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NO. A18-0398

State of Minnesota

In Supreme Court

Firefighters Union Local 4725 and
Mark Turner, Its President,

Respondents,

vs.

City of Brainerd,

Petitioner.

BRIEF OF PETITIONER CITY OF BRAINERD

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Issue: Does a municipal government's reorganization of a department that results in the dissolution of a bargaining unit constitute a statutorily authorized exercise of a public employer's inherent managerial authority, consistent with *State ex rel. Quiring v. Bd. of Educ. of Ind. Sch. Dist. No. 173*, 623 N.W.2d 634 (Minn. Ct. App. 2001), *review denied* (Minn. May 29, 2001), or is it an unfair labor practice, as the court of appeals determined below?

Rulings Below: The issue was raised before the Crow Wing County District Court through cross motions for summary judgment filed by the Petitioner and Respondents. (Docs. 28-29, 31, 41.) The trial court granted the Petitioner's motion for summary judgment and denied the Respondents' motion, holding that the decision to reorganize the Brainerd Fire Department was a matter of inherent managerial policy and therefore not subject to negotiation. (Add. 2, 9-11; *see also* Add. 27; Add. 28-29.) The Minnesota Court of Appeals reversed and ordered judgment in the Respondents' favor, holding that if an employer's unilateral decision to reorganize a department results in the elimination of a bargaining unit while a bargaining agreement is in effect, the employer has engaged in an unfair labor practice. (Add. 38-41, 50-51.) Petitioner preserved the issue for appeal by filing a timely petition for review.

Apposite Authority:

Cases:

Arrowhead Pub. Serv. Union v. City of Duluth, 336 N.W.2d 68 (Minn. 1983)

Minneapolis Fed'n of Teachers Local 59 v. Minneapolis Special Sch. Dist. No. 1, 258 N.W.2d 802 (Minn. 1977)

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STATEMENT OF THE CASE

Prior to 2015, the City of Brainerd operated a "combination fire department," staffed with both full-time fire equipment officers ("FEOs") and paid-on-call firefighters ("POCs"). In 2015, in an attempt to address financial pressures with which it had been struggling for several years, Petitioner City of Brainerd passed a resolution to change the organizational structure of the department from a combination fire department to a fully paid-on-call department.

Respondents, the FEOs whose positions were eliminated as part of the reorganization, and their union, initiated this lawsuit in Crow Wing County District Court on or about January 19, 2016. (Doc. 1.) The Complaint contained the following claims: (1) that the reorganization violated the Public Employment Labor Relations Act ("PELRA") because it resulted in the elimination of the bargaining unit; (2) that the reorganization violated the Brainerd City Charter; and (3) that the reorganization was

undertaken in retaliation for Respondents' speech, in violation of the Minnesota and United States Constitutions. (*Id.*)

At the close of discovery, the parties filed cross motions for summary judgment. (Docs. 28-29.) The Crow Wing County District Court, the Honorable Earl Maus presiding, denied Respondents' motion, and granted Petitioner's motion in part. (Add. 2, 9-11.) The only claim that survived summary judgment was Count I, which alleged that the reorganization violated PELRA. (*Id.*)

After receiving permission from the district court, the City filed a motion for reconsideration. (Doc. 82.) On January 11, 2018, the district court granted the City's motion for reconsideration and dismissed the only remaining claim on the ground that Respondents had failed to raise a genuine issue of material fact in response to the City's motion, as required by Minnesota Rule of Civil Procedure 56.05. (Add. 28-29.) Respondents appealed. (Doc. 104.) On October 8, 2018, the Minnesota Court of Appeals reversed the district court's order with respect to Count I, and affirmed the remainder of the order. (Add. 50-51.) Petitioner City of Brainerd filed a petition for review on November 7, 2018.

STATEMENT OF THE FACTS

The Parties

The City of Brainerd ("the City") is a home-rule charter city. (Doc. 44 ¶ 3.) The City operates a fire department ("Brainerd Fire Department" or "BFD"), which offers protection to the City and several surrounding communities. (*Id.*)

Respondent Firefighters Union Local 4725 ("Local 4725") is the exclusive bargaining unit for the Fire Equipment Operators ("FEOs") who were previously employed by the BFD. (Doc. 1 ¶¶ 1, 2; Doc. 43 Ex. 7 at 17.) Local 4725 had five members at the time of the restructuring that is the subject of this lawsuit. (Doc. 44 ¶ 11; Doc. 43 Ex. 7 at 15.) Respondent Mark Turner is a former FEO for the BFD, and was president of Local 4725. (Doc. 1 ¶ 2.)

The Reorganization[1]

Prior to 2015, the BFD was a combination fire department; that is, it employed both full-time FEOs and paid-on-call firefighters ("POCs"). (*See* Doc. 36 ¶ 7-8.) POCs are like FEOs, in that they receive firefighter training and are paid by the City. (Doc. 48 ¶ 2.) However, unlike FEOs, POCs do not have regularly-scheduled work hours. (*Id.*) Rather, they are "on call," and respond to fire and other emergency incidents on an as-needed basis. (*Id.*) In addition to FEOs and POCs, the BFD employed a full-time fire chief and an administrative specialist.

On September 21, 2015, the City Council passed Resolution 45:15, which reorganized the BFD by creating a full-time position that served as both as a Fire Marshal and a Deputy Fire Chief and by eliminating the FEO positions. (Doc. 45 Ex. A.) The reorganization, which became effective on October 21, 2015, resulted in all five members of Local 4725 being laid off. (*See id.*)

[1] The City referred to its reorganization of the BFD as "restructuring." References in the record to "restructuring" refer to the same process described herein as "reorganizing."

History of Reorganization

The idea of reorganizing the BFD was not new in 2015. (Doc. 44 ¶ 9.) Financial stress had caused the City to attempt to reorganize the BFD five years earlier, in 2010. (Doc. 46 Ex. L at 7-8.) In 2010, the City was, like many other communities, suffering from the effects of a nationwide recession. (Doc. 44 ¶¶ 4-7.) The recession had caused property values to plunge, which resulted in decreased property tax revenue to the City. (*Id.*) Additionally, legislative action caused the City to receive less in local government aid than for which it had budgeted, from 2008 to 2011. (*Id.*) The decrease in revenue forced the City to make significant cuts to its budget. (*Id.* ¶¶ 7-9.)

