

**Summary of SC89152, *St. John's Mercy Health System v. Division of Employment Security, et al.***

Appeal from the Labor and Industrial Relations Commission.

**Attorneys:** St. John's was represented by Julie A. Bregande of The Lowenbaum Partnership LLC in St. Louis; the nurses were represented by Janine M. Martin and Richard Shinnars of Hammond, Shinnars, Turcotte, Larrew & Young PC in St. Louis; and the division was represented by Matthew Heeren and Larry R. Ruhmann of the Division of Employment Security in Jefferson City.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** This case involves a hospital's appeal of the grant of unemployment benefits to its nurses for the time they were on strike. In a 7-0 decision written by Judge William Ray Price Jr., the Supreme Court of Missouri affirms the judgment below, holding that the state statute authorizing unemployment benefits for striking employees of an employer that has been found guilty of an unfair labor practice does not violate the state and federal constitutions and is not preempted by national labor law. The nurses meet the requirements for benefits under the statute because the national board found the hospital guilty of unfair labor practices before the strike and the strike was in part a response to the hospital's practices.

**Facts:** An October 2001 collective bargaining agreement's union security clause required registered nurses at St. John's Mercy Health System to join the United Food and Commercial Workers Local 655 union and to pay dues. The clause also required St. John's to discharge non-compliant nurses upon receiving written notice from the union. Beginning in February 2002, when the dues obligation became effective, the union sent St. John monthly notices of non-compliant nurses, but St. John's refused to discharge these nurses. Between April 2002 and December 2004, the union filed four unfair labor practice charges against St. John's stemming from its continuing refusal to discharge the non-compliant nurses. One charge resulted in judgment by the federal district court, which was affirmed by the United States Court of Appeals for the Eighth Circuit, enforcing an arbitration award requiring St. John's to comply with the union security clause, to discharge the non-compliant nurses and to reimburse the union for lost dues. Another charge resulted in a March 2005 decision by the National Labor Relations Board, also affirmed by the Eighth Circuit, that St. John's had committed an unfair labor practice by violating the collective bargaining agreement by refusing to discharge non-compliant nurses. In December 2004, while negotiating a new collective bargaining agreement, certain registered nurses who work at St. John's and are union members gave notice of their intent to strike. They were on strike from December 15, 2004, to January 21, 2005. In January 2005, they filed for unemployment compensation benefits. A

division of employment security deputy initially found the nurses ineligible because their unemployment resulted from a strike and a final decision on the unfair labor practice charges had not been made. In November 2006, the appeals tribunal reversed this decision because, by that time, the national board had found St. John's guilty of an unfair labor practice prior to the strike and because the statutory ineligibility provisions did not apply. On review, the Labor and Industrial Relations Commission affirmed the appeals tribunal decision with modifications to the dates the nurses were eligible for benefits. St. John's appeals.

## **AFFIRMED.**

### **Court en banc holds:**

(1) Because states have the power to provide unemployment benefits to striking employees, section 288.040.6(2), RSMo 2000 – which provides unemployment benefits to employees on strike when the employer has been found guilty of an unfair labor practice by the national board or a federal court – is not preempted by the national labor relations act. Although state laws regulating or prohibiting conduct protected by the act are preempted, the United States Supreme Court has held that states may make policy decisions regarding unemployment benefits and that state laws providing unemployment benefits to striking employees are not preempted.

(2) The nurses meet the requirements of section 288.040.6(2), which provides unemployment benefits when the actions constituting an unfair labor practice were “preceding or during the strike.” When the nurses here went on strike, St. John's unfair labor practices for failing to comply with the collective bargaining agreement by not discharging the non-compliant nurses had been going on for more than two and a half years. The record shows the nurses went on strike partially in response to the ongoing unfair labor practices. St. John's also was found guilty by the national board, which was affirmed by the Eighth Circuit on appeal, of unfair labor practices before the strike.

(3) Section 288.040.6(2) does not violate the equal protection clauses of the federal and state constitutions. It is rationally related to the state's legitimate government interest in seeking to prevent employers from engaging in unfair labor practices by providing unemployment benefits to striking employees. It can be said that striking employees are unemployed as a result of the employer's actions and, therefore, are eligible for unemployment benefits because they are unemployed through no fault of their own.

(4) St. John's failed to preserve for this Court's consideration the issue of whether the ruling is valid without a deputy determining the nurses' total or partial eligibility for unemployment benefits. An issue appropriate for, but not addressed with the commission, cannot be litigated on appeal.