

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

COMPREHENSIVE SECURITY, INC.,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 3:18-cv-00375
)	
METROPOLITAN GOVERNMENT OF)	
NASHVILLE AND DAVIDSON)	
COUNTY,)	
)	
Defendant.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This antitrust case concerns private security services in Davidson County, Tennessee. For years, private companies, including Plaintiffs, were the primary suppliers of private security services in Davidson County. Those private companies hired off-duty Metropolitan Nashville Police Department (“MNPDP”) officers to provide part-time security services. Beginning in 2013, MNPDP started a five-year plan to transition the secondary employment of off-duty MNPDP officers away from private companies. As MNPDP implemented this transition, it also decided to enter the private security services market. In order to win business, MNPDP lowered rates, changed administrative procedures, and eventually prohibited off-duty MNPDP officers from working for private security companies. MNPDP won a number of contracts previously held by private security companies and became a significant player in the private security services market.

Plaintiffs allege a disruption caused by MNPDP’s aggressive, competitive, and successful entry into the private security services market. They argue that MNPDP was successful through the use of anticompetitive conduct in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2

(“Section 2”).¹ A bench trial was held on November 12 through 16, 2020, (Doc. Nos. 138-140), and the parties submitted post-trial briefs. (Doc. No. 137, 145, 146). The Court makes the following Findings of Fact and Conclusions of Law in accordance with Rule 52(a) of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

The Private Security Services Market In Davidson County, Tennessee

1. Plaintiffs are three long-established private security companies operating in Davidson County, Tennessee. Comprehensive Security, Inc. (“Comprehensive”) is headed by Loyd Poteete, a former MNPD officer. Associated Protected Services (“APS”) is owned by Michael Woods, a former Millersville, Tennessee police officer. OnTrac Security is operated by Ralph Douglas Jones, a formed MNPD sergeant.

2. Plaintiffs offer traditional police and security services to the public, including site security, asset security, traffic control, crowd control, individual protection and other similar security services.

3. In order to deliver police and other security services, Plaintiffs hire off-duty police officers as part-time employees on an as-needed basis. (Doc. No. 138 at 16-26, 157-60). Those off-duty officers are either commissioned by the Tennessee Peace Officer Standards & Training Commission (“POST officers”) or without a POST commission. (Id. at 17-19, 26, 159-63, 191). The distinction is significant because only POST officers can make arrests and direct traffic on public streets. (Id. at 16; Doc. No. 139 at 26; Doc. No. 140 at 66). Most of the off-duty officers typically work full-time for local and state governmental law enforcement agencies, such as MNPD, and receive employment benefits and annual training through that employment. As a

¹ Plaintiffs abandoned their Section 2 predatory pricing claim. (Doc. No. 145 at 2, 32).

result, private security companies benefit greatly from having access to trained off-duty officers who desire sporadic, additional part-time work pay without incurring the training cost or other costs associated with regular employees. (Doc. No. 139 at 116). Having this ready labor made it easier for private security companies, like Plaintiffs, to fulfill their contractual security obligations in Davidson County. (Doc. No. 138 at 171-72).

4. MNPDP facilitated the success of private security companies through secondary employment policies and procedures. As far back as the 1990s, an MNPDP officer who wanted to work part-time for a private security company could submit a secondary employment work request, known as a Form 150, and approval was “pretty much guaranteed.” (Doc. No. 138 at 173; see also id. 51-52; Doc. No. 119-20). In 1997, MNPDP created the Secondary Employment Unit (“SEU”), to help MNPDP officers obtain approval of secondary employment requests. The SEU gave private security companies “very easy” access to a “great pool” of MNPDP officers that were “on standby constantly.” (Doc. No. 138 at 51-53, 172).