In 2010, the BFD employed seven FEOs and approximately 40 POCs. (*Id.* ¶ 9.) The City Administrator at the time, Dan Vogt, concluded that reorganizing the department to eliminate the FEO positions and to hire a full-time Deputy Fire Chief/Fire Marshal, would result in a significant reduction in personnel costs.[2] (Doc. 46 Ex. L; Doc. 44 ¶ 10.) In March 2010, the City Council voted to adopt the plan. (Doc. 44 ¶ 10.) After the City Council voted, however, the FEOs and their union launched a public campaign against the reorganization. (Doc. 1 ¶ 11.) They argued that the reorganization would result in slower response times, thereby adversely impacting the department's ISO rating[3] and putting public safety at risk. (*See, e.g.*, Doc. 46 Ex. M at 4 (statement by Charlie

[2] The City had already cut staff by refraining from filling certain vacant positions. (Doc. 44 ¶ 8.)

[3] An ISO (Insurance Service Office) rating is on a 1 to 10 scale, with a rating of 1 being the best, and 10 the worst. The rating reflects the risk to the community, based on the quality of fire service it receives. The rating may or may not be used by insurance companies to determine homeowners' insurance rates, but it is generally used as a benchmark by fire departments and the communities they serve.

Dunneman).) This caused the City Council to reconsider its decision, and it rescinded its vote to restructure the fire department in April 2010. (Doc. 44 ¶ 10.)

Financial Issues Affecting the Brainerd Fire Department

In the years that followed the City's first attempt to restructure the BFD, the BFD began to experience financial stress over and above that experienced by the City as a whole. (Doc. 44 ¶ 11.) This stress came from two sources: loss of members to the Brainerd Fire Service Area, and the loss of a federal grant. (*Id.*)

The BFD is unique among the City's various departments in that it generates revenues from surrounding communities. (*Id*. ¶ 12.) The Brainerd Fire Service Area ("FSA") is a group of cities and townships (including Brainerd) that pay a yearly fee to receive services from the BFD. (*Id*.) The fee paid by the members of the FSA is used to pay the yearly costs of running the BFD. (*Id*.) In or around 2013, some of the communities that were members of the FSA began to complain about the amount of money they were paying for fire service. (*Id*. ¶ 13.) Daggett Brook Township had already terminated its membership in the FSA in 2011. (*Id*.) In 2014, the City of East Gull Lake and Fort Ripley Township notified the City that they planned to terminate their contract, and ultimately left the FSA at the beginning of 2015. (*Id*.) The City was concerned about the loss of the communities in the FSA, because not only did it have a financial impact on the City, but it also jeopardized the City's relationship with other members of the FSA. (*Id.*) The City had to charge the remaining members of the FSA higher fees, in order to

cover the losses caused by communities leaving the FSA. (*Id*.) Unorganized Territory[4] began openly discussing plans to leave the FSA. (*Id*.) On or around June 2015, Crow Wing Township gave notice that it intended to leave the FSA.[5] (*Id*.) Maple Grove Township also raised concerns and eventually left the FSA, effective January 1, 2017. (*Id*.)

During this time, the BFD also lost a federal grant on which it relied to employ two FEOs. (*Id*. ¶ 14.) FEMA offers financial assistance through the SAFER (Staffing for Adequate Fire & Emergency Response Grants) Program. (*Id*.) The purpose of the program is to provide funds directly to local fire departments to help increase or maintain the number of trained firefighters in their communities.[6] Since 2011, the City had been receiving SAFER funds. (*Id*.) The grant expired in April 2013, and in 2014, the City was notified that the grant would not be renewed. (*Id*.) As a result, the City had to lay off two of its FEOs, reducing the number from seven to five. (*Id*.)

Strategic Financial Planning

In 2012, the City worked to adopt a mission and vision statement and to identify strategic focus areas. (*Id*. ¶ 15.) One of the major focus areas was Strategic Financial

[4] "Unorganized Territory" is the First Assessment District of Crow Wing County. *See* Chelsey Perkins, *Taxes Will Rise—But by How Much? Unorganized Territory Residents About to Find Out*, BRAINERD DISPATCH, Sept. 20, 2017, https://www.brainerddispatch.com/news/4330661-taxes-will-rise-how-much-unorganized-territory-residents-about-find-out. It operates as a township. *See* CROW WING COUNTY MINNESOTA, https://crowwing.us/1454/First-Assessment-District (last visited February 27, 2019).

[5] Ultimately, Crow Wing Township did not leave the FSA.

[6] *See Staffing for Adequate Fire & Emergency Response Grants*, FEMA, U.S. DEP'T OF HOMELAND SECURITY, https://www.fema.gov/staffing-adequate-fire-emergency-response-grants (last visited February 27, 2019).

Planning. (*Id*.) The City had an urgent need to engage in financial planning for three reasons:

- To make needed capital expenditures—One of the ways the City responded to the financial pressures placed on it by the recession was to dramatically reduce its capital expenditures. In the years 2009 to 2013, the City had spent very little on capital equipment. (*Id*. ¶ 17.) The City invested more from 2014 to 2016, but still less than 50% of what had been requested by its various departments. (*Id*.) The City recognized that continuing to underfund capital investments ultimately would result in failing or deficient equipment. (*Id*.) This concern applied to equipment used by the BFD, as well as the other departments in the City. The last time the City had issued debt to purchase new equipment for the BFD was in 2007, when it purchased a ladder truck. (*Id*.) The City had not made any major purchases after this time. (*Id*.) This fueled concerns that the City's ISO rating would be jeopardized because the City was failing to replace aging equipment. (*Id*.)
- To prevent debt service funds from going further into the negative—The City had kept the levy flat or had reduced it in the period of 2007 to 2013. (*Id*. ¶ 18.) During this time, the City had not made up for the loss in revenue through other means. (*Id*.) As a result, the City's debt service funds had gone into the negative. (*Id*.) In other words, the City had been "borrowing" from other funds to make debt service payments over the years. (*Id*.)
- To comply with the Fund Balance Policy—In 2009, the City had adopted a Fund Balance Policy, which provided that the City must "maintain the unassigned

portion of the fund balance for Cash Flow in a range equal to 35-50% of the working fund current year operating expenditures." (*Id*. ¶ 16.) At the end of 2012, this fund was at 33%. It had decreased to 29% by the end of 2013. (*Id*.)

