

STATE OF MINNESOTA  
IN SUPREME COURT

**FILED**

October 2, 2019

OFFICE OF  
APPELLATE COURTS

City of Duluth, Minnesota,

Petitioner,

APPELLATE COURT CASE  
NUMBER: A19-0404

vs.

Duluth Police Union, Local No. 807,

DATE OF THE COURT OF  
APPEALS' DECISION FILED:  
September 3, 2019

Respondent.

**PETITION FOR REVIEW  
OF DECISION OF COURT OF APPEALS**

Susan K. Hansen (#0258222)  
Madden Galanter Hansen, LLP  
7760 France Avenue South, Suite 290  
Bloomington, MN 55435  
(763) 545-2525  
[SHansen@mgh-lawfirm.com](mailto:SHansen@mgh-lawfirm.com)

James P. Michels  
Rice, Michels & Walther LLP  
10 Second Street NE, Suite 206  
Minneapolis, MN 55413  
(612) 676-2300

and

Steven B. Hanke  
Deputy City Attorney  
411 W. 1st Street, Rm. 410  
Duluth, MN 55802  
(218) 730-5490  
[SHanke@duluthmn.gov](mailto:SHanke@duluthmn.gov)

**ATTORNEYS FOR PETITIONER**

**ATTORNEY FOR RESPONDENT**

**TO: THE MINNESOTA SUPREME COURT**

Petitioner City of Duluth asks this Court to review the Court of Appeals' opinion filed on September 3, 2019.

**I. Statement of Legal Issue Sought to be Reviewed and its Resolution by Court of Appeals.**

Whether enforcing an arbitration award reinstating Police Officer Adam Huot violates well-defined and dominant public policies against unreasonable use of force and failure to report use of force?

Here, the Court of Appeals issued an opinion indicating there is “some question about whether the public policy exception applies in Minnesota.” The Court applied the public policy exception and held the arbitration award does not violate the public policy against the unreasonable use of force or the public policy against failure to report use of force.

The Court ruled the award does not violate the public policy against unreasonable use of force because the arbitrator did not find that Huot is likely to, or will, misuse force in the future. The Court held that though Huot's use of force is contrary to a public policy against use of force, the arbitrator's award of reinstatement is not.

The Court of Appeals also found the award does not violate the public policy against reporting use of force because the arbitrator did not find Huot had violated the reporting policy on any prior occasions or would continue to fail to meet reporting requirements.

## **II. Statement of Criteria of Rule Relied upon to Support Petition.**

The criteria of Minnesota Rule of Appellate Procedure 117, subdivision 2 which support this petition are:

- (a) The question presented is an important one on which the Supreme Court should rule;
- (b) A decision by the Supreme Court will help develop, clarify, and harmonize the law; and
- ...
- (2) The resolution of the question presented has possible statewide impact.
- (3) The question is likely to recur unless resolved by the Supreme Court.

## **III. Statement of the Case.**

On the evening of May 20, 2017, Huot and two other Officers were dispatched to an area of Duluth's skywalk system where they encountered two Duluth citizens. As a result of this encounter, one of the citizens—B.H., a Native American male—was handcuffed with his hands behind his back and led by Huot and another officer through the skywalk system toward their squads. B.H. fell to the ground and told the Officers he would not continue walking. In response to this passive resistance, within ten seconds, and without saying anything to B.H. or his fellow officers, Huot reached down to pick up the handcuff chain holding B.H.'s wrists and used it to drag B.H. along the ground approximately 100 feet down the skywalk and through a doorway. Huot did not slow down or look behind him before dragging B.H. through the doorway, where B.H.'s head struck the door's solid metal frame, causing a loud banging noise that is audible on the body

camera video footage, which captured the entire incident.<sup>1</sup> After Huot caused B.H.'s head to strike the metal doorframe, one of Huot's colleagues responded by shouting: "Adam," hoping Huot would stop. Huot did not stop and continued to drag B.H. approximately 10 feet before dropping B.H. in front of the elevator. Add. 033-036, 077-079.

The two other officers who were present immediately recognized the incident was a reportable use of force incident under Department policies. One of the officers later told Huot he was uncomfortable with the incident. The other officer reported the incident to his supervisor and prepared a report that same shift. That officer had never seen "use of force taken to that level, [and] knew that it wasn't right." Huot did not report the incident to the supervisor nor prepare an incident report. Add. 045-048.

