various divisions such as administration, emergency medical services, operations, prevention and training, provides the community with a number of services, including but not limited to:
1. response to medical help, fires and other situations where the public calls for assistance;
  2. fire investigations, and code enforcement and engineering services augmented by public education, technical assistance for fire code compliance, inspections and safety assessments; and
  3. CPR and other educational classes.
- B. The fire chief, fire marshal, or other designated officer, any of whom is the "fire official", also enforces various federal and state fire codes, including fireworks and underground storage tanks.
- C. The fire chief is appointed by the mayor and confirmed by the city council.

## Spokane City Ordinance C-34964

- Passed by the Spokane City Council April 8, 2013
- 4-3 vote
- Signed by Mayor Condon April 22, 2013
- Effective May 22, 2013
- Adopted SMC 3.01A as replacement to SMC 3.01

## Changes under SMC 3.01A

- Renamed various City entities previously delineated as “Departments” as “Divisions”
- For example, Spokane Fire Department was re-identified as “Spokane Fire Division Department”
- Divided functions within Fire Division into “departments,” each identified by a specific Section number within 3.01A
- Added 3.01A.265-03.01A.300

## SMC 3.01A.265 - Fire

- A. The fire division, through various departments, provides the community with a number of services, including but not limited to:
1. Responds to medical help, fires and other situations where the public calls for assistance;
  2. Fire investigations, and code enforcement and engineering services augmented by public education, technical assistance for fire code compliance, inspections and safety assessments; and
  3. CPR and other educational classes.
- B. The fire chief is responsible for the leadership and management of the fire division and the various departments within the fire division.
- C. The fire chief or fire marshal is the “fire official” for enforcement of various federal and state fire codes, including fireworks and underground storage tanks.

### SMC 3.01A.270 – Fire Communications

The communication department's primary responsibilities are to receive calls through the Community's 9-1-1 system and dispatch appropriate resources to the public's request for assistance as well as to communicate with and provide documentation and other support to fire and EMS response agencies and their field units. Includes assuring that facilities, equipment and systems are in place and operational for interoperable communication to occur between the public and responders in order to support the mission of the fire division as well as fulfill the obligations to provide contract dispatching services to other fire agencies.

### SMC 3.01A.275 – Fire Emergency Medical Services

The fire emergency medical services department is responsible for the medical systems necessary to provide quality pre-hospital basic life support and paramedic level critical care. Includes the management and oversight of the 9-1-1 ambulance transport contract as well as participation in the coordination of the overall community emergency medical services system.

### **SMC 3.01A.280 – Fire Logistics**

The fire logistics department manages and maintains the emergency response fleet of specialized apparatus, equipment, physical buildings and inventory that are in place and necessary to support the fire division's mission.

### **SMC 3.01A.285 – Fire Operations**

The fire operations department primary responsibilities include response to fire, emergency medical services, rescue and other calls for services that typically occur through the community's 9-1-1 system. Consists of personnel and equipment deployed to field operations (stations and apparatus) as well as special operations and emergency incident management.

### **SMC 3.01A.290 – Fire Planning and Information Management**

The fire planning and information management department primary responsibilities are to develop and oversee the fire division's information technology plan and systems necessary to support the fire division's mission together with the obligations to provide contract dispatching services to other fire agencies. Includes providing all aspects of information technology and information management services through development, purchase, installation and maintenance of routine and critical technological software and interoperable, secure infrastructure.

### **SMC 3.01A.295 – Fire Prevention**

The fire prevention department primary responsibilities are to manage and oversee the enforcement of the fire code and other applicable standards as well as other efforts to prevent injury and harm from firm and avoidable accidents. Includes the review of plans for new and remodel projects within the City; field inspections to insure [sic] compliance with required permits and codes; educational and other collaborative programs to minimize occurrence of fires, accidents and injuries in the community.

## SMC 3.01A.300 – Fire Training

The fire training department primary responsibilities are to lead and manage the training, educational and other systems necessary to assure operational readiness and compliance with governmental standards and regulations. Includes the management and oversight of the fire division's safety program.