The 2015 Reorganization

In 2014 and 2015, there was renewed discussion about reorganization. City staff estimated that reorganizing the BFD would save the City approximately $275,000 per year. (Doc. 44 ¶¶ 19-21; Doc. 43 Ex. 7 at 88; Doc. 43 Ex. 8.) Representatives from the communities making up the Fire Service Area questioned the cost of maintaining FEOs at Fire Advisory Board[7] meetings on January 14, 2015 and April 30, 2014. (Doc. 46 Exs. N, O.) In December 2014, Council member Gary Scheeler announced that he was going to make a "public push" and a motion to the City Council to eliminate the FEOs' positions. (Doc. 43 Ex. 3.) As they had in 2010, the FEOs and the Union publicly spoke out against the reorganization. (*See* Doc. 43 Ex. 4 at 2-3; Doc. 43 Ex. 5 at 2-3.)

On July 7, 2015, the City informed the Union, by letter, that it intended to reorganize the BFD. (Doc. 46 Ex. P.) On September 21, 2015, the City Council enacted a resolution to eliminate the five FEO positions and to hire a full-time Fire Marshal/Deputy Fire Chief. (Doc. 45 Ex. A; Doc. 46 Ex. R.) The reorganization was implemented on October 21, 2015. As a result, the FEO positions were eliminated, and each of the members of Local 4725 were laid off. (*See* Doc. 45 Ex. A; Doc. 46 Ex. R.) The City placed the estimated savings that resulted from the first year after reorganization

[7] The Fire Advisory Board is an advisory committee that is comprised of representatives from each of the member communities of the Fire Service Area.

($275,000) into a capital fund to provide for the purchase of future equipment or facility needs. (Doc. 44 ¶¶ 20-21; Doc. 43 Ex. 7 at 88.)

The Lawsuit

On January 19, 2016, Local 4725 and its president, Mark Turner, sued the City. (Doc. 1.) The Respondents' Complaint contained four counts. Count I alleged that the City engaged in an unfair labor practice, in violation of PELRA. (*Id.* ¶¶ 7-25.) Count II alleged that the reorganization violated the City's charter (*id.* ¶¶ 26-33), and Counts III and IV alleged that the City decided to restructure the BFD in retaliation for Local 4725's and the FEOs' exercise of free speech. (*Id.* ¶¶ 34-52.) On July 20, 2017, the parties submitted cross motions for summary judgment. (Doc. 71.) The City sought dismissal of the lawsuit in full, while Turner and Local 4725 sought judgment in their favor on Counts I and II. (*See generally* Doc. 31; Doc. 41.)

Local 4725's argument in regard to Count I, as articulated in both its response to the City's motion for summary judgment and in Local 4725's memorandum supporting its motion for partial summary judgment, was that the reorganization constituted an unfair labor practice under the following statutory provisions:

> Employers. Public employers, their agents and representatives are prohibited from:
>
> (1) Interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;
>
> (2) Dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;

> (3) Discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization . . . .

Minn. Stat. § 179A.13, subd 2 (2016). (*See also* Doc. 31 at 10, 12, 14-17; Doc. 55 at 1-9.) In regard to section 179A.13, subdivision 2(2), Local 4725 argued, without any supporting authority, that the reorganization was an unfair labor practice because, by eliminating all the positions in a bargaining unit, it interfered with the existence and administration of an employee organization. (Doc. 31 at 14-15.)

The district court granted the City's motion in part, and denied Local 4725's motion in its entirety. (Add. 26.) The district court dismissed Counts II through IV, on the ground that the City's charter did not prohibit the restructuring, and that Local 4725 had not made a prima facie case that the City had retaliated against Local 4725 and the FEOs for exercising their right to free speech. (Add. 17-26.) The district court denied the City's motion as to Count I. (Add. 26.) It held that the City's decision to reorganize the BFD was a matter of inherent managerial policy over which the City was not required to negotiate. (Add. 9-15.) It determined, however, there were fact issues as to whether the City had failed to negotiate the effects or impact of the reorganization, and as to whether the City properly negotiated the issue of work jurisdiction. (Add. 15-17.)

The City requested permission, and was allowed, to file a motion for reconsideration. (Doc. 78; Add. 27.) The City pointed out that neither of the grounds on which the court had determined that there was a fact issue was properly before the court, as neither had been pleaded. (Doc. 84 at 2-7.) Additionally, Local 4725 had not met the requirement of Minnesota Rule of Civil Procedure 56.05 in that Local 4725 had raised

the arguments for the first time in its reply brief to the City's motion for summary judgment, and had not supported the arguments with admissible evidence. (*Id.* at 7-9.) The district court agreed with the City, and amended its order to dismiss Local 4725's lawsuit in full. (Add. 28-29.)

The Court of Appeals' Decision

The court of appeals affirmed the district court on all grounds except as to the PELRA claim. (Add. 32.) It reasoned that, because the City eliminated all the FEO positions, the City had effectively eliminated "the entire union." (Add. 41.) It determined that the City had violated Minnesota Statutes section 179A.13, subdivision 2(2), which prohibits employers from "interfering with the formation, existence, or administration of any employee organization." (Add. 40-41.) The court concluded "that it is not an 'inherent managerial policy' for an employer to reorganize a department when the reorganization interferes with the existence and administration of a union. Minn. Stat. §§ 179A.07, .13, subd. 2(2)." (Add. 41.) The court of appeals remanded the case to the district court with instructions to enter judgment in favor of Local 4725. (Add. 41-42.)