The City terminated Huot following an investigation concluding Huot had violated numerous policies by using unreasonable force and failing to report the use of force. Add. 037, 076-077. Huot had previously been involved in three other incidents involving inappropriate use of verbal or physical force against handcuffed individuals, some of color, for which he received a disciplinary suspension, coaching, counseling and remedial training. Add. 080. The Duluth Police Union grieved Huot's termination and the matter proceeded to arbitration. Add. 037-039.

On June 22, 2018, Arbitrator Mario Bognanno issued an award concluding the City did not have just cause to terminate Huot and reinstating him to his position as a Police Officer without back pay or benefits. Add. 085. While Arbitrator Bognanno found Huot

---

<sup>1</sup> Add. 012, Index #2 (Tusken Aff., Exhibit B).

had engaged in an unreasonable use of force by “dragg[ing B.H.] like a dog” through the Duluth skyway, he ultimately concluded termination was too harsh a penalty. Add. 083-085.

The Arbitrator stated that Huot’s conduct in this incident, caused “command staff to speculate” that he would misuse force again in light of the fact he had already been subjected to a disciplinary suspension, trained and coached about use of force. The Arbitrator concluded: “The Arbitrator cannot find fault with this speculation.” Add. 083-085. The Arbitrator further stated:

Huot and his career as a police officer is at a crossroad: Either he takes control of his penchant for misusing vocal and physical force or he will be fired: A *third* use of force violation would be his last.

Id. (emphasis added).

The City filed a motion in St. Louis County District Court seeking to vacate the Arbitrator’s decision. In an Order dated December 28, 2018, the district court denied the City’s motion, finding the award did not violate well-defined and dominant public policies. Add. 015. The Court of Appeals affirmed by opinion dated September 3, 2019. Add. 001.

#### **IV. Argument in Support of Petition.**

This case presents an important matter for the Supreme Court to decide and a case which will help clarify, harmonize, and impart certainty to the law. The legal issue before this Court is likely to recur and has possible statewide impact.

The Court of Appeals’ opinion calls into question the public policy exception, which has been repeatedly cited, analyzed, and applied by Minnesota courts. The Court of Appeals’ decision, if allowed to stand without further review, creates incredible discord

within the law of Minnesota regarding the continuing vitality of the public policy exception. Without guidance from the Supreme Court, lower courts and parties in Minnesota are left without a clear ruling on the existence of the public policy doctrine under Minnesota law.

In its decision, the Court of Appeals' specifically notes a perceived disharmony and lack of clarity in the law regarding the public policy exception: "There is some question about whether the public policy exception applies in Minnesota." Add. 006 (p. 6, FN 1.)

The Court notes the Minnesota Supreme Court has twice considered whether to vacate an arbitrator's award under the public policy exception, but the Court of Appeals finds the Supreme Court "has not determined whether the exception exists in Minnesota." Id. (citing *City of Richfield v. Law Enf't Labor Servs., Inc.*, 923 N.W.2d 36, 41 (Minn. 2019); *State, Office of State Auditor v. Minn. Ass'n of Prof'l Emps.*, 504 N.W.2d 751, 758 n.9 (Minn. 1993)).

The City does not agree with the Court of Appeals' interpretation of the Supreme Court precedent. Rather, the Supreme Court's application of the public policy exception in these two cases indicates the existence and vitality of the public policy exception under Minnesota law.

The Court of Appeals' opinion also references a prior published opinion from the Court of Appeals in which the Court not only explicitly recognized the public policy exception, but also applied it to vacate an arbitrator's award. Add. 006 (p. 6, FN 1.) (citing *City of Brooklyn Ctr. v. Law Enforcement Labor Services Inc.*, 635 N.W.2d 236 (Minn. Ct. App. 2001), *review denied* (Minn. Dec. 11, 2001)). The Court of Appeals states, however,

that *Brooklyn Center* was decided before the most recent Supreme Court *City of Richfield* decision and as such, concludes “its continued validity with regard to the public-policy exception is somewhat unclear.” Add. 006-007.