## The City's rationale for the change

- In keeping with the City's mission "to deliver efficient and effective services that facilitate economic opportunity and enhance quality of life" the changes to the SMC "codif[ied] the existing structure" and brought "Public Safety departments more in line with the rest of the City divisions."
- Through the appointment of both a department head and assistant department head of the seven departments within the Fire Division (as authorized by Article IV, § 24 of the City Charter) the amendment permitted the Fire Chief to select individuals who: 1) were willing to execute the vision of the City; 2) willing to move the organization in the direction of the City; 3) understand the importance of excellent customer service and are willing to practice that philosophy; and 4) understand and are willing to put forth the amount of work and the number of hours necessary to successfully perform the job.

## Relevant impact of the change

- Prior to the adoption of SMC Ch. 3.01A, only the Spokane Fire Chief and Assistant Fire Chief positions were filled by mayoral appointment.
- Following adoption of SMC Ch. 3.01A, the Mayor was permitted, pursuant to Article IV, § 24 of the Charter, to appoint a department head and assistant department head of the seven departments identified in SMC 3.01A.270-300.
- Including the Chief and Assistant Chief, the Fire Division now had sixteen potentially “appointable” positions.

## Exempt vs. commissioned employees

### Terminology

1. Commissioned: employees within the Spokane Civil Service system. An opening for a commissioned position must be filled through civil service. Employee enjoys civil service protections.
  2. Exempt: employees not within the Spokane Civil Service system. An opening for an exempt position may be filled through mayoral appointment. Employee is not protected by civil service.
- At the time of the adoption of SMC 3.01A, the City had 2,023 employees, 59 of whom were exempt from civil service. 41 of the 59 exempt positions were not union-represented.
  - City Attorneys, for example, though exempt and appointed, are union represented.

## Who cares?

- Both unions serving Spokane's firefighters: the International Association of Fire Fighters Local 29 (Local 29) and the Spokane Association of Fire Officers (SAFO).
- Potentially, additional unions serving the employees of Spokane.

## Why Spokane's union firefighters sued

- In the Complaint filed May 17, 2013 (before SMC 3.01A became effective), Local 29 and SAFO brought a Writ of Constitutional Review and Complaint seeking declaratory relief that alleged
  - Ordinance C-34964 and SMC 3.01A was "intended to circumvent the requirements of state and the [Spokane] city charter relating to the protections provided by civil service."
  - In "dividing the Spokane Fire Department into seven 'departments'...the Ordinance [sought] to create fourteen exempt positions in the Fire Department, despite the state law and city charter provisions limiting the number of exempt employees to two."
  - The legislation would "eliminate civil service protections for [fourteen] positions that currently are covered by the civil service system. Many of those positions are filled by members of the plaintiff unions. Those union members are currently protected by the civil service system from unfairness in hiring, layoffs, disciplinary proceedings, promotions and a variety of other employment issues."
  - Civil service "seeks to curb political favoritism, remove political pressures on public employees, assure public employees are hired based on merit and, thereby, protect public safety and serve the public welfare."
  - The Ordinance was "not created at the time of the adoption of the annual budget."
  - The Ordinance was arbitrary and capricious.

## Summary of the plaintiffs' arguments

- Spokane remedied the timing issue by ratifying SMC Ch. 3.01A and the departments/divisions created at the time of the 2014 budget. The parties stipulated and dismissed the claim.
- Unwise decisions or errors in judgment do not meet the threshold of proving arbitrary and capricious action. Concerned Land Owners v. King Cnty., 64 Wn. App. 768 (1992). Legislation is not arbitrary and capricious if there is room for two opinions *even though* a particular action may have been unwise or even erroneous. Stegriy v. King Cnty. Bd. of Appeals, 39 Wn. App. 346 (1984).
- The plaintiffs did not strongly pursue the arbitrary and capricious allegation and it was not referenced in trial court's ruling.