STANDARD OF REVIEW

When interpreting statutory provisions, the Court applies a de novo standard of review. *Ekdahl v. Ind. Sch. Dist. No. 213*, 851 N.W.2d 874, 876 (Minn. 2014) (citing *Reider v. Anoka-Hennepin Sch. Dist. No. 11*, 728 N.W.2d 246, 249 (Minn. 2007)). "The goal of all statutory interpretation is to 'ascertain and effectuate the intention of the legislature.'" *Binkley v. Allina Health Sys.*, 877 N.W.2d 547, 550 (Minn. 2016) (quoting Minn. Stat. § 645.16).

ARGUMENT

The Legislature has described the policy and purpose of the Minnesota Public Employment Labor Relations Act, codified at Chapter 179A, as follows:

> It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees. This policy is subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety, and welfare.

Minn. Stat. § 179A.01(a) (2018). Implicit in the declaration of this policy is that PELRA is designed to weigh the interests of public employees, who seek to negotiate the terms and conditions of their employment, and of public employers, who are charged with protecting the health, education, safety, and welfare of Minnesota residents, and to resolve issues that arise when those interests conflict. This lawsuit involves the interplay of three sections that balance the interests of public employers and employees.[8] Section 179A.03, subdivision 19, sets forth the "terms and conditions of employment," about which employee representatives are entitled to bargain with employers. Section 179A.07, subdivision 1, sets forth "matters of inherent managerial policy," which are functions of government over which employers are not required to bargain. Section 179A.13, subdivision 2(2), proscribes "unfair labor practices," which are practices by employers

[8] The original versions of all three of these sections were passed simultaneously by the Legislature in 1971, as part of the Public Employment Labor Relations Act of 1971. 1971 Minn. Laws Ch. 33 §§ 3, 6, 8 (1971 Extra Session) (codified at Minn. Stat. §§ 179.61-179.77 (1971)). In 1984, the Public Employment Labor Relations Act was recodified at Minnesota Statutes Chapter 179A. 1984 Minn. Laws Ch. 462. The three relevant sections remain virtually unchanged from 1971. *Compare* 1971 Minn. Laws Ch. 33 §§ 3, 6, 8 (1971 Extra Session), *with* 1984 Minn. Laws Ch. 462 §§ 4, 8, 14, *and* Minn. Stat. §§ 179A.03, subd. 19, 179A.07, subd. 1, 179A.13, subd. 2(2) (2018).

designed to discourage or impair the ability of public employees to assert their union rights.[9]

The City reorganized the BFD because it determined that its obligations to the public demanded that it spend its limited funds on capital improvements rather than ongoing personnel costs, the latter of which it did not judge to be essential to public safety. In balancing the respective interests of public employees and public employers, the Legislature determined that organizational and budgetary policy decisions such as that made by the City are within the exclusive province of governmental entities and agencies and are not mandatory subjects of bargaining. Nevertheless, the court of appeals held that the City engaged in an unfair labor practice because the reorganization eliminated all the positions held by the members of Local 4725. In doing so, the court of appeals ignored the plain language of the statute, disregarded the Legislature's stated policies, and disrupted the balance between the interests of public employees and employers that PELRA has struck.

I. THE INTERESTS OF PUBLIC EMPLOYEES AND PUBLIC EMPLOYERS ARE BALANCED BY SECTIONS 179A.07 AND 179A.03.

PELRA strikes a balance between public employees' interests in bargaining over their working conditions and public employers' interests in providing service to the public. It does so by delineating those topics that are subject to mandatory bargaining and those that are not. To protect employees' rights, PELRA requires employers to bargain over "terms and conditions of employment." Minn. Stat. §§ 179A.06, subd. 5; 179A.07,

[9] Section 179A.13 contains provisions that prohibit certain conduct by employees, but in this context, only the provisions pertaining to employers are relevant.

subd. 2. The Legislature set forth what subjects constitute "terms and conditions of employment" as follows:

> the hours of employment, the compensation therefor including fringe benefits except retirement contributions or benefits other than employer payment of, or contributions to, premiums for group insurance coverage of retired employees or severance pay, and the employer's personnel policies affecting the working conditions of the employees. . . . "Terms and conditions of employment" is subject to section 179A.07.

Minn. Stat. § 179A.03, subd. 19. In order to protect public employers' discretion to set the policy and direction of their agencies and departments, the Legislature has provided that public employers are not required to meet and negotiate on "matters of inherent managerial policy." Minn. Stat. § 179A.07, subd. 1. "Matters of inherent managerial policy" is defined as follows:

> Matters of inherent managerial policy include, but are not limited to, such areas of discretion or policy as the functions and programs of the employer, its overall budget, utilization of technology, the organizational structure, selection of personnel, and direction and number of personnel.

Id.

Consistent with the policy objective of making public health, education, safety, and welfare matters of paramount importance, the Legislature explicitly limited the definition of "terms and conditions of employment" to issues that are not matters of inherent managerial policy. Minn. Stat. § 179A.03, subd. 19 (stating, "'Terms and conditions of employment' are subject to section 179A.07."). In short, the Legislature has directed that where there is overlap between a term and condition of employment and a matter of inherent managerial policy, courts are to resolve any conflicts by determining that the matter is not the subject of mandatory bargaining. *See id.*

II. THE COURT OF APPEALS' DECISION IS CONTRARY TO PELRA'S LANGUAGE.

A. The decision to reorganize the BFD falls squarely within the definition of "inherent managerial policy."

The City's decision to reorganize the BFD was a matter of inherent managerial policy under the explicit terms of PELRA. PELRA defines "matter of inherent managerial policy" as including, among other things, organizational structure, the number and selection of personnel, and overall budget. Minn. Stat. § 179A.07, subd. 1. The reorganization of the BFD involved each of these matters.