5. The cooperative relationship between MNPDP and private security companies extended to Metro’s Special Events Committee, which consisted of representatives from the Mayor’s Office, Public Works, Metro Parks, MNPDP, Metro Fire, and special event coordinators. The Committee’s responsibilities included the planning, permitting, and approval of special events in Davidson County. (Id. at 37-38, 175; Doc. No. 139 at 57-58). The inclusion of Plaintiffs and other private security companies reflected the then market reality that private security companies did the “lion’s share of [the private security] work,” and were able to share their expertise on security, road closures, and traffic control. (Doc. No. 139 at 58-59).

Chief Anderson's Five-Year Transition Plan for MNPD

6. In April 2013, then MNPD Chief Steve Anderson announced a five-year transition plan to change “the future of secondary employment of [MNPD] police officers” and to ensure the “safety” of citizens and visitors. (Ex. 68 at 2, 6). In an April 26, 2013 email to city officials, Chief Anderson explained that “practices relating to the off-duty employment of police officers that were in place 20 years ago would not be acceptable today.” (Id. at 2). He explained that there was “little or no regulation or oversight as to how, or even where, officers used their police authority in off-duty employment,” and that without “sufficient oversight, there is the real potential, and as we have seen in other cities, [for] the reality of inappropriate conduct, favoritism, misbehavior and/or corruption.” (Id.) He was committed to “improving accountability and reducing liability to the city” by changing the availability and controls surrounding secondary employment of off-duty MNPD officers. (Id.)

7. Chief Anderson also determined that continued employment of MNPD officers by private security companies had “the potential to divide an [MNPD] officer’s loyalties, create conflicts of interest and otherwise have a detrimental effect on the operation of the Metropolitan Government.” (Id. at 3). So, he decided to restrict officers’ secondary employment by requiring that all private security services work be approved by MNPD. (Id.) This would enable MNPD to “limit its liability and exercise sufficient control so as to minimize any detrimental impact [secondary employment] can create.” (Id.) The change would also help MNPD become more “professional [and] coordinated,” and “enhance public safety and service.” (Id. at 6).

8. The transition plan for MNPD officers’ secondary employment would occur over five years to avoid any “outcry” over sudden change to an existing system “[e]ngrained into the culture of Nashville.” (Id.) It was important to Chief Anderson that special event planners would

not hire MNPDP officers directly unless the fees charged by MNPDP were “reasonable and affordable.” (Id. at 5). He explained that it was “imperative” that MNPDP “give the Nashville community and event organizers an affordable way to have Metropolitan Nashville police officers staff their events.” (Id. at 5-6).

9. MNPDP Captain David Corman, the head of SEU from 2010 to 2019, was responsible for implement Chief Anderson’s five-year transition plan. (Doc. No. 140 at 76).

10. Beginning in April 2013, Corman began the process. First, the focus of SEU changed to obtaining private security contracts for MNPDP that could be directly staffed with MNPDP officers. (Doc. No. 139 at 37). MNPDP Sergeant Kim Forsyth testified that Corman was concerned that private security companies were using MNPDP’s officers to make their own money, and he became excited at the prospect of generating business for MNPDP. (Id. at 37-38). Forsyth, a witness offered by Plaintiffs, was very critical and accusatory of Corman. She believed that Corman wanted to make as much money as possible for MNPDP and operated SEU with the goal of eliminating the work available to private security companies so that eventually they would be forced out of business. At trial, she was nervous, unsure, fearful and contrived. She lacked any direct or indirect knowledge about MNPDP’s anti-competitive activities or motive. Instead, her testimony consisted of aggressive, prepackaged speeches that were often not responsive to questions. Overall, the Court found Forsyth not credible, and likely influenced by personal feelings about Corman.

11. Second, Corman implemented administrative changes to add “more structure” and “more oversight” to the Form 150 process for approving secondary requests. (Doc. No. 140; see also Doc. No. 138 at 51-57, 173-75). For example, MNPDP required multiple escalating levels of approval – first by the captain or precinct commander, then by the head of SEU, and eventually by

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