



## RICE, MICHELS & WALTHER LLP

Attorneys and Counselors at Law

Brian F. Rice • James P. Michels • Ann E. Walther • Karin E. Peterson • Michael J. Salchert

Writer's Direct Dial (612) 676-2301  
jmichels@ricemichels.com

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Council President Kathy Lantry  
320-C City Hall  
15 Kellogg Boulevard West  
Saint Paul, MN 55102

### **RE: Ordinance Creating Positions in the Appointed, Unclassified Service**

Dear President Lantry:

As you know, I am the Business Agent and attorney for the Saint Paul Supervisors Organization (SPSO). The SPSO Board has asked that I write to you and your colleagues on the City Council to express our reservations and concerns regarding the proposed ordinance that would create three new job classifications in the unclassified service in the City of Saint Paul.

This matter is before the City Council pursuant to the provisions of Chapter 12 of the City Charter. Chapter 12 establishes the merit system for the City of Saint Paul which is founded upon the following principles set forth in Section 12.01:

- a) recruitment, selection and advancement of employees on the basis of their relative knowledge, skills, abilities and competence for the positions which they hold or for which they are applying or may be appointed;
- b) equitable compensation and benefit plans;
- c) improvement in job performance through training and education reflecting changes in workforce concepts and technological advances;
- d) compensation, retention, advancement and separation of employees on the basis of job performance and productivity;
- e) non-discriminatory treatment of applicants for employment and employees with proper regard for their privacy and constitutional rights; and
- f) protection of employees from arbitrary action, personal favoritism, political coercion or discrimination.

In keeping with these principles, the Charter establishes the general rule that all positions be in the classified services and filled pursuant to the merit system except for: elected officials; department heads; the mayor's secretary; the City Attorney and deputy and assistant City Attorneys; the Fire Chief; Police Chief; Personnel Director; City Clerk; and members of Boards and Commissions. *See Charter Section 12.03.2.* Clearly, the intent of the founding fathers and mothers, as expressed in the City Charter, was to limit the number of positions in the unclassified service so that the purposes of the merit system articulated in Section 12.01 could be achieved to their fullest extent.

As you know, Section 12.03.2 of the Charter does allow the City Council to establish by ordinance additional positions in the unclassified service with the consent of the Civil Service Commission. However, the creation of additional unclassified positions is a power that should be exercised with great caution because, while it is theoretically possible that unclassified positions may be filled by appointment in a manner consistent with the principles of Section 12.01, in practice filling positions by appointment too frequently is done based on considerations other than hiring the best person for the job.

Since appointed positions are contrary to the general provision of the City Charter favoring the merit system, whenever a new appointed position is proposed, the Council should base its deliberations on why the City would be better served by an appointed position rather than one filled through the merit system. The work to be done by the Deputy Director positions you are being asked to create is work that, for as long as anyone can remember, has been performed faithfully and effectively by SPSO members. To date, we have seen no evidence to demonstrate or even heard anyone claim that those duties would be performed better by someone hand-picked by the Department Head. If only reason to appoint people to high ranking positions is to placate the desire of the Department Head, such a rationale is not sufficient to overcome the strong presumption established by the Charter in favor of the merit system.

SPSO members are high-ranking managers for the City and as such they have devoted their careers to doing what is best for the City and its citizens. Over the years, SPSO members have seen appointed positions be used to provide employment to friends and political allies of Department Heads and, on occasion, elected officials. In many instances, the people appointed were not only *not* the best available candidate for the job, but also they were not competent in the skill sets necessary to adequately perform the essential functions of the job. Such a result is clearly contrary to the best interests of the City and its citizens.

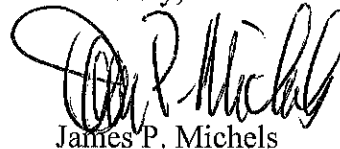
Moreover, it is unclear whether the proposed ordinance is intended to create appointed positions for three full-time employees or rather to create three new job classifications that can be used to appoint multiple additional appointed employees without the Council's further approval and consent. This creates the very real potential that Department Heads may in the future circumvent the merit process by systematically assigning work from classified positions to appointed deputy directors. SPSO members believe that there is evidence to suggest that cost of adding more high-paid appointed positions has caused and will continue to result in the elimination of classified positions – thereby reducing the number of front line employees available to deliver services to the people who live in, work in and visit Saint Paul. Civil Service Rule 34 shows that, when done in accordance with the Charter, the creation of job classifications in the

unclassified service has been done on a case by case basis with the intention that position be filled by a single incumbent. There has not been a blanket grant of authority for the Mayor, Human Resources Director or Department Heads to create positions in the unclassified service. It is simply not appropriate to grant such authority in this time of budget austerity with uncertainty as to the necessity for layoffs or staffing reductions through attrition.

Finally, SPSO members, as employees of the City, have certain rights under applicable law, the Civil Service Rules and their collective bargaining agreement. One of those rights is the right to collectively bargain. For more than a decade, the City has tried in collective bargaining to get SPSO members to give up their promotional rights – that is the right established by Civil Service Rules to fill positions with competent City employees before the City may hire from outside the City service. Given the fact that the work to be performed by the proposed Deputy Director positions is work previously performed by SPSO members, allowing this work to be performed by people selected by appointment rather than by the competitive examination process violates our member's promotional rights – rights which the City has repeatedly tried to strip from SPSO at the bargaining table. The City should not engage in the practice of merely taking something by ordinance which it could not obtain in bargaining. This constitutes an attack on our members' collective bargaining rights of the same nature that has caused a backlash by voters in other states throughout the country.

Therefore, for the reasons set forth above, SPSO and its members respectfully request that you reject the attempts to take our job duties, positions and promotional opportunities simply so that the Mayor and/or his department heads can hand pick people to do the work that SPSO members have effectively and efficiently been doing for years. Or, in the alternative, if you believe that such appointed positions are necessary to best serve the interests of the citizens, that you take measures to limit the number of employees that can be appointed to fill the new job classifications. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "James P. Michels". The signature is fluid and cursive, with a large initial "J" and "M".

James P. Michels

cc: Mayor Coleman  
Pat McGinn, SPSO President