The decision to reorganize affected the City's budget. At the time the City reorganized the BFD, the City was tasked with solving several financial problems. The City had not been making adequate investments in capital equipment (including the replacement of equipment needed by the fire department), its debt service fund was in the negative, and its cash reserves had fallen below the level the City considered acceptable. The duly elected governing body of the City determined that times had changed, and in order to meet the needs of the community, so must the fire department. The City estimated that reorganizing the BFD would result in a savings of approximately $275,000 a year. It placed the first year's estimated savings into the capital improvement fund.

The reorganization involved changing the BFD's organizational structure and the number of personnel—prior to the reorganization, the department consisted of a number of POCs, five FEOs, a fire chief, and an administrative specialist. While the reorganization eliminated the FEO positions, it also enabled the City to add a position to

serve in dual roles as a member of the fire department's command staff (Deputy Chief) and as the City's fire marshal.

It cannot be disputed that that this reorganization was an exercise of "inherent managerial policy" under section 179A.07. Personnel decisions designed to address budgetary issues such as those faced by the City are so clearly policy determinations that this Court has stated that it is "without question" that they fall within section 179A.07, subdivision 1, and are not subjects of mandatory bargaining. *See Arrowhead Pub. Serv. Union v. City of Duluth*, 336 N.W.2d 68, 71 (Minn. 1983) (laying off personnel); *Minneapolis Ass'n of Adm'rs and Consultants v. Minneapolis Special Sch. Dist. No. 1*, 311 N.W.2d 474, 476 (Minn. 1981) (decreasing administrative staff by divesting certain positions of administrative functions); *Minneapolis Fed'n of Teachers Local 59 v. Minneapolis Special Sch. Dist. No. 1*, 258 N.W.2d 802 (Minn. 1977) (transferring teachers). When a statute clearly and unambiguously applies to a situation, that statute must be given effect. *See State v. Noggle*, 881 N.W.2d 545, 550 (Minn. 2016) (citing Minn. Stat. § 645.16, which instructs that, "the letter of the law shall not be disregarded . . . .")). The language of section 179A.07, subdivision 1, is plain and unambiguously applies to this case. Giving it full effect requires a determination that the reorganization was a matter of inherent managerial policy that the City was not required to negotiate.

B. The Legislature did not intend section 179A.13, subdivision 2(2), to create an exception to the definition of "inherent managerial policy."

Local 4725 posits that the City's reorganization of the BFD was not an exercise of inherent managerial policy because it interfered with the existence or administration of a

union, in violation of section 179A.13, subdivision 2(2). Local 4725's position is controverted by the plain language of section 179A.07, subdivision 1. When the Legislature set forth the definition of "inherent managerial policy" in section 179A.07, subdivision 1, it did so in absolute terms. It set forth no limitations, provisos, or exceptions. Section 179A.07, subdivision 1, does not refer to section 179A.13, and it does not explicitly state that budgetary, personnel, or organizational decisions lose their status as matters of inherent managerial policy when they interfere with the existence or administration of an employee organization.

This silence is significant, because when the Legislature defined "terms and conditions of employment" in section 179A.03, subdivision 19, it included limiting language: "'Terms and conditions of employment' is subject to 179A.07." Under this legislative formulation, a matter is considered a term and condition of employment only if it is not also considered a matter of inherent managerial policy. The "subject to" clause in section 179A.03, subdivision 19, is noteworthy because it shows that the Legislature knew how to reference one section of PELRA in order to limit the reach of another.

Had the Legislature intended to limit the definition of "matters of inherent managerial policy" only to those actions that do not interfere with the existence or administration of an employee organization, it would have made matters of inherent managerial discretion "subject to" section 179A.13, subdivision 2(2). The fact that the Legislature did not include limiting language in section 179A.07, subdivision 1, shows that it did not intend the definition of "inherent managerial policy" to be constrained by other provisions of PELRA. *See State v. Kirby*, 899 N.W.2d 485, 489-90 (Minn. 2017)

(Legislature's silence on whether the common law doctrine of amelioration applies to the Drug Sentencing Reform Act, as compared to explicit language that it did not apply in a criminal sexual conduct statute, demonstrates that the Legislature intended amelioration to apply to the former, but not the latter); *City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752, 756 (Minn. 2013) (Legislature's express language treating publicly-owned property differently than privately-owned property in Minn. Stat. § 435.19, subd. 2 demonstrates that the Legislature did not intend to make such a distinction in Minn. Stat. § 429.31, subd. 1(f), where similar language does not appear).

To the extent that there appears to be a conflict between section 179A.07, subdivision 1, which would authorize the reorganization, and section 179A.13, subdivision 2(2), which appears to prohibit the reorganization, the conflict must be resolved in favor of section 179A.07, subdivision 1. A canon of statutory construction is that where two statutory provisions conflict, the specific provision prevails over the general provision. *See Connexus Energy v. Comm'r of Revenue*, 868 N.W.2d 234, 242 (Minn. 2015). This canon assumes that when two provisions are part of the same statutory scheme, it shows that the Legislature "has deliberately targeted specific problems with specific solutions." *Id*. (quotation omitted).

> Where statutes contain general and special provisions which seemingly are in conflict, the two should be construed together, and if possible, harmonized and reconciled and effect given to both. In such cases the general provision will be taken to affect only such cases within its general language as are not within the language of the special provision.

State ex. rel. Interstate Air-Parts v. Minneapolis-St. Paul Metro. Airports Comm'n, 25 N.W.2d 718, 724-25 (Minn. 1947). Sections 179A.07 and 179A.13 are part of the same

statutory scheme. They cover the same topic, and were enacted at the same time. *See supra* note 8. Section 179A.13, subdivision 2(2), is a general prohibition against acts that interfere with the existence or administration of an employee organization. Section 179A.07, subdivision 1 is, however, specific in that it provides that the organizational structure, number of personnel, and the overall budget are matters of inherent managerial policy, left to the discretion of the employer. To the extent that there is a conflict, section 179A.07, subdivision 1, which is the more specific of the two provisions, controls.

The Legislature has declared that its policy of promoting orderly and constructive relationships between public employers and employees is subject to the paramount right of citizens to have government make good on the guarantees of health, education, safety, and welfare. The City of Brainerd exercised its inherent managerial authority to reorganize the fire department to meet those needs, and the reorganization was permitted by PELRA.

