

No. ED90143

**In the Missouri Court of Appeals
FOR THE EASTERN DISTRICT**

ST. JOHN'S MERCY HEALTH SYSTEM, APPELLANT

v.

DIVISION OF EMPLOYMENT SECURITY, *ET AL.*, RESPONDENTS

*ON APPEAL FROM AN ORDER OF THE
MISSOURI LABOR & INDUSTRIAL RELATIONS COMMISSION,
DIVISION OF EMPLOYMENT SECURITY*

BRIEF OF RESPONDENT-CLAIMANTS

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Argument

1. The Commission Did Not Err in Ruling That the Claimants Were Not Ineligible for Benefits

As set forth in appellant's brief, each of the respondent-claimants in this matter were registered nurses who were members of the United Food and Commercial Workers, Local 655 ("the Union") and who participated in a strike against the Medical Center from December 15, 2004 through January 21, 2005. Each claimant filed for unemployment compensation and each received deputy determinations denying their unemployment based on the "labor dispute" disqualification of Missouri Revised Statutes, Section 288.040.6(2). The determinations stated substantially the same thing: "The claimant is ineligible from 01/02/05 to 99/99/99 because the claimant is unemployed due to a strike." (LF at 4.) The reason for the determinations, as stated therein, was that "The claimant's unemployment is due to participation in a labor dispute at the premises where last employed." (LF at 4.)

The claimants timely appealed the findings of ineligibility. (LF at 5, 7.) On appeal, the Appeals Tribunal reversed the deputy's determinations. Its decision states: "The deputy's determinations are reversed. The claimants, whose names appear on the list attached to this decision, are not ineligible for benefits for any week claimed from December 12, 2004, through January 24, 2005 because of Section 288.040.6(2)." (LF at 17.) At no time during the appeal to the Appeals

Tribunal did the Medical Center argue that the Appeals Tribunal did not have the authority to consider the issue of ineligibility based on Mo. Rev. Stat. § 288.040.6(2). (LF 7-17.)

The Medical Center now contends that the Commission exceeded its powers “by upholding an award of benefits without the necessary threshold determination as to the claimants’ eligibility for benefits.” (Brief of Appellant, p. 10.) As a threshold matter, the Union points out that the deputy actually did find that the claimants were unemployed: as stated in the preceding paragraph, the deputy’s determinations found that the claimants were “unemployed due to a strike.” (emphasis added.)

However, even if the Medical Center is correct in stating that the underlying deputies’ determinations do not make any findings as to whether the claimants were either totally or partially unemployed, the Commission did not exceed its authority in deciding the ineligibility question based on the labor dispute disqualification. Chemtech Inds. v. Labor and Industrial Relations Comm’n, 617 S.W.2d 121 (Mo. App. E.D. 2002); Blue Hills Homes Corp. v. Young, 80 S.W.3d 471 (Mo. Ct. App. E.D. 2002). The Medical Center bases its argument on Blue Hills Homes Corp. v. Young, 80 S.W.3d 471. More analogous to the present case, however, is Chemtech Inds., 617 S.W.2d 121. In Chemtech Inds., the deputy found that a group of claimants was ineligible for benefits due to a work stoppage

caused by a strike. The deputy did not otherwise make any finding on the eligibility of the claimants to received benefits.

On appeal, the Appeals Tribunal held that no work stoppage existed and ruled that the claimants were therefore not ineligible on this basis; the Commission affirmed. The trial court affirmed and the issue was presented to the circuit court. The circuit court also affirmed the holding that the claimants were not ineligible for benefits due to a work stoppage. As for the eligibility issue, the court noted that it had no evidence either way to indicate whether the deputy had made a finding of eligibility. It held only that that issue was for the deputy and any finding by the deputy on that issue could be subsequently appealed, stating: “It is apparent that the statute requires a determination of eligibility of claimants which includes ability to work and availability before that issue can be reviewed under appellate procedures.” 617 S.W.2d at 121.

As in Chemtech, the Commission in this case did not make an award of benefits, but merely ruled on the issue of ineligibility due to a labor dispute issue. As in Chemtech, the Commission decided only that “The claimants . . . are not ineligible for benefits for any week claimed from December 12, 2004, through January 24, 2005 because of Section 288.040.6(2).” This decision was not in excess of the Commission’s jurisdiction.

The claimants in this case have already received their benefits. Therefore, an eligibility determination must have been made in some fashion subsequent to the Appeals Tribunal's decision. It is that decision from which the Medical Center should take its appeal on the issue of eligibility.

2. The Commission's Decision that the Claimants Were Not Ineligible for Benefits Was Predicated on a Constitutional Construction of Missouri Revised Statute § 288.040.6(2)

The Medical Center asserts that the Commission construed Missouri Revised Statute § 288.040.6(2) in an unconstitutional manner. According to the Medical Center, the Commission's failure to find "a causal connection between the conduct that produced the adjudicated ULP and the reasons for [claimants'] strike against the system," resulted in a "an irrational, overly broad and unconstitutional" interpretation of the relevant statute. The Medical Center argues, "Presumably, the legislature sought to create an exception to the disqualification of striking employees for benefits only if they go on strike because of their employer's adjudicated ULPs." (Appellant's Brief, pp. 18-19 (emphasis in original).)