## Summary of the plaintiffs' arguments continued

- In opposing the City's motion for summary judgment and pursuing their own cross motion for summary judgment, the plaintiffs put forth two primary arguments:
  1. Ordinance C-34964 and SMC Ch. 3.01A violated the Spokane City Charter; and
  2. Ordinance C-34964 and SMC Ch. 3.01A violated Washington State law, specifically, the change created a civil service system that did not "substantially accomplish" the purpose of the State statute governing civil service of firefighters, RCW Ch. 41.08.

## Summary of the City's arguments

- It was undisputed that no union member had been appointed to an exempt position or lost civil service protections. Moreover, safeguards (collective bargaining, right to return to civil service position, etc.) existed should a union member be appointed in the future. As a result, the harm alleged by the union members had not occurred and therefore the plaintiffs lacked legal standing to assert the challenge.
- The plaintiffs could not establish violation of the City Charter.
- Spokane's civil service system substantially accomplished the goals of RCW Ch. 41.08, *or*, to extent the Court held that Spokane's system did not substantially accomplish the goals of RCW Ch. 41.08, RCW 41.08.140 requires that the local civil service commission initiate "begin and conduct all civil suits necessary for the proper enforcement of this chapter..."
- RCW 7.24.110 requires that "in any proceeding which involves the validity of a municipal ordinance...the attorney general shall also be served with a copy of the proceeding and be entitled to be heard." (Remedied by letter of AG's Office stating it was not interested in being involved)

## Standing

- In the context of a declaratory judgment, a four-part test is applied to determine if a litigant is the proper party to bring a dispute:
  - 1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot argument;
  - 2) between parties having genuine and opposing interests;
  - 3) which involves direct and substantial interests, as opposed to theoretical, abstract, or academic; and
  - 4) a judicial determination of which will be final and conclusive. Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811 (1973).

## Standing cont.

- The City's position was that the "dispute" for purposes of standing was whether SMC Ch. 3.01A caused injury to any union firefighter.
- The City's argument was twofold:
  - 1) no union member had been appointed to an exempt position (and thus had no impact upon their civil service rights) therefore the harm alleged was future, not present and existing; and
  - 2) if and when a union member was appointed to an open position, following appointment, the employee was protected by Article IV, § 24 of the City Charter which grants the Mayor the power "appoint and remove administrative heads and assistant administrative heads in each department of the city government **provided** the appointment of an administrative head shall be subject to the approval of city council and **further provided, that the head and assistant head of any department shall not be deprived by any such removal of standing under the civil service provisions of this Charter which the employee may have had before appointment as head or assistant head of a department.**"
- Per an internal document created by Spokane's Civil Service Commission and disclosed during the proceeding, employees of the City of Spokane appointed directly from a classified position are granted an "indefinite leave of absence from classified service." The return of civil service rights applies equally to employees: 1) removed by the Mayor from the appointive position; 2) removed as a result of the deletion of the appointed position due to an organizational change; and 3) who voluntarily resign from the appointive position.
- Thus, even if a union member was appointed to a department head or assistant department head position in the future (which no were), if the hypothetical employee was subsequently removed from the position, he/she would retain all civil service protections including the right to return to their prior position.

## Standing cont.

- The plaintiffs argued that standing was present as:
  1. Standing must be evaluated on the basis of what the City can do under the new ordinance, not what it has done, i.e. the City can appoint union members who would then be removed from the civil service system.
  2. The change to the SMC effectively amended the City Charter, depriving union members of the right to vote.
  3. The change caused immediate injury as it made certain jobs less attractive to union members and, in fact, caused union members to turn down opportunities. This argument focused on the loss of "bumping rights" and "return rights" of union members in department(s) with a small number of employees.
  4. The change conflicted with prior collectively bargained agreements.