C. Reading section 179A.13, subdivision 2(2), as limiting section 179A.07, subdivision 1, renders municipal employers unable to serve the public interest.

The court of appeals agreed with the argument put forth by Local 4725, and held that the reorganization constituted an unfair labor practice because it interfered with the administration and existence of the union. The court of appeals did not, however, specify what the City could have done, if anything, in order to reorganize the BFD in such a way as to avoid violating section 179A.13, subdivision 2(2). The inference to be taken from the decision is either that the City was required to negotiate with the union about its decision or that the reorganization was prohibited altogether. Either result is untenable.

As a threshold matter, section 179A.13, subdivision 2(2), cannot be read to require the City to bargain its decision to restructure the BFD. The only subjects of mandatory bargaining set forth by PELRA are grievance procedures, which are not implicated in this case, and "terms and conditions of employment." Minn. Stat. §§ 179A.06, subd. 5; 179A.07, subd. 2. The subjects that constitute "terms and conditions of employment" are enumerated in Minnesota Statutes section 179A.03, subdivision 19. The prohibition against "interfering with the administration and existence of an employee organization" is not found in section 179A.03, where "terms and conditions of employment" are defined, but rather in section 179A.13, which prohibits unfair labor practices. Unfair labor practices are not subjects of mandatory bargaining, but are acts that are strictly prohibited. *See* Minn. Stat. § 179A.13, subd. 2 (stating, "Public employers, their agents and representatives *are prohibited* from . . . ." (emphasis added).) From this language, it can only be concluded that, if section 179A.13, subdivision 2(2), applied to the City's actions, the City would be prohibited from eliminating the FEO positions, whether it negotiated with the Union, or not.

An examination of the procedures set forth by PELRA also shows that section 179A.13, subdivision 2(2), cannot reasonably be read as requiring the City to negotiate with the union before it reorganized the BFD. Firefighters are essential employees, and are therefore prohibited from striking. Minn. Stat. § 179A.03, subd. 7. In recognition of the fact that essential employees cannot strike, PELRA provides that unions may submit items that have been negotiated, but not agreed upon, to binding interest arbitration. Minn. Stat. § 179A.16, subd. 2. If the City and Local 4725 had entered into negotiations

over the City's decision to reorganize the BFD and had reached impasse, Local 4725 would have been entitled to submit the issue for binding interest arbitration. If certified by the Commissioner, the City would be required to participate in the arbitration of the matter, and would be bound by the arbitrator's decision. *Id*. The end result would be that the BFD's organizational structure, an issue that usually would be considered a matter of inherent managerial policy, would be placed into the hands of a third-party tribunal.

In short, under the court of appeals' formulation, either section 179A.13, subdivision 2(2), would operate as an outright ban on a decision that interferes with the existence or administration of a union or it would require employers to negotiate with unions before making such decisions. Either result is unworkable. Interpreting section 179A.13, subdivision 2(2), as an outright ban would require employers to structure departmental reorganizations in such a way as to preserve enough positions to avoid interfering with the existence or administration of the bargaining unit in which those positions reside. (At the present time, it is unclear how many positions the employer would be required to maintain to avoid the reorganization from being considered interference with the union.) Alternatively, if it is read to require an employer to bargain with unions about decisions that would interfere with the administration or existence of an employee organization, ultimately the decision would be taken out of the employer's hands, and would be decided by an arbitrator.

It stretches the limits of credulity to believe that the Legislature intended PELRA to divest public employers of the authority or discretion to structure their workforce in the manner they determine best serves the public's interest. It is equally absurd to think that

the Legislature intended to vest unelected arbitrators or third-party tribunals with the authority to saddle taxpayers and government entities with ineffective organizational structures. Indeed, this Court has previously considered and rejected such absurd results. *In Laird v. ISD No. 317*, the Court held that a school board's decision to transfer teachers is a matter of inherent managerial policy. In doing so, it examined the interplay between teachers' union rights and school boards' authority to make organizational changes, as follows:

> This appeal illuminates the tension between two policies embedded in the state's teacher tenure act: the policy of protecting continuing contract teachers from arbitrary termination and the policy of allowing school boards flexibility in dealing with the problems created by declining enrollments as well as other problems encountered in administering a school system. . . . Although the tenure act was designed to protect the educational interests of the state by preventing arbitrary teacher demotions and discharges unrelated to ability, . . . it was not intended to place unreasonable restrictions on the powers a school district must possess to effectively administer the operation of the public schools. . . . The school board, as the duly elected representative of the parents, taxpayers, and other electors is vested with the management, supervision, and control of the school system; and the unrequested leave of absence provisions of the tenure act do not eliminate the board's flexibility.

Laird v. Indep. Sch. Dist. No. 317, Deer River, Minn., 346 N.W.2d 153, 155 (Minn. 1984) (citations omitted). The interests of the City in this case are no less important than the school board's interests in *Laird*. For these reasons, it is clear that the Legislature did not intend the definition of "inherent managerial policy" to be made subject to section 179A.13, subdivision 2(2).

III. PUBLIC POLICY IS BEST SERVED BY DECLINING TO READ SECTION 179A.13, SUBDIVISION 2(2), AS AN EXCEPTION INTO "MATTERS OF INHERENT MANAGERIAL POLICY."

A. The Legislature has made the policy decision that organizational decisions should be left to public employers' discretion.

The Court need not look beyond the plain language of sections 179A.07, subdivision 1, and 179A.13, subdivision 2(2), to reach the conclusion that the City's decision to reorganize the BFD was a matter of inherent managerial policy. Nevertheless, an examination of the Legislature's policy and intent leads to the same conclusion.

The Legislature stated its policy in enacting PELRA as follows:

> It is the public policy of this state and the purpose of sections 179A.01 to 179A.25 to promote orderly and constructive relationships between all public employers and their employees. This policy is subject to the paramount right of the citizens of this state to keep inviolate the guarantees for their health, education, safety, and welfare.