Despite the Court of Appeals’ questioning of the clarity of this legal doctrine, the precedent demonstrates Minnesota appellate courts, including the Minnesota Supreme Court, have unmistakably and repeatedly recognized the existence of the public policy exception as a doctrine that may be invoked to vacate an arbitration award.<sup>2</sup> However, the Court of Appeals’ interpretation of the case law and its explicit questioning of established precedent creates a disharmony and lack of clarity in the law suitable for review.

The Court of Appeals’ decision also jeopardizes the public confidence in law enforcement agencies and the legitimate and necessary authority of these agencies to protect the public, especially individuals of color. The Court of Appeals’ held that the award reinstating Huot—an Officer found by the arbitrator to have a penchant for use of force—does not violate public policy. The Court’s decision is in error. Upholding the award reinstating Huot, ignores the rights of citizens to be free from police brutality and

---

<sup>2</sup> See *State Auditor*, 504 N.W.2d at 756; *City of Richfield*, 923 N.W.2d at 40 (“We have noted that a public-policy exception may, in limited circumstances, provide a basis to vacate an arbitration award that violates a well-defined and dominant public policy.”) (citing *State Auditor*, 504 N.W.2d at 756); *City of Minneapolis v. Police Officers’ Fed’n.*, 566 N.W.2d 83, 89 (Minn. Ct. App. 1997) (“In limited circumstances, a ‘public policy exception’ may provide a basis for courts to vacate an arbitration award.”) (citing *State Auditor*, 504 N.W.2d at 756); *City of Brooklyn Ctr.*, 635 N.W.2d at 244 (“[T]his award must be vacated upon an application of the public policy exception . . .”).

the unreported use of force—rights which are clearly and unmistakably grounded in public policy.

This matter arises out of unique and important circumstances wherein an arbitration award was issued reinstating an individual contrary to the legitimate safety-related decision of a chief law enforcement officer responsible to protect the citizens of Minnesota. Here, the arbitrator did not find fault with command staff's view that Huot would misuse force again, but still the arbitrator reinstated him. This type of matter is exceptional, but likely to arise again. As such, the applicability of the public policy doctrine to these unique circumstances must be clearly communicated and understood for future application to these extraordinary situations.

Additionally, this case presents a significant legal issue, the resolution of which has possible statewide impact. It is not just the parties to this proceeding that are impacted by the resolution of this issue. This matter broadly represents a legal issue of important public interest. In these extraordinary circumstances, it is necessary to apply the public policy exception to vacate an award that violated public policy and dismantles the community's trust in law enforcement.

Across Minnesota, law enforcement leaders are rising to the intensifying and earnest public request for increased accountability in law enforcement, particularly in their interactions with communities of color. Law enforcement leaders have responded to these requests by implementing policies and standards requiring increased accountability as part of their effort to regain and build trust with the citizens of this state.

This decision affects law enforcement officers, law enforcement leaders, and Minnesota citizens. Minnesotans must be able to trust their law enforcement. They must be able to trust that peace officers with a demonstrated proclivity for unreasonable use of force will not be reinstated to their positions despite the well-reasoned decisions of police chiefs to terminate such officers. Strong relationships of mutual trust between police agencies and the communities they serve are critical to maintaining public safety and effective policing. The award which ordered the reinstatement of Huot violates the clear public policy against unreasonable use of force and failure to report that use of force and prevents law enforcement and government employers from fulfilling their affirmative duty to protect the public from unreasonable force.

For these reasons, Petitioner seeks an order granting review of the decision of the Court of Appeals.

Dated: October 1, 2019

Respectfully submitted,

**CITY OF DULUTH**

/s/ Steven B. Hanke

Susan K. Hansen  
Attorney ID No. 0258222  
Madden Galanter Hansen, LLP  
7760 France Avenue South, Suite 290  
Bloomington, MN 55435  
(763) 545-2525  
[SHansen@mgh-lawfirm.com](mailto:SHansen@mgh-lawfirm.com)

Steven B. Hanke  
Deputy City Attorney  
Attorney ID No. 0387429  
411 W. 1st Street, Rm. 410  
Duluth, MN 55802  
(218) 730-5490

SHanke@duluthmn.gov

ATTORNEYS FOR PETITIONER