## Standing cont.

- The trial court concluded that the plaintiffs had standing, stating:

“This is an important issue for [the plaintiffs] and it is not just theoretical. If it does not affect every one of them tomorrow, it is going to affect them in the future. This ordinance creates uncertainty. It definitely can create a different scenario for employees as to what jobs they may want to apply for. There will be an effect because people want to plan for the future and you cannot assume everything will stay the same. I am satisfied that they have standing to bring this action.”

## The plaintiffs’ claim of violation of Spokane City Charter

- The plaintiffs argued that the creation of 14 new exempt positions violated the City Charter
- Although the term “department” was undefined in the Charter, the creation of many small departments in Fire, some with few employees, did not reflect the intent of the law.
- The trial court did not find a Charter violation

## The plaintiffs' claim of violation of State law

- RCW Ch. 41.08 "Civil Service for Firefighters"
- Per RCW 41.08.010, the provisions of Ch. 41.08 "shall have no application to cities and towns which at the present time have provided for civil service in the fire department...which said local charter or regulations substantially accomplish the purpose of this chapter."
- A municipality can effectively opt out of the requirements of Ch. 41.08 by developing a civil service system for its firefighters that "substantially accomplishes" the purpose of the Title.
- Therefore, though at all times relevant Spokane had a civil service system covering all but two Fire employees (the Chief and Assistant Chief), the plaintiffs argued that following enactment of SMC Ch. 3.01A the City's option to bypass civil service and appoint future department heads and assistant department heads for the seven departments within the Fire Division created a system that no longer substantially complied with Ch. 41.08.

## The plaintiffs' claim of violation of State law cont.

- The plaintiffs argued that SMC Ch. 3.01A violated RCW 41.08.050 which states that "classified civil service and provisions of this chapter shall included all full paid employees of the fire department in each city, town or municipality coming within its purview, *except that individuals appointed as fire chief...*"
- The City's ability to exempt up to 16 employees from civil service was unlawful

## The plaintiffs' claim of violation of State law cont.

- The City argued that RCW 41.08.010 requires that the determination of substantial compliance be made ***“at the present time”*** and at the present time all union members were enrolled in Spokane’s civil service system. The plaintiff’s argument that a system that offered civil service protections to *all* firefighters at present was not in substantial compliance was flawed.

## The plaintiffs' claim of violation of State law cont.

- The City also argued that, if the Court agreed with the plaintiff and found that the City’s civil service system did not substantially accomplish the goals of Ch. 41.08, that *all* sections of Ch. 41.08 then became applicable.
- RCW 41.08.140 “Enforcement by civil action – Legal counsel” states:
  - ***“It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and the rules of the commission.*** The commission shall be represented in such suits by the chief legal officer of the city...”
- Identical statute applying to civil service for police (RCW 41.12.140)
- Never cited in a Washington case
- Language appears to limit standing to ensure local compliance with Ch. 41.08 to local civil service commission
- Spokane civil service commission was approached by union representatives prior to suit and declined to pursue

## The trial court's ruling

- Granted the plaintiffs' motion and declared Ordinance C-34964 and the portions of SMC Ch. 3.01 relating to the Fire Division invalid in light of violation of State law.
- In concluding that the legislation violated RCW 41.08, the Court stated

“The civil service statute says the fire department has one exemption (although Spokane has two). The latter is not at issue here. A change can be made as long as it substantially complies with RCW 41.08. Creating these subdivisions and calling them departments, and then creating 14 additional new exemptions, does not substantially comply with RCW 41.08.”

## The trial court's ruling cont.

- As to the City's argument as to the apparent exclusivity of the Spokane civil service commission to bring forth such challenges as set forth in RCW 41.08.140, the Court stated:

“I don't know that that is exactly what the statute says. What [RCW 41.08.140] says is that the civil service system has the duty to do it. It doesn't say someone else cannot do it.”

## Aftermath

- Following the Court's decision, Spokane City Council voted to repeal SMC 3.01A.270-300. SMC 3.01A.265 creating the Fire Division, remains in place as do all other portions of SMC Ch. 3.01A applicable to other City Divisions
- The City has appealed the ruling which is currently before Division III, Court of Appeals