Minn. Stat. § 179A.01(a). This provision addresses two, sometimes competing, interests. The first is the public's interest in health, education, safety, and welfare, and the second is public employees' interests in their employment. The Legislature struck a balance between these interests by placing public employers' acts into three categories: matters of inherent managerial policy, over which an employer is not required to bargain; terms and conditions of employment, which are subjects of mandatory bargaining; and unfair labor practices, which are prohibited.

Governmental entities are vested with the duty and power to provide for the "health, safety, order, convenience, and general welfare" of the public. *See, e.g.*, Minn. Stat. § 412.221, subd. 32 (setting forth the responsibilities of city councils). The

Legislature has recognized that the public's interests are furthered by giving public employers "direction over the broad [governmental] objectives" of the entities they serve. *See Minneapolis Fed'n of Teachers Local 59 v. Minneapolis Sch. Dist. No. 1*, 258 N.W.2d 802, 804 (Minn. 1977) (determining the scope of school board's managerial policy). The Legislature has demonstrated its intention to preserve public employers' sole discretion to make decisions relating to their governmental objectives by categorizing them as matters of inherent managerial policy. *Id*. On the other side of the balance, PELRA protects employees' interests by making "terms and conditions of employment," matters that do not affect a public employer's discretion to set policy, subjects of mandatory bargaining. *See St. Paul Fire Fighters Local 21 v. City of St. Paul*, 336 N.W.2d 301, 302 (Minn. 1983) ("terms and conditions of employment [are] negotiable to the extent that negotiation is not likely to hamper the employers' direction of its functions and objectives"). The Legislature has made clear that where there is overlap between matters of inherent managerial policy and terms and conditions of employment, the employees' interests in bargaining must yield to the public's interests in preserving employers' discretion to decide matters of inherent managerial policy. *See* Minn. Stat. § 179A.03, subd. 19 (providing that terms and conditions of employment are "subject to section 179A.07").

The determination that an employer must negotiate with the union regarding its decision to reorganize a department if the decision eliminates all the positions in the bargaining unit cannot be reconciled with this legislatively-crafted balance. It is well-established that a public employer's decision to lay off some number of employees is a

matter of inherent managerial policy, because it involves organization and the number and selection of personnel. *See Arrowhead Pub. Serv. Union v. City of Duluth*, 336 N.W.2d 68, 72 (Minn. 1983) (laying off three employees due to budget reductions were decisions regarding matters of inherent managerial policy); *Laird v. Ind. Sch. Dist. No. 317, Deer River, Minn.*, 346 N.W.2d 153 (Minn. 1984) (placing a school teacher on unrequested leave of absence due to declining enrollment was a matter of inherent managerial policy). This is the case even if the employer's act has an effect on the bargaining unit. For example, in *Minneapolis Association of Administrators & Consultants v. Minneapolis Special School District No. 1*, an employer's decision to divest seven employees of their administrative functions resulted in those employees being removed from their bargaining unit. 311 N.W.2d 474, 474-75 (Minn. 1981). Nevertheless, it was determined that the employer did not engage in an unfair labor practice when it refused to bargain with the union over this decision.

The City's decision to reorganize the BFD is the same as those made in *Arrowhead Public Service* and *Laird*, in that the City laid off employees due to budgetary issues. The only difference is that in *Arrowhead Public Service* and *Laird*, the employers laid off a subset of employees, while the reorganization of the BFD resulted in laying off all the employees within a bargaining unit. From a policy perspective, this is a distinction without a difference. Regardless of the number of employees affected by a reorganization, the policy remains the same—the interest of citizens in an organizational structure that best serves them is paramount, and therefore the decision lies solely with the body vested with the responsibility of protecting that interest.

Prior to the case currently before the Court, the court of appeals had recognized that the interests of the citizens are of paramount importance, even if a reorganization results in the elimination of all the positions in a bargaining unit. *In State ex. rel. Quiring v. Board of Education of ISD No 173*, the court determined that a reorganization that resulted in the elimination of two principal positions was a matter of inherent managerial policy. 623 N.W.2d 634, 636, 640 (Minn. Ct. App. 2001), *review denied* (Minn. May 29, 2001). The court of appeals tried to distinguish *Quiring* from the present case, by making the assumption that the school board had not eliminated the entire union when it eliminated Quiring's position. (Add. 11 (stating that "only one member of the union was 'eliminated,'" and speculating that "plausibly, the union's administration and existence was not impacted").) This assumption is, however, incorrect. The *Quiring* court stated that the school board's actions had "terminated Quiring's bargaining unit without negotiations." *Id*. at 638.

The court of appeals' current approach takes a sharp turn from *Quiring*, subverts the Legislature's intent, and breaks with precedent established by this Court. Under this new approach, a reorganization remains within a public employer's discretion unless the number of employees laid off reaches some critical mass, at which time the decision is either prohibited or becomes a subject of mandatory bargaining. The outcome of this approach is in direct contravention of the Legislature's policy, because it places the interests of employees and their unions over those of the public. Additionally, the decision is in discord with *Arrowhead Public Service* and *Laird*. Logically, a public employer's decision to restructure a department by eliminating an entire class of positions

has a greater impact on the organization and on the public in general than would the decision to eliminate a single position or a subset of positions. Accordingly, the public's interest in allowing the public employer to exercise its discretion is greater in the latter circumstance than in the former. Yet, under the court of appeals' analysis, the decision with the lesser impact is left to the discretion of the public employer, while the decision with the greater impact is wrested away from the body vested with the responsibility of protecting the health, safety, and general welfare of the public.

Regardless of how one examines the issue before the Court—whether by analyzing the plain language of the statute, by considering legislative policy, or by considering the consequences of the application of the statutes, the result is the same. The most reasonable interpretation of the interplay between sections 179A.07, subdivision 1, and 179A.13, subdivision 2(2), is that resolving whether a decision constitutes a matter of inherent managerial policy is determined exclusively by looking at section 179A.07, subdivision 1, and section 179A.13, subdivision 2(2), is not implicated in that analysis.