The claimants disagree with the Medical Center's assertion that the statute can be interpreted in a constitutional manner only if there is an explicit finding of a "because of" connection between the ULP and the strike. As the Medical Center correctly points out, the statute generally disqualifies striking claimants from receiving unemployment benefits, in accordance with the usual rule in such cases

that an individual should receive benefits only if he or she is unemployed through no fault of his or her own. O'Dell v. Division of Employment Security, 376 S.W.2d 137, 141 (Mo. 1964.) However, the statute also quite purposely provides an exception to this lack of eligibility for striking employees whose employer has been found guilty of an ULP committed before or during the strike.

As the Supreme Court stated in a case involving an Ohio unemployment statute, “[l]ooking only at the face of the statute, an acceptable rationale [for this exception] immediately appears.” Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 491 (1977). The legislature had the right to decide that employees who are on strike solely due to economic concerns are unemployed due to their own fault, and, therefore, do not receive unemployment benefits. This conclusion does not depend on the particular facts of the strike, even in those cases where the strike is forced by unreasonable conduct by the employer that falls short of an ULP. On the other hand, the legislature was within its constitutional rights to determine that the balance shifted once an employer was found guilty of an ULP that preceded or occurring during a strike. Now, on the scales of justice, the employer’s side tipped below equal. The legislature could properly decide that the employer, and not the employee, should bear the burden. In fact, one might rationally suppose that a more intensive inquiry into cause and effect, had it even been considered by the legislature, might have been rejected due to the difficulty of

determining which one of many issues was the, or even a, "cause" of a strike. Thus, "although one might say that this system provides only 'rough justice, its treatment of the employer is far from irrational. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification is not made with mathematical nicety or because in practice it results in some inequity." Id. (internal citations omitted).

The statute at issues, Missouri Revised Statute, Section 288.040.6(2) falls neatly within the reasoning of the United Supreme Court in the Hodory case: the statute disqualifies from the receipt of unemployment benefits those individuals who embark on a purely economic strike, presuming those employees to be unemployed through their own fault; on the other hand, the statute exempts from this disqualification striking employees whose employers committed an unfair labor practice before or during the strike, presuming the employees not unemployed through their own fault due to the ULP finding. While there may be occasions on which some inequity results to the employer, there remains a rational basis for this decision and therefore, the legislature was within its constitutional limitations in drawing the distinction it drew.

Even if the statute were read to require a causal connection between the ULP of which the employer was found guilty and the strike, the claimants in this case would still be entitled to benefits under this provision. As set forth in the Decision

of the Appeals Tribunal, the unfair labor practice of which the Medical Center was found guilty on December 6, 2004 involved the Medical Center's failure to honor its union-security obligations. (LF at 13.) The Medical Center engaged in this unfair labor conduct immediately upon the ratification of the parties' first collective bargaining agreement and into 2006. (LF 9-14.) During negotiations for a successor agreement, one of the reasons the negotiations stalled was due to the Medical Center's insistence that its union security obligations be deleted from the successor agreement altogether. (Appellant's Brief at 5.) Thus, the issue of union security both underlay the ULP and was a factor in the parties' inability to reach a successor agreement. If a causal connection between the ULP and the cause of the strike is necessary, this connection should be sufficient.

The Medical Center, however, insists that the causal connection must be tighter. It seeks to distinguish the ULP finding that it had failed to comply with its union security obligation for four years from the negotiation issue of whether it would agree to a union security provision in the parties' successor agreement. As discussed in the preceding paragraph, the Union asserts a causal connection between the ULP and the strike as both concern the Medical Center's continuing attempts to avoid union security obligations. The Medical Center's argument for a more exact connection must be rejected because it stands on its head the requirement that disqualification provisions be narrowly construed in favor of

eligibility. Furthermore, the obvious complications that would arise from accepting the argument and thereafter having to weed through the potentially many reasons for a strike to find “the one,” demonstrates why the legislature chose a simpler standard: if the employer commits a ULP in the period preceding the strike or during the strike, the striking employees get benefits.

3. Missouri Revised Statutes, Section 288.040.6(2) Is Not Facially Unconstitutional

The Medical Center argues that § 288.040.6(2) is facially unconstitutional first, because it fails to require a causal connection between the ULP of which the employer is found guilty and the reason for the strike and second, because there is no temporal limitation on when an ULP that precedes the strike must have occurred. Whether a causal connection must exist for the statute to be constitutional was discussed in the preceding section. The Medical Center’s argument that § 288.040.6(2) is facially invalid because there is no temporal connection between the ULP and the strike will be discussed below.

As an initial matter, claimants first address the question of whether the constitutional issue need even be reached in this case. The Medical Center is concerned that strikers will be able to receive benefits during an economic strike, if “at any time since July 5, 1935, the Board or a court has adjudicated an ULP against them.” (Appellant’s Brief, pp. 24-25.) This case, however, does not present such a dilemma. The Medical Center was found guilty of an ULP by an

Administrative Law Judge (ALJ) on December 6, 2004; the strike commenced on December 15, 2004. (LF, at 13.) The decision of the ALJ, which was subsequently adopted by the NLRB, stated that “since December 19, 2003,” the Medical Center had been violating the National Labor Relations Act by failing to comply with its union security obligations. (LF, at 13.) That is, for the year prior to the strike, the Medical Center had been committing an ULP. Furthermore, the ULPs were not cured until after February 1, 2006. (Tr. at 58-59.)

Under this factual reality, the Medical Center’s arguments about what might happen to employers who had committed “stale” ULPs is simply not at issue. There is a temporal connection here between the ULP and the strike and therefore, no need to determine whether the statute would permit strikers to be eligible for benefits if the ULP had occurred ten years’ prior.

To the extent the constitutional argument is considered, the analysis must start with the cardinal rule of statutory construction that a court will “presume the validity of a statute unless it clearly convenes a constitutional provision, to adopt any reasonable reading of the statute that will allow its validity, and to resolve any doubts in favor of constitutionality.” General Motors Corp. v. Director of Revenue, 981 S.W.2d 561, 566 (Mo. banc 1998). The court must not construe the language of a statute in a hyper technical fashion, but should instead give a reasonable and logical meaning to the statute. In re Boland, 155 S.W.3d 65, 67

(Mo. banc 2005). The words of the statute, the context in which those words are used, and the problem sought to be redressed in the statute must all be considered together. Care and Treatment of Schottel v. State, 159 S.W.3d 836, 842-43 (Mo. banc 2005).

As has been stated elsewhere, the statute at issue is a remedial statute, designed to provide unemployment benefits to individuals unemployed through no fault of their own. Thus, while employees unemployed due to participation in a strike are generally ineligible for such benefits, the legislature carved an exception for striking individuals whose employers had been found guilty of an ULP. As with all remedial legislation, the disqualification provision must be construed narrowly while the eligibility provisions are to be construed liberally. O'Dell v. Division of Employment Security, 376 S.W.2d 137, 142 (Mo. 1964.) The construction of its language must be undertaken within these parameters.

It is certainly true that the phrase “preceding or during the strike” can be construed in various ways. As the examples from the Medical Center’s brief show, the language could be read to remove the striker disqualification from strikers whose employers committed ULPs even decades prior to the strike at issue. However, such an interpretation is not reasonable in the context of the statute. The statute’s intent to provide benefits to employees unemployed through no fault of their own would seem to imply that this section would be read to inquire into

whether the ULP finding changed the assessment of fault in the strike. There are therefore several other ways to read the language, besides the way posited by the Medical Center, which would result in a constitutional meaning. As one example, the term “preceding the strike” could be defined as meaning “in the period leading up to the strike.” It is even possible that the phrase was not meant to have a temporal meaning at all but was meant to provide the causal link between the ULP and the strike that the Medical Center has otherwise urged, that is, that the ULP was a factor leading to the strike. Either of these readings is more reasonable than that urged by the Medical Center and either of these readings is in accordance with constitutional principles.

Conclusion

For the reasons set forth above, the decision of the Commission should be affirmed. The Commission was within its authority to decide the issue of ineligibility based on Section 288.040.6(2) and to determine that the statute’s striker disqualification provision was inapplicable due to the ULP committed by the Medical Center. Although the Medical Center has raised a constitutional argument, that argument is not relevant to the present case. The ULP finding that rendered the claimants not ineligible for benefits occurred in both temporal and causal proximity to the strike. The Medical Center had for years been evading its union security obligations and, when negotiating for a successor agreement, took

that evasion a step further in its insistence on completely removing its union security obligation. This insistence was without doubt one of the reasons for the strike.

To the extent the constitutional argument is considered, it must be rejected. The legislature had a rational basis for determining that strikers whose strike follows a ULP are not unemployed due to their own fault, but are instead unemployed at least to some extent due to the employer's bad act. Furthermore, there is no need to interpret the statute's language in an unconstitutional manner, as is done by the Medical Center. The language should be interpreted in the context of the statute's purposes. As the Union points out above, there are several logical interpretations of the language that fit the context of the statute and that do not have an unconstitutional impact.

Rule 84.06(c), (g) Certificate of Compliance

The undersigned attorney hereby certifies that this brief complies with the page limits of Special Rule 360, contains 3,083 words in Times New Roman 14 font, the information that is required by Missouri Supreme Court Rule 55.03, and otherwise complies with the dictates of Rule 84.06.

A CD-ROM containing an electronic copy of this brief has been submitted in accordance with Rule 84.06(g). The CD-ROM has been scanned for viruses and is virus-free.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the counsel listed below by depositing both a written copy and a CD-ROM containing an electronic copy of the same in the U.S. mail, postage prepaid, this 10th day of December 2007:

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