IV. PUBLIC EMPLOYEES RETAIN RIGHTS EVEN IF EMPLOYERS ARE NOT REQUIRED TO BARGAIN REORGANIZATIONS THAT RESULT IN THE ELIMINATION OF ALL OF THE POSITIONS IN A BARGAINING UNIT.

A. Section 179A.13, subdivision 2(2), retains its efficacy.

The City's interpretation of section 179A.13, subdivision 2(2), does not strip employees of the provision's protections. The result of the City's interpretation is narrow—that is, section 179A.07, subdivision 1, not section 179A.13, subdivision 2(2), determines what is a matter of inherent managerial policy, over which an employer has

discretion. Under the City's interpretation, section 179A.13, subdivision 2(2), would still prohibit acts that interfere with the administration or existence of an employee organization, so long as those acts are not otherwise permitted by section 179A.07, subdivision 1. Additionally, courts in other jurisdictions have held that an employer's otherwise-lawful acts might be considered unfair labor practices if they are motivated by antiunion animus. *Metropolitan Edison Co. v. N.L.R.B.*, 460 U.S. 693, 700 (1983) (interpreting unfair labor practices provision of National Labor Relations Act regarding discrimination and concluding, "Congress, however, did not intend to make unlawful all acts that might have the effect of discouraging union membership. Rather, the intention was to forbid only those acts that are motivated by antiunion animus."); *American Ship Building Co. v. N.L.R.B.*, 380 U.S. 300, 309 (1965) (discussing consideration of antiunion animus in analyzing prohibition against interfering with employees' exercise of rights under N.L.R.A.). If this theory were to be employed, it is possible that section 179A.13, subdivision 2(2), would prohibit a reorganization that is motivated by antiunion animus.

B. Employees have the right to bargain the effects and impacts of an employer's decision to reorganize.

The City's interpretation of section 179A.07, subdivision 1, does not reduce employees' right to bargain terms and conditions of employment. Additionally, under the City's interpretation, employees retain the right to bargain the *effects* of a decision to reorganize an agency or department.

Courts have long recognized that decisions regarding matters of inherent managerial policy sometimes "impinge" upon terms and conditions of employment. *See*

St. Paul Fire Fighters v. Local 21 v. City of St. Paul, 336 N.W.2d 301, 302 (Minn. 1983). The policy decision's impact on the terms and conditions of employment does not make the decision a subject of negotiation. *Id*. However, if the implementation of the decision is severable from the underlying policy decision, the effects of the decision's implementation on the terms and conditions of employment are negotiable to the extent that negotiation is not likely to hamper the employer's managerial discretion. *Id*. Applying this analysis, this Court has determined that employers' decisions to lay off employees generally are not subjects of negotiation. *See Arrowhead Pub. Serv. Union v. City of Duluth*, 336 N.W.2d 68, 71 (Minn. 1983). The implementation and effects of the decision, such as the order of lay-offs or severance pay, is, however, often determined to be negotiable. *See, e.g.*, *Ind. Sch. Dist. No. 88 v. School Serv. Emps. Union Local 284*, 503 N.W.2d 104, 107-08 (Minn. 1993) (holding that decision to contract out was inherent managerial right, but "the *effects* of that decision may still be subject to negotiation and arbitration").[10]

[10] The discussion of the impacts and effects on terms and conditions of employment is offered to demonstrate that the City's interpretation of sections 179A.07 and 179A.13 does not necessarily prevent employees from negotiating the terms and conditions of their employment. It is important to note, however, that the extent to which the City and Local 4725 engaged in negotiations regarding the *impact* of the implementation of the reorganization is not at issue in this case. The Respondents did not plead in their Complaint that the City refused to negotiate the effects of the reorganization. In the cross motions for summary judgment, the Respondents argued that the City had violated the following PELRA provisions:

> Employers. Public employers, their agents and representatives are prohibited from:

C. Unions and employees retain their rights to influence the decision makers.

Most importantly, the City's interpretation of the interplay between sections 179A.07, subdivision 1, and 179A.13, subdivision 2(2), does not strip unions or employees of their rights to speak against policy decisions being considered and making their positions known to decision makers. This is well-demonstrated by the facts of this lawsuit. One of the cornerstones of Local 4725's lawsuit is that the City violated their constitutional rights by retaliating against them for speaking out against the reorganization. Local 4725 has pointed out repeatedly, during the course of this lawsuit, that the FEOs and the union were vociferous in their opposition to the reorganization. They made statements to the media, and they used social media to argue against the reorganization. In fact, in 2010, their opposition to the City Council's initial attempt to reorganize the BFD was so effective, the City Council changed its mind. It did not

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> (1) Interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A to 179A.25;
>
> (2) Dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;
>
> (3) Discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization . . . .

Minn. Stat. § 179A.13, subd. 2. (*See also* Doc. 31 at 10.) The Respondents did not, however, plead that the City had refused to negotiate the impact of the restructuring, which would be a violation of section 179A.13, subdivision 5. They raised this argument for the first time in their reply to the City's motion for summary judgment. The district court correctly determined, however, that Local 4725's argument did not comply with Minnesota Rule of Civil Procedure 56.05. For that reason, the only question currently before the Court is whether the policy decision to reorganize the BFD is permitted under PELRA.

reorganize the BFD until 2015, five years after it first began considering the reorganization.

The determination that the City engaged in an unfair labor practice when it reorganized the BFD is not a vindication of the union's or FEOs' right to express their views on a management decision. Rather, it wrests the authority to make policy decisions from the officials elected to make them, and it promotes the FEOs' and union's interests over those of the public's. This result is contrary to public policy, and intrudes upon the powers and responsibilities delegated to City officials by the Legislature.

CONCLUSION

For the foregoing reasons, the City of Brainerd respectfully requests that the Court reverse the decision of the court of appeals in this matter.

Respectfully submitted,

Dated: February 28, 2019

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A18-0398
STATE OF MINNESOTA
IN SUPREME COURT

Firefighters Union Local 4725 and Mark Turner, its President,

Respondents,

vs.

City of Brainerd,

Petitioner.

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Appellate File No. A18-0